

# STATES OF JERSEY

## OFFICIAL REPORT

**TUESDAY, 14th MAY 2013**

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[9:30]

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

## **COMMUNICATIONS BY THE PRESIDING OFFICER**

### **The Bailiff:**

#### **1.1 Welcome to His Excellency The Lieutenant Governor**

May I begin by welcoming His Excellency to this sitting of the Assembly.  
**[Approbation]**

#### **1.2 Liberation Day – thanks to those involved**

Secondly, in relation to Liberation Day, can I repeat some of the observations I made in the Pomme d'Or Hotel after the morning's events. Liberation Day really does require input from an enormous number of people and they give their time well above and beyond the call of duty and in many cases, of course, they do it without any obligation at all, so I really am most grateful to all those who play their part. **[Approbation]**

#### **1.3 Liberation Challenge cyclists - congratulations**

Thirdly, this particular Liberation Day was, I think, added to greatly by the presence of the Liberation Challenge cyclists, so I would like to repeat the congratulations to the cyclists for the very worthwhile venture that went on and commend them for their fortitude in getting all the way there and back again. **[Approbation]** Linked to that, Members will know that I read out the message of goodwill from the Bürgermeister. The Bürgermeister has sent, rather as we did in the other direction, a nicely written out message, and the Usher is holding up the original now, and we are going to place it for the rest of the day in the Members' coffee room so it can be inspected. In due course we will find a home for it somewhere in this building. **[Approbation]**

#### **1.4 Liberation Day address by Connétable of Trinity - appreciation**

Last, but not least, I thank the Connétable of Trinity for his address to the Assembly at Liberation Day which got us all off to a very good start. **[Approbation]**

## **QUESTIONS**

### **2. Written Questions**

#### **2.1. THE CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE HOUSING COMPONENT OF INCOME SUPPORT AND THE IMPACT OF THE HOUSING TRANSFORMATION PROGRAMME:**

##### **Question**

Can the Minister advise Members the amount paid to claimants as the housing component of Income Support for 2009, 2010, 2011 and 2012?

Has the Minister considered the impact on the Income Support budget for the years ahead as a result of what may well be a considerable increase in publicly-owned rental properties and, if so, how much extra is projected to be required in 2014, 2015 and 2016.?

Does the Minister intend to request an increase in budget to meet this extra burden?

Is the Minister content for his department to transfer millions of its budget to support a body that may not be as politically accountable as the Housing Department is to the Housing Minister and Assembly today?.

## Answer

Information previously published indicates that the calculated allocation to housing components within the total income support expenditure has been:

Year	Allocation	Reference
2009	£22.7 M	Question 6536; 12/9/2011
2010	£24.1 M	Question 6536; 12/9/2011
2011	£24.4 M	R.126/2012, Question 7520; 19/3/2013

The allocation for 2012 will be published as part of the 2012 annual report.

The anticipated increase in publicly owned rental properties will allow additional tenants in receipt of income support benefit to transfer from the private sector to the public sector. These transfers will not, in themselves, result in any additional costs to the income support budget.

The total impact on the income support budget following the implementation of the Housing Transformation Programme has been considered in detail and as stated in the response to question 7602 (30 April 2013) *“The Minister for Treasury and Resources has confirmed that the additional cost of higher Income Support rates following the change in social rental policy will be fully reflected in additional funding for Income Support on an annual basis.”*

As Minister for Social Security, I hold the political responsibility for the income support scheme which supports low income families with their basic living costs. A large proportion of income support households live in the social rented sector and many of the proposals contained within the Housing Transformation Programme are aimed at improving both the condition of the social housing stock and the legal rights of social housing tenants. As such, I am fully supportive of the current proposals of the Housing Minister.

For clarification, there is no intention to transfer budgets between the Social Security Department and the new Housing Company. Income support is a benefit claimed by individual tenants. However, to reduce administration costs, bulk payments in respect of income support assistance towards the rental costs of tenants are made on a weekly basis, currently to the Housing Department and it is anticipated that a similar processing method will be set up with the proposed Housing Company.

The Housing Company will continue to be politically accountable as its policies will be set by the Strategic Housing Unit which will be governed by the Housing Minister, and the social housing regulator will ensure compliance with those policies. Additionally, the Housing Company will be 100% owned by the States of Jersey and governed by a Transfer Agreement between the States and the Housing Company which includes the requirement to provide regular updates to the States.

## **2.2 THE CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE IMPACT OF THE INCREASE IN**

## **RENTS PROPOSED IN THE HOUSING TRANSFORMATION PROGRAMME:**

### **Question**

Has the Minister considered the potential adverse economic impacts of increasing social housing rentals, as proposed within the Minister for Housing's Housing Transformation Programme document, at a time of recession?

Does the Minister accept that if the average increase in rents is £300 per month per household, then this could remove over £14 million of disposable income out of the economy on an annual basis?

### **Answer**

The economic implications of increasing social rents for the group of tenants that will be affected have been considered as part of the wide consultation process undertaken, including with the States Economic Adviser, as well as Scrutiny and external stakeholders.

The estimated additional rental income to be received by the new Housing company as a result of the proposed rent increases, in real terms, is £0.5 million in 2014 and £1.1 million in 2015. Of these amounts £0.3 million in 2014 and £0.7 million in 2015 will be paid by Income Support. The balance £0.2 million and £0.4 million is the net additional rent that will be paid by tenants. (Section 5.5, Page 52 of P33/2013).

I refer also to the answer to Written Question 7600 to the Minister for Housing on 30<sup>th</sup> April 2013 where it is stated, *"the proposed policy would add, on a weighted average, a further £11.89 or 6% to rents on new tenancies. For 2 bedroom accommodation the figure is £20.06 or 10%."*

These figures are different to those quoted by the Connétable.

The relatively small economic impact of the rent increases must be considered in the wider context of what the Housing Transformation Programme will deliver. In 2014 and 2015 Housing plan to commence New Build Projects and Major Refurbishment Projects totalling £31.4 million in 2014 and £45.9 million in 2015. This at a time when the construction industry most needs it, given that current survey information shows 55% of construction firms are working below capacity. Overall the HTP helps to support the economy during the downturn by delivering valuable construction activity at the right time.

## **2.3 THE CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING ASSISTANCE TO THE LOCAL FISHING INDUSTRY:**

### **Question**

How much, if any, was given to the Island after the Amoco Cadiz oil disaster in 1978 to help the fishing industry and cover the costs of cleaning up the oil and is there any balance left in that fund?

If a balance is remaining, would the Minister consider using the funds to assist the Jersey fishing industry by training local crews or to support Jersey vessels applying for licences to fish in Guernsey waters?

## **Answer**

Jersey received £203,392 from an insurance claim on the Amoco Cadiz, an oil tanker which ran aground in 1978, causing actual and potential pollution along the French Coast and in the vicinity of the Channel islands.

Proposition P32/91 (attached) was approved by the States on 26th March 1991 and provided for the establishment of an Ecology Fund using the Amoco Cadiz insurance money. The Ecology Trust Fund (ETF) was created with the transfer of £203,392 plus accrued interest of £141,200, and the £344,592 capital account of the fund is not available for distribution. Interest from the fund is available for use by the trustees (as detailed in the proposition) to grant aid, wholly or partially, for any activity designed to promote or protect the environment or ecology of Jersey.

Income from the fund has been used to fund projects which enhance the biodiversity of Jersey.

As of 31 December 2012 (unaudited accounts) the fund stood at £371,656 and currently provides an income of approximately £3,000 per annum available for grants.

Under proposition P32/91 the ETF trustees were given discretion to make sums available from the annual investment income from the Fund for the purposes, as detailed above, of partially or wholly granting aid for any activity, whether by public or private bodies or individuals, designed to promote or protect the environment or ecology of the Bailiwick of Jersey.

The ETF invites applications from the public and meets quarterly or biannually (depending on number of applications received) to consider these. Decisions on the use and allocation of funds clearly fall within the remit of the trustees. Decisions are based upon a majority vote among the trustees present and the Chair of the trustees, who is currently Deputy Anne Pryke.

## **Conclusion**

Proposition P32/91 establishes that the ETF was not designed to provide for fishing industry development support. However, it should be noted that the Economic Development Department provide industry development funding through the Rural Initiative Scheme and have already provided support for Jersey fishermen applying for licenses to fish in Guernsey waters.

### ECOLOGY FUND: ESTABLISHMENT

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Lodged au Greffe on 12th March 1991 by the  
Finance and Economics Committee

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**STATES OF JERSEY**

**STATES GREFFE**

1991

P.32

Price 75p

**PROPOSITION**

**THE STATES** are asked to decide whether they are of opinion  
—

(a) to approve the establishment of an Ecology Fund, the interest from the investment of which would be available for use by the trustees to grant aid, wholly or partially, for any activity designed to promote or protect the environment or ecology of Jersey;

(h) to agree that there should be five trustees of the Fund appointed by the States on the nomination of the Island Development Committee;

(c) to authorise the Treasurer of the States to transfer the sum of £203,392 plus accrued interest to the Fund;

(d) to agree that the Fund should be administered in accordance with the report of the Finance and Economics Committee dated February 1991;

(e) to authorise the trustees to make sums available for ecological purposes from the annual investment income of the Fund.

**FINANCE AND ECONOMICS COMMITTEE**

## **2.4 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING INCREASES IN RATES OF DIABETES:**

### **Question**

What are the predicted increases in diabetes rates for the next five years and what additional resources, if any, will be allocated by the Department to deal with these predictions particularly in relation to prevention?

### **Answer**

There are several different types of diabetes and the three predominant varieties are all increasing, albeit at different rates.

The current best estimate of past and present diabetes prevalence in Jersey is the Central Disease Register, which includes all persons known to have been diagnosed with diabetes, and still be living in Jersey. This register has been held by the Jersey Diabetes Centre since 1991.

Of the three main categories of Diabetes – Type 1, Type 2 and Gestational - Type 2 is showing the most significant increase in prevalence trends, with around 300 new cases diagnosed each year.<sup>1</sup>

The only useful way of preventing diabetes is to prevent obesity. Although levels of childhood obesity among five years olds are showing small signs of flattening out, the numbers are still of real concern, while obesity in adults continues to increase rapidly.

In an ageing society, where the strains on health and community social services are, inevitably, going to increase, obesity and diabetes will continue to present enormous challenges for the H&SSD.

Clearly, it is not a problem that can be managed or addressed by the Health department alone, but one that demands an overall States of Jersey strategy. Securing cross departmental support is a prerequisite for any meaningful joined up action, and is essential if Jersey is to have any hope of tackling the growing problems presented by the increasing prevalence of obesity and diabetes

While this does not yet exist, there are a range of current initiatives which are likely to have an effect, in time, on reducing the number of people becoming overweight or obese and these could actively underpin an overall States of Jersey strategy to tackle the problems.<sup>2</sup>

The prevalence of Diabetes and the challenges facing prevention is summarised below, followed by a more detailed background on trends and initiatives being developed to target obesity.

### **Executive Summary:**

- Δ Three key types of Diabetes – Type 1, Type 2 and Gestational. All three are increasing, with Type 2 showing the most significant rise in prevalence

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<sup>1</sup> A breakdown of prevalence trends for all three primary forms of Diabetes is detailed below the Summary

<sup>2</sup> An addendum, showing a breakdown of Obesity and Diabetes trends, together with a table outlining initiatives to form part of an overall States of Jersey Strategy for targeting the problems, is attached.

- Δ There are currently 3233 people living in Jersey, who have been identified on the register as having Type 2 Diabetes. This compares to 670 cases 20 years ago.
- Δ It is estimated another 400 have been diagnosed but not yet added to the register, and around 1500 additional people living with the condition, but not yet diagnosed
- Δ Cases of Type 1 Diabetes and Gestational Diabetes are both also increasing, though on a comparatively slower scale
- Δ It is estimated that a total of 5500 in Jersey are currently living with some form of diabetes with an expected increase of around 2000-3000 over the next five years
- Δ Preventing obesity is the only useful way to tackle the increasing prevalence of diabetes, and any treatment is unlikely to succeed without strategies to reverse ‘obesity promoting’ social trends
- Δ An overall States of Jersey strategy, with cross departmental support and joint initiatives, is essential if Jersey is to tackle the increasing prevalence of obesity and diabetes. This does not currently exist.
- Δ Despite the lack of an overarching States of Jersey Strategy, a number of initiatives are in place, including:
  - Public Health Department currently developing an outline business case for a **food and nutrition strategy**
  - **Breastfeeding initiative**
  - **Early years food guidance/training:** Covers basic food hygiene requirements as well as best practice in providing healthier foods suitable for the nutritional requirements of under 5’s
  - **Jersey school food standard:** Secondary school canteens monitored in offering healthier foods and drinks with an emphasis on reduced fats and saturated fats, sugar and salt as well as increasing fruits and vegetables
  - **Healthy Schools:** Schools work to achieve best practice standard across four areas, in particular food and physical activity
  - **Eco-Active schools:** Develops programmes and facilities that encourages, supports and promotes the benefits of walking and cycling to school
  - **Strategic Travel plan:** Includes improvements in cycle routes and pedestrian friendly infrastructure, as well as walking and cycling awareness raising events
  - **Provision of Health Education materials:** SoJ web basic fact sheet information with links to UK best practice sites
  - **Public Consultation on Sport:** joint initiative, being led by the Education Department, working closely with H&SS and involving other Departments



- Δ HSSD has made a commitment to further investment in existing diabetes services within the next 12 months, as well as allocating additional investment in the development of community diabetes services through White Paper funding

### **Prevalence and Trends: A Breakdown**

**Type 2 Diabetes** is the most prevalent type of the disease in Jersey and other Western societies.

The prevalence of Type 2 Diabetes in Jersey has been rising, according to an exponential trend, doubling approximately every six years for the past two decades. There are currently 3233 people living in Jersey, who have been identified on the register as having Type 2 Diabetes, compared to 670 cases 20 years ago.

To these must be added a further estimated 400 people who, according to past patterns of delayed registration, have been already diagnosed with Type 2 Diabetes but are yet to be added to the register. It is estimated that a further 1500 people in Jersey have developed Type 2 Diabetes but are yet to have the condition diagnosed, giving a current estimated total of around 5100 people with Type 2 Diabetes.

Based on recent trends, this number can be expected to rise to c7000-8000 people with Type 2 Diabetes in the next five years, of whom approximately 4750 will be diagnosed and on the disease register.

New cases of Type 2 Diabetes in Jersey are currently being diagnosed and registered at a rate of around 300 cases per year. If past trends continue, this rate is expected to rise to approximately 525 newly-diagnosed and registered cases per year, five years from now, but a true incidence of c750-800 new cases developing per year. A significant proportion of people with Type 2 Diabetes, perhaps 15-20%, die from a complication of the condition without their diabetes ever being diagnosed. This is usually as a result of a vascular complication, such as a heart attack or stroke, and generally because, unless proactively sought out, the delay from development to diagnosis of Type 2 Diabetes is up to 10 years.

**Type 1 Diabetes** is the second most prevalent type of diabetes.

The prevalence of Type 1 Diabetes in Jersey has been rising more slowly and, according to a linear rather than an exponential trend over the past two decades, there are currently 425 people with Type 1 Diabetes in Jersey, compared to 251 cases 20 years ago.

It is unlikely there are any significant numbers of undiagnosed or unregistered cases of Type 1 Diabetes. Prevalence of Type 1 Diabetes in Jersey, according to past trends, is increasing by just under nine cases per year, meaning there will be an estimated 470 cases in five years time.

**Gestational diabetes**, which is diabetes arising for the first time in pregnancy, is the third most common type of diabetes diagnosed in Jersey. It is estimated, using the most up-to-date diagnostic criteria, that around 16% of pregnancies are complicated by Gestational Diabetes.

The majority of these cases are presently undiagnosed, in part because less stringent diagnostic criteria are used and, in part, as current detection protocols do not detect many cases. Undiagnosed

or untreated Gestational Diabetes is the cause of a range of pregnancy-related complications, including some which are life-threatening to both mother and baby.

The rate of diagnosis of Gestational Diabetes in Jersey has increased from 10 cases per year to more than 50 cases per year over the past decade. Many units in the UK do not attempt to detect or treat the majority of cases of Gestational Diabetes because they lack the resources to do so.

The total number of people with a form of diabetes in Jersey is estimated at 5500, with an expected increase of 2000-3000 over the next five years.

### **Prevention**

Preventing obesity is the only useful way to tackle the increasing prevalence of diabetes. The obesogenic environment we have been living in for several decades is generating the upward trends in obesity across Western civilisation and, in turn, the rise in Type 2 diabetes.

A report by the International Obesity Taskforce blames social trends for the increase in childhood obesity, such as an increase in being driven to school, increased sedentary recreation, computer-based games and TV, as well as greater quantities and easily available energy-dense foods etc.

The report concludes that treatment is unlikely to succeed without strategies to reverse these 'obesity promoting' social trends.

An overall States of Jersey strategy with cross departmental support and joint initiatives, is essential if Jersey is to tackle the increasing prevalence of obesity and diabetes. In line with this, a number of initiatives are currently in place to tackle the problems of obesity.<sup>3</sup>

### **Investment**

H&SSD has not escaped the impact of the financial pressures facing the public sector in recent years, and the department has struggled to meet the levels of investment in services needed to keep up with the unprecedented increase in diabetes prevalence trends over the past decade.

Some of the shortfall has been made up with the help of the local diabetes charity. HSSD has, however, made a commitment to put further investment into existing services within the next 12 months, as well as allocating additional investment to support the development of community diabetes services through White Paper funding.

### **ADDENDUM: OBESITY & DIABETES TRENDS**

#### **Obesity in Adults**

- **Increasing trend**
- **Currently over 17,000 (18%) likely to be obese**
- **14,000 at high risk of cardiovascular disease**
- **Obesity in other European countries range from 10 to 30% of the population**

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<sup>3</sup> See Table 1: Page

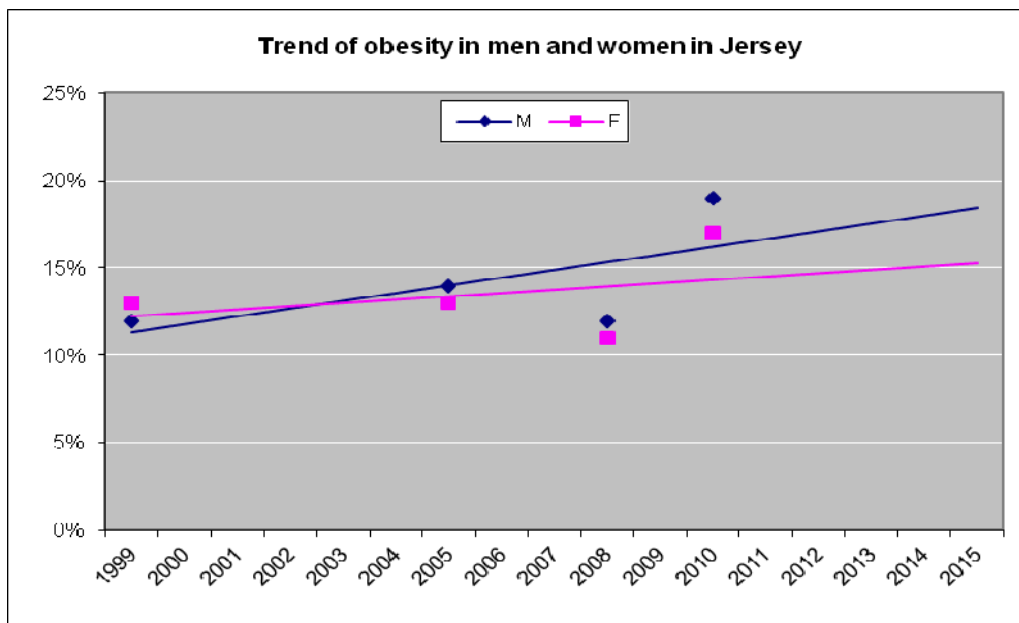
Obesity has been estimated using local surveys since 1999. This is likely to be an underestimation of the actual prevalence of obesity in the population, as respondents to self reporting surveys tend to under report their weight and over report their height.

Although the proportion of the population who are obese is not as high as some other European countries, where obesity ranges from 10 to 30% of the population, there is an increasing trend in obesity in both men and women in Jersey (Figure 1).

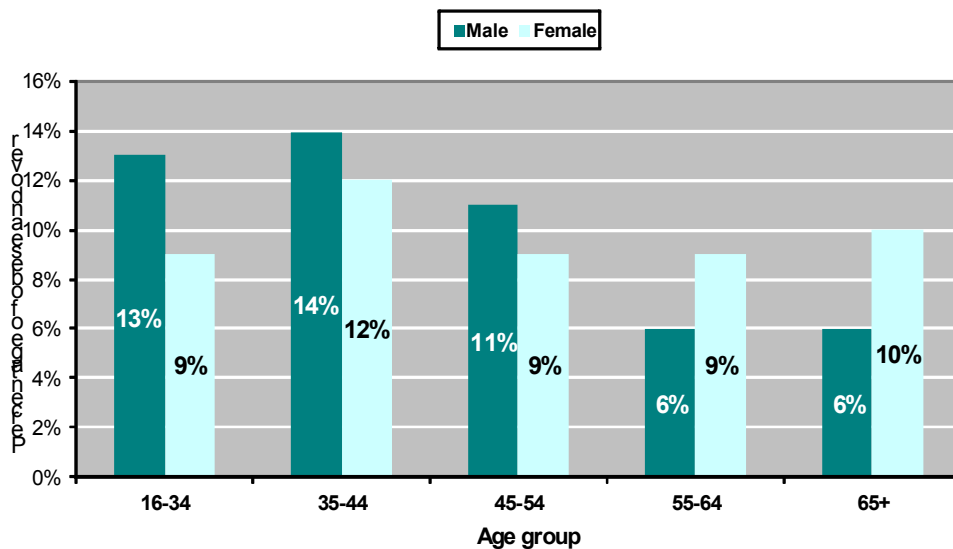
A greater proportion of the population are now overweight or obese, compared to 1999 figures. In 2010 18% of adults were obese (over 17,000 individuals) and an additional 38% were overweight. Obesity is slightly higher in men than women (19% of men; 17% of women). It tends to be more prevalent among men aged 16-54 and more evenly spread in women (Figure 2).

Waist size is a good indicator of individuals who are at increased risk of cardiovascular disease. Self reported surveys have indicated that over 14,000 individuals (15-16% of the adult population) report they have an increasing waist size, with both men and women, aged 55 and over, the most likely to be carrying excess weight around their middles.

**Figure 1: Obesity trend in adults**



**Figure 2: Obesity by age and gender**



### **Obesity in Children**

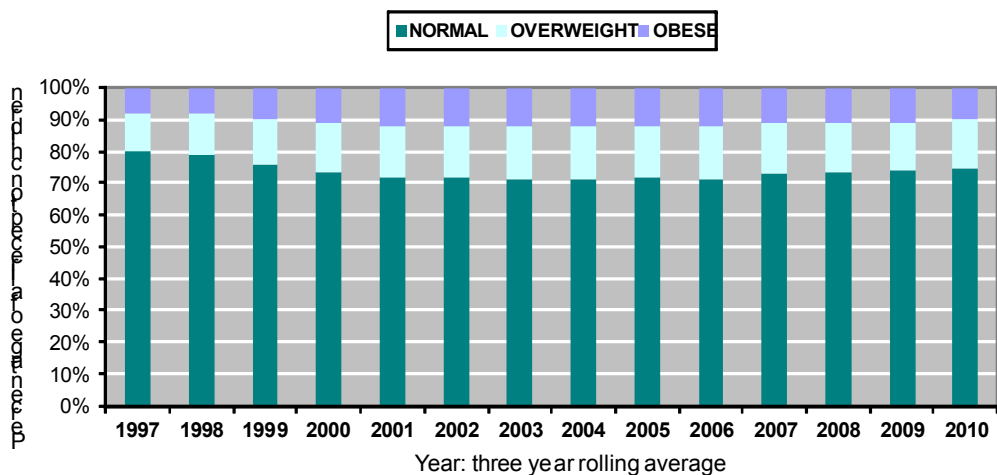
- **Increasing trend appears to be flattening**
- **10% of our 5 year olds are obese**
- **Prevalence of obesity in 5 year olds of 9.4% in England**

Data on obesity in five year olds has been collected at school health checks and analysed since 1997. The first data on obesity 10 year olds will be available later this year, following the completion of the first year of measurement in 2011/12

The increasing trend in obesity in younger children (to 2003/04) now appears to be flattening out (*Figure 3*) but it is still too early to be certain that this represents a long-term change in the trend. This reflects similar findings in the Health Survey for England 2010.

In 2010, 10% of five year olds were obese and an additional 15% were overweight, suggesting that one in four reception class children are likely to be overweight or obese. This is similar to the prevalence of obesity in five year olds in England, which is recorded at 9.4%.

**Figure 3: Reception age BMI**



## Diabetes

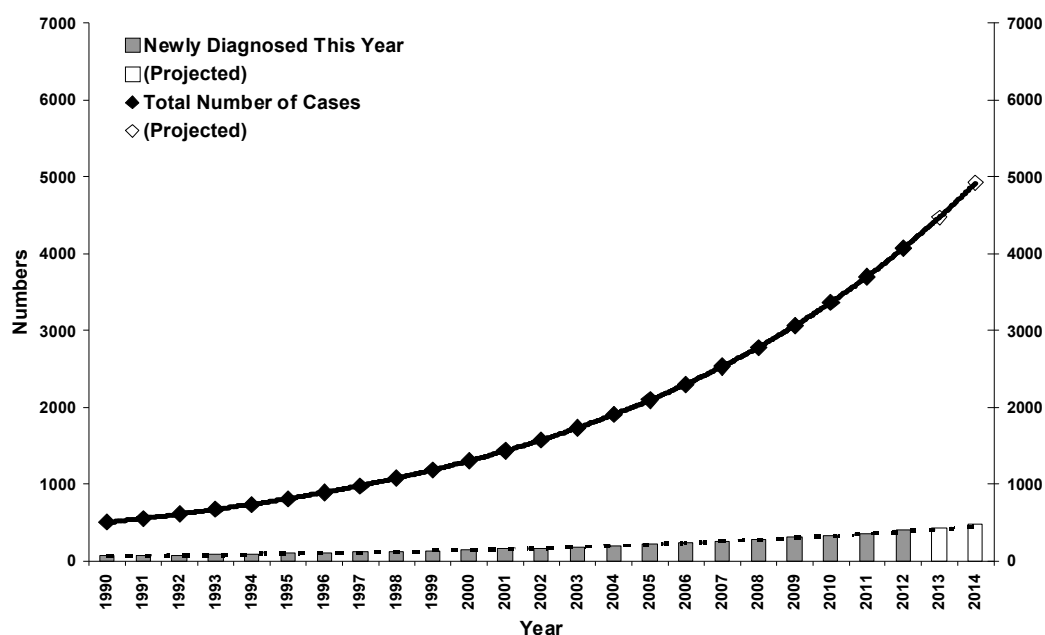
- **4,000 individuals with diabetes**
- **Increasing trend**
- **UK average of 4.2% of the population with diabetes.**

The diabetes service in Jersey has around 4,000 individuals on its data base. This amounts to around 4% of the population of Jersey. Of these around 3,000 individuals have Type 2 diabetes and around 450 have Type 1 diabetes. This is in line with the UK average of 4.2% of the population with diabetes.

As a consequence of increases in levels of obesity the diabetes service report increasing numbers attending with diabetic problems (Figure 4)

**Figure 4: Diabetes patients in Jersey 1990-2012**

Number of patients with Diabetes alive and in Jersey 1990-2012, projected to 2014



### Progressing a Strategic Approach

While there is currently no overall States of Jersey strategy on obesity, a number of long-term initiatives are in place, aimed at reducing the number of people becoming overweight or obese (See Table 1).

Table 1: Existing activity which would be included in an Obesity Strategy

Initiatives	Children	Adults
Whole population	<p><b>Breastfeeding initiative:</b></p> <p><b>Early years food guidance/training:</b> Covers basic food hygiene requirements as well as best practice in providing healthier foods suitable for the nutritional requirements of under 5's.</p> <p><b>Jersey school food standard:</b> Secondary school canteens monitored in offering healthier foods and drinks with an emphasis on reduced fats and saturated fats, sugar and salt as well as increasing fruits and vegetables.</p> <p><b>Healthy Schools:</b> Schools work to achieve best practice standard across four areas, in particular food and physical activity</p>	<p><b>Strategic Travel plan:</b> Includes improvements in cycle routes and pedestrian friendly infrastructure, as well as walking and cycling awareness raising events</p> <p><b>Provision of Health Education materials:</b> SoJ web basic fact sheet information with links to UK best practice sites.</p>

	<b>Eco-Active schools:</b> Develops programmes and facilities that encourages, supports and promotes the benefits of walking and cycling to school.	
<b>Primary activity</b>	<p><b>GP:</b> The universal 6-8 week baby developmental check is an opportunity for parental advice and guidance</p> <p><b>Health Visiting:</b> Universal development checks at 8 months – 1yr and 2 – 2 ½ years provide opportunity for parental advice and guidance</p> <p><b>School nursing:</b> Provision of school weight measurement programme: support to families with children measuring as overweight and obese and onward referral into dietetic service.</p>	<p><b>GP:</b> The draft Quality Improvement Framework has an indicator which requires general practice to provide a register of people who have a BMI over 30. It also describes interventions relating to diabetes hypertension, and cardio vascular disease.</p> <p><b>Health Walks:</b> Self or health professional signposting to local three day a week walk programme c (120 active walkers at any one time and up to 400 active over a year)</p>
<b>Community weight management</b>	<b>Dieticians:</b> Specialist dietary advice and planning.	<p><b>Dietitians:</b> Specialist dietary advice and planning.</p> <p><b>Exercise Referral:</b> Exercise on prescription by health professional. Tailored 12 week programmes based on assessed health and medical need.</p> <p><b>Weight Watchers by Referral:</b> For clients referred into Exercise Referral with a BMI over 30 (Approx 200 pa) Currently 68% achieving clinically significant 5% weight loss following 12 weeks.</p>
<b>Specialist treatment</b>		<b>Bariatric surgery</b>

**2.5 SENATOR A. BRECKON OF THE MINISTER FOR HOUSING REGARDING THE AMOUNT OF RENT PER HOUSEHOLD THAT WAS PAID TO THE TREASURY IN 2012:**

**Question**

Further to the content of the Report on the Social Housing Property Plan 2007-2016 produced in June 2007 by the Health, Social Security and Housing Panel which showed that each States tenanted household paid by way of rents £4,531 per annum to the Treasury and funded directly not only the public sector but also the private sector rent rebates, can the Minister state how much rent per household was paid to the Treasury in 2012?

**Answer**

In 2012, the Housing Department returned £24,375k to the Consolidated Fund which equates to an average of £5,370 per household per annum.

The Review of the Social Housing Property Plan was carried out in 2007 as a response to P6/2007. The report carried out an examination of the Housing Department's finances dating back some twenty years and stated that the burden of rental subsidy was evident and that the biggest growth

overall was in the private sector and housing trust tenants, and that rent abatement for the Housing tenants has remained fairly constant over a period of 14 years.

I have been working hard with the Minister for Treasury & Resources to come up with funding solutions that will address the backlog in maintenance for States properties and bring all social housing up to the Decent Homes Standard with 10 years. In addition, my proposals will create a social housing sector that is capable of meeting the demand for homes in future in a viable and sustainable manner, without the need to reduce the budgets of other departments or indeed raise taxation.

The Housing Transformation Programme will deliver the return to the Consolidated Fund agreed in the Medium Term Financial Plan until 2015, and thereafter, the return will be maintained in real terms.

It is worth noting that P6/2007 has been a success since its approval by the States, and a total of 119 deferred payment sales have been made to tenants. £34m has been generated from these deferred payment sales, £27m in cash and £7m in retained bonds. During the same period 131 new homes have been created and paid for from the income from sales.

## **2.6 SENATOR A. BRECKON OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE AMOUNT OF RENTAL INCOME RECEIVED BY THE TREASURY:**

### **Question**

Can the Minister state how much was received by the Treasury from the Housing Department from rental income in the following years –

- (a) 2007
- (b) 2008
- (c) 2009
- (d) 2010
- (e) 2011
- (f) 2012

### **Answer**

Under the Public Finances (Jersey) Law 2005 all income received by or on behalf of the States must be paid into a consolidated fund bank account. This account is operated and maintained by the Treasury.

As a States funded body any income received by the Housing Department, including rental income, will therefore effectively be received by the Treasury. Hire & Rental income received by the Treasury from the Housing Department, under this definition, is:-

£,000



- (a)2007 32,560
- (b)2008 33,222
- (c)2009 34,638
- (d)2010 35,944
- (e)2011 36,820
- (f) 2012 38,954

## **2.7 CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE LISTING OF PARISH PROPERTY:**

### **Question**

Further to the receipt by Parishes of Planning and Building notices of intent to list items such as boundary stones, culverts, war memorials, Clos des Pauvres and so on, could members be told the cost to taxpayers in manpower, time and consultants in preparing the listing of such items and, given that Parishes already have a duty of care for these matters, whether this is an appropriate use of the Department's budget?

### **Answer**

Under the terms of the Convention for the Protection of the Architectural Heritage of Europe (the Granada Convention), the provisions of which were extended to Jersey in 1988, there is an obligation to maintain an inventory of the Island's architectural heritage in order that it might be statutorily protected.

This is enabled by the Planning and Building (Jersey) Law 2002 which states that the Minister shall include on a List those buildings and places of special architectural, historical and archaeological interest. On this basis, the addition of structures of unique historical interest to this List is an entirely appropriate use of the Department of the Environment's resources in fulfilling the Island's obligation and satisfying the Minister's responsibilities under law irrespective of any 'duty of care' exercised by the owners of such structures.

Work to review the heritage value of historic roadside structures has been undertaken by Jersey Heritage as part of its service level agreement with the Minister for Planning and Environment. The value of the service level agreement, for 2013, which is published in full on the websites of both the States of Jersey and Jersey Heritage, is £69,000, a small part of which would cover the cost of assessing the heritage value of historic roadside structures. The administration of Listing is handled by the Department of the Environment the cost of which is met within the department's own budget, as published, a small part of which would cover the cost of Listing historic roadside structures.

## **2.8 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHAIRMAN OF COMITÉ DES CONNÉTABLES REGARDING THE ISSUING OF FIREARMS LICENCES:**

### **Question**

Would the Chairman advise:

- a) the current time taken to process the renewal of a firearms licence together with a breakdown of the time taken at each stage;
- b) what level of insurance cover is currently required, who determined this level to be appropriate and would he provide details of how this figure was calculated ; and,
- c) what percentage, if any, of firearms certificate holders are usually consulted regarding insurance and similar issues?

**Answer**

- a) The time required to process the renewal of a firearms licence will vary according to the complexity of the application.

When an application form is received, it is checked to ensure it is complete and all information has been provided including the reference forms from the 2 referees. Police record checks are undertaken on both the applicant and on the 2 referees and the results are reported to the Connétable. It is expected that the result of these checks will usually be available within 3 weeks.

The Connétable will then determine the application which is likely to include meeting with the applicant and verifying the information provided in relation to the firearms and ammunition possessed by the applicant and their storage.

If the applicant is seeking permission for additional firearms and/or ammunition as part of the renewal then appropriate enquiries will have to be made so that the Connétable may determine the application.

It is expected that a straight forward renewal application should be determined within 6-8 weeks but a more complex application may take longer.

- b) All persons engaged in shooting sports in Jersey should have third party public liability insurance cover.

Anyone participating in a shooting event on an authorised range will be covered for third party public liability under the auspices of their relevant Club or Association. This covers the use of target firearms for the disciplines of Rifle Shooting; Pistol Shooting; Muzzleloaders / Black Powder Shooting and Clay Target/Pigeon Shooting.

In addition, those carrying out vermin or pest control as a business will be covered by their relevant insurances, as will farmers / growers carrying out pest control on their own property.

For any other person wishing to rough shoot, including vermin control, £10 million third party public liability insurance cover is now required. This level of cover has been recommended by the Firearms Law Liaison Group (FLLG) established by the Minister for Home Affairs as it is the standard cover provided by insurance policies offered by the British Association for Shooting and Conservation (BASC) or the Clay Pigeon Shooting Association (CPSA). Certificate holders who are members of the 'Jersey Rough Shooters Association' are provided with this insurance cover within the membership fee. A Connétable may, however, accept cover of £2 million for a person who only rough shoots on his or her own land as this is the standard cover available through a household insurance policy.

- c) The Minister for Home Affairs established the FLLG as a forum to discuss firearm issues with the Connétables, the States Police and the shooting community. The shooting community is represented by the Jersey Firearms Council (JFC) which nominates two

officers to serve on the FLLG. With some 35 affiliated clubs and associations, the JFC therefore represents the majority of firearm certificate holders in Jersey.

In relation to the proposal regarding insurance, this was originally put to the FLLG by the JFC representatives on behalf of the Rough Shooters. The JFC consulted with its member clubs and associations in 2011 who agreed the proposal that persons wishing to rough shoot should have third party public liability insurance and this was subsequently endorsed by the FLLG in early 2012.

## **2.9 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHAIRMAN OF THE ENVIRONMENT SCRUTINY PANEL REGARDING A SCRUTINY REVIEW OF THE BUS SERVICE:**

### **Question**

Would the Chairman advise whether his Panel is reviewing, or is about to review the bus service and, if so, what is the approximate timetable proposed for this review?

### **Answer**

The Environment Scrutiny Panel has monitored developments with the new bus contract through regular contact with the Minister for Transport and Technical Services and his officers in both public and private briefings since early last year. Members have been kept closely informed of the challenges faced by LibertyBus in taking over the bus service from the previous operator and how they are being addressed.

The Panel recently attended a presentation given by Mr Dai Powell, the Chief Executive Officer of LibertyBus' parent group. Mr. Powell explained the ethos of the company as a social enterprise, which aims to provide the best possible bus service to the Island within the available public funding, and to return a significant proportion of its profits in the form of community benefits to Islanders. Ways in which the company could help to provide additional services within the community are already being explored.

The Panel is aware that not everything has gone to plan for the new service. It is also unfortunate that the company has experienced significant industrial relations problems in making the changeover. The Panel hopes that these difficulties can be overcome soon, to enable LibertyBus to deliver the best service to bus users.

The Panel discussed the bus service with the Minister for Transport and Technical Services most recently at a public hearing held on 18th March, when the company's plans and performance to date were discussed in detail and at length. In view of the significant difficulties experienced over and above what might normally be expected in a transition period, the Panel concluded that it was important to give the opportunity for regular services to settle in before considering a review.

The Minister for Transport and Technical Services had already agreed a period of 100 days for the company to sort out any initial problems. The Panel considers that a clearer picture of how the new service is performing should be available by early July. Changes to the service took place in March, and further improvements for the summer are planned to come into effect from 27th May. The Panel therefore feels that after the end of June there should be sufficient information available to enable a clear assessment of how the service is progressing, and will consider whether a full Scrutiny review is required at that time.

**2.10 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHAIRMAN OF PRIVILEGES AND PROCEDURES COMMITTEE REGARDING AN ANALYSIS OF THE STATES WITH 42 MEMBERS:**

**Question**

Further to his answer to my oral question of 30th April 2013, would the Chairman agree to produce the Committee's analysis of how the States may function if reduced to 42 members concurrent with any Proposition the Committee may lodge to implement the result of the referendum?

**Answer**

Yes. The analysis will be circulated to States Members as soon as it is available.

**2.11 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE EFFECTS OF ZERO HOURS CONTRACTS:**

**Question**

Has the Minister or his Department carried out research into the effect of zero hour contracts on the working population together with the effects they have, if any, on Income Support and other benefits they administer?

**Answer**

This subject was dealt with at some length in a series of written and oral questions in May 2012. Relevant extracts from the answers given at that time are set out below:

“Zero hours contracts are used to meet requirements for casual or irregular work where no particular number of hours or times of work are specified and there is no guarantee of work. They are useful when an employer needs a bank of ‘casual workers’ including recruitment agencies, bank nurses and supply teachers. In a zero hours contract, there should be no obligation on the part of the employer to offer work and no obligation on the worker to accept. Zero hours contracts may be used, for example, to cover ad hoc shifts, holidays, sickness and seasonal upturns in certain industries (particularly fulfilment, agriculture, hospitality and retail).

If an Income Support claimant is working sporadically under a zero hours contract, their Income Support claim will be reviewed frequently to ensure that the benefit amount is adjusted in line with actual earnings.

Depending on the number of hours actually worked, an Income Support claimant may also be required to undertake job-seeking activities in order to find more regular employment.

There are no specific problems identified with the administration of an Income Support claimant with a zero hours contracts per se. If an individual has earnings that fluctuate considerably from day to day or week to week, this will result in extra administration but this could be due to short-term temporary contracts, overtime, commission income and casual work or zero hours contracts.

Genuine zero hours contracts are necessary and appropriate, for both employers and employees.”

“The Employment Tribunal has indicated that the presence of a zero hours contract does not diminish an employee’s rights under the employment law if an employer-employee relationship has been established. ... (and) I believe that the current framework of employment legislation in Jersey provides a reasonable balance between the protection of the employee and the legitimate interests of the employer.

The States funds the Jersey Advisory and Conciliation Service, JACS, which provides independent advice and support to employees and employers. The Director of JACS has ... drawn attention both in the local media and as part of the 2011 annual report to the inappropriate use of zero hours and JACS warning that such use does not enable employers to avoid their legal obligations.”

“Since March 2011, the Jersey Advisory and Conciliation Service (JACS) has included the following advice on its website discouraging employers from inappropriately using zero hours contracts:

*“We are concerned that some employers are using zero or variable hour contracts in circumstances that may not be appropriate and they may, therefore, be susceptible to successful Tribunal claims. Where we think problems do arise is when an employer uses zero hour contracts for work that is regular because the employer believes it protects them from claims of unfair dismissal, the need to give notice or, in future, from the obligation to make redundancy payments. The question arises as to whether an employer/employee relationship is created but, in our view, it is probable that a relationship does exist where a mutuality of obligation arises i.e. there is an expectation by the employer that the individual will be available for work and by the individual that work will be offered. In such circumstances we believe that such employees would be entitled to the same employment rights as ‘permanent contract’ employees. While it is for the Employment Tribunal to determine the facts in any such case, we caution employers to be careful that they use zero or variable hour contracts appropriately.””*

In May 2012 I gave a commitment to keep this topic under review. I have not been made aware of any particular trends in the use of zero hours contracts in the local employment market during the last 12 months which would justify any additional work being undertaken in this area. I will however continue to keep the subject under review.

## **2.12 DEPUTY J.H. YOUNG OF ST. BRELADE OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE AARHUS CONVENTION:**

### **Question**

Will the Minister inform the Assembly of his detailed assessment of the requirements of the United Nations Economic Commission for Europe (UNECE) Aarhus Convention on ‘Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters’ and their applicability to Jersey; together with details of his progress in considering the adoption of this Convention as notified to the Assembly in the Department of the Environmental Report 2010 (R.126/2011)?

## **Answer**

Concerning the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; public access to environmental information is clearly a desirable goal and the department has many elements in place which meet the requirements of the Aarhus convention.

As the Deputy will appreciate, requesting the extension of an international convention to the Island should not be undertaken lightly or without due consideration of its appropriateness, the resources required to implement its requirements and to maintain compliance. An assessment was undertaken in 2003 and advice was sought from the Law Officers Department and the Office of the Data Protection Commissioner as to whether it was appropriate to request that the convention be extended to Jersey. The advice given, was, that at that time, Jersey was not in a position to meet the requirements of this Convention and would therefore not wish it to be extended to the Island. The Deputy will be aware that since 2003, considerable progress has been made in data collection and publication of information and also in enabling public participation through the Environmental Impact Assessment process.

In 2007 a further assessment was undertaken which noted the progress made in putting in place a number of the elements to work towards compliance. These included publication of the regular State of Jersey report; developments which require an Environment Impact Statement (EIS) are prescribed under Article 2 of the Planning and Building (Environmental Impact) Order 2006 (the EI Order); the development of the biological records centre.

Compliance with the UNECE Aarhus convention does require the presence of domestic legislation to ensure that members of the public and organisations thereof can have sufficient involvement in environmental matters according to the provisions of this Article. The implementation of the Freedom of Information (Jersey) Law 201- which, when enacted, will replace the existing Code of Practice on Public Access to Official Information, will mean that Jersey is in a position to review compliance with the Aarhus convention and consider whether it wishes the Convention to be extended to the Island. Consideration needs to be given to the resources from within the department and the advice that would be required from Law Officers Department to undertake such a review, as well as the resource implications in respect of arbitration which cannot be assessed at this stage.

R216/2011 notes that the department will 'consider becoming signatory to the Aarhus Convention', I am sure that the Deputy will recognize that considerable progress has been made. However, whilst the Convention has many laudable aims towards which the department continues to work, at the current time we are not in a position to meet the requirements of this Convention and would therefore not wish it to be extended to the Island at the present time. This situation will continue to be kept under review.

## **2.13 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HOUSING REGARDING THE WEIGHTED AVERAGE FOR RENT RISES:**

### **Question**

Notwithstanding his answer to my written question No. 7600 of 30th April 2013, will the Minister provide the figures on which he bases the £11.89 for the weighted average for rent rises and will he further produce a table showing rents for bedsits, 1, 2 and 3-bed flats and houses and the weighted

average at 69% (current average), 80%, 90% and 100% of current market rents along with the current fair rent levels for these properties?

**Answer**

As noted in my answer to the Deputy’s question (7600), the Department has operated a policy of uplifting rents for new tenancies to more appropriate levels following refurbishment and the proposed policy would add, on a weighted average, a further £11.89 or 6% on new tenancies. The £11.89 is calculated by taking the weighted average rents at 90% of market rents (£205.27) less the weighted average rents at current fair rent levels (£193.38) which are noted in the table below, along with the analysis requested.

	Weighted average				
	2012	Fair rent	80% market	90% market	100% market
	£	£	£	£	£
Bedsit	98.21	110.95	104.94	118.06	131.18
1 bedroom property	137.29	155.14	142.84	160.69	178.54
2 bedroom property	178.36	207.20	202.01	227.26	252.51
3 bedroom property	229.25	258.37	239.57	269.52	299.47
<b>For all general Social Housing stock</b>	<b>169.76</b>	<b>193.38</b>	<b>182.46</b>	<b>205.27</b>	<b>228.08</b>

Also noted in my answer to the Deputy’s question (7600), it was recognised in 2010 that States rentals had fallen significantly behind market, the proposed policy aims to bring rent levels from the 2010 weighted average of 69% of market to 90% of market. By the end of 2012, weighted average rentals had risen from 69% to 74% of market due to fair rents being charged on new properties and new tenancies. During the same period the private sector rental market has seen only modest increases.

Again, as noted in my answer to the Deputy’s question (7600), considering the impact on the tenant of the average change in rent levels is meaningless. The change in rent for existing tenants moving to new tenancies is dependent on a wide range of circumstances such as where the tenant is moving to and from and for what reason. Indeed, many tenants downsize and so their rent could actually decrease.

Furthermore, as I have said, all tenants on low incomes and receiving Income Support will be fully protected and only those tenants who move will be subject to the proposed policy.

**2.14 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE PROTECTION OF TENANTS THROUGH INCOME SUPPORT:**

**Question**

Will the Minister examine the figures given in P.33/2012 (Amd 2) (The Reform of Social Housing), guarantee the protection of tenants through Income Support (IS) from the effects of the projected Housing Transformation Programme rent rises in the years to 2023, and inform members what the full impact of that protection will be on the sum required for the rental component of IS will be?

Will he further guarantee this protection beyond 2023 over the full 30-year term of the plan and state what the final sum for the rental component will be?

### **Answer**

A fundamental principle contained within P.33/2013 is that the States of Jersey is responsible for additional Income Support costs as a result of the proposed rent policy. This is reinforced throughout the Projet, for example, section 5.5 (Page 51) of P.33/2013, Income Support Implications.

With regard to P.33/2013 (Amd (2)), the impact of RPI and uprating on figures quoted in Section 5.5 of P.33/2013 is understood. The Financial Model produced by Housing has significantly more detail than could be meaningfully incorporated into the Projet. The Minister for Housing's view (answer to Written Question 7564 from the Deputy) that the "real terms" basis is the most appropriate and meaningful way of presenting these particular figures in the Projet, is supported.

The Deputy in P.33/2013 (Amd (2)) incorporates into his figures in Table E the impact of additional Income Support arising from Re-lets, New builds and Uplift on refurbishments. New builds will not result in significant additional costs. It is estimated that the majority of these will be tenanted by persons moving from private rented accommodation who will already be in receipt of Income Support. It is estimated this will be a transfer of cost not an additional cost. On the issue of Re-lets and Uplift on refurbishment, it is existing practice that Housing already review and uplift rents to the current Fair Rent ceiling in these instances. The impact of the rent proposals in P.33/2013 will be to increase the Income Support costs from the existing Fair Rent ceiling to the 90% of market rent level.

In summary, the additional estimated Income Support Costs, in real terms, in 2023 will be £3.8 million. Of this £2.2 million relates to the estimated costs of the existing policy on re-lets and refurbishment and £1.6 million as a result of the introduction of a rental policy to 90% of equivalent market rental increases.

Protection beyond 2023 is an issue on which only the States can decide. If P.33/2013 is approved then the protection will be put in place and will remain in place until such time as the States decide differently.

The year 30 additional estimated additional Income Support costs, arising directly from the change in policy to 90% of equivalent market rental, amounts to £2million. In addition, the existing policy applied to the programme of refurbishment and re-lets will add a further £3.4 million per annum at 2012 prices (i.e. excluding the costs of annual uprates at inflation +0.75%).

## **2.15 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HOUSING REGARDING POPULATION PROJECTIONS USED WHEN PREPARING THE HOUSING TRANSFORMATION PROGRAMME:**

### **Question**

Will the Minister confirm to members that, in drafting the Housing Transformation Programme, advice was not sought from the Head of the Statistics Unit over the impact of population projections on potential demand for housing and, in particular, social rental housing over the 30-year term of the plan, and, if so, would he explain why he did not do so?



Will he further state why the plan contains no estimates of the population it is designed to cater for and there are only 4 paragraphs on page 11 of R.15/2013 (Full Business Case) relating to population?

Does the Minister consider that the failure to address such issues is a serious weakness in the plan, and, if not, why not?

**Answer**

The advice of the statistics unit was not sought because advice on the overall population was not required. However, the report does take into account a number of outputs from the Statistics Unit most notably prevailing house prices, private sector rents and the Housing Needs Assessments, which are jointly commissioned by the Department of the Environment and Housing Department and run by the Statistics Unit.

R.15/2013 contains no estimates of overall population because as I said in my response to question 7621 on 30th April 2013, an increase in the overall population of the island does not necessarily translate into an increased need for affordable housing. The need for affordable homes is a much more complex issue and one which is sensitive to economic fluctuations. This is why the outputs from the Housing Needs Surveys having been validated against the Statistics Units Population Model and the Affordable Housing Gateway, are reviewed annually and set out in the Department of the Environments' 'Review of Residential land Availability' on an annual basis. This document monitors the delivery of homes including those on sites approved in the Island Plan and identifies the impacts that insufficient or slow to emerge supply has on housing needs. Shortages in supply are dealt with in the Island Plan and in 2011 it was agreed that schemes on States land would be brought forward as a means of meeting the level of need identified in the most recent Housing Needs Survey. It is these sites which form the basis of the growth in the new Housing Company's Business Case.

As I have said before, I fully acknowledge that even without widening eligibility criteria to include groups such as key workers and couples and singles under 50 without children, further sites are required to meet the growing demand and I am working with the Minister for Treasury & Resources and the Minister for Planning & Environment to identify appropriate sites.

The important thing about my reform proposals in P.33/2013 is that they will put in place the structure necessary to respond to the changing housing requirements of the Island. The Housing Company will have the capacity and flexibility to react to changing requirements (as laid out in section 3.83 of the Reform of Social Housing Report) and the proposed rent policy will enable the Housing Company and the other registered providers to deliver new homes through the use of borrowing, with the rentals generated from the new units being sufficient to repay the borrowing over time. This will leave the Strategic Housing Unit free to set housing policy with the Regulator monitoring achievement of that policy.

It might have been possible to show additional growth in the Business Case but I would suggest that the inclusion of notional sites with notional costs would have been grossly misleading, particularly if further growth had been based on increased population numbers without any sense of whether the individuals making up that growth would fall into the eligibility criteria for social or affordable housing.

What I will deliver is a re-structured social housing sector that resolves current issues, increases capacity and provides a structure that enables further supply of homes into the long term as and when our Housing Strategy identifies the need for them and suitable sites are made available.

**2.16 DEPUTY J.H. YOUNG OF ST. BRELADE OF H.M. ATTORNEY GENERAL REGARDING THE AARTHUS CONVENTION:**

**Question**

Does the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters known as the Aarhus Convention, which was ratified by the UK in May 2005 according to their authorities to provide ‘environmental democracy’, have any status in law in Jersey and do any of the requirements of this convention have effect in Jersey legislation in whole or part, in particular;

- (1) a right of access to review procedures to challenge governmental decision and interactions between the public and the government Ministers on matters concerning the local, national and trans-boundary environment;
- (2) access to “fair, equitable, timely and not prohibitively expensive” procedures to be available for the public to challenge decisions relating to the environment, made by the Minister for Planning and Environment;
- (3) procedures which enable the Royal Court in appropriate circumstances, to make the equivalent to a UK Protective Costs Order in Judicial Review proceedings brought entirely in the public interest by third parties or Non Governmental Organisations in challenging a decision of the Minister for Planning and Environment on environmental grounds?

**Answer**

The Aarhus Convention has not been extended to Jersey and hence has no application in Jersey Law. As the answer to the first part of the question is in the negative then, in the premises, the numbered paragraphs do not fall to be answered.

**2.17 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHAIRMAN OF ENVIRONMENT SCRUTINY PANEL REGARDING A SCRUTINY REVIEW OF THE PLANNING PROCESS:**

**Question**

Would the Chairman update members on his review into Planning issues?

**Answer**

Further to my reply tabled on 19th February 2013 to the Deputy’s earlier question on this topic, the Chief Minister replied to a letter from the Panel regarding the need for an independent review of planning process on 27th February, suggesting how this could be progressed. The Panel was unable to agree to the terms proposed, for three main reasons:

1. The Chief Minister suggested that terms of reference for the review should be negotiated at a meeting between the Panel, the Minister for Planning and Resources and his Chief Officer, to be chaired by the Chief Minister himself. Members considered that enabling the department to have a substantial influence on the terms of reference would undermine the concept of an independent review, as well as creating a conflict of interest for those taking part.
2. The Panel is aware from its experience of public and private meetings that the department's view of its performance is fundamentally different from that of the Panel and other observers, including some members of the Planning Applications Panel, the Chamber of Commerce, industry and the public who have contacted the Panel expressing their concerns.
3. It was also apparent that the scope of the discussion would be restricted. The Chief Minister's letter excluded a number of the concerns raised by the Panel; effectively this would have pre-judged important issues before the review had even begun, further compromising its effectiveness.

The Panel wrote to the Chief Minister on 5th March 2013 confirming that it would not attend the proposed meeting under these restrictions. In the absence of further communication from the Chief Minister the Panel is not aware whether it is still intended to commission a full independent review of the planning process, although members believe that the need for this has been amply demonstrated. The Panel has agreed to focus on reviews of specific departmental policies where these do not appear to be working well, and has prepared scoping and draft terms of reference for a review of historic buildings regulation to be discussed shortly with the Minister for Planning and Environment. Terms of reference for other aspects of the planning process believed to be most urgently in need of review are also under consideration, including:

- Pre-application advice service
- Fees and charges
- Decision-making, to include the interaction between officer advice, the Planning Applications Panel and the Minister's responsibilities

### **3. Oral Questions**

#### **3.1 Deputy K.L. Moore of St. Peter of the Minister for Health and Social Services regarding full-time residents at Eden House:**

In light of the ongoing presence of full-time residents at Eden House could the Minister explain what help, if any, is being offered to families who would usually receive respite at the centre?

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

I would like to thank the team at Eden House who have provided a great response when in February we did have to take 2 young people into full-time care, and with this response and extra effort by the staff the respite to the rest of the families accessing Eden House has been very minimal.

##### **3.1.1 The Deputy of St. Peter:**

What will the Assistant Minister be doing to make sure that this access to respite is not minimal and is routine and predictable for the families?

**Deputy J.A. Martin:**

There are in place already some outreach in the community respite short breaks. We are opening another short-break house called The Haven and hopefully that will be ready next month, and this will be for short-term respite. It is unfortunate that we did not see another 2 families come in but it was not due to them not receiving respite care, it was something extended in their family support system.

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

What does the Assistant Minister mean by “very minimal”?

**Deputy J.A. Martin:**

That all the families that did access respite are still receiving respite, some maybe not as much as they did before, some are getting the same, some have not the same needs as others in the first place.

**3.1.3 Deputy R.G. Le Hérissier:**

If they are not receiving as much as they received before could the Assistant Minister give examples of the shortfall that is occurring and whether these families have indeed complained about the limited facilities now available?

**Deputy J.A. Martin:**

I have spoken to the manager, and I cannot go into every individual case, when I say “minimal” sometimes they were accessing twice a week with an overnight stay, that may be now once a week. Individual cases are assessed on their basis and obviously family circumstances. I am sorry, I have forgotten the last part of the question.

**Deputy R.G. Le Hérissier:**

Have any of the families complained about the decline in care?

**Deputy J.A. Martin:**

I did hear the Deputy of St. Peter on the radio and apparently she has been contacted by some families. Unfortunately, and I do not know why, they have not contacted myself, the Minister or the department. They... and I am told again, through the manager – who I have no reason to say is not telling the story exactly as it is - that on the main they are happy with the respite they are receiving due to the circumstances we have found ourself at Eden House.

[9:45]

**3.1.4 Deputy J.A. Hilton of St. Helier:**

It seems to me that despite our report that we issued last year that the question of people with serious conditions, like autism, are still being let down by the Department of Health. In our report we have stated that the department has plenty of notice of those children in families that may require long-term care in the future, and it seems to be that the department just simply is not addressing the issue and families are being let down again and again and again. What assurances is the Assistant Minister going to give that this is going to be addressed once and for all so those families are not let down.

**Deputy J.A. Martin:**

The wording in the Deputy’s question was “may” have needs in future. We do know the families who need access to respite. We do know the families. We do not know when and if a crisis will happen. We have 3 young people in the U.K. (United Kingdom) we need to bring back. We have

plans in planning and hopefully this home will be ready in 2014. We now have another 2 who need full respite care, and this will be continual. As I have mentioned to the Deputy of St. Peter, we do not have a borough up the road that can help us if we are short on short-break respite, we are 9 by 5 and we have to deal with it the best we can.

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

The Assistant Minister said hopefully that this short-break home will be ready in 2014. "Hopefully" just is not good enough.

#### **The Bailiff:**

The question, Deputy?

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

The question is: we had the same situation with Oakwell when the department was aware of the number of children who were accessing respite at Oakwell and in the end we had the situation where we had older children living there almost permanently so newcomers into the system ...

#### **The Bailiff:**

The question?

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

So the question is: I am not assured by the comments that the Assistant Minister has just made that the problem is being addressed.

#### **The Bailiff:**

There is still no question there. [Laughter]

### **Deputy J.A. Martin:**

I would just like to clarify to the Deputy, I said the home for short-term breaks will be ready hopefully next month, and it is called The Haven and I know the Deputy does know about it. The long term is taking longer. It is a facility for the care that is needed for people on the Autism to Asperberger's spectrum. The Deputy knows you just cannot take over a home or a house and say: "There it is, get on with it." It is an absolute dedicated design and that is what we were doing, and that is what I said will be ready for next year to bring back 3 young Jersey people to live back in Jersey.

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

Could the Assistant Minister confirm when the essential short-term respite levels will return to an appropriate state?

### **Deputy J.A. Martin:**

As I say, if we can get this - which I am assured - we will have this The Haven up and running by next month that is when the short term will return to absolute normal, and if not increase, because we are working with Autism Jersey and other third sectors to do the outreach packages. We are already working with 4 young people and there are another 2 in the plans. One to cover, I think it is going to be a ... it is going to be a necessity over the half-term and for other people to perhaps have weekend breaks. So there is a lot of work going on, but the short-term, as soon as The Haven is up and running, will return to normal, which as I said, it is only very minimal that has been interrupted anyway.

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

Can the Assistant Minister confirm whether the users of these short-term respite services are aware of the efforts and the timing of the improvements?

**Deputy J.A. Martin:**

Yes, because as I just said, we are working with 6 families, 4 and 2 young people out in the community, who are very happy that their needs are being met. Maybe not at Eden House. They all know that The Haven is coming and, as I said, I heard the Deputy of St. Peter, again on the radio, saying there is no short-term break respite. That is not the case.

### **3.1.8 The Deputy of St. Peter:**

I would like to seek some clarification from the Assistant Minister. Her answers have been very helpful and it was particularly heartening to hear that The Haven will be coming online next month. I would like to seek assurances from the Assistant Minister that families are properly communicated with and understand the changes in the circumstances. The question really relates to a lack of communication and although they are aware that The Haven is coming online the people who have spoken to me have not been sure when that is happening and so I would like the Assistant Minister to give her assurance that communication with families will be improved.

**Deputy J.A. Martin:**

Maybe the Deputy and myself have a different understanding of what the communication is. The team at Eden House who work with these families day-in/day-out, do communicate very well. Everything in my answers I have passed through the managers and the staff at Eden House and I feel that if there are families out there, and I said it last time about Oakwell, if there are any families in particular who feel that they are not being listened to or the communication is not as it should be, to ask permission that they speak to myself or the Minister so we can get to the root of the problem, because this is the only way we are going to deal with this. I probably disagree from the communication I see with the families down at Eden House and across the respite sector I think is very good, but everything, I agree with the Deputy, can be improved and if she would like to pass anything on to me so we can find out more I would be very grateful.

### **3.2 Deputy G.P. Southern of St. Helier of the Minister for Housing regarding the release of the updated/replacement Wilcox (Sector) report reflecting the impact on social rents of weighted average increases:**

Will the Minister release to Members the updated Wilcox report or its replacement, showing the impact on social rents of his proposal to increase levels from 69 per cent of private sector rents currently to 90 per cent, the impact on income support funding and on a weighted average increase in rent levels previously calculated at £39 weekly?

**Deputy A.K.F. Green of St. Helier (The Minister for Housing):**

It does not matter how the Deputy keeps asking this question. There was no updated Wilcox report. There was no updated Wilcox report because that work was abandoned, the Minister for Social Security has offered to provide Members who request it a draft copy of the Wilcox report as drafted, that was abandoned. Deputy Southern had a copy of that 2 weeks ago. The work that continued following that report, as I say, was abandoned. There was no follow up. That work that continued is to be found, and that work was done by my officers and the officers of Social Security, in P.33 and R.15. There was no updated or replacement Wilcox report. I do not know how to say it so the Deputy understands. I am not hiding things. Everything we have he has.

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

Can the Minister confirm then that he has just stated that work on the social impact of this proposed rise in rents has been abandoned and he has no new figures because the Sector report, apparently, was out of date?

**Deputy A.K.F. Green:**

No, I did not say that. I said it was abandoned and the work was taken up by my officers and the officers of Social Security and that information provided is in P.33 and R.15 respectively.

**3.2.2 Deputy G.P. Southern:**

The Minister has just said that work was continued and appears in P.33. I believe it consists of a table and possibly 2 pages. The original Wilcox report was some 50-something pages long. Does he think 2 pages replaces 50 pages of in-depth research?

**Deputy A.K.F. Green:**

I think the number of pages is irrelevant. It is the accuracy of the work that is important.

**Deputy G.P. Southern:**

If I may continue, Sir.

**The Bailiff:**

One more.

**3.2.3 Deputy G.P. Southern:**

In response to written question 13 asked of the Minister, the Minister refers to the average increase as being around £12 or 6 per cent. In that case he takes the average between 90 per cent of the market and the current fair rent levels. Will he accept that the current average paid by States sector tenants is 69 per cent of the market rent and therefore the actual increase over the next few years to States tenants will be far, far larger than going from 82 per cent to 90 per cent, as he has stated in question 13?

**Deputy A.K.F. Green:**

I am not in the habit of making statements not correct. I stand by the answer that I put in my written question. When we did the work on this, yes, we did find a small number of units of accommodation that were being charged at 60 per cent of market rate. We found a small number also that were being charged over 100 per cent of market rate. I stand by the work that I have done and the answer that I have given in my written answer.

**Deputy G.P. Southern:**

I think ...

**The Bailiff:**

No, one question I said.

**Deputy G.P. Southern:**

Is the Minister allowed to accidentally mislead the House, Sir?

**The Bailiff:**

Well, he has given his answer.

**Deputy G.P. Southern:**

He is misleading the House then.

**Deputy J.A.N. Le Fondré:**

I thought somebody else was trying to ask a question on the previous question, Sir.

**The Bailiff:**

No, nobody showed their light and Deputy Southern asked 4 questions.

**3.3. Deputy J.A.N. Le Fondré of St. Lawrence of the Minister for Housing regarding the overall net financial impact to the States of the Housing Transformation Programme:**

**Deputy J.A.N. Le Fondré:**

Would the Minister confirm the overall net financial impact to the States of the Housing Transformation Programme as per P.33/2013 for 2015 including any increased cost in social security, including the impact upon the private sector laid out in R.44/2013, and after taking account of any returns to Treasury from the new company and any other financial matters arising as a result of P.33?

**Deputy A.K.F. Green (The Minister for Housing):**

You can imagine this will not be a short answer. In answering the Deputy's question, all amounts provided for are in real terms. The net impact on the States finances in 2015 is modelled to be £1.7 million. This is made up of £0.7 million for additional income support costs payable towards the States social security housing rentals and £1 million which has been allocated in the Medium-Term Financial Plan for the additional income support costs relating to the private sector rentals. The Housing Transformation Programme has no impact on the return to Treasury as the amounts returned will be in line with the commitment set out in the Medium-Term Financial Plan. There will be further amendments to States finances relating to regulation, additional income support for social security housing trust rentals and loan interest, all of which will have a nil impact on States finances. With the exception of income support costs the proposed housing company and the social housing trust will be financially self-sufficient and the housing company will provide the Treasury with a sustainable return.

**3.3.1 Deputy J.A.N. Le Fondré:**

I do appreciate the answer because it is simpler ... well it could have been even more simple. I have one question in relation to the response that he has given in terms of accuracy. The only thing is that I believe he said that the return from the company is as laid out in the M.T.F.P. (Medium-Term Financial Plan) and in the M.T.F.P. the indicative return from the company on page 296 is £36,292,000. In, I believe, the figures provided by his department in the last 3 weeks that return is now £30 million, that is £6 million less. I was expecting the Minister to say that as a result of the changes in policy that the thing was broadly neutral but what he has just said is that the cost is net £1.7 million but that is including a return of £36 million whereas his Housing Department is saying it is £30 million; that is a £6 million difference to the figures he has just given. Not actually a supplementary but I would like clarification on the previous answer.

**Deputy A.K.F. Green:**

As you understand, this is a complex issue and that level of detail I will have to come back to the House with that information. What I do know though is that the Medium-Term Financial Plan has not changed. What we agreed remains but if we are going to need to go into that sort of detail, I am sorry, I am not a calculator. I cannot carry that sort of information, I will have to come back to the Assembly when I have checked it.

**3.3.2 Deputy J.A.N. Le Fondré:**



If I could also ask the Minister: the Scrutiny Report has also identified I think its £269,000 of extra possible income support of course that they did not consider were included in the projections and should have been. If he can perhaps consider that at the same time.

**Deputy A.K.F. Green:**

Certainly.

**3.3.3 Deputy G.P. Southern:**

Is the Minister content that his table on page 45 of P.33 shows the impact of inflation on his rental income rising in 30 years to £3 billion and yet when he talks about the additional cost to income support he has a figure which he refers to as “real terms” which does not contain inflation at all, and therefore looks tiny by comparison to £3 billion? Is he content that this is an accurate way and a good way to present information?

**Deputy A.K.F. Green:**

Before I look at that, can I just ask the Deputy to confirm the page in P.33 that that table is on?

**Deputy G.P. Southern:**

The inflated figures of up to £3 billion is on page 45 of my copy and the one revealing the contribution of income support, the additional bill for income support is on page 52.

[10:00]

**Deputy A.K.F. Green:**

It is probably a problem with my ageing. I thought the Deputy had said page 35, and I was at a loss. A lot of work has gone into working out these figures and a lot of better brains than me in terms of finance have gone through them and I am absolutely confident that these figures are correct. They have been checked time and time again, the Scrutiny Panel has had their own housing expert look at it. They have confirmed that the work is robust and reliable and so has Professor Christine Whitehead. I am confident that the information I have given is correct, accurate and fair.

**3.3.4 Deputy G.P. Southern:**

I do not question the accuracy of the figures, inflated or non-inflated. What I suggest is that comparing inflated figures to produce £3 billion with non-inflated figures which show a small extra contribution from income support is like comparing apples with pears. Does he agree?

**Deputy A.K.F. Green:**

No, I do not. I am trying to give people a picture for the future as well as where we are now.

**3.3.5 Deputy T.A. Vallois of St. Saviour:**

Could the Minister confirm that the M.T.F.P. was prepared on the basis that housing incorporation was not to proceed in 2014? However in the M.T.F.P. Appendix 6 sets out the financial implication if the incorporation goes ahead.

**Deputy A.K.F. Green:**

No, I cannot confirm that the M.T.F.P. was worked out on the basis that the Housing Transformation Programme did not go ahead. Quite the contrary, as I understand it.

**3.3.6 Deputy T.A. Vallois:**

A supplementary. It was in answers from the Treasury and Resources Department in relation to the M.T.F.P. on the M.T.F.P. debate. We have a series of questions and answers given to us by the

Treasury and Resources Department and it states on the answers to those questions that the M.T.F.P. was prepared on the basis that housing incorporation does not proceed in 2014. So could the Minister please confirm that that is the case?

**Deputy A.K.F. Green:**

It is not my understanding but I will go back and check that.

**3.3.7 Senator S.C. Ferguson:**

With £6 million here or there or somewhere, and inflation here and not here, does the Minister not agree that we should not be debating this proposal today, and it should be taken back and corrected? [Approbation]

**Deputy A.K.F. Green:**

No, I do not. What I have given Members is a view of what is going to happen in the future. This is a big decision. It is a decision that some people do not want to make. We are very good at putting off decisions. If you do not agree with what I am doing speak against it, vote against it. Do not try and put off the day. We have got tenants out there in homes that do not meet the decent home standards. We have got homeless people out there. I have got a plan to do something about it, and at least give me the grace to present it. [Approbation]

**3.3.8 Deputy J.A.N. Le Fondré:**

I thank the Minister for at least clarifying that at least this is going to cost us £1.7 million a year. What I would like to ask is: is the Minister concerned about the increase in the Social Security bill as a result of these proposals and what will happen if it is higher than it is anticipated? How is that to be funded?

**Deputy A.K.F. Green:**

Let us be under no illusion. Yes, the Social Security bill will be increased and we have allowed for that. But let us be under no illusion. This cost exists now, and this cost exists at the expense of our tenants not getting their house properly maintained, and all we are doing is putting it transparently where it should be. I am quite happy with that arrangement.

**3.4 Deputy M. Tadier of St. Brelade of the Minister for Social Security regarding the receipt of Carers' Allowance and Old Age Pension:**

Will the Minister confirm that individuals who qualify for Carer's Allowance may not also claim their Old Age Pension and, if so, does the Minister consider this is appropriate?

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

The Home Carer's Allowance is mainly aimed at supporting working-age people, who give up employment to take on caring responsibilities. The allowance is paid as an income-replacement benefit. Unlike other working age contributory benefits a carer can opt to continue to receive the Home Carer's Allowance after they reach pension age. This provides added financial protection to carers to ensure that they will continue to receive the maximum rate of benefit, which is currently £187.25 per week. For all other working age benefits the individual is automatically transferred to their Old Age Pension once they reach pension age. I therefore do consider that it is appropriate that working age carers who continue with their caring responsibilities after they reach pension age should be able to choose to continue to receive the higher-rated benefit, which is to their financial advantage. It is also worth noting that the income support scheme includes a carer's component, which is available to a carer of any age living in an income support household. This is currently worth £46.97 per week.

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

Let us put this in context because it can get very confusing when we talk with dry figures. I have a constituent in St. Peter and she has to look after her sister, and she is of pension age, and even though she has paid and contributed to a pension for the whole of her life, she now has to choose between the Carer's Allowance and the pension, and she would be better off if she put her sister into care, or got a private carer in who was paid by the States and it would cost the States much more money in order for that constituent to be able to enjoy her pension. So does the Minister not think that it is fair and that we should pay a carer separately and if they happen to have a pension or if they happen to be on L.T.I.A. (Long Term Incapacity Allowance) we should pay that completely separately and the 2 should not be convoluted?

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

Obviously it is impossible for me to comment on an individual set of circumstances as I do not know the full background. If a person starts their caring responsibilities after they have reached pension age then they would not qualify for the Home Carer's Allowance. As I said in my opening response, if somebody starts on Home Carer's Allowance before they reach their pension age then they can continue to receive Home Carer's Allowance if it offers them a higher rate of weekly benefit and the Social Security Law only allows Home Carer's Allowance to take precedence over pension benefits to the advantage of the recipient.

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

Given that the cost of care at home is approximately half of that in a care home, does the Minister not think that it is time for the department to do a cost benefit analysis to establish the genuine contribution made by carers to the economy? **[Approbation]**

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

I think the Senator is absolutely correct that we do value the contribution of carers in our community and unfortunately this is an increasing need, to look after people in their own homes. That is why when I am able to come back to this Assembly with my proposals for long-term care, we will be able to offer care packages using the Long Term Care Benefit to enable more people to receive care in their own homes and to reward, if possible, their carers if they do not qualify for Home Carer's Allowance.

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

I have seen the negative impact on young carers in my past profession. What I would like to ask the Minister is that given the news from the U.K. about how carers tend to disregard their own health and suffer as a consequence, does not the example that Deputy Tadier raises suggest that even with moves, which I know the Minister is making, that we have a whole lot more to do and that perhaps that should be reconsidered in the way that Deputy Tadier suggests?

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

I am not quite sure I understand the thrust of the Deputy's question. When somebody qualifies for Home Carer's Allowance the person they are caring for has to be assessed as being eligible for the highest impairment component within income support. If this person receiving the care qualifies for income support they would be receiving, in addition to their normal component, an extra... and I do not have the exact figure in front of me, but about £150 a week. That money is for their care needs, and therefore some of that money would obviously be directed at the carer of any age who is assisting them, whether or not that person lives with them or goes into the house to provide the care, so I do not see that there is anything I need to do on this matter. I am not quite sure I understand the Deputy's question.

**The Bailiff:**

Do you wish a final question, Deputy Tadier?

**3.4.4 Deputy M. Tadier:**

Just to put this back in context, I hope the Minister will pursue this. I know some work has already been done on this, and we have an elderly pensioner looking after another very seriously disabled elderly pensioner. It seems to me that that is not fundamentally fair. Does the Minister agree now that I should go and tell this person that she should either find another carer or put her sister into care so that she can finally enjoy her pension and enjoy the contributions that she has been making over the years, with the downside for the Government, for the Minister, that it will cost us exorbitantly much more to pay for that care, rather than simply to give somebody a bit of extra money for doing 2 jobs?

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

The Deputy has now clarified that the person providing the care is a pensioner already. I was not aware of that, but it explains why the person, if they have just started their caring duties, is not eligible for Home Carer's Allowance for the reasons that I said in my opening answer. Of course we encourage family members and anybody who wishes to provide caring duties to do so. The fact is that the recipient of the care, if they qualify for income support, there would be a carer's component available, and also as I said in an earlier answer, the impairment component provides in excess of £150 a week and some of that money can be used to pay a carer. If the household does not qualify for income support I would assume therefore that there is a level of income coming into that household which could be directed towards paying the carer.

**3.5 Connétable P.J. Rondel of St. John of the Minister for Economic Development regarding the future of the Sailors Rest Café on the New North Quay:**

In light of the advertisement seeking expressions of interest for the Sailors Rest Café on the New North Quay, can the Minister state who currently owns the building and the business and would he also give details of the terms of the current lease, the area of the site and details of any proposals for the café site?

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

The land is the property of the Ports of Jersey and the temporary building is owned and was installed by the current incumbent. The current licensee has the concession on a strictly rolling temporary basis for a number of years in the full knowledge that it has been the intention of the Ports of Jersey to further improve facilities in the area, and that if and when that happened she would be given the opportunity to be considered, along with any other interested parties. The licensee currently has an agreement which is due to run until the end of 2013 and which is based on 5 per cent of turnover per annum, a figure which is below that charged to other Ports of Jersey café sites. The facility also includes 2 staff car parking spaces and an *al fresco* area.

**3.5.1 The Connétable of St. John:**

Does the Minister consider that his department are good landlords and have a duty of care to any tenants within their sphere of responsibility? If so, can it be right to hold a tenant like a puppet on a string from one year to another for some 11 years?

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

Yes, I do consider the department is a good landlord for tenants and I do not think there is any suggestion that this tenant, or licensee which is the correct term, is being held as a puppet on a

string. She has been aware of the circumstances from the very moment that she moved in, and was prepared to accept those terms and conditions. The fact that it has run on as long as it has has presented her with a commercial opportunity, and she can now seek further opportunities by becoming part of the current expressions of interest for the redevelopment of the site.

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

Is the Minister aware that the footfall of the area is very low, and given that several fast food outlets are proposed for around the steam clock, *et cetera*, by his department or Property Holdings, and given that Liberty Wharf across the road has a very small footfall, is it right that we are putting additional pressure at this time on small businesses who are employing people and trying to keep their head above water? By increasing the number of establishments within the footfall area this company is likely to fail.

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

As I said a moment ago, this particular business has an opportunity to get involved in the expressions of interest and improve the facilities in this particular area. It is an important area for visiting yachtsmen and provides a very good facility.

[10:15]

The other facilities mentioned by the Connétable relate to the States of Jersey Development Company Limited which is looking at some concessions in a site not too far away from here, but it is not related to this particular topic. We continue to support all businesses and if this particular business wishes to put forward further plans they are able to do so, and get involved with the redevelopment of the area.

#### **The Bailiff:**

I will come back to you at the end, Connétable.

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

Having clothed the future in very optimistic language, could the Minister confirm that the opportunity to which he refers is a euphemism for a much-increased rent? Would he not acknowledge that the need for good, solid food is as prevalent now on that pier as it has been over the last 11 years?

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

I think I made it plain in my earlier answer that in fact the current licensee has a discounted rate below all other café sites which form part of the portfolio of the Ports of Jersey. That was done to take into consideration the temporary nature of the arrangements all those years ago, and that continues to be the case. This is not just about optimising a maximum return on the site. It is about ensuring that good facilities develop and as time goes by it is important to always be improving. We are hopeful that the current licensee will get involved in the process, in the expressions of interest, and help develop the site and provide for the 25,000 or so visiting yachtsmen that use the facilities around the port and in particular that one.

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

So just to clarify, the price will be much, much greater for rental than it is now?

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

It will be greater, I am sure, probably, but it will depend on what the options are for the redevelopment. It depends what the expressions of interest throw up. It is quite likely that the existing licensee could indeed continue there, but with an improved proposition which would help

her to make more money. If she can make more money the arrangement is on a percentage of turnover, so it is a win-win scenario. If the turnover improves the Ports of Jersey get a higher return.

**The Connétable of St. John:**

I hope you are not going to cut me off at the knees again, Sir.

**The Bailiff:**

I think that is a bit harsh to say you were cut off at the knees after 3 questions. **[Laughter]**

**The Connétable of St. John:**

Sir, my colleagues, Deputy Southern and others, had the floor to themselves for the entire question.

**The Bailiff:**

That is because nobody else was waiting to ask a question.

**The Connétable of St. John:**

I was ready to continue, Sir, and my thoughts are now broken.

**The Bailiff:**

Do your best, Connétable.

**3.5.5 The Connétable of St. John:**

That being the case, in my original question I asked what was the proposal for this site in the future. Could we be told, please?

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

Sir, I think it is unfair that you suggest that the Connétable is cut off at the knees. I think cut off at the shoulders might be more appropriate. **[Laughter]** I jest, and I know he will take it in good humour. The expressions of interest process is under way, which the Connétable is aware of. That in fact closes today and we will see what is thrown up as a result of that process. It is, as I have said several times this morning, quite likely that the existing licensee could still be involved in an improved facility and we are waiting with interest to see what her proposals are going to be, but it is not likely that anything on this site is going to be other than a catering facility. That seems to me and it seems to the property area in the department of Ports of Jersey to be the most likely outcome.

**3.5.6 The Connétable of St. John:**

So will the Minister look at this particular case, because 11 years with one tenant is very good, but to be only able to invest for 12 months in any particular business is unacceptable. You want a longer term. I am sure the States are not in a position to develop that site at this time. Will he please look at giving a longer lease than 12 months on this site?

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

I am delighted that the Connétable has got it. That is exactly the point of the expressions of interest. We are looking for a longer-term arrangement. We are looking for investment in the site, and we are very keen that the current incumbent gets involved in the process, and if she can come up with a proposition that looks good then I am sure she will have every chance of being successful. Longer-term is much better for everyone concerned.

### **3.6 Deputy G.C.L. Baudains of St. Clement of the Minister for Transport and Technical Services regarding the operation of the incinerator:**

Would the Minister inform Members whether the incinerator continues to suffer problems and, if so, identify those periods it has been out of action so far this year, and would he in particular state whether the combustion is so poor that grate ash has to be sifted in order to return unburnt material to the furnace?

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

As I outlined in my answer to the written question on 16th April, the Energy from Waste plant is having a significant amount of work done to it between March and August 2013. This work is being undertaken and funded by the contractor, CNIM Spie Batignolles Cameron as part of the overall Energy from Waste contract. The work is to replace 4 banks of superheater tubes that have shown signs of premature ageing with tubes of a higher material specification that will last for a longer period of time. The contractors will be modifying the flue gas treatment system to enable it to run more efficiently. The contractors will also be making modifications and repairs to the sea water condensers which will provide better corrosion protection and extend the life of the equipment. CNIM Spie Batignolles Cameron has worked with the department and developed a programme of works that will minimise disruption to the plant and keep at least one boiler running for as much as possible during this period. There will be a few short outages where the whole plant is shut down, and during these shutdown periods the bunker will be used to store waste until the plant is restarted. With the exception of 2 short periods in March and April when the superheater repairs were underway, and one day where there was an internal electrical problem in the early part of March, the Energy from Waste plant has not been out of action.

#### **3.6.1 Deputy G.C.L. Baudains:**

Would the Minister like to suggest when the plant will be satisfactorily fully operational and be able to be taken over by the department from the building contractor?

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

Yes. The defect period will end in July 2013, however any items that have been repaired within the defect period will have a further 2-year defect period added to them.

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

The list of defects suggests that the plant is not fit for purpose, or that the defects result from our plant being partially experimental. Have we been sold a defective design?

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

Absolutely not. The plant itself is industry standard. That is why it was chosen. The bunker unit is standard; the burners are well-known and often used. The generator section is tried and tested. Basically it is the flue gas cleaning units that are new and they are functioning very well.

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

Would the Minister inform the Assembly whether the defects that he has described have any effect on the standard of emissions being emitted by the plant?

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

None at all. As I have just mentioned the flue gas cleaning unit is working perfectly.

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

Is the Minister aware that much of the equipment within the plant, although it was a French company that built the plant, came from all parts of the world and then were added together, where

historically most of the material would have come, shall we say, from the centre - in this case in France, but in the past it may have been Germany or the U.K.? Given that it came from a variety of different countries could this be in part some of the reasons why we are having failures, because the technology in different parts of the world are at different areas and they have been, for want of a better word, cobbled together?

**Deputy K.C. Lewis:**

The Constable is absolutely correct in that the parts did come from all areas of the world, however they are tried and tested units. Basically it is only the pipes that have caused a problem, and everything else seems to be functioning normally. There was a problem with a grating section, but this is part of the normal bedding-in process.

**3.6.5 Deputy J.A. Hilton:**

I believe in the past a series of health checks were carried out at the old Bellozanne Valley incinerator site. Can you tell Members whether there is a programme of health checks in place for workers involved at the new incinerator site?

**Deputy K.C. Lewis:**

I will have to check up on that. Not to my knowledge, but as I say it is the latest technology and the flue gases are perfectly clean, but I will check on that and get back to the Deputy.

**3.6.6 Deputy J.H. Young:**

The Minister has advised us that the cost of the replacement works is going to be met from within the contract terms under the guarantee. Could he confirm or advise the Assembly whether or not there is any consequential knock-on costs or increased costs which will arise for the Transport and Technical Services Department or others and if so will we be able to recover that?

**Deputy K.C. Lewis:**

No, there will be no additional costs. In fact we will be slightly better off, in a way. The waste is being stored in the shutdown time, so obviously not generating electricity, but as it is stored that is stored fuel in some way. So when we restart the burners again that will be burnt and electricity will again be generated and sold on to the J.E.C. (Jersey Electricity Company). The normal superheater tube life expectancy is between 3 and 5 years, depending on the nature of the waste being burned. Once installed the new tubes will have a further 3-year guarantee and are expected to last at least 6 years. The defect period will end in July 2013, as I have mentioned, and any items that have been repaired will have a further 2-year defect period added to them. The civils structure has a 12-year defect guarantee and there is an extended warranty schedule for mechanical plant defects which is limited to 5 years.

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

Given that this plant appears to be a breakdown waiting to happen, or not even waiting, it does it all the time, does the Minister not agree that it was a mistake by the department to tell another worldwide company who wanted to tender for this job, and would in fact have built this incinerator for £40 million less than we paid, not to bother to tender?

**Deputy K.C. Lewis:**

I am not aware of that. I have heard all sorts of rumours and I have heard all sorts of specifications written on the back of cigarette packets, *et cetera*. This is a state-of-the-art unit. I believe there are at least 7 of them running throughout Europe, and it was the best option for Jersey.

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



If I might assist the Minister, this back of the cigarette paper or whatever he referred to was one of his Ministerial propositions.

**3.7. Senator S.C. Ferguson of the Chief Minister regarding the use of ‘gagging’ clauses in compromise agreements:**

Will the Chief Minister confirm that, in common with best practice, ‘gagging’ clauses will no longer be permitted in compromise agreements?

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

The States Employment Board is of the view that there is a presumption that confidentiality clauses should not be used in all but exceptional circumstances.

**3.7.1 Senator S.C. Ferguson:**

My thanks to the Chief Minister. Would he like to outline what procedures will be used to convey this information to the various departments of the States?

**Senator I.J. Gorst:**

The Senator is probably aware that last February I issued a report entitled *Utilisation of Compromise Agreements* and the process to be used is quite clearly outlined in that, and ensuring that it is used accordingly will be part of the responsibility of the H.R. (Human Resources) Department and there are processes in place to ensure that it is used accordingly.

**3.7.2 Deputy T.M. Pitman:**

Could I just ask the Chief Minister to define “exceptional circumstances”? Thank you.

**Senator I.J. Gorst:**

A very good question, but quite difficult to do. They arise from time to time. Other jurisdictions use them. It is mostly about protecting the interest of the person with whom the agreement has been reached, rather than the States itself.

**3.7.3 Deputy R.G. Le Hérissier:**

Building on that, could the Chief Minister outline, irrespective of the paper that did outline this earlier or some aspects, what checks and balances are in place to ensure that the public interest is always preserved and the impression is never given that the individual - or perhaps the victim, as he was inferring - is the person driving the process?

**Senator I.J. Gorst:**

It is quite clear. I expect the Deputy himself has read the report. It is in the public domain, and that is why in answer to his question the States Employment Board when they were undertaking this review - and this work for the Comptroller and Auditor General did an excellent piece of work reviewing compromise agreements which had been undertaken by the States as well - that the States Employment Board came to the view that there should be a presumption against using confidentiality clauses. It is that presumption that I believe protects the public interest.

[10:30]

**3.7.4 The Connétable of St. John:**

How many gagging orders have been put in place over your time in office, Chief Minister?

**The Bailiff:**

In the Chief Minister's time in office?

**The Connétable of St. John:**

In the Chief Minister's time in office, Sir. Also state whether or not those which have been gagged, given his comments earlier this morning, are now able to speak freely if it has been solely put in place because of those people?

**Senator I.J. Gorst:**

As the Connétable would expect in light of the presumption, I am aware of an agreement which was reached which I made public statements about in regard to a consultant, that there was information made public with regard to that agreement and with regard to the amount of money spent. I believe that this States Employment Board can stand on its record there, and I am not aware of any other.

**3.7.5 Senator S.C. Ferguson:**

How will the States Employment Board deal with departments who wilfully ignore the strictures of the S.E.B.?

**Senator I.J. Gorst:**

Carefully but thoroughly and, I suppose, ultimately forcefully.

**The Bailiff:**

Very well. We will come to the next question which Deputy Pitman will ask of the Chief Minister.

**3.8. Deputy T.M. Pitman of the Chief Minister regarding his access to the report associated with the suspension of the Dean's Commission case:**

Further to concerns raised by a member of the public travelling on the same flight as the Assistant Chief Minister with responsibility for external relations, that he was able to identify details of both the victim and alleged abuser in the suspension of the Dean's Commission case, does the Chief Minister stand by his statement that the only document being read was the Korris Report which does not contain names?

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

Sir, I would like to ask my Assistant Minister to act as rapporteur to answer this question.

**Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

I would like to be helpful to the Assembly but as the Chief Minister stated on 30th April the only relevant document that I can recall reading on a flight is the independent review of a safeguarding complaint for the Diocese of Winchester published in March which is available to all on the internet.

**3.8.1 Deputy T.M. Pitman:**

A supplementary. I have to say I find the answer very hard to take, but perhaps the Assistant Minister could explain to us in his view how a member of the public sitting just opposite him could read the name, and I could read it out but I will not, of the alleged abuser and indeed makes that quite clear in his email, which I am happy to give to any Member of this Assembly, to verify that he did see these documents, what he describes as police documents. How does the Assistant Minister marry that up? Is the member of the public lying?

**Senator P.M. Bailhache:**

As the Chief Minister was entering the building this morning he was handed by Deputy Shona Pitman a document that purports to be a copy of an email sent by an unidentified person to Deputy Trevor Pitman. I think it is a pity that Deputy Pitman was not willing to show me that document beforehand, because I could have explained to him privately how and why the allegations are inaccurate. The document does contain some information that is not in the public domain. Taken in the round, it gives a fictitious and malicious account of my reading habits on aeroplanes and I am not going to be drawn further on this subject.

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

I am very disappointed to hear that the Minister is not going to be drawn further on this subject, when I have got a question to ask him and his light is on. Can I quote from the document he is referring to that says, in the words of this complainant: "Obviously, certain facts and names are kept strictly confidential from these types of cases but now I, for one, can name the woman in question and others that have involvement, because of this lack of discretion of information being reviewed in a public place." Does he refute that altogether, or only partially?

### **Senator P.M. Bailhache:**

I have already said that the document is fictitious and malicious and I do not propose to make any further comment on its contents.

### **3.8.3 Deputy G.C.L. Baudains:**

I wonder if the Assistant Chief Minister could just clarify for the Assembly, regardless of documents and whether they are fictitious or not, can he assure us that he did not identify the people involved on that aircraft, either by speaking or by any other means?

### **Senator P.M. Bailhache:**

I cannot envisage any circumstances whereby any member of the public could have obtained from me the confidential information that is contained in the document that Deputy Southern and perhaps others now have.

### **The Bailiff:**

Very well. Do you wish a final question, Deputy Trevor Pitman?

### **3.8.4 Deputy T.M. Pitman:**

Absolutely, and I have to say I find that slur on a member of the public, and the only reason I retracted his name is because he is scared of the consequences, but perhaps I can persuade him to meet the Chief Minister and then perhaps can I ask will the Assistant Minister do the right thing and resign? It is disgraceful to put that a member of the public who is concerned, has expressed very clear concerns and the Assistant Minister could have read this on the internet, redacted. I would like him to apologise to that member of the public because I think it is disgraceful and it shows the arrogance with which some of our Members in this establishment ...

### **The Bailiff:**

Deputy, you cannot impute improper motives for another Member of the Assembly.

### **Deputy T.M. Pitman:**

This is a member of the public who has acted in good faith, concerned at what he could read, and now he is being called a liar. No wonder he is afraid.

### **The Bailiff:**

The Assistant Chief Minister simply stated that he was not reading this document.

**Deputy G.P. Southern:**

Sir, are we, as per the Ministers' Code of Conduct, not supposed to treat all members of the Jersey community with respect and to accuse somebody in public of ...

**The Bailiff:**

The question is what was the Assistant Chief Minister reading and he said what he was reading and did not disclose the name. That is, as I understand, the simple position. If some other member of the public thinks otherwise then that is for that other member of the public, but the Assistant Chief Minister has given this Assembly his assurance. Do you wish to answer the supplemental question?

**Senator P.M. Bailhache:**

I have nothing to add, Sir.

**3.9. Deputy G.P. Southern of the Minister for Social Security regarding increases in private sector rent levels:**

What evidence does the Minister have to support the statement in R.44/2013 that private sector rents are not "clustered" around income support levels and that raising the level of rental support to private sector income support claimants will not lead to further increases in private sector rent levels?

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

The report published as R.44 was written by Michael Jones, an independent housing expert. Mr. Jones examined detailed income support data in respect of private sector tenants, and identified that just under half were paying rents below the income support level and just over half were paying rents above the income support level. He did not identify any clustering around maximum income support levels. Mr. Jones also identified that income support claimants make up just under 20 per cent of the total of the residentially-qualified rental market. His conclusion, based on both the level of the current rentals being charged, and also the relatively small proportion of income support claimants in the private sector, is that he would not expect that his recommended change in benefit policy would have any significant impact on private sector rent levels.

**3.9.1 Deputy G.P. Southern:**

Could I ask 2 clarifications to that particular statement? Can the Minister state what qualifications the reviewer has? Are they mathematical or statistical because to my mind a 56-44 split around the income support level is fairly evenly balanced and suggests to me, depending upon what the actual sums are, a degree of clustering, and secondly how well does he know Jersey and its rental market.

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

Mr. Michael Jones is employed by the Cambridge Centre for Housing and Planning Research which is the Department of Land Economy in the University of Cambridge so Mr. Michael Jones has been advising the steering group to do with housing transformation programmes for a number of years now and is well versed in the Jersey economy and rental sector. In preparing his report he received detailed information not only on income support claimants but also from the Statistics Office based on the statistics for rents in the private sector collected through the Jersey Private Rental Sector Index over a period of 3 years, 2009 to 2011, and his findings were from that data that 63 per cent of private sector tenants pay rents at less than the 30th percentile. That means that the majority of our private sector tenants are renting properties in the lower 30th percentile of rents paid in the private sector and also we established that 14 per cent of our income supported

households in the private sector are non-qualified tenants and obviously in those cases those rents tend to be higher than those for qualified.

**3.9.2 Deputy J.H. Young:**

The Minister has given us a statistician's view obviously from Mr. Jones; could you tell us whether that particular piece of work in reaching that conclusion took any evidence- verifying evidence - from local estate agents that are in practice as to whether or not this move was going to have any potential effect on private sector rental levels?

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

I was not involved in the research process so I cannot answer the Deputy's question exactly but I am sure that the index that I have referred to before takes account of leases granted which require consent under the Housing Law and therefore that information is up-to-date information which is information collected over a 3-year period and therefore is very good data on which to base a report. I hope I have answered the Deputy's question.

**3.9.3 Deputy J.H. Young:**

Can I ask a clarifying? Does the Minister know whether that data includes, for example, information on share-transfer properties which is, of course, not recorded?

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

Yes, it does in fact. Obviously in this sector that we are talking about I think something like 80 per cent of private sector tenants on income support live in one or 2-bedroom accommodation or bedsits. The data, as I said before, is provided by the Statistics Unit to assist Mr. Michael Jones. I think the point that the Deputy is making is that on share-transfer the information is not necessarily conveyed because the leases are not always requiring approval but, as I say, a wide range of data was used to arrive at the conclusions made by Mr. Jones.

**3.9.4 Senator S.C. Ferguson:**

Mr. Jones has been working on the market as it exists and the effects of changes as it exists, but given that the private section subsidy distorts the market, has the Minister obtained reports from Oxera to look at the real economic effect of changes or even removal of these subsidies so that these can be assessed?

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

No, we have not commissioned Oxera to look into the matters. I would stress however that the relevance of increasing support to private sector tenants on income support is to assist the Minister for Housing with the waiting list for the gateway.

[10:45]

It is quite clear that we are having to support more households who have perhaps unsuitable accommodation in some cases in the private sector, and the more that we can do to assist them to have a greater range of choice the less pressure there will be on new-build and completing new properties in the social housing sector.

**3.9.5 Senator S.C. Ferguson:**

Supplementary. But if the price has been increased because of the subsidy is it not worthwhile to look at the effects of removing the subsidy and therefore removing the pressure on the Housing Department and so forth?

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

In answer to the Senator's question, there is no evidence that the price is increasing because of the subsidy and if the Senator has evidence perhaps she would let me have it.

**The Bailiff:**

Final question, Deputy Southern.

**Deputy G.P. Southern:**

Final? Okay.

**The Bailiff:**

Final plus your supplementary.

**3.9.6 Deputy G.P. Southern:**

Or the clarification. Is the Minister aware that many landlords pay strict attention - very close attention - to the States' rule of rent increases being not more than 2.5 per cent and often used that mark by which to raise their rents annually in the private sector. Is he content that in future when they look at States policy they will see a policy of inflation plus 0.75 which is 4.25 for States sector rents rising periodically - annually - and does he not fear that the private sector will adopt the same practise?

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

Average increases in rents over 2009 to 2011, a 3-year period, was the following: bedsits 2.75; one-bed flat 2.02; and 2-bed flat 1.55, therefore I reject the Deputy's statement.

**3.9.7 Deputy G.P. Southern:**

Will the Minister refer to the period just before the ones he quotes, which was when the housing market rents and prices were slowing down - cooling down - when they were galloping?

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

The reason rents were galloping - the word the Deputy uses - in that period was because of shortage of supply. We have had a lot of new units created. Certainly we have seen a lot of developments of flats and that has eased the market.

**Deputy G.P. Southern:**

Sir, if I may?

**The Bailiff:**

You have had your supplementary, I think.

**Deputy G.P. Southern:**

I seek clarification.

**The Bailiff:**

Well let us see if it is, but I doubt it.

**3.9.8 Deputy G.P. Southern:**

It might be clarification. **[Laughter]** Is the Minister aware that the Stats Department suggest a shortage currently of over 400 houses and the waiting list is currently over 800 people waiting for housing? Does he not think that that galloping is likely to happen now as well?

**The Bailiff:**

Not clarification. Good try but it was a good way short also. **[Laughter]**

**3.10 Deputy J.A.N. Le Fondré of the Minister for Housing regarding the net increase in units of accommodation for social rental purposes over the next 20 years:**

Would the Minister confirm the net increase in units for accommodation for social rental purposes arising to the new housing company as identified in P.33/2013 over the next 20 years?

**Deputy A.K.F. Green (The Minister for Housing):**

The proposed housing company stock development plans are noted in section 5.4, appendix B, of the *Housing Transformation Programme - Full Business Case*. The housing company plans to deliver and let 434 new social housing units. Additionally certain social housing trusts will deliver a further 203 new social housing units. The proposals also include a sale of 300 States social housing units to tenants which will move those tenants from the social sector and create more home ownership. The proposals taken together will allow for 637 families to be housed from the affordable housing gateway in addition to the normal vacancies created each year. I think it is important though to pick up that in addition should the strategic plan require further homes to be delivered - and I think they will - by social housing providers then these will be delivered so long as appropriate sites are made available and the proposed rent policy is adopted.

**3.10.1 Deputy J.A.N. Le Fondré:**

I will get to my next question but my question was very clear. I wanted the net figures to the company of social rented. It is not 637 units. It is 84 and that would have been a very simple answer to give. The question I would like to ask is: in the schedule that is included P.33, a reference is made that this is gross additions of 598 units which includes assets currently in development, and I was wondering of those 598 units what was the number of assets currently in development? If he does not have the information could he arrange it with the other information and provide it before the start of P.33?

**Deputy A.K.F. Green:**

I have a partial answer and I will come back with the rest. The company will be building 598 homes but that includes that to make space for those we will be knocking down, 164 of them. The point is that if the rent levels are at the right amount... and the Deputy knows this full well from his work in Housing, and you have the sites you can develop the homes. It is as simple as that. The only limiting factor is whether we can afford to develop them, i.e. the income from the rent is correct, and there is a site to build on and both are being tackled by the Council of Ministers.

**3.10.2 Deputy G.P. Southern:**

Will the Minister come clean and admit that the net - the net - if you take away the 300 sales and those houses which are going to be demolished, is in fact 84 in P.33, and will he in particular release the Tribal document on housing trust capacity study so that we can be comfortable that the trust sector can deliver the 203 he has talked about?

**Deputy A.K.F. Green:**

The Deputy can be comfortable that we will deliver and that the trusts will deliver. As I said before, and Deputy Le Fondré knows this better than anybody else, if you have the right income for your investment the only limiting factor then is the number of sites and I am pleased to say that the Minister for Planning is working on that as well. Okay, the figures do not give us the number of homes that we would like to see immediately but once the rent levels are at the right level and the sites have been released the world is our oyster in terms of development and I have had very good talks with the trusts about them taking on their share and it is quite likely that one of the trusts will be taking on one of our sites very soon to develop that.

**3.10.3 Deputy G.P. Southern:**

I wish the Minister to answer the second half of the question because I have been seeking this Tribal report on housing trust capacity from the Assistant Minister for a fortnight and from him for the last 4 days, I believe, or 3 days. Will he release this document so that we can all be very comfortable that the research has been put in to back-up the capacity claims that the Minister has just made?

**Deputy A.K.F. Green:**

Everything the Deputy has asked for that we have, he has. I am not hiding anything.

**3.10.4 Deputy G.P. Southern:**

That is simply not true. I have asked for the Tribal report listing the housing trust capacity. I know it is there because I have seen a copy of it but I do not have a copy of it and I have not received it either in hard-back or electronically and I have been asking for a fortnight.

**The Bailiff:**

You have clarified the position then. It is the Tribal report that you want. Minister?

**Deputy A.K.F. Green:**

I know of no report known as that but I will go back and double-check.

**3.10.5 Deputy M. Tadier:**

Will the Minister explain why it will take 20 years to get a net increase of 84 social units of housing - which is 4.2 houses per year incidentally - and surely do we really need a company structure in order to deliver 4 new homes for social housing every year, and would it not be better if the Minister concentrated on, rather than providing purchase homes, sorting the backlog of the waiting list for social tenants which he has promised to do when he was elected Minister for Housing?

**Deputy A.K.F. Green:**

It is a very, very good question because the business plan will give us a sustainable company that will be able to deliver homes that will be only limited by the site availability. As long as we have the right income stream from the rental then we will be able to deliver. I believe we need to be delivering in the end, and it will not take 20 years, the Statistics Unit tell us 400 additional homes. That will be a joint effort between the trusts and ourselves. I believe it is probably nearer 800 additional homes and I will fulfil my election promise but we need to have a company that is based on sustainable income. That is what the rent levels are for. That is when we debate the 90 per cent rent levels. I will prove to Members that once we have that, the only limiting factor of providing further social housing is the sites, and my good friend the Minister for Planning and Environment is working on that with the Council of Ministers as well.

**3.10.6 Deputy J.H. Young:**

I find the cross-firing of statistics and numbers confusing. I wonder if therefore the Minister could just confirm, is the number of new social housing units that will be produced as a result of the new rental policy 434 or is it 84 as the Deputy for St. Lawrence said, and of course whatever the number could he please tell us whether or not those new social units are going to be on sites that are already available and identified for housing or is it in the category of sites where we are working on it?

**Deputy A.K.F. Green:**



I was trying avoid this one. I am going to have to read you a long list. Units added and demolished by the housing company, Le Squez phase 2C 2014, 24 units added; 2-4 Journeaux Street 2014, 9 units added.

**The Bailiff:**

Minister, do we need them all? The question, I think, was the figure of 400, was it?

**Deputy A.K.F. Green:**

In total, 598 new units, 164 demolished, 433 remaining.

**Deputy G.P. Southern:**

How many sold?

**The Bailiff:**

It is not your turn, Deputy.

**3.10.7 Deputy J.H. Young:**

Now I have the numbers – 433 - I do not want to go through a list of the sites but are they all sites that we know about and already available to us? That was my question.

**Deputy A.K.F. Green:**

They are all sites that we know about and all are available but over a period of time. Some sites do not become available until 2018. Some sites are now available and we are on them.

**3.10.8 Deputy T.A. Vallois:**

Could the Minister explain why we were able to build 1,600 social housing units from 1991 to this period without the need for 90 per cent of market rent levels, and why we will only be increasing our units by 84 by the end of this 20-year period of the Housing Transformation Programme?

**Deputy A.K.F. Green:**

I cannot explain what happened in the past. Presumably the financial model was very different, maybe the States subsidised it with capital grants.

**3.10.9 Deputy J.A.N. Le Fondré:**

I think what I would like to say and I will ask: does the Minister agree in the end ... the point is that the Minister frequently makes reference to the gross additions but what we should be looking at from the point of view of the delivery of this plan is the net movements. What the Minister is mixing up is the sale of 330 units to affordable buying which is ownership, which is fine, but that is different to the impact on social rented and the fact that on gateway at the moment we have over 1,000 people who cannot afford to buy. They are looking for rental. That is 1,000 people, not 1,000 applications and the Minister therefore when he talks about 598 units or 637 units, he is talking gross. He is not taking account of the loss of units on the social rented sector to the affordability sector. There is also a distinction between the company and what it delivers and what the existing trusts can deliver, and whether it is on their existing models or not. Does the Minister agree that that is the confusion that Members are coming to and can he clarify?

**Deputy A.K.F. Green:**

No, I do not. The only confusion around here is the confusion that people who are opposed to this proposition are trying to put in place. It is quite simple to me that the sales are over 20 years, they are a small number, to help people who find themselves that have worked hard in a better position

who can afford then to come out of social renting into affordable to buy homes, one of the objectives of the Council of Ministers. The Deputy knows all this full well.

**3.11 Deputy G.C.L. Baudains of the Chief Minister regarding the inclusion of sub-contracting and zero-hour contracts under the new Control of Housing and Work Regulations:**

Is the Chief Minister confident that sub-contracting and zero-hour contracts will be captured by the new Control of Housing and Work Regulations?

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

I will ask my Assistant Minister to answer that.

[11:00]

**Deputy P.F. Routier (Assistant Chief Minister - rapporteur):**

Both zero-hour contract staff and sub-contractors are captured by the new law and we will also be increasing our compliance and monitoring to ensure that licenses are adhered to.

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

I believe the Assistant Minister will recall when he was in another position that on the Waterfront Social Security decided to make a check as to who was working there and who was not, and when they arrived it looked like a bank holiday had taken place because everybody had disappeared. How can he be sure that he will be able to monitor this because it does seem to me that sub-contracting especially is a very grey area as to know who you are talking to? The person you are talking to could easily say: "Well, it is not me. I am sub-contracted to him", and he is sub-contracting to somebody else. How do you get hold of that?

**Deputy P.F. Routier:**

Under the new regime there will be more compliance taking place. There will be visits to sites and we are also working with other departments, like Social Security and Immigration, as well who will be also carrying out checks on people coming into the Island. The new legislation does allow for other officers from other departments to work within our existing legislation so there will be a lot of greater compliance checks carried out.

**3.11.2 Deputy G.P. Southern:**

Does the Assistant Minister not agree that this is the perfect opportunity with the new regime to carry out a study to see whether zero-hours contracts are being genuinely used for zero-hours genuine jobs or being abused by keeping people in permanent and full-time work but on zero-hours contracts? Will he assure Members that he will over the next, say, 12 months or so produce a report to investigate zero-hours contracts and its place in our society?

**Deputy P.F. Routier:**

Under the conditions of this particular legislation I do not see that that would fall within that remit of work. Certainly I think as far as social policy is concerned that might be something that could be looked at but as far as the new Control of Housing and Work Law, as long as an employer is keeping within their license granted that is what we want to achieve by that particular legislation.

**3.11.3 Deputy G.P. Southern:**

Can the Assistant Minister tell me who is in charge of social policy and will he talk to that person and arrange that an investigation does take place in short order to find out the extent of the use of zero-hours contracts or abuse of them in Jersey society?

**Deputy P.F. Routier:**

I thought I had implied that that might happen in my initial answer but certainly it is something that is worth looking at and with regard to when the work will be carried out, I know there were demands put on our department at the last sitting with regard to the living wage which has created obviously a relook at our priorities and we are having to look at the work that we are doing. If we can fit it in we will do our best but I cannot promise any timescale at the present time.

**3.11.4 Deputy G.P. Southern:**

Just so I am completely aware of what the target is, is the Minister saying that he is in charge of social policy?

**Deputy P.F. Routier:**

The Council of Ministers are very keen to ensure that social policy is at the top of our priorities and the Chief Minister has asked me to take an overview of social policy across departments. Each department still obviously has their own responsibilities but I have been asked to take an overview of what is happening and I will continue to do that.

**Deputy G.P. Southern:**

I will take that as a yes.

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

I thought the Assistant Chief Minister's response to Deputy Southern was rather vague in the area of whether he was going to look at the possible abuse of zero-hour contracts or not. Could the Assistant Minister give us an assurance that it will be looked at?

**Deputy P.F. Routier:**

Certainly with regards to the Control of Housing and Work legislation looking at zero-hours contracts will be part of when we look at any licence to see if anybody is falling foul of their licence conditions but it has to be recognised that zero-hour contracts with regard to our particular legislation, it is only if somebody is working that they fall within the legislation. It is quite possible for temp agencies for instance to have people on zero-hour contracts but they may not be working at all so they do not fall within the legislation if they are not working, it is only people who are working that it does but certainly we will be keeping an eye on it.

**3.12 The Connétable of St. John of the Minister for Health and Social Services regarding responses to the consultation document on the draft Public Health and Safety (Dwellings) (Jersey) Law:**

Would the Minister state how many responses have been received to date in response to the consultation document on the draft Public Health and Safety (Dwellings) Jersey Law and of these responses how many have been supportive of the proposals and how many have been critical? Would he further state who initiated the drafting of this legislation and what cost has it been to date?

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

The department is reviewing and reflecting very carefully on the outcome of the recent consultation and on comments that are received. There has been some concern and we will be offering a States

Members briefing shortly which will outline the next steps in shaping the final draft law ready for lodging. We have received 20 written responses to the formal consultation, 8 were positive, 8 were negative, and 4 were neutral. Including the letters to the *Jersey Evening Post*, emails, phone calls and letters direct to the department, there were an additional 10 responses received in the last couple of days and these are currently being analysed, both supportive as well as negative. Working towards this new legislation was started in 2000 after the then Attorney General ruled that the risk to people in their homes was outside the scope of the 1930 - and excuse my pronunciation - *Loi Sur La Santé Publique* law. This left a gap in Jersey's ability to protect the health of our most vulnerable Islanders from poor, and in some cases atrocious housing conditions. In drafting the legislation the usual checks had been made by the Law Officers to ensure that the draft law is human rights compliant, not duplicating any existing Jersey legislation. The costs have been within the resources of the existing officer's time with an additional £250 per venue hire and refreshments for the consultation. Members, there are a number of examples of people living in quite appalling conditions here and now in Jersey. The aim of this proposed draft law is to ensure that this situation is addressed and so support some of our most vulnerable Islanders.

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

So it appears that some 10 people over and above the 20 that the Minister mentioned have responded only in the last couple of days obviously because of the high profile of the media on this. Given that being the case, would the Minister consider extending her consultation period by another 4 to 8 weeks so as other people - obviously this has been raised - have contacted me and I have told those people to send in comments? Would she consider taking this back and allowing the public that extra bit of time please?

**The Deputy of Trinity:**

I am happy, and I know there have been raised some issues to extend it say by the next couple of weeks as it has been very high profile, but I would like to make it also very clear that the aim behind this law is to improve living standards. We do not have that bit of law to support the officers. Officers will only go in whether it is tenanted or owner-occupierd if there has been a complaint or there has been a referral.

**The Connétable of St. John:**

Has the Minister ...

**The Bailiff:**

I will come back to you, Connétable, the Minister has agreed that she will extend the consultation.

**The Connétable of St. John:**

Yes, I accept that.

**The Bailiff:**

I will come back to you. Senator Ferguson.

**3.12.2 Senator S.C. Ferguson:**

Perhaps the Minister would like to give us a preliminary explanation as to why the conservation of energy and water are included, particularly for owner-occupiers, because frankly if I want to turn my heating up and open all my windows to the world, I do not see why anyone should stop me. It is a free world. So, perhaps she would like to explain. Particularly with emphasis on the owner-occupier angle.

**The Bailiff:**

I think that is going way outside the current question, Senator, which was about consultation and responses rather than the merits of the legislation. So, we will come next to a question from Deputy Baudains.

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

The Minister spoke of vulnerable Islanders. I can understand the possible scenarios that are revolving around unqualified accommodation. Can the Minister explain how this relates to owner-occupiers? Surely it is hardly a vulnerability that the department needs to look into to come and see what I have in my loft or whether I have the tap turned on in the bath instead of the sink or something like that, which appears to be what this legislation is all about.

**The Bailiff:**

Deputy, I think that is the same point. This is really a question about consultations not the merits or detailed merits of the legislation, on which, of course, Members are perfectly free to ask questions, but not as a supplementary to this.

**3.12.4 Deputy R.G. Le Hérissier:**

In formulating the law, could ... and I do think buried under this is the need to deal with some of the quality and some of the landlords, who sadly have been very rapacious and have made a lot of money off quite poor people, quite frankly. But would the Minister identify what are the areas, when the law was formulated, that it was felt other agencies - like Housing - could not deal with and it was therefore imperative that her own Ministry moved into these areas?

**The Deputy of Trinity:**

In formulating this, the officers worked very closely with Housing, Planning and Environment - especially the Environment Department - and also Fire and Rescue. Because, obviously, if the fire service go into a house that has had a fire or is unsafe and there are issues then they would ask to deal with it. This would show that there was no duplication from any other department. We are looking back here at houses that have not been properly maintained for one reason or the other and where it is a hazard to people that live in them.

**3.12.5 Deputy G.P. Southern:**

Continuing on the same theme, the Minister has stated that officers were working closely with Housing officers on this issue. It seems to me that despite the statement that there will be no overlap, this is an area - certainly in lodging houses, certainly in accommodation standards - where Housing has a wealth of experience. I just wonder whether, in fact, she would revisit the allocation of responsibilities within her intentions to replace the health element with one that belongs to Housing.

**The Deputy of Trinity:**

I can understand where the Deputy is coming from. But, Environmental Health Officers are very highly trained, specific in their area of health and people's well-being. That is not the role of a housing officer. In saying that, they work very closely together and will continue to work very closely. As I have said, we made sure that there was no duplication of laws.

**3.12.6 Deputy J.H. Young:**

The Minister has given us a wider view, which is very welcome, of her purposes in also answering the question about consultation. But, in hindsight does she not feel that the low level of response initially received, before the publicity, illustrates that the problems of going out to consultation with simply a draft law, without giving any explanation, rationality or purpose. In hindsight, does she think that was the right thing to do? Would she not reconsider that approach in future?

**The Deputy of Trinity:**

Before the *J.E.P. (Jersey Evening Post)* had commented on the last couple of weeks there was an article in the *J.E.P.* I know one of my Environmental Health Officers did a media interview. We have had 2 public consultations and also the environmental officers have talked to other organisations. This law is needed. Organisations, like the churches and what have you, have responded. As I said, I am happy to keep it open for another couple of weeks. I suggest that if anybody has any comments, both positive and negative, then please do submit them.

[11:15]

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

Given that the Minister stated earlier that work was started on the legislation in 2000, could the Minister tell Members what has caused the delay in introducing this law?

**The Deputy of Trinity:**

That is a very good question and when I found out, I thought that it has been unacceptable. But, the Environmental Health Officer team is a very small team, and their remit is very broad. Unfortunately, it just got slightly side-tracked by more pressing issues. Saying that, that is why this law is important. It is only a small amount, but it does affect the lives of Islanders each and every single day, when you see the photos that I have sent Members.

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

Supplementary, sir? I was quite shocked at the Minister's response. On the one hand she says that her department is obviously limited in size and is very busy. Yet, on the other she said this is extremely important and she has pictures of the very poor conditions that exist in housing on the Island. Surely if the Minister had these concerns, this matter should have been brought to this Assembly far earlier. Could she properly explain why that decision was not made?

**The Deputy of Trinity:**

I was not Minister back in 2000. But, we are where we are, so the saying says. But, I am determined to bring this forward, because we do need this bit of law. It has taken a long time. I know law drafting, *et cetera*, and working with the department and other organisations does take time.

**Deputy G.P. Southern:**

Sir, I have a point, I believe, of clarification.

**The Bailiff:**

Well, I think Deputy Trevor Pitman next.

**3.12.9 Deputy T.M. Pitman:**

Sir, I know you have ruled a couple of questions out of order, but we are talking about consultation or the Constable of St. John was. Given the clear anomalies the impact this law would have on owner-occupiers, does the Minister really think that she has taken the right route? Because surely this should not be about, say Deputy Tadier, owning his flat and whether he has stored his barrels of gunpowder safely. I mean, that is not the same as appalling conditions, which we all obviously want to see eradicated.

**Deputy M. Tadier:**

Can I just clarify, I do not own my own flat, Sir? [Laughter]

**The Deputy of Trinity:**

I hope I am not at the end of the Deputy Tadier's gunpowder. I have been into situations in my former life as a nurse in owner-occupieds as well as tenanted. Some of the conditions I think you would be absolutely surprised at. You think in this day and age people cannot live like that. But, rest assured, it does happen. With a briefing, the officers would be very happy to give Members actual descriptions of what they go and see. It is down to the complaints that they have received and referrals, be it from uniformed organisations, churches and whatever. This is not about investigating Deputy Tadier's flat. This is about referrals and complaints that are made every single week. The department gets about 3 to 4 complaints or referrals every single week.

**The Bailiff:**

Deputy Southern, you have already asked a question. I think there is really time for the Connétable to ask his question.

**The Connétable of St. John:**

I will give way because I think the Deputy had a clarification requirement.

**The Bailiff:**

Well, if it is any better than his last point. **[Laughter]**

**3.12.10 Deputy G.P. Southern:**

I accept the reprimand, Sir. It is wicked of me. But the Minister did talk about the size of her department. Will she confirm that the size of her department - Environmental Health - is smaller than it was previously because she cut, under C.S.R. (Comprehensive Spending Review), the number of Environmental Health Officers?

**The Deputy of Trinity:**

No, it has not. There has been one officer down, because that officer has been on T.A. (Territorial Army) duty, if that is the right phrase, in Afghanistan. As a good department, we have been supporting that officer through it. **[Approbation]** The Environment Department is a busy department. It is a small department. I can reassure Members even when this law, hopefully, is approved there will be no increase in environmental officers.

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

That gets me nicely to where I wanted to go. Is the Minister aware that once this law is in place it becomes law and it is black and white? Unlike many old laws that she was referring to, there were shades of grey, where people could deal with it in slightly different ways. Once penalties are in place, they are there and they are enforced by your officers. The officers cannot see shades of grey. They will only be allowed to see black and white. Is she aware of that? Anything she puts in place has to be user-friendly for the Island of Jersey not for some borough in the United Kingdom.

**The Deputy of Trinity:**

This is specific to Jersey. The problem is here today. We need to sort that problem out. Appalling conditions as I have seen would turn my hair grey. **[Laughter]** The department is very good at negotiating and working with landlords or owner-occupiers. That is their role. But they need this bit of law to support them in doing that. It will not increase the number of staff, as I have said, and it also will not increase the cost. I would like to think that the cost will be reduced. If we can improve those conditions and it saves even one person from being admitted to hospital with a broken leg, because they have fallen through floor boards, or a child developing asthma because they are continually living in damp and mouldy conditions, then that is a cost saving to the health of this Island.

### **3.13 Deputy T.M. Pitman of the Chairman of the Privileges and Procedures Committee regarding the implementation of Option B following the recent referendum:**

Given that Option B gained a total of only 8,190 votes of the total 16,749 cast and thus achieved only 48.8 per cent of the vote, why is the Committee putting this option forward, having failed to achieve even 50 per cent of the vote?

#### **Connétable A.S. Crowcroft of St. Helier (Chairman, Privileges and Procedures Committee):**

The Privileges and Procedures Committee has agreed to proceed with implementation of Option B, because that is the will expressed by the electorate in a referendum held in accordance with the Referendum Act - P.5/2013 - that this Assembly approved. To do otherwise would have sent a very negative message to those who took the trouble to vote and would probably have discredited any future referendum. Whether Option B is to be implemented is ultimately a matter for the States. The result of a referendum is not binding on the States, but there is an expectation that the States will consider the outcome of the referendum and determine the way forward. P.P.C. (Privileges and Procedures Committee) believes that its duty is simply to act as a midwife in this process. The committee expects to fulfil that duty by lodging a draft amendment to the States of Jersey Law 2005 in a matter of weeks, with the potential for a debate in the last meeting of the States before the summer recess.

#### **3.13.1 Deputy T.M. Pitman:**

Supplementary? I have to say, if the P.P.C. is a midwife, then it is going to birth a monster. But, P.P.C. will obviously be bringing forward what is effectively disenfranchising to people of St. Helier. I think the Constable would agree with that. Now, those people voted to have parity, equality, with their country Parish compatriots. So, can I ask the Chairman, will P.P.C. additionally then be seeking to amend proposals to give St. Helier the 4 additional representatives required to make this fair, an opportunity that was spurned by the Assembly, sadly?

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

The Deputy is right that the States Assembly did consider a number of amendments to the referendum, which were rejected. I cannot really speak of how the Privileges and Procedures Committee will act when it receives the instructions at its next meeting. I would suggest that if the Deputy is interested he attends the meeting. I am assuming it is going to be on the open agenda. As soon as the Committee has had a chance to consider it the matter will be brought forward. As the Deputy may know, the committee was not unanimous in its decision as soon as the referendum outcome was known to proceed with lodging instructions, amendments and there may well be a lively discussion in the Privileges and Procedures Committee when these instructions come forward.

#### **The Bailiff:**

Very well, no further questions. Deputy Pitman, final question.

#### **3.13.2 Deputy T.M. Pitman:**

I was not quite ready for that one. Is the Chairman of P.P.C. aware and will it be taken into consideration when they are discussing what is going to be put forward that there are already moves by a number of different groups to take this matter to the U.K. Privy Council?

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

I certainly heard rumours to that effect.



### **3.14 Deputy M. Tadier of the Chief Minister regarding an investigation into aggressive tax planning schemes:**

Given the Chief Minister's assertion last year that: "There is no wish or need to accommodate or to give encouragement to those who seek to involve Jersey in aggressive tax planning schemes" (Hansard, 26 June 2012) will the Chief Minister carry out an investigation to ascertain the extent to which these schemes are used in the Island, to confirm his position in this matter?

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

Last year I met with finance industry representatives. We agreed on the importance when deciding on what business to undertake of taking into account the reputation of the Island as well as their own reputation and generally applying what has been referred to as the sniff test. I am confident that this message has been taken on board by all concerned. However, one of the recommendations arising from the McKinsey study is that there should be created a Sound Business Practice Committee, one of the rules of which would be to identify business practice in Jersey which may conflict with Jersey's aim to be an international finance centre which supports only legitimate business and recommend action to address activities not in line with this aim. The Steering Group that is to progress all the McKinsey's recommendations on which government, the regulator and industry are represented met on Monday and the creation of the Sound Business Practice Committee is being actively progressed.

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

There is a lot in there and I thank the Minister for his initial response. There is an issue, is there not, I would ask the Chief Minister? Because, of course, aggressive tax planning, which the Minister denounced only a year ago, is perfectly legitimate and legal and seems to be practised by some elements within the finance industry. So, how is it that this sniff test will be applied? Does that sniff test have any teeth, if you excuse the mixing of metaphors? Does the person who is performing this sniff test have the prerequisite olfactory senses to be able to sniff-out anything that is not quite right? Is there any legal basis for that?

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

I think the Deputy knows the answer to the question before he has asked it. He also, from previous questions in this Assembly, knows that this is not a straightforward but a complex area and arises from complex tax codes in other jurisdictions. As I said, I have spoken to finance industry representatives. They themselves are aware that when they are taking on business they should have regard to Jersey's reputation across the world as they have regard to their own reputation. I believe that they take those issues seriously. I believe that we can have confidence that they are doing so.

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

Does the Chief Minister not think there is a real issue building-up as evidence that in a radio interview with a banker from the African sub-continent on Radio Jersey this morning, namely that McKinsey is moving the Island away from Europe where business is clearly becoming undertaken in a much more hostile environment and looking to other areas of the world like the Far East and Africa? Does he not think our ability to apply the tests of which he is so proud is very limited, as indeed did that speaker on the radio this morning? It is very limited when we are operating in markets where there are different cultures, where there is considerable distance and where we do not probably know the market to any extent as we appear to know the European market?

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

I cannot agree with that at all. Of course, different markets are looking for different characteristics from their financial services. We know that in the Middle East and in the Far East confidentiality

and privacy is a very important factor when they are choosing either a provider or a jurisdiction. We should not stand aside from that. As the Deputy knows, we are in the process.

[11.30]

We have initialled a FATCA Agreement with the United States Government. That is a global standard. We have reached agreement with the United Kingdom Government, because of our long historical association. We watch with interest the move to automatic exchange and we are waiting the outcomes of the G5 pilot, the G8 initiative, the work that the O.E.C.D. (Organisation for Economic Co-operation and Development) is doing. We can be proud of our record when it comes to meeting relevant international standards and we will continue to do so in the future.

**3.14.3 Deputy R.G. Le Hérisier:**

Just a clarification. Could the Chief Minister then confirm that the standards which he applies to one part of the world will indeed be applied with the same rigour and in exactly the same fashion to the new markets which he is seeking?

**Senator I.J. Gorst:**

These are jurisdictional issues and I would expect financial services companies in our Island to apply these tests to business across the board. It is absolutely right and proper that they do so, that they consider the best interests of Jersey and of their organisation when taking on new business. I do not think that is any doubt.

**3.14.4 Deputy G.P. Southern:**

Can we get down to practicalities? Can the Minister name the company in Jersey that does a conduit for the Jimmy Carr scheme, for example? Can he assure Members that officers have talked to representatives of that company and the company has withdrawn from that activity?

**Senator I.J. Gorst:**

I cannot and I do not believe that that is my job to do so. Those organisations are regulated by the Jersey Financial Services Commission. They will be authorised individuals and therefore they will be reviewed appropriately in that regard.

**3.14.5 Deputy G.P. Southern:**

Supplementary, if I may then? Will the Minister ensure that the J.F.S.C. (Jersey Financial Services Commission) talks to that company and can assure him that they have withdrawn from such activities, which do damage our reputation?

**Senator I.J. Gorst:**

I have made my position quite clear with regard to the role of the Jersey Financial Services Commission, as the Deputy ought to remember when I answered questions on this last year. They were one of the parties that I spoke to with regard to having regard to Jersey's international reputation and our best interest.

**Deputy G.P. Southern:**

I would have thought a year later the Minister might know that officers have spoken to this company and have arranged to make sure they are not doing it. It is a year on.

**3.14.6 Deputy T.M. Pitman:**

Deputy Southern has asked my question. However, I would ask, following the Chief Minister's answer, he said it is not his job that such scams, I would say, as K2, are regulated. Clearly they are

not regulated very well. Does that not suggest to the Minister that a bit more of, perhaps, a personal interest from himself is required to ensure that we do not get these damaging episodes?

**Senator I.J. Gorst:**

We are starting to refer back to press coverage which happened in the United Kingdom last year. I said a lot in that regard and Members seem to have forgotten that. I suppose that is a hazard of my position. With regard to K2, it was a U.K. promoted product. It had U.K. advice and it just so happened that it was administered in Jersey. As I said at the time, it could have been administered in any other jurisdiction and to some extent that can happen to any jurisdiction. So, I do not think I have anything further to say in that regard.

**3.14.7 Deputy T.M. Pitman:**

Supplementary, if I may? The very fact Deputy Southern, I think, was trying to get across, what has been done? It is fine to say this happened last year, but what has been done. I accept it is not the Chief Minister's job to do it, but surely he should be finding out what has taken place.

**Senator I.J. Gorst:**

We certainly know that the United Kingdom Government have brought forward a G.A.A.R. (General Anti-Avoidance Rule) and they will be bringing that into their legislative programme and therefore I hope that that will ensure that schemes similar to that are no longer able to be promoted from the United Kingdom.

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

If a Member has evidence of malpractice, would the Minister be prepared to put a paper together with P.P.C. on a way forward, so we do not have to wash our dirty linen off-Island?

**Senator I.J. Gorst:**

I am not quite sure how that question is connected. But, I do feel that perhaps the mover of the initial question was trying to dig themselves out of a hole with some comments that they made recently which from my regard seem to have no basis in fact or reality and now he is trying to move the argument on to one which is aligned with my own and this Government's position.

**3.14.9 Deputy M. Tadier:**

It seems that the sniff test does work, but it only works when it is carried out by foreign journalists who make their way to the Island to sniff out some of the dirt themselves, which is not done satisfactorily by our own Ministers, it would appear. Can the Chief Minister confirm that he is guilty of cognitive dissonance? Because on the one hand he tells the BBC last year quite openly that he has no desire to see aggressive tax schemes used in Jersey. He said: "I have every intention of ensuring that this message is received and understood by all concerned." Yet, he has told us today that he does not even know or seem to care which company was employing the K2 scheme that Jimmy Carr and many others were involved in using Jersey. So will the Minister confirm that what he is saying is that we do not want aggressive tax planning if there is reputational damage to Jersey, but aggressive tax planning is quite fine so long as there is no reputational damage to Jersey in any way and it does not matter because we will not check those things anyway?

**Senator I.J. Gorst:**

Absolutely not: I am concerned about Jersey's reputation. This Government continues to, as I said, comply with relevant international standards. My position with regard to aggressive tax planning remains and it is quite clear. I am afraid that my position appears over the recent publicity and time to be at odds with the Deputy, who does not wish to base his comments on fact and on evidence, but simply seems to read them in a book and then pass them off internationally as facts. Perhaps,

we in this Assembly have a duty, while of course being free to say whatever we like under freedom of speech, but we have a duty to ensure that when we are talking about our main industry - and let us not forget the livelihoods of our constituents - to at least deal with facts when we are doing so.

**3.14.10 Deputy M. Tadier:**

The Minister obviously has a duty not to make statements which he has no intention of following up, saying on the one hand that: "We do not want aggressive tax avoidance, but we will do nothing to prevent it and I am not interested in setting up any investigations into whether it exists, because I can talk with impunity in Jersey and no one cares about that."

**The Bailiff:**

The question, Deputy, is ...?

**Deputy M. Tadier:**

Of course, the Minister will agree with that?

**Senator I.J. Gorst:**

I could not disagree more. It seems that the Deputy has forgotten what I said only 10 minutes ago in my opening answer to his question, which is very important and he cannot for one moment say that I or we as a Government will do nothing. As he knows, we have initialled an agreement with the United States Government on F.A.T.C.A. (Foreign Account Tax Compliance Act). We have come to agreement with the United Kingdom Government with a U.K. F.A.T.C.A. That is not doing nothing. That is proudly putting ourselves at the forefront of international standards and meeting our obligations to our neighbours. It is not doing nothing, but it is based on fact. It is understanding the reality of the financial services industry in our community and the benefits that they bring to our community and not as some other Members seem intent on doing in this Assembly and outside of these shores.

**Deputy M. Tadier:**

All words and no action.

**4. Questions to Ministers without notice - The Minister for Transport and Technical Services**

The Bailiff:

Very well. That brings questions on notice to an end. We come now to questions to Ministers without notice and the first period is to the Minister for Transport and Technical Services.

**4.1 Deputy G.P. Southern:**

I have been away from the Island for the last 10 days, so I would dearly love to know what the Minister for Transport and Technical Services has managed to do and what actions has he taken to resolve the lack of recognition - the absence of recognition - of the Jersey Bus Company. Has that matter been resolved or is it still pending?

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

I have been informed that the situation is still ongoing. The workforce may decide for whom they wish to be recognised as a union. If this cannot be agreed with the company then after a series of several meetings it will go to the J.A.C.S. (Jersey Advisory and Conciliatory Service).

**4.1.1 Deputy G.P. Southern:**

Could the Minister inform us what he has done personally in the last 10 days to resolve this issue and how long he expects this dispute to go on?

**Deputy K.C. Lewis:**

I am not aware it is a dispute. It is about recognition of a union, which is standard procedure. It is not for me to do this. It is for the workforce and the company to agree jointly the way forward. If this cannot be agreed then it will go to J.A.C.S.

**4.2 Deputy S. Pitman of St. Helier:**

I am just following on from that question. A couple of weeks ago myself and Deputy Trevor Pitman had a meeting with staff representatives of the bus company. The civil servant that was present agreed to look at the timetables and shifts. I just wanted to know what progress had been made with that.

**Deputy K.C. Lewis:**

Yes, that is quite correct. This is a matter for Liberty Bus and the workforce. The Minister does not have any jurisdiction over shifts. But following a representation from the 2 Deputies and some of the workforce, I have asked my officers to discuss this with Liberty Bus to find a way forward. I believe that is happening. But split shifts are part of a working pattern and cannot be eliminated completely.

**4.2.1 Deputy S. Pitman:**

Could the Minister tell us when his civil servant will be getting back to him regarding the discussions with Liberty Bus Company?

**Deputy K.C. Lewis:**

Yes. I have been informed that the talks are still ongoing. But they are trying to sort the shifts out to make it easier for the staff. As I say, they will not be eliminated completely.

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

I believe the Minister has put the bus company on 100 days' notice for lack of performance. Could he advise us when that 100 days expires and could he also advise us what happens thereafter should nothing improve?

**Deputy K.C. Lewis:**

I did not quite catch the question, Sir.

**The Bailiff:**

Have you put the company on 100 days' notice to have improved performance?

**Deputy K.C. Lewis:**

No. There is a constant dialogue between my officers and Liberty Bus on performance generally. I have been informed that complaints have dropped 96 per cent. The only complaints that people are getting now are not with the timetable but the fact that buses are in fact full. So, they are going to start putting on more buses and the new timetables will be released shortly.

**4.4 Deputy J.M. Maçon of St. Saviour:**

I forget the exact name of the law, but can the Minister please advise where the new maintenance of roads law, with the utilities companies is, what are the hold-ups and when it is going to be lodged in this Assembly, as it is long overdue? Thank you.

**Deputy K.C. Lewis:**

I think the Deputy is referring to the proposed Street Works Management Law. I believe that will be early next year. It is in draft form at the moment.

**4.4.1 Deputy J.M. Maçon:**

Can the Minister please advise what is holding up the progress of this law? Thank you.

**Deputy K.C. Lewis:**

It is a work in progress.

**4.5 Deputy J.A. Hilton:**

In an earlier question this morning, concern was expressed when it came to light about failure of certain components of the new incinerator. Can the Minister confirm emission tests are being carried out and if not, why not?

**Deputy K.C. Lewis:**

Emission tests are monitored daily and reported to the Minister for Planning and Environment, who has a regulatory function. That is done on a quarterly basis. I thought the question this morning was regarding health checks... the workforce.

**4.5.1 Deputy J.A. Hilton:**

There was a question with regard to health checks this morning. I personally think it is really important that those ongoing health checks are being carried out.

**Deputy K.C. Lewis:**

Yes, I have made a note of that and I will inquire with the department.

[11:45]

**4.6 Connétable M.J. Paddock of St. Ouen:**

Can the Minister advise the Assembly at what stage his department is with regards to the Road Safety Strategy and the date when this piece of work may be completed?

**Deputy K.C. Lewis:**

Again, that is ongoing. Is the Constable referring to the Schools' Road Safety Strategy? Yes, that is happening at the moment. That is out to consultation. That will be reported on shortly and I will report back to Members on that.

**4.7 Deputy M. Tadier:**

Will the Minister confirm that school bus tickets may be used on Liberty Bus and until what time this may take place on school days?

**Deputy K.C. Lewis:**

I believe that to be. I am not aware of any time limits.

**4.7.1 Deputy M. Tadier:**

The reason I ask is that some students stay on after school for various extracurricular activities and make their way to the Weighbridge. It seems to me that it is unclear for them until what time they may use the bus service without being charged the 70p fare.

**Deputy K.C. Lewis:**

I am not aware of a time limit, but I will of course check that out and get back to the Deputy.

**4.8 Deputy R.G. Le Hérisier:**

Given that the ongoing labour relations issue inevitably affects staff morale and inevitably take away a lot of management energy and no doubt prove a matter of considerable frustration to the Minister, could the Minister tell us what deadline he has set for the resolution of these issues, as opposed to this constant work in progress, matters just going on, people talking to each other? It has become a very open-ended frustrating process all round. Thank you.

**Deputy K.C. Lewis:**

As I pointed out, discussions are going on regarding union recognition. As I said, if that does not happen then it will go to J.A.C.S. But, I can see a resolution within weeks.

**Deputy R.G. Le Hérisier:**

Sorry, the question was - I wonder if the Minister could reply - has he set a deadline for Liberty Bus to sort this out by? Thank you.

**Deputy K.C. Lewis:**

No. But I have requested they sort things out pronto.

**4.9 Deputy T.M. Pitman:**

In an earlier response the Minister said that the issue of split shifts was not his responsibility. While I accept that, I am sure he must agree that if those split shifts are done in such a pattern that is breaching the law and having an impact on drivers' health then it definitely is his responsibility to do something. Can he tell us where we are with that issue?

**Deputy K.C. Lewis:**

Yes. The split shifts do not break the law. It is well within the law and is an operational matter for Liberty Bus. However, I would obviously encourage as few split shifts as possible to maintain a quality of life for all working staff at the bus company.

**4.10 Connétable D.W. Mezbourian of St. Lawrence:**

The Minister responded to the Connétable of St. Ouen and answered about the Schools' Road Safety Strategy. What I would like to know is about the Island-wide Road Safety Strategy for which consultation began I think, probably, some 6 months ago. We are still waiting to hear from it and are being constantly asked by parishioners what is going to happen to the Island-wide speed limits. I really want to know about this: when we are going to have something and when the Minister will be bringing something to the House for debate.

**Deputy K.C. Lewis:**

Indeed. I had a meeting with my officers on this very subject yesterday. I have gone through all the plans and all the maps, *et cetera*. Constables are being consulted as we speak regarding lower limits where requested. There are about 5 or 6 in the pipeline.

**The Connétable of St. Lawrence:**

When can we expect the final report?

**Deputy K.C. Lewis:**

As soon as the Constables and parishioners agree upon them.

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

In my view, the new incinerator has every indication of becoming a long-term liability for the Island. Will the Minister agree to circulate to Members a list of the significant faults that have happened to date, because of the unusual number that there has been? Also, will he explain how he

could guarantee that the Island will not be lumbered with ongoing costs of repairs arising from faulty design or manufacture?

**Deputy K.C. Lewis:**

Yes. The significant component failures were mentioned by myself this morning. The tubes have gone. That is all being replaced at the contractor's expense. If any Member would like a guided tour of the Energy from Waste plant, I am more than happy to do that, when they can see for themselves what a superb unit it is. It is not a liability. With anything of this size there will be ongoing maintenance, which is to be expected.

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

I was not referring to ongoing maintenance, which as an engineer I fully understand myself. I asked about the list of repairs arising from faulty design or manufacture.

**Deputy K.C. Lewis:**

There are no significant problems there. Everything is under guarantee. The whole unit itself - the solid part of it - is guaranteed for 12 years. The tubes are guaranteed for 6 years. As I say, it is an ongoing problem. We are burning waste. It is an industrial unit and will need to be maintained. Other than that there are no significant problems.

**4.12 Deputy J.A. Hilton:**

In answer to an earlier question, the Minister said that emission tests were carried out on a daily basis and were then forwarded on to the Environment Department. Is the Minister content that they fall within acceptable levels and there have been no changes?

**Deputy K.C. Lewis:**

Yes, indeed. I think I mentioned they are reported to the Minister for Planning and Environment on a quarterly basis.

**4.13 The Connétable of St. Lawrence:**

Will the Minister advise what his department's policy is when private landowner's land suffers slippage on to T.T.S. (Transport and Technical Services) roads and the landowners then claim they are not in a position to pay for the repairs and yet roads are kept closed for many months? What is the policy? How does the Minister deal with this?

**Deputy K.C. Lewis:**

That is an excellent question. As the Constable is aware, there is one such slippage in her Parish, which my team are trying to deal with at the moment. It is a problem with the severe weather we have had of late. Sadly, it is a legal problem, which can be protracted. What may be the ultimate solution is that the T.T.S. may clear all the debris, but the rebuilding of walls, *et cetera*, is not part of our remit and we do not have the funds to do that. But, we hope to get all roads open as soon as possible.

**4.14 Deputy R.G. Le Hérisier:**

I wonder if the Minister could confirm what issues, if they are indeed similar, are afflicting St. Aubin's Hill and the landslip there at the moment.

**Deputy K.C. Lewis:**

Yes, indeed. I believe that is a similar case. I believe works were undertaken there. But, again, there may be legal problems which I had best not go into.

**4.15 Deputy M. Tadier:**



Can the Minister advise us what progress he has made, if any, with dialogue to try and get Romanian driving licenses mutually recognised?

**Deputy K.C. Lewis:**

We rely on our U.K. colleagues at D.V.L.A. (Driver and Vehicle Licensing Agency) in the U.K. to maintain that. We have not been approached by the Romanian Government via the U.K. to recognise Romanian licences. We would only do so if it was reciprocal.

**4.15.1 Deputy M. Tadier:**

Several months ago I asked the Minister on this same subject. He said they were in talks with the U.K. and they would bring this up. So why has there not been any proactive activity from the Minister's department? There are many hundreds of Romanians in Jersey who can quite happily drive in the U.K. and they seem to have the skill to do it, but in Jersey they are essentially second class citizens.

**Deputy K.C. Lewis:**

I would disagree on being second class citizens. But, as I pointed out to the Deputy several times, it can only be by approach from the Romanian Government and it has to be reciprocal.

**4.15.2 Deputy M. Tadier:**

Will the Minister give an undertaking to do that?

**Deputy K.C. Lewis:**

My officers have done that. An approach was made and it was decided it would only be done if it was reciprocal.

## **5. Questions to Ministers without notice - The Minister for Home Affairs**

**The Bailiff:**

Very well. That brings questions to the Minister for Transport and Technical Services to an end. So we now come to questions to the Minister for Home Affairs. Deputy Shona Pitman.

**5.1 Deputy S. Pitman:**

It is a question regarding the Fire Precautions Regulations 2012. I just wanted to know what financial assistance there is for owner-occupiers who are living on low incomes to comply with these regulations?

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

There is not any.

**5.1.1 Deputy S. Pitman:**

Does the Minister believe that there should be? Certainly I do, because I have a constituent who owns a small flat in a multi-occupancy building and is living off a redundancy package and a small pension and has estimated that to comply with these regulations it would cost her around £20,000. She simply does not have the money and because of that she is considering selling her property.

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

One of the most difficult decisions that I had to make, obviously with advice, was exactly where we sought to set the definition of houses of multiple occupancy and I was very keen to avoid a situation in which people living within their own single unit home would be affected. The test that

we brought to this Assembly, and indeed which this Assembly passed, was a test where you had an old building which had been converted into multiple units, but it did not require - I am going from memory on this - a permit and it did not require a fire precaution certificate, unless less than two-thirds of the units were owner-occupied. Now, I assume from the question that this must be a unit in which there are rented out premises and that therefore has brought it within the limit. So it is a difficult test. That is the test I brought to the Assembly. That is the test which the Assembly passed. Interesting enough, I well remember having a question from the Connétable of ...

**The Bailiff:**

I think, Minister, you are going to talk out the entire question time if we are not careful. [Laughter] Deputy Hilton.

**5.2 Deputy J.A. Hilton:**

As part of Guernsey's new Population Policy, the question of criminal record checks has been revisited again. What discussions, if any, has the Minister had between himself and the Chief Minister's Department on whether to revisit this matter again and whether any discussions have been taken place with the Law Officers in order to challenge the commonly-held belief that such checks would not be human rights compliant?

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

I am so sorry, I lost a word or 2 as to precisely what the question was about, so could that just be clarified? This is immigration checks, is it?

**Deputy J.A. Hilton:**

It is, yes, criminal record checks for new incomers.

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

Well, we do not have any control in terms of immigration in relation to people coming from elsewhere in the European Economic Area. So, we cannot do it under existing legislation. We do, of course, have such controls in relation to people coming from elsewhere.

**5.2.1 Deputy J.A. Hilton:**

A supplementary? It is my understanding that criminal record checks are carried out in other Crown Dependencies. The question about whether any discussions had taken place with the Law Officers to challenge the widely-held belief - in Jersey at least - that we cannot have criminal record checks.

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

I am trying to understand what the question is about. I have said that we have no immigration control in relation to people coming from elsewhere in the E.E.A. (European Economic Area) under present legislation. That is the position. Therefore, I assume that the question relates to people coming from outside the E.E.A. In relation to those, of course, they would need to obtain a visa in order to come in, unless they were staying purely for a short period of time.

**Deputy J.A. Hilton:**

I think I shall write to the Minister with the question. Thank you.

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

Yes. I am struggling to understand the precise question.

**5.3 Deputy R.G. Le Hérissier:**

I wonder if the Minister could inform us when he hopes to have total compatibility between the Jersey and the U.K. parole systems?

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

I do not. I prefer our system.

**5.3.1 Deputy R.G. Le Hérissier:**

I wonder if the Minister could clarify, when does he hope to have reciprocity between the 2 systems?

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

On the assumption that the question is still about parole systems, I do not.

[12:00]

**5.4 Deputy T.M. Pitman:**

Given that when he gave evidence to the Scrutiny Panel that I then chaired and indeed within this Assembly, the Minister confirmed that all the evidence pointed to the leaking of information to the U.K. media during a live child abuse investigation that led back to the chief investigating officer who had replaced Mr. Harper and he thus named Mr. Gradwell. Can the Minister therefore clarify if he has now forwarded details of the internal inquiry carried out in Jersey about all this to Operation Elveden in the U.K?

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

I have not forwarded anything to Operation Alpha. The local police force are, of course, working in co-operation. I am assuming Operation Alpha is the investigation in relation to historical abuse by celebrities and such like people. I know that the local police force are actively assisting in relation to that. But, it is not for me to be involved at what is clearly an operational level.

**5.4.1 Deputy T.M. Pitman:**

A supplementary, if I may. If we only go back to the last Assembly, there were some, I have to say, wholly wrong efforts by certain Members of the last Assembly to cast dispersions on Mr. Harper's reputation. Now, the Minister did give that evidence that Mr. Gradwell had leaked this information. There is the Operation Elveden going on. That officer was seconded to the Jersey force, but he still came under U.K. legislation, so why is that important information leaking evidence not being forwarded?

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

I now understand what Operation Alpha is, I did not know it under that particular name. This is to do with police officers providing information to the press. I have indeed been asked the very same question recently by a member of the public and have agreed that I will discuss that with the senior police officers. I am sorry that I misunderstood which operation it was.

**5.5 Senator P.F. Routier:**

Following on from the question from Deputy Hilton regarding Guernsey's proposals to be able to carry out criminal record checks under their new immigration policies with regard to people perhaps who are within the European area... would the Minister be pleased to know that I shall be going to Guernsey very soon to find out how they are progressing that?

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

I would be very pleased. I thank my colleague for the question, but, which of course means that the question was never within my area of responsibility in the first place, which is probably why I did not know the answer. [Laughter]

**5.6 Connétable S.W. Pallett of St. Brelade:**

Could the Minister tell the Assembly where his department is in regards to the introduction of Tasers?

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

Yes, I can. There is a very long draft report produced, which I have been working on in recent days, about 52 pages. Unfortunately, it is completely in the wrong format and is going to have to now be rewritten in order to be acceptable in terms of a report attached to a proposition. Having reviewed it myself I have now passed it back to my staff, who were not very happy at the prospects of having to do a lot of work on it themselves. They felt the police should pick this up and turn this into the right format. So, unfortunately, a great deal of work has been done. It is a very long report, but it is completely in the wrong format.

**5.6.1 The Connétable of St. Brelade:**

Could the Minister give some guideline as to what timescale he puts on the work that needs to be done? I know the police are very keen to get the Taser into operation, subject to the proposition being accepted in the States. But, can he give us a timeline on the work that he is doing?

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

That is going to be dependent upon how quickly the work can be done to turn it from the format it is in now - which took a great deal of time to be produced - into the format it needs to be in. I would hope that could be done within a month, but of course I have agreed with the Scrutiny Panel that I will not simply be lodging it, I will be sending to them what I am proposing to lodge for their comments first. So that may cause some further delay.

**5.7 The Connétable of St. Brelade:**

Just in regards to difficulties with on-street parking, I just wondered if the Minister could tell us what progress he has made in regards to dealing with on-street parking and just remind him as well that Guernsey does have fixed penalty legislation and whether he would consider looking at the legislation that currently exists in Guernsey in regards to fixed penalty notices?

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

Well, this strictly also is not within my area, because once into that it is the Minister for Transport and Technical Services. I have had discussions with the Connétable in relation to that, but have not taken it forward. I have been working with the working party in relation to related areas to do with maximum penalties for matters. We have made considerable progress on that. Again, this is one of those grey areas. Whose responsibility is it? Strictly it is not mine, but I am willing to assist.

**5.8 Deputy M. Tadier:**

Will the Minister clarify whether or not wheel-clamping is lawful and if it is not currently lawful is it appropriate that there are still signs up all over the Island in private car parks saying that wheel-clamping can be used if parking is done inappropriately?

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

There are different opinions in relation to the lawfulness of wheel-clamping. My own opinion, as a lawyer, rather than as a Minister, is that it is not. But there are those who differ with me on that. The position in relation to that is, of course, that in the U.K. they have passed legislation now

which is very much along the lines of what I had hoped to bring to the Assembly. We are now working actively on that. We have sent our ideas off to the Law Officers to get some human rights compatibility advice in relation to that. Then we will be intending to proceed later this year. Unfortunately, I have recently learned that we are running out of law drafting time, as a Ministry. So my hopes that I could bring this to this Assembly this year for debate may be thwarted. It may have to be put back until next year. But, we are actively working on it.

**5.8.1 Deputy M. Tadier:**

Could the Minister confirm that currently, following the proposition which was debated in the last Assembly, there is no legal basis for wheel-clamping? Does he agree that it is completely inappropriate that there should be these yellow signs telling people they will be fined, when in fact I doubt that a wheel-clamp has been used between now and that debate?

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

As I said, there are differing legal opinions on this. In my own opinion it is unlawful and if people are wheel-clamped they would have a right to sue. Of course, that has never been tested in the courts.

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

The Constable of St. Brelade just made the point that the police service are greatly looking forward to the Taser review. Can I just ask the Minister how, in this day and age, such a large piece of work comes before him which he finds unacceptable to bring to the House? What type of work still has to be done before it is acceptable?

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

Yes. What has happened here is this particular project was allocated to a particular officer, who is very capable indeed, but quite inexperienced. This officer then changed his role and indeed took on extra responsibilities and so was having to deal with his extra responsibilities as well as this particular project. What he has done, essentially, is produced a very detailed document answering the points made by the Scrutiny Panel. Of course, that is not the right formatting in relation ... so, the information is there, but it is not the right formatting for a report to the States in support of a proposition.

**5.10 Senator S.C. Ferguson:**

Would the Minister for Home Affairs like to confirm that the prison does make a G.S.T. (Goods and Services Tax) return to the Treasury? Would he like in due course to supply the information to this Assembly as to how much G.S.T. they supply to Treasury?

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

I do not know the answer to that question. I do not get involved down to that sort of level. I simply do not know.

**Senator S.C. Ferguson:**

I did ask if the Minister would supply the information.

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

Yes, I can arrange for that, yes.

**PUBLIC BUSINESS**

**6. Draft Discrimination (Jersey) Law 201- (P.6/2013)**

**The Bailiff:**

Does any other Member wish to ask any questions? Very well, that brings questions to the Minister for Home Affairs to an end. There are no matters under Jersey or K, so we come then to public business. The first matter on the Order Paper is the Draft Discrimination (Jersey) Law 201-, P.6, lodged by the Minister for Social Security. I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Discrimination (Jersey) Law 201-. A Law to prohibit certain kinds of discrimination and for connected purposes, and to further amend the Employment (Jersey) Law 2003, the Jersey Advisory and Conciliation (Jersey) Law 2003 and the Employment Relations (Jersey) Law 2007. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

Sir, there is an amendment to this law, and I was going to ask your permission for the law to be dealt with with the amendment.

**The Bailiff:**

Yes. At the moment, of course, you are just proposing the principles; the amendment will only come into play when we get to the individual Article in question. But, when the time comes, I am sure Members would agree to you proposing the Article in its amended form.

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

Members, I am sure will agree that it is unacceptable in a modern civilised society for a person to have no legal protection if they are turned away from a restaurant, bar or nightclub or refused a place to live or turned down for a job, just because of their colour, nationality, national or ethnic origin. In introducing this law today, we are simply bringing Jersey into line with other civilised societies. Historically, it has always been the intention that a framework law should be introduced that provides protection against all forms of discrimination and that race should be introduced as the first protected characteristic. Some have suggested that this law is an attempt at social engineering. I do not accept that; we do not solve problems in society just by passing a law. The aim of this law is more modest: to give some legal protection to those individuals who may be the victim of racial discrimination or harassment. We want to make sure that this law protects all of the people in Jersey, whatever their background. It is as unlawful to discriminate against someone because they are from Jersey as it is to discriminate against someone because they come from elsewhere. However, an employer who pays no attention to an employee's ethnic origin and just recruits the best person for the job has nothing to fear from this law, nor does any business or landlord which provides its service on an equal basis. This is one of the reasons that race was chosen as the first protected characteristic. Surely, we can all accept the fundamental concept that people should be treated equally, regardless of race or ethnic origin. I know that many in the business community are worried that this adds to the cumulative regulatory burden upon them. In preparing this draft law, however, we have worked hard to ensure that bureaucracy and red tape is kept to a minimum. I can confidently say that there is nothing in this law that requires an employer to do anything other than avoid discrimination. There is no need to comply with particular procedures, fill quotas or complete ethnic monitoring reports. A business that just wants to hire the best person for the job and treat all employees equally, regardless of race, can simply carry on as normal. In discussing these issues with bodies, such as the Chamber of Commerce and the Institute of Directors, I specifically asked if there was any aspect of this law which required an employer to do something that was unreasonable or burdensome. They were unable to identify any specific provision that they could object to. Ultimately, what we are asking employers, businesses and other bodies to do is very simple: do not treat people differently just because of where they are

from or the colour of their skin and do not impose unreasonable conditions that will cause particular disadvantage to ethnic groups. Our position as a small Island economy does present particular challenges.

[12:15]

We have rules on immigration, employment and the ownership of property that are necessary to meet our particular needs, and these are allowed for in this Discrimination Law. We have also adopted policies aimed at promoting employment or other opportunities for those born in Jersey or who have lived here for a certain period of time. Anyone acting in reliance on those written policies will be covered by a specific exception to the law. Much of the Discrimination Law is about proportionality. For example, one issue that we have discussed extensively in our consultations and briefing sessions with States Members is whether employers will be able to impose language requirements on their employees insisting, for example, that they speak fluent English, Polish, Portuguese or any other language. I am happy to say that all an employer needs to do is show that the requirement is a proportionate one in the circumstances. If an employee needs to speak fluent English to talk to customers or communicate with colleagues, then it would be perfectly lawful for an employer to insist on that requirement, provided the standard they apply is proportionate to the need they have. As with the Employment Law, there is a strong focus on resolving complaints before they reach a tribunal hearing, which should be a last resort. Employment-related complaints will be referred for conciliation by the Jersey Advisory and Conciliation Service, known as J.A.C.S., and non-employment related complaints will be referred to the Community Mediation Service. Enforcement will be through what will become the Employment and Discrimination Tribunal, and I will bring regulations to the States later this year to propose the required changes. As far as remedies are concerned, the tribunal will have a range of tools at its disposal. Some cases may be best dealt with through a simple declaration as to whether discrimination has taken place and in some cases the tribunal can decide to make a recommendation to an employer or business, for example, that its recruitment policy changes or that it makes a service available on a non-discriminatory basis. An unreasonable failure to comply with the recommendation may lead to an award for compensation. In some cases, the discrimination will have resulted in the claimant suffering financial loss or significant hurt or distress; in these cases, it will be appropriate for the tribunal to award compensation. To preserve the informal nature of tribunal proceedings, I have decided that compensation should be limited to £10,000, which is equivalent to the amount that can be recovered in the Petty Debts Court. Out of that amount, no more than £5,000 can be awarded for hurt and distress. This is a modest remedy by the standards of most other jurisdictions but is, I think, appropriate for Jersey and the tribunal system that we have. We know that small employers struggle most with new laws, although I stress again that compliance with this law does not impose any real burden. Nevertheless, we will do everything we can to make sure that businesses in Jersey are well prepared for this new law and that training and guidance will continue to be provided, at no cost, by J.A.C.S. The United Nations Convention on the Elimination of all Forms of Racial Discrimination came into force in 1969 and the U.K. ratified that convention in respect of Jersey on 7th March 1969. Thirteen years have passed since the States first decided that an all-encompassing discrimination law should be introduced in Jersey. This is not a law this Assembly today can be accused of rushing into. Deputy Southern's proposition in July 2011 requested the Minister for Social Security to lodge a draft Discrimination Law by the end of 2012. That proposition was unanimously adopted by the States, 42 votes in favour and no votes against. A lot of groundwork has previously been done in the Chief Minister's Department and lately by the current Minister for Home Affairs. They prepared draft legislation and consulted with the public. This provided me with a good starting point from which to work. I was happy to comply with the requests from our Scrutiny Panel to be given time to review the draft law. I agreed that it was important to allow them to undertake this task and so I built-in a 4-month lodging period

to allow them sufficient time to conduct that review. Scrutiny presented its report to Members on 3rd May. I presented my response to their 6 recommendations on the same day, after I had taken advice of the Law Officers and the law draftsmen. I am reassured that Scrutiny has proposed no major amendments. Hopefully Members will agree that this suggests that we have done our job well and that we have prepared a law that is fit-for-purpose. I have accepted and lodged one amendment; Scrutiny proposed that Article 12 should be amended so the definition of “partnerships” would include foreign law partnerships as well as Jersey partnerships. I agreed that this was an area that the law should cover and so I was happy to propose this minor amendment. Members would have seen my response to the other 5 recommendations. Dealing briefly with each of these: first, Scrutiny recommended that I provide guidance for the tribunal to clarify whether a breach of the law can be committed extraterritorially. I believe the tribunal can reach a conclusion as to the application of the words set out in Article 2 of the law, in particular, that where it applies to employment, it will apply wholly or mainly in Jersey and, therefore, the tribunal should not be guided by the Minister in this. The position is sufficiently clear and is consistent with other legislation. Secondly, Scrutiny recommended that I consider taking a different approach to the sanctions that can be imposed on profit and non-profit-making sectors. Different approaches are already possible in the 3 remedies that are available to the tribunal. There will be cases where compensation will not be appropriate. It is anticipated that many cases involving voluntary work, for example, could be adequately dealt with through a tribunal recommendation rather than a financial award because there are unlikely to be any financial losses. Where, however, an individual has suffered discrimination as an employee or contract worker in the non-profit sector, I can see no reason why they should have any less protection than an employee who works in the profit-making sector, particularly if they have suffered financial losses. It must be remembered that there are some very large non-profit-making organisations operating in Jersey that employ a considerable number of employees. Thirdly, Scrutiny recommended that I should consider providing the tribunal with the power to issue non-discrimination notices as part of the bedding-in process. A non-discrimination notice would not provide a suitable bedding-in or warning process; it would, however, increase red tape and bureaucracy. Such a system would require a new inspection and enforcement system with new staff and criminal penalties in addition to the right to make a complaint to the tribunal. Notices are rarely used in the U.K. around 7 notices in 35 years, and in Guernsey, zero notices in 7 years. I believe that the existing powers relating to tribunal recommendations already provide what Scrutiny is aiming for, which is a process that helps to change behaviour without the requirement to impose criminal penalties for non-compliance. Dealing with the panel’s last 2 recommendations, I have agreed to consider the possibility of establishing a joint appeals tribunal from decisions of the tribunal with Guernsey, and I would ensure that plain English guidance notes are made available to assist people in complying with the law. J.A.C.S. has been running training courses on draft discrimination legislation for 5 years and it will continue to do so. Around 900 delegates have already taken advantage of this training to date. I have made sure that funds are available for this training to be provided at no charge to delegates and I hope that many more people will take advantage of the training in the run-up to the new law taking effect. Our work does not end with race discrimination, we aim to extend the law to other protected characteristics such as sex, age and disability. While there are some members of our community who would like to see the other characteristics introduced quickly, we will only do this after we have carried out wide-ranging consultation. Many of the concerns about this law that we have heard from the business community are focused on sex discrimination rather than race. I want to assure States Members that everybody will have a full opportunity to contribute to the development of this law as it is gradually extended to cover other protected characteristics. The decision of this Assembly today relates to discrimination on the grounds of race only, not sex, age or disability. Those characteristics are for debate another day. So, in summary, in this primary law, we are providing vital rights to the residents of Jersey that allow us to comply with our



international responsibilities. Racial equality is one of the most important hallmarks of a developed and mature democracy. So, in the first instance, we will be protecting the characteristic of race, but further characteristics can be introduced by regulation. We are introducing the law cautiously and with sensitivity towards the needs of business. I believe we are striking the right balance. We may still have a long way to go on this issue, but this law is an important step forward and I hope that it will find widespread support both in this Assembly today and going forward among all current and future members of our community. I propose the principles. **[Approbation]**

**The Bailiff:**

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

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

May I congratulate the Minister and his team for making progress on this issue. I am pleased also to take the opportunity of recognising the work of, if I may, former Senator Kinnard who, along with I think the only other member of the then Policy and Resources Committee - Senator Routier - will recall the persistence which Senator Kinnard showed on this issue of discrimination. I am a Minister for Treasury and Resources who rarely speaks about discrimination issues, but I do feel an obligation to promote discrimination and diversity issues on a day like today. I care about discrimination for a number of reasons: first, quite aptly, because of the reason the Minister has explained, the first issue is one of race, because I am a proud, great great grandson of a Frenchman. It is important to recognise that Jersey society has evolved over the last 100 years or so; 100 years or so ago, it was, I am afraid, quite normal to cite individuals like my great great grandfather as a: "*Fils Français et Catholique*", son of a Frenchman and a Catholic, in a pejorative way. As uncomfortable as it is to say, immigrant communities in Jersey have faced discrimination over the years and I am pleased to celebrate today the diversity of our immigrant community and our Island community, and I believe that it is highly appropriate that the first protection that the Minister is bringing forward is on race.

[12:30]

Let there never be again a situation of discrimination with any of our immigrant communities. As the Minister has said, discrimination does exist in other areas too. While it might be fairly trite to say, I experienced this discrimination in 2003, and I do say this is trite because it was absolutely nothing serious, when I suffered alopecia and I went through, as Members will recall, quite a transformational change. As a 32 year-old who was fairly hirsute, I suddenly almost overnight became completely bald. It was said, I think, that I had A.I.D.S. (Acquired Immune Deficiency Syndrome) there were all sorts of other comments that were made. But I learned in that experience in the way that people treated you, in the way that all sorts of people passed remarks, perhaps not knowingly unkindly, but that you should never ever judge a book by its cover. Race, disability, sex, age must all follow in this Discrimination Law. I rarely speak about issues about the other aspects of discrimination that do exist in Jersey and I do not often speak about the importance that I hold to be in some way representative of the interests of the gay, lesbian and transgender communities. Discrimination does exist in Jersey and there does need to be a recognition of that. It was brought into sharp focus for myself personally only last week when an interesting, highly-uninformed, but extremely hurtful, telephone call was left on my answering machine. To the person who left that message, which was a blatant homophobic attack on me, I have to say that it is water off a duck's back as far as I am concerned. But the importance of saying that lies in the fact that I would wish that no other person in Jersey ever has to accept or listen to that sort of attack and, if they do, that there is redress on the statute book of dealing with that. I am told, while it does not appear in the Minister's report (and I would be pleased if he would confirm this) discrimination

on the grounds of sexual orientation will be included in the area of sex discrimination, and I welcome that, and I welcome the day when we put in place a whole suite of discrimination laws to ensure that no person is discriminated against, whatever the cover of the book that they may appear to have.

### **6.1.2 Deputy J.H. Young:**

Jersey has changed, certainly in my time since I came to the Island in 1979 as a (j) cat. Phrases were used: “Boats in the morning” things like that, and I think what has happened is that I think Jersey people now all recognise the diversity and the benefits that are brought by different cultures, different ethnic backgrounds and so on, into our community, and therefore you might argue: “Well, it is not necessary to have a law if Jersey has changed for the better.” But, of course, there are risks and the risk particularly in bad economic times that people will hunt for those to blame when things go wrong. I think it is important that we do have a legal structure in order to be able to manage these issues. I am not a great expert on this, but when I read the Minister’s report, I was struck at what an excellent report it was, how he clearly set out all the legal obligations that have been through human rights and so on, step by step, and how the long process of consultation has been gone through to arrive at a structure of a law. Of course, what we have got here is a law which deals with race, but I see it that we have got an excellent framework in the law in which we can add the issues of age, sex discrimination and disability. Now, I hope myself that those subjects can be progressed much faster than I think the sort of dates that I am talking about, because questions arise: “Is it right that we discriminate against this but not against ...?” there will anomalies. I think in terms of having a unified discrimination law, that is excellent. I was also very pleased to see the approach to using employment tribunals as a means of allowing redress where things go wrong, because having administered processes rather than judicial runs, I think, is absolutely right; clearly, the Employment Tribunal is geared-up for the task, they are efficient, economic; I saw the costs that the Minister’s report shows us are quite reasonable, £100,000 a year rising to £300,000, and so I think that is a very progressive move. I am very pleased that the Minister has explained to us the remedies and sanctions, because I did not quite understand it; I was worried about relying on compensation orders. Because we already have compensation orders for Employment Law and, of course, this law tells us that the number one issue of discrimination is about employment, and so there is likely to be quite a strong connection between issues of discrimination and employment. So again, I am pleased that there are alternatives to compensation and I hope that, with that kind of administrative process, the way the tribunal would make its decisions whether to award compensation or go for other remedies, would be driven by a light hand. I also picked up in there that this is not a means of enforcing positive discrimination, but eliminating negative discrimination; I think that the balance is right there. Of course, that is where the Minister has had to strike a balance between the various rights of the individuals in this matter, and I think he has got it right. So I shall be supporting this. I have concern on some of the details, which I will deal with later, but I am very much supportive of this, I think it is a really excellent move, and I congratulate the Minister on it.

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

I would just like to say it is one of those, sort of, sad and happy days: sad in as much as, as we move on through this discrimination path into sex, age and disability, that there is so much work that the Minister and his department will have to do, and sad in a way because he has to do this. Laws are sometimes said to be written for 5 per cent only of the population, and this may well be the case here. I would like to feel that people on the Island do not discriminate, they do things for the best reasons. It is sad that we have to have laws like this, but let us be happy that we have got here... it has been an awful long time coming, we have finally got this Discrimination Law here

and I look forward to supporting it and also to the sex, the age and disability parts of it when the Minister brings it to this Assembly.

#### **6.1.4 The Connétable of St. Lawrence:**

I want to speak briefly, first of all to endorse the words of Senator Ozouf in acknowledging the work that former Senator Kinnard did towards this legislation [**Approbation**] and to recall the many times that we discussed it with her when I sat on the former Home Affairs Scrutiny Panel. I also want to take this opportunity to say thank you for the work that has been presented to the Assembly by the current Scrutiny Panel, which has been acknowledged by the Minister. I think, just following on from what the Deputy of St. Martin has said, yes, times are changing, times do change and it is almost to me a sad occasion that we find ourselves in the position of needing to introduce such legislation, but we need to recognise that the rights of the individual must be protected and must be recognised. I wonder if I am the only Member of the States to have an Armenian surname during the history of the States, but people come up to me and say: “Where is your name from? How did you get your name?” “Well, I got my name because I married my husband” but yes, it is an Armenian surname and people find it interesting that I am here with that name. I was formerly the girl “Misson” from Trinity, and I wonder how names impact upon us. I am sure many of us have stood up at election time and proudly boasted of our Jersey roots because we think that that will stand us in good stead with the electorate, the fact that we have a Jersey name or ... you know, I do not have a Jersey name, I have an Armenian name now, but I am proud to boast of my Jersey roots. I think that we should be aware of that because what we should be doing is encouraging members of all nationalities to come forward to represent the public in the States of Jersey, and so we need to stop discrimination in many areas. My only plea is that this is handled with a light touch, and I think that that can be managed through the Employment Tribunals who will be used as and when necessary. So, in closing, it is just to say, yes, it is a good day that we introduced this legislation on, because I am sure it will be introduced, while recognising that, as times have changed, it is perhaps a shame that we do need to introduce it, but certainly I will be offering my support to the Minister on this one.

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

If I might just preface a note taken from some of our consultation with many different groups in the Island, one comment really hit the nail on the head when it said that: “The feeling was the law had been thoroughly consulted on and it was well-drafted and a thorough piece of work.” But to follow on briefly from the Constable of St. Lawrence, we as a Scrutiny Panel would like to follow any future work that the Minister for Social Security undertakes. Last week, we received a call from the Guernsey Disability Alliance, who brought up a very interesting line of thought, which was that rather than prohibition, collaboration and education could be concentrated on and be the focus of any future work for discrimination. So we would perhaps like to work with the Minister and his team as they move forward and encourage a more collaborative approach rather than that of prohibition in future, notwithstanding the need to have this law in place. After the many years that have gone past through the creation of this law, I think the world has changed a great deal and views of discrimination and discriminatory behaviour have changed very much, but I also would like to join with those who have congratulated the Minister for Social Security for bringing this to the Assembly and completing this important piece of work.

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

Unlike some, I am not sad that we are debating and likely to introduce this law today. Islanders’ attitudes in relation to discrimination have changed and the draft law will have, I am sure - and is already having - an effect on our society. As the development of this anti-discrimination legislation started approximately 13 year ago, I am sure no one would argue that there has been a lack of

consultation or discussion around it, however, it was interesting to note from the panel that the Jersey Community Relations Trust and others would certainly welcome the law but they accept that the law may not be perfect and, indeed, further amendments might be required in the future. Equally, the panel is pleased at the result of the review undertaken by Parslows, our advisers, and, following discussions with the Minister, an amendment has been lodged which we will be hopefully agreeing to later. I also hope that the Minister, as he has already stated, will give further consideration to a number of our other panel recommendations because they are aimed at helping both businesses and individuals alike to gain a greater understanding of the law and so that they are able to comply with it.

[12:45]

This is important, as the draft law is very comprehensive and covers not only paid work but also areas of voluntary work, education, goods, facilities and services, access to and use of public premises, disposal and management of premises, clubs and requests for information; certainly wide-ranging. The panel was expecting to find that a detailed audit would have been carried out to assess whether the draft law would directly impact on legislation within all States departments, however, this does not seem to have been the case. I look to the Minister in his summing-up to give assurances that this will be looked at as a matter of urgency to ensure that all our public departments can fulfil their obligations with regards to the law. The panel is aware that many people still have genuine concerns regarding the current law and how it will be implemented; for instance, it was noted that it would be easy for an employee to bring a claim to the tribunal and there would be an onus on the employer to respond. It is therefore possible that claiming for discrimination cases could be open to abuse. However - and it is an important "however" - it was also recognised that for most individuals, bringing a claim alleging discrimination would not be easy and could result in the person finding it hard to find alternative employment after the claim had been made, especially in a small community such as ours. Certain employer groups were also concerned that work required to ensure compliance with the draft law would be a distraction from the focus of core business and that this would restrict growth within the economy as a consequence. These concerns cannot be overlooked and, although research carried out in the U.K. suggests that employers overestimate the additional burden such legislation will cause them, their concerns are real and frequently driven by anxiety that they will not be compliant. This can be addressed, as we have already said in our report and conveyed in our recommendations, by an effective provision of information and support coupled with an appropriate lead-in period to ensure that businesses are not overwhelmed by the full impact of the law. I am pleased that the Minister and his department are to adopt a proactive strategy of working with businesses, the voluntary sector and the wider civil society, to encourage behavioural change rather than simply using enforcement powers to prohibit acts of discrimination. Organisations such as the Citizens Advice Bureau, the Employment Tribunal and the Jersey Advisory and Conciliation Service will play - as the Minister has already said, a vital role - so it is essential that sufficient resources are made available to cope with the increased workload. Although assurances have been given, again, I look to the Minister to confirm that necessary funding will be made available to those key organisations so that no practical problems will arise when a law is introduced. Finally, I would like to thank Parslows for undertaking a study of the draft law on the panel's behalf, and the many individuals and businesses who openly shared their thoughts on this important piece of legislation, it was very much appreciated.

## **LUNCHEON ADJOURNMENT PROPOSED**

### **The Bailiff:**

The adjournment is proposed. Just before we rise, Deputy Southern has given an indication that he would like to propose the deferral of the Housing Transformation Programme project - Projet 33. If

Members agree, would it be convenient to take this immediately after lunch so that Members know what to expect and know whether they are debating that afterwards or not? So, if Members agree, we will ask Deputy Southern to make that proposition immediately after lunch and then the States can decide.

**Senator P.F. Routier:**

Sir, would we not end up with quite a long debate on whether we are going to defer it or not, and it might interfere with this discrimination legislation?

**The Bailiff:**

Well, it is a matter for Members, but it seems to me that it is more important Members know what the future holds for this sitting; it has to come at some stage, the Deputy is entitled to bring that proposition and debate has to be had at some stage, so if Members agree, we will do it after lunch. I think is a fairly short point, so the debate should not take too long.

**Deputy M. Tadier:**

Sir, could I also give notice that I will ask for P.51 to be deferred so to not take it today; that is the one about the Chairman of the Comité des Connétables and the Chief Minister?

**The Bailiff:**

Sorry, Deputy, this is your proposition?

**Deputy M. Tadier:**

Yes. Just to give as much advance notice as possible for Members.

**The Bailiff:**

Yes. Well, you have the right to defer that unilaterally, so you will be doing that. Very well. So we will reconvene at 2.15 p.m.

[12:51]

## **LUNCHEON ADJOURNMENT**

[14:16]

**The Bailiff:**

Now, I think Members agreed before lunch that it would be convenient to hear from Deputy Southern at this stage in relation to the Reform of Social Housing.

### **7. The Reform of Social Housing (P.33/2013) – deferral of the matter under Standing Order 87(2)(b) to 4th June 2013**

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

I almost hesitate before rising to my feet to ask the House to put off debate of P.33 until the next meeting. I do so reluctantly because I am aware that I had already asked for a 2-week delay on this debate in order that further questions could be asked of the Ministers concerned, and that issues might be clarified. But the fact is, despite having a month to respond to my amendment, the comments arrived after the noon deadline on Friday, 10th May. I did not see this response - and it is 6 sides - neither was I able to consider what is valid and what is not in it, and I did not see that document until gone 9.30 p.m. last night. Also, despite a fortnight asking for a document which I believe is vital to 2 arguments - one on my amendment and another on one of Deputy Le Fondré's amendments - in order to consider it properly, I do believe we need full sight of *Jersey Housing Trust Capacity Review*, the paper on which some of the data is based. Until earlier today, the

Minister says he has never heard of it and he would seek it. But, obviously, it places me in a very difficult position. I do not believe my amendment or Deputy Le Fondré's, can be properly debated in that context and I believe that, in fact, the overall plan cannot be debated now without some more time to consider what has been a series ... there are 6 sets of comments on the various amendments which need to be considered properly by Members, I believe, in order to debate properly P.33. I am not doing this just to be awkward, I am doing this in the interests of good, solid debate so we make sure that we know what we are accepting or rejecting when we do it, and I hope Members will agree with me that a fortnight, for the sake of getting it right, is probably worthwhile.

### **The Bailiff:**

Is that proposition seconded? [**Seconded**] Deputy Green?

#### **7.1.1 Deputy A.K.F. Green:**

Sorry if I get a bit passionate about this, but I do really care about providing decent homes for people in Jersey and, when I go to see young couples living in one room with about 2 square feet of floor space, I get very upset by it, particularly when we have a solution and we have a plan. In my view, Deputy Southern in his speech made the comment there that he did not get the comments to amendment 2 - and I apologise for that, it took longer than I would have hoped - and then went to say he had not had a chance to examine the other comments. Well, the other comments were out in time. This is the States at its worst: P.33 is a comprehensive document, just look at the files I have here, and it was put together following a Green Paper, White Paper, a review by a leading academic - Professor Christine Whitehead - that is her report. Then we took time and we put together the full Housing Transformation Programme; Members have had over 8 weeks to examine that, it is a sound good, piece of work. From that, we produced The Reform of Social Housing - P.33 - and the Scrutiny Panel took our figures and our work apart and produced an excellent report with some very good suggestions and recommendations, all of which we have taken on board. It has been a thorough Scrutiny process which I have embraced wholeheartedly, and I thank the Scrutiny Panel for their hard work. I have listened to all the feedback [**Approbation**] that I have received, I have made changes where I have been convinced of the argument and, as I have said, I accepted 14 of the 19 recommendations. The information to Members, as I have referred to before, is enormous and extensive and consultation has taken place at every level. I have released all the reports when I could do so because I have absolutely nothing to hide. Members should know, in the short time I have been in this House, that is not the way I work, what you see is what you get, and I work openly with Members. But, of course, that is a 2-way street; they have to work openly with me. Again and again we are faced, or I am faced, with requests for further information. I say to Members: if you really have for ideological reason, and it is quite legitimate, objections to the work that is going on here, then speak against it, vote against it, but let us not delay any further. Deputy Southern is saying, because he has not seen every scrap of paper, that he is not in a position to debate this vitally important matter. I will refer now to the report that Deputy Southern has asked me for, and I do apologise for immediately not recognising the report that the Deputy was asking about; I had confused it myself with the Wilcox Report. The request was made on 8th May, the report is a capacity report, as the Deputy says, and it belongs to the Trust, although the work was carried out by us, and I immediately over lunchtime emailed all the Trust chairmen and asked if I can release that information. But I can tell you now that there is nothing in there that would affect this debate, there is a load of brass in there. I will talk about capacity, because I have permission to do so for one of the housing trusts. The Jersey Homes Trust is sitting on the best part of £100 million and has the capacity to provide homes today, the only limiting factor is sites, and we are working on that now. There is absolutely no reason to delay this any further. The figures are there, they do add up, despite all the smokescreens that some Members like to put there, they have been frankly, honestly and thoroughly scrutinised, and Deputy Southern has asked question

after question, and I have always been very open and my officers have been very open with him. We owe it to these people, who are waiting for decent homes, to make a decision and make it now. How on earth, after all the work that has gone into this, after all the work from leading academics, and the work of Scrutiny, can I look at people in the community waiting for homes and say: "Sorry but the Members could not bring themselves to debate it. They wanted more time." The public has put us here to make decisions, not to sit on the fence, not to duck the difficult issues, so now is the time. I implore Members not to delay, do not send this back for any more information; you have got sufficient information, it is a very detailed business case. I suspect, for ideological reasons - and I do respect the Deputy - that he would never, however much information I give him, be able to support my proposals, but this is delay and we cannot delay any longer. We must get on with the job, and I ask Members to work with me, it is not reference back, but reject this delay and get on later on, after the Discrimination Law, and debate provision of our community's housing. **[Approbation]**

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

A point of correction if I may, Sir. I did not ask for this particular report of the *Capacity Review of Housing Trust* on 8th May, I asked for it on 30th April from the Assistant Minister, immediately after question time.

#### **7.1.2 The Deputy of St. Peter:**

I would just like to confirm that the sub-panel would hope that Members have had time over the last month to digest the contents of our report. I feel, and hope, that we have done a thorough job and covered all of the aspects of this very, very detailed piece of work. Now, I did not bring in the full business cases before this morning, because I was trying desperately to bring in the minimum amount of paperwork that might be useful today, but it is a wodge of paper that thick, about half an inch thick. It took a specialist in modelling to assist our adviser in understanding the full business cases properly, and then giving us a proper briefing on their ramifications, and so I feel that all the information that has been required has been provided to us, and I hope that we have made it accessible to Members and I hope that they will not support this delay. We have had plenty of time to assess all the information provided. **[Approbation]**

#### **7.1.3 Deputy J.A.N. Le Fondré:**

I think ideologically **[Aside]** I am fairly far removed from Deputy Southern on normal days. I have got a lot of sympathy for where he is coming from, principally because it is that usual argument, although we do have a lot of agreement on the H.T.P. (Housing Transformation Programme), although I may disagree with the views, that it is defending their right to do things, and that is how this Assembly is meant to operate: it is fairness. What I do find is becoming increasingly the case is that comments are coming out from the Council of Ministers much later than they should be. I am sorry, I think it is a discourtesy - and I am afraid Bank Holidays and Liberation Day are not an excuse, Liberation Day has been round for 68 years, so we should be able to work our way round it - that on Friday, I think the comments were sent out at 4.20 p.m., a notification that they were going to be lodged on Monday. Speaking personally, I asked for them to be emailed to me. It was only through the good offices of the Greffier on Saturday that I received the comments on my amendments. In fact, on the Friday night, I came into the Assembly and went in to look at the pigeon holes to get some of the comments to find out whether any of my amendments were being accepted or not. I find, to have to do that on something that is £500 million worth of property, £40 million worth of revenue affecting 13,000 tenants ... yes, and originally it was going to be debated in 6 weeks. The Scrutiny Report is very good, absolutely, it takes a lot of reading; the actual proposition and the business plan have taken a lot of reading, and so to receive comments ... I freely admit, I have not yet read the comments on Deputy Southern's information - that is my next

job during the Discrimination Law - because they came in so late. So from that point of view, as I said, it is not about ideology, I think it is about common courtesy to Members. I am mixed, because I am absolutely worn out and I would love to get this out the way, but I think the point is that as a common courtesy we as an Assembly should be saying ... and we have done it before, a number of us did not agree with the Constable of St. Saviour's amendment on States wages, but a number of us voted to let her have her say, and it is that principle. So I do not think this is about delay; I am certainly aware that Deputy Southern has been trying to get hold of the information out of Housing for a month and, in fact, his amendment was lodged a month ago and came out last night or yesterday. I just think it is an absolute breach of process. So even if this is not approved, I hope the Chief Minister will take that on board, because to treat the Assembly like that is just not acceptable, in my books.

#### **7.1.4 Deputy G.C.L. Baudains:**

I was disappointed in the Minister for Housing's response because it seemed to me he avoided the situation completely.

[14:30]

If I thought this was a tactic by Deputy Southern to delay and frustrate the process of the debate, he would not have support at all, but I do not see it that way because, as the Minister for Housing said, we are here to make decisions, yes, but we are here to make well-informed decisions. Now, the crux of the matter is this document which arrived late. I have made it a policy both in business and in politics that I do not accept late documents. If I do not have the time to give them proper attention, then I do not think I am doing my job properly, I am not well-informed. The first I knew of this document was when it was on my desk this morning; I have not yet looked at it so, if we do this debate, I shall simply disregard that document, and I do not think that is the way to proceed properly. We do need time to have all the information on something which is so important. I am not against what the Minister for Housing is doing, but I want to be well-informed.

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

I will not add to the remarks of the Minister for Housing, but I will just say 3 things, if I may: first of all, I recall the Assembly also recently chastising the Minister for Economic Development when bringing the in-principle decision on the Ports of Jersey. He was chastised for not giving the Assembly enough information. We have this debate about 'in-principle versus detail' debate. This debate cannot be criticised for an absence of information, there is a master class of documents and analysis that has been pointed out, but I would, perhaps without wanting to tempt fate, just remind Members that this is a proposition, effectively, in principle. Deputy Le Fondré is right to say the importance of this, but this is on a timeline to go to the next stage of doing all of the detailed legislation and the drafting, the Minister for Treasury and Resources, Minister for Housing, Minister for Social Security and the Chief Minister are all requested to do things after this debate. I would just ask Members, if I may, just to turn to page 47, because this is the only thing that I think the Minister for Housing may well have added in his remarks. There is a timetable, we are on a 3-year parliamentary cycle in this House, and we must adhere to certain timelines. What the Minister perhaps might have added is the fact that, if we do not take this debate today, we are not simply going to be able to deal with the timetable that requires the detailed legislation then to be brought forward, with the hopeful approval of this Assembly of the agreement in principle, then for the legislation to be lodged, for Scrutiny to be carried on and for this timetable to be stuck to. There has already been latitude given for this, effectively, in-principle debate to be delayed. This has serious consequences, it is already delayed, and there will be further serious consequences if we do not move to the next stage. Of course, it may be tempting fate, but Members will, of course, have



the opportunity of, effectively, further amending the legislation when it comes forward. I hope not, because I hope the principle will be accepted.

**7.1.6 Senator S.C. Ferguson:**

I am all in favour of ensuring that our population is housed correctly with no rising damp or rats under the bath but, on the basis of the figures discussed this morning: benefits inflated, expenses not inflated, an extra £6 million in costs; that, frankly, it is not good enough. I also feel that, with the latest overt threat from the G7 last week, it is not good enough to just carry on regardless. We are only asking for maybe 2 weeks’ delay, perhaps the Deputy will say something when he responds, but is this too much to ask for something which it is intended will eventually land us with a £250 million loan to service? Is it really too much to ask for a proper reconciliation of the figures with which we have been provided or to ask for all relevant documentation to be provided? We owe it to the tenants, perhaps, but we also owe it to the taxpayer to make a proper decision on solid information. Frankly, it is a great deal better to delay now than to defeat the proposition.

**The Bailiff:**

Very well, if no other Member wishes to speak, then I invite Deputy Southern to reply.

**7.1.7 Deputy G.P. Southern:**

I thank all of those of you who have contributed, especially Deputy Le Fondré and Senator Ferguson; it is rare indeed for me to be the meat in their sandwich, as it were. But it is about making sure that we have the right information to make the right decision. This is not any deliberate or intentional attempt to derail anything. To be told by Senator Ozouf that this was an in-principle decision - oh, believe you me, it is no in-principle decision - and that we have got somehow a timetable which we had to adhere to ... we are the States of Jersey, we are not a railway; there is a timetable, yes, but if we cannot slot in a fortnight, and it is only 2 weeks I am asking for, then I think we are in a sad state. The fact is that the information I require to understand the full argument given in the comments was received late, it was received yesterday, it is presented to the States on 14th May, so it is today presented, it was on our desks this morning and makes it impossible for me to respond accurately to this document because it is late. It is not my fault but I believe that endangers my proposition and endangers other amendments to this particular plan which I believe deserve proper thorough investigation before we go forward. I urge Members to vote for a deferral, it is a fortnight, to make the right decision, please.

**The Bailiff:**

The appel is asked for then in relation to the proposition of Deputy Southern to defer debate on Projet 33 for 2 weeks. If you want to defer it, you vote pour. If you do not, you vote contre and the Greffier will open the voting.

<b>POUR: 10</b>		<b>CONTRE: 34</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Deputy J.A. Martin (H)		Senator B.I. Le Marquand		
Deputy G.P. Southern (H)		Senator F.du H. Le Gresley		
Deputy J.A.N. Le Fondré (L)		Senator I.J. Gorst		
Deputy S. Pitman (H)		Senator L.J. Farnham		
Deputy T.M. Pitman (H)		Senator P.M. Bailhache		
Deputy J.M. Maçon (S)		Connétable of St. Helier		
Deputy G.C.L. Baudains (C)		Connétable of Trinity		
Deputy J.H. Young (B)		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		

		Connétable of St. John		
		Connétable of St. Ouen		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. Saviour		
		Deputy R.C. Duhamel (S)		
		Deputy R.G. Le Hérisssier (S)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		
		Deputy R.J. Rondel (H)		

## **7.2 The Reform of Social Housing (P.33/2013) – deferral of start of debate until 15th May 2013**

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

If I may then, I would beg leave of the States to not start this debate, P.33, today. I have spoken to the Chairman of P.P.C. and I received this document at 8.30 p.m. last night. I have had no time to assess it or analyse it in the context of my debate. The Chief Minister is shaking his head. I would ask humbly that the States do not discuss this tonight and at least give me one night to understand the case being made against my amendment in order that I can properly present my amendment and, indeed, debate P.33 tomorrow.

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

If it would be helpful to the Deputy, I am quite happy for P.40 to be taken as the next item after the current one in order to give the Minister for Treasury and Resources more time to find that money. **[Laughter]**

#### **The Bailiff:**

Do Members agree that then or do Members want to discuss this? This is just to put it off until tomorrow. Yes, I see, very well. Deputy Southern has proposed then now that we move Projet 33 down the list so it is not taken until tomorrow. Is that your proposition, Deputy?

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

Indeed, yes.

#### **The Bailiff:**

Is that seconded? **[Seconded]**

### **7.2.2 Deputy J.A. Martin:**

I would like to say just a few words because I did not speak and I am still not clarified whether I can even stay in the debate so it is nothing personal but the comments that were received... the amount of man hours from the Council of Ministers. If I was a civil servant sitting out there... That is what you might as well do to him because there was tuts and tuts about poor Deputy Southern not reading them as if I have all read them in that court and in that court. No, you have not read them and if you have read them, you have not taken them in. He is asking for a few hours. Give the courtesy, the man hours that have been put into them, comments that only arrived today. If you do not respect other Members of the House, respect your own civil servants.

### 7.2.3 Deputy A.K.F. Green:

I do not want to delay this any longer but I think, to be honest, looking at the running order for this, by the time we get to Deputy Southern's, we will be into Wednesday anyway so he will have time to look at it. We have got the first amendment part 1. I have got to do my introduction, of course. Then you have got part 1 and then you have got the fifth amendment part 2 by Deputy Le Fondré. Then you have got the Health and Social Services Scrutiny Panel first amendment part 2, then Deputy Vallois amendment 4, and then Deputy Southern so we will be well into Wednesday by then anyway.

#### The Bailiff:

Very well. Deputy Southern, do you wish to reply?

### 7.2.4 Deputy G.P. Southern:

Just briefly and my contribution to the discrimination debate. I try to contribute where possible instead of which I may well be working on this because I will have to prioritise but that infringes my rights as a Back-Bencher and the fact that the Minister was late and not me is germane.

#### The Bailiff:

The appel is asked for, then, on the proposition of Deputy Southern, which is to defer the debate simply so that it does not take place until tomorrow. If you want to, you vote pour. If you do not, you vote contre and the Greffier will open the voting.

<b>POUR: 26</b>		<b>CONTRE: 16</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
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. Lawrence		Connétable of Trinity		
Connétable of St. Mary		Connétable of St. Peter		
Connétable of St. Brelade		Connétable of St. John		
Connétable of St. Saviour		Connétable of St. Ouen		
Deputy R.C. Duhamel (S)		Connétable of St. Martin		
Deputy R.G. Le Hérisier (S)		Deputy E.J. Noel (L)		
Deputy J.A. Martin (H)		Deputy A.K.F. Green (H)		
Deputy G.P. Southern (H)		Deputy of St. John		
Deputy of St. Ouen		Deputy J.P.G. Baker (H)		
Deputy of Grouville		Deputy S.J. Pinel (C)		
Deputy J.A. Hilton (H)		Deputy of St. Peter		
Deputy J.A.N. Le Fondré (L)				
Deputy S. Pitman (H)				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				

Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy J.H. Young (B)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

**Deputy G.P. Southern:**

Can I thank the Assembly for giving me that small grace.

**8. Draft Discrimination (Jersey) Law 201- (P.6/2013) - resumption**

**The Bailiff:**

Now we return to the debate on the Draft Discrimination Law. We were debating the principles and I had seen next the Connétable of St. Helier.

**8.1 The Connétable of St. Helier:**

I do not know if it is a coincidence that this proposition is the first matter being considered by the Assembly after Liberation Day but I did want to say a few remarks in connection with that because, of course, at Liberation Day, one of the things we are most powerfully aware of is the damage that discrimination has done historically and the damage to our Island as a result of what happened during the war. I refer also, Sir, to your comments this morning about the Liberation Cycle Challenge and the twinning between St. Helier and Bad Wurzach and it may not generally be known that the twinning, in fact in its genesis, has very little to do with the history of the internees who were interned in the Bavarian town that we are now so familiar with. If I can just very briefly tell the Assembly what happened in 2001. When I was elected Constable of St. Helier, I ran a language school in the town centre and my work, though satisfying, had been increasingly distressing because my students were being harassed racially when they came to Jersey on a language learning holiday. There was, in particular, a much publicised incident in which a group of Austrian students were chased through the streets of St. Helier by a group of local youngsters who were abusing them racially before they could find help and someone to look after them. I also had examples of French students who were physically assaulted on grounds of their nationality. When I became Constable and I was aware of the twinings that operated so successfully in other parts of the world, I started to look around for a German town with which to twin St. Helier. I was aware that it was a controversial proposition. Several Deputies of the Parish warned me against it but, as chance would have it, I was attending my first Liberation Day as Constable of St. Helier. I was, I am afraid, woefully ignorant of the history of the occupation in relation to the internment of Jersey residents in Bad Wurzach and, in fact, nobody had told me, despite having been in office for nearly 6 months, that this had taken place nor, indeed, that attempts had been made in the 1970s to formally link St. Helier with Bad Wurzach.

[14:45]

I found myself on the stairs of the Pomme d'Or queuing for coffee next to the speaker that the then Bailiff, Sir Philip Bailhache, had invited to Liberation Day, an act of considerable courage on his part. I turned to the German and I said, when I realised he was German, I do not think I had even noticed he had been speaking or been present at the Liberation service, I obviously did not pay much attention in those days, and I turned to him and I said: "Since you come from Germany, I am looking for a town to twin St. Helier with in Germany. Have you got any ideas?" He seemed rather mystified and it was only later that it turned out that he had been trying for years to achieve the very same thing. So the twinning proceeded and the rest, as they say, is history but I think it is

worth reminding the Assembly, and reminding the public as well, that it was racially motivated attacks on visitors to this Island that led me personally to pursue that first proposition that I took to a St. Helier Parish Assembly. I am very pleased to be able to stand this afternoon and give my full support to this proposition which now gives legal protection not only to visitors to our Island but to people who choose to settle here for reasons of work and other reasons, who are not Jersey-born, who are not English, but who come from other countries. Some Members have mentioned that things have got much better and I am sure that is true, they have got much better, but of course, as we know from history, they can get worse again and that is why it is so important that legislation is put in place because it may well be - if I can say God forbid that it should be... but it may well be that things will change and I believe this legislation is essential in providing that legal protection for minorities living in our community who know that their role here and their contribution here will be safeguarded by the law so I am very happy to fully support this proposition.

#### **8.1.1 Deputy T.M. Pitman:**

Just a few brief points really, following on from the Constable. It is interesting that the Constable mentions Liberation Day and I just think it is equally telling that here we are debating this after all this time so soon after many of the people who will no doubt vote for it, and rightly so, because we should all be supporting this, are of course quite happy on the other hand to turn round and enforce discrimination against the voters, the people of St. Helier and really, the silly gasps from some of the Constables benches because this is true. St. Helier people are being discriminated against. Many of the people who will be making fine speeches and pressing the *pour* button are quite happy to pretend this all exists in some vacuum. It does not. You cannot just pick little bits of discrimination if you are going to truly adhere to it. The people of St. Helier are going to be made second-class citizens. Well, they will have to get over the dead bodies of people like myself and Deputy Southern and others first, but let us bear that in mind when we are congratulating ourselves. Talking of congratulations, I would like to congratulate Deputy Southern because without his constant terrier-like willingness to annoy people, we probably would not be here. It was interesting to speak to former Senator Kinnard earlier who had been upstairs watching this, something that, as she said, had gone on and had started years and years ago. It is a good step forward but let us not just have little joined-up bits of anti-discrimination law. Let us adhere to it. Let us not have the highly offensive third world banana republic type moves being put forward as Option B. Let us really stick to bringing equality about in the Island. Let us support this and then let us help kick Option B into the long grass where it should be quickly buried.

#### **8.1.2 Deputy G.C.L. Baudains:**

Having read this document and obviously aware of previous debate on it, I find that it is very seductive. In his opening comments, the Minister referred to international responsibility, which of course in this day and age is quite necessary. His whole approach seemed to me to say how reasonable this legislation is and with almost a total absence of negative issues but what concerns me with any legislation, I do wish more Members would do what I do and let us not focus exclusively on the benefits but also on the potential disbenefits or downsides or, indeed, how legislation could be abused. I think this legislation is particularly relevant because it represents, as the Minister said, and as the proposition also states, this is a thin edge of a very thick wedge. If we agree this today, how could we possibly refuse to add on other discriminations, sex, age, religion, *et cetera*? I am not saying it is not a good thing. What I am saying is be aware of where we are going. I would like to start by focusing on 2 parts of the proposition. On page 5 of the report, we learn that the need for this legislation has been queried and also, even if it is needed, would it stop discrimination? I believe the answer to both those questions is no. I have lived in Jersey practically all my life and I am aware that the amount of discrimination here is tiny when one realises the sheer number of immigrants and the sheer number of different nationalities which have

come here over the years and I think we must be almost unique in that regard. Of course I am aware of what the Constable of St. Helier outlined and the problems that existed at that time but it was a rare instance. Would the legislation benefit? Would it help that small number of people? Here, we do not have to guess. We can look at the United Kingdom and there we will see that in similar vein to the human rights legislation, it does not deliver at all where political correctness has all but vetoed common sense and equality. I do not believe this legislation promotes equality. I believe it creates division. For argument's sake, we have all heard the call for more women in industry and politics and such like. In the United Kingdom, some political parties have women only shortlists, which in itself is discrimination so you are trying to stop discrimination but causing it. People, in my view, should be selected, whether it is in business or politics or wherever on ability and nothing else. In the United Kingdom, discrimination laws have become so onerous that even if no one is offended, others are able to be offended on other people's behalf. It is crazy but one needs to understand the logic behind that, political correctness which has gone mad. We have already seen in Jersey over the years and people might say: "Well, it could not happen here" for a number of years our police, when referring to a Portuguese national, have called them of near Mediterranean descent. What does one achieve by that? Today's proposition is solely about racism but, as I said, the proposition makes it clear it is only a beginning. Other discriminations will be added later on, the second part that I referred to a moment ago. As an example which I have used in the past many times, if I ran an Italian restaurant for argument's sake and I wanted Italian staff, why should I not be able to advertise for Italian staff but of course I would not be able to. If I still ran a farm and employed a staff of 20 Polish people and I wanted more staff, why could I not put an advertisement in the *Jersey Evening Post* saying I wanted a couple more Polish people to work for me? But, no, I would have to employ whoever came along, even if it meant language and therefore safety problems. In the U.K., as an example, we have seen considerable abuse of the legislation to an extent that employers no longer risk taking on the most appropriate staff but because of the easily offended, those offended on behalf of others and the unemployable, they do not employ the best candidate. They employ the candidate most likely to take them to court if they were not selected because to do otherwise risks lengthy and expensive court cases as we see in the fines proposed in this legislation. I have to ask what benefit that is to anyone, never mind a country's economy. I believe the answer lies in the real reason behind this legislation because governments in general do not care much about individuals. It is about control, just like the legislation we passed at the previous sitting where Jersey-born people now need a permit to live in their own homes. I believe the real purpose of this legislation is to pave the way for complete discrimination law which the proposition says and once we go there, we run the risk of suppressing free speech so the public are effectively muzzled. We have seen that in the United Kingdom where those United Kingdom citizens who are not happy about immigration from certain countries, they are not happy about the multi-cultural experiment which has gone disastrously wrong, but they are not allowed to state their concerns because it would be illegal to do so. Therefore I disagree with the Minister. This will have negative consequences with business and eventually, when the legislation is expanded, with free speech as well. Of course abuse must not be tolerated but I believe that more often than not, laws such as this, as evident in the United Kingdom, only seem to apply to technicalist use with the unwary being severely punished but the real cases of abuse never really seem to get caught. Of course there are frequently times when discrimination of one kind or another make absolute sense. Indeed, the Minister outlined several instances in his opening speech. As a government, we already make substantial discrimination ourselves and of course the trouble is, as with most laws, it is inflexible. Unintended consequences tend therefore to outnumber the good that may be done. I believe that just like human rights legislation, which the Conservative Party in the United Kingdom has been talking about withdrawing from and creating a Bill of Rights instead for some time and, like most other things, they seem to take a long time to get round to it, but I believe it will do more harm than good. In this Assembly, we often talk about the need to cut

red tape and then proceed to add yet more. My position is that I believe this proposition is well-intentioned but basically will fail to deliver and create more problems than it will solve. I urge Members to think very carefully about this and to understand not only the benefits but the disadvantages it could bring as well because what seems like a very simple and worthwhile proposition is a Trojan horse because once you open the door, it will be too late to stop the unintended consequences of all those other discriminations that are due to be added. I believe the password should be pragmatism, not populism.

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

Pragmatism, not populism indeed, and this is a pragmatic law and one which is long overdue. How long I cannot quite remember, but I have been in this Chamber for 11 years and perhaps I have been in here for 1½ years before Deputy Le Main, then, says: “Oh, we have got nobody from St. Helier on the Home Affairs Committee. I propose Deputy Southern to sit on the Home Affairs Committee” then and so 10 years ago, or something like that, I was serving under a President, Senator Kinnard, who is still in the Chamber, still upstairs, and we would discuss the need for a discrimination law and indeed I think she started to do the law drafting to get it done herself at one stage, and I wonder today whether she recognises the bare bones of what is in front of us from her attempts back then but she is to be congratulated for keeping this one going. When I picked this one up because it had fallen off the agenda, the priorities of the Council of Ministers last year, I picked it up at the very last minute. In the July meeting I thought: “I will just slip this one in and see if they will run with it” on the grounds that it was about to be the summer break and people would just nod it through [**Aside**] and that is exactly what happened.

[15:00]

“Here it is, in principle. Let us get on with this, pick up the Discrimination Law and get on with it” and lo and behold, some tired people at the end of a long session, I think it was July, just before the holidays, said: “Okay, okay, we will go with it, okay we will do it” and it fell then into the lap not then of the Minister for Home Affairs but into the lap of the Minister for Social Security and that was July last year, and here we are in May this year and may I offer the Minister for Social Security my deepest congratulations. It just shows what a department can do if it sets its mind to do something. [**Approbation**] I am deeply impressed that here we are, less than 9 months later, with a law about to be passed and I hope it is passed in its entirety. With that note of congratulation for the Minister for Social Security, let us get on with it.

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

A lot of the problems, in fact, stem from this Chamber when it comes to discrimination. If we look at our hospitals, for example. The Samarès Ward at Overdale has a lift for able-bodied people and for people in wheelchairs but they do not even have a bed lift. Some 18 months ago, my late daughter had to be moved from the ward on the first floor to an ambulance. The only way to move her was to open the door and the French windows, push her out on to a balcony, a slope that ran all the way around the entire building, this in November in weather not unlike early this morning when it was raining and blowing, down to the ambulance with the ambulance driver and the colleague apologising to my wife and my daughter at the time because of the weather and nothing had been covered. I then asked the Minister how long this part of the hospital had been built and it was 15 years ago I was told, so in the days when we had money coming out of our ears. They could put a lift in for the walking and for wheelchair users but not for the terminally ill for a cost of £150,000 at that time when, as I say, we had money coming out of our ears. It is ridiculous. I well remember yet again another States project, the West Park Cafe or the Upside-Down Boat. It came before a Tourism Committee and we wanted to have a lift to a first floor but no, at the end of the day, it was turned down because of expense, yet again in days when we had plenty of money because we could

not have a lift up to the first floor and the chair lift at that time probably cost £10,000, maybe £15,000. Just look at this House. We renovated it extensively about 8 or 9 years ago. We cannot get a wheelchair to the gallery. If you are fit and able, you can get up there but nobody else can, nobody else, and I was on the committee of the day that worked alongside the late Senator Lakeman who was the chairman. We were trying to push to get that extra funding to put a chair lift up so everybody who was disabled could get up into the gallery. Discrimination? That is discrimination. Once again, it was all down to money and yet, 8 years ago, yes, we did have plenty of funds but no, they were going to spend £8 million on changing historical windows on this building which had wicket gates in them for windows and they were perfectly able to stay there for another 20 or 30 years. How come the S.S.I. (Site of Special Interest) Department, that Planning and Environment did not make sure that we had like-for-like reinstated in this building? I just do not know because they were historical windows. Yet we can find money for that kind of thing, to replace windows when we could have done with a lift to get people upstairs. This law is only in part. It is going forward in pieces. Yes, we are doing it for those in the workplace. Basically, that is what it is all about. The poor people who are disabled, in whatever form it may be, I am disabled in a certain way, I am dyslexic. I have had to put up with jibes all my life but that does not worry me, I have learned to live with it, but that said, other people are far more disabled than that, considerably more, I am just ... to me, it is, as I say, you have got to learn to live with these things but you are always at the bottom of the pile. Disabled people are always, and yet again I do not see a great deal in the legislation at this time that is going to help the disabled in this Island. If we are going to do this, let us do the job properly. I am not sure that I am going to support this at this moment because I wanted to see the whole package so everybody has the same advantage, not just those people in the workplace who will turn this whole thing on their head and work against some of the employers, and given that we are a small Island and everybody knows each other something does get said from time to time, yes, I accept that, and I have probably done it myself in the past because I am human and there would be very few people in this Chamber who would not have discriminated against a fellow human being at some time. We should have the whole package for everybody, not just go down and put something in place, playing lip service to something. I am not 100 per cent sure I will be going with this at this time. I will wait to hear the rest of the debate.

#### **8.1.5 The Connétable of St. Brelade:**

I have a slightly different tack to the Constable of St. Helier. It is an issue that has been touched on and is an issue that was highlighted to me recently. My early working career was in the building industry and I have to say in the late 1970s, early 1980s - I know I do not look that old - that discrimination was rife. Sexist jokes, racism, bullying and sackings on the spot were 10 a penny. I have to say, though, that over the last 30 years things have changed dramatically. With the work of the Construction Council recently, I am positive that the building industry have got their act in order. But that was not the only sector that discrimination was a concern, what I need to say is that there is no doubt that some sectors, certainly most sectors in Jersey now, have been discrimination compliant for many years. I think the finance sector - the one my daughter works in - is one where discrimination is certainly not abided in any way, shape or form. I think this good practice has spread through into other areas where discrimination has been problematic. I am sure though many people here believe that this much needed new legislation will more likely protect those who have made their lives within the Island from further afield, especially from those across Europe. But I think there is another side of the coin and one that several parishioners have contacted me about over many months that is a concern to them, that is discrimination against local Jersey-born Islanders and especially young people looking for work in several sections of our local economy. One sector that was highlighted was retail and I have to say another one was parts of tourism where local job seekers did not feel they were getting a fair crack of the whip. I think those employers need to understand that this legislation is going to apply to them and they need to make sure that



any jobs are available to local people and they do get a fair chance. Another part of that, I think, that needs to be highlighted as well is that those from outside of the Island who are settled here and now run local businesses will also have to realise that discrimination against Jersey-born job seekers is equally unacceptable. It would be wrong to pick out any individual companies or any particular nations that come to live here but I think it has been an issue and we all need to realise that we all need to wake up and when this law becomes legislation they all need to abide by it. I applaud the bringing of this legislation and I agree with my colleague sitting next to me here, the Constable of St. Lawrence, that this legislation should be implemented with a soft touch. I certainly thank the Minister for bringing this matter forward and I, like many others, look forward to further legislation on the same lines on various other issues. In that regard, I will be fully supporting this proposition, thank you.

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

In fact it follows very neatly on the Constable of St. Brelade because I was going to slightly elaborate on that point. I give fantastic congratulations to the Minister, this has been stalled far too long after the excellent work of Senator Kinnard and the old Legislation Committees and so forth, and the speed and the application he brought to this truly deserves our praise. It does not mean it is beyond criticism. What struck me, as the Constable of St. Brelade was speaking, is the dilemma you are now finding in Britain and particularly when Gordon Brown has his Mrs. Duffy moment. I do not know if you remember that, she was the woman who effectively door-stepped Gordon Brown and effectively derailed his campaign in a very big way, because I think what she did or what she symbolised to people was the fact, yes, we believe implicitly and absolutely in human rights but you cannot do that without taking cognisance of the social and the economic environment in which you are. She was saying: "Look, I live in this deprived city, we have got masses of unemployment and you have allowed immigration drift." Unfortunately, because the Government did not get a handle on it, of course, you have this massive defection of voters. There was a 3-way conversation in the street yesterday and somebody was saying: "If you continue speaking like that you will be going to the new tribunal." I said: "Well, unfortunately if you do you can go and vote for U.K.I.P. (UK Independence Party) if you were in Britain" and that should not be the case. People should feel confidence that the social and economic policies that surround this law are policies that are equal and have fairness in the way that they operate. I can see the Chief Minister looking very strained but that is a very important point. I also get assailed and I have never been able to give a proper answer to these people, it has to be said and I have come to the Assembly several times, but I have also often been assailed about Protocol 3 and the citizenship issue. The answer I have always received is: "Well, you are making a mountain out of a molehill; this was part of the sacrifice people had to make when we entered what was then the Common Market. It was just a sacrifice. If we had to make a little sacrifice along the way, tough luck." That is not a satisfactory answer because it is patently an unfair situation. Now, it is history, the world has moved on, the nature of the European Union has moved on and so forth. But that burning sense of injustice... and I have heard all the stories about you can go and knock on the local mayor's office and he will give you a permit - stop faffing about with the fact that the Protocol 3 will not allow you to do this and so forth. But it is an important issue and unless you get a symmetry to the way you enforce the law you get people feeling that they have been badly done by and it is very important that they should not go away with that feeling or you will get again what you see in England, the so-called white working class male syndrome. Where you get a group that starts to get alienated and politically they can start making trouble for you, as Mr. Cameron is finding out at the moment. I have strayed a bit but I think the important point is make sure - as the Constable of St. Brelade was saying, or I hope he was saying that - you have good economic and social policies that surround it; that the labour market's people are being well looked after. The immigration system is a fair system, but always - and this is where I must divert greatly from my dear friend,

Deputy Baudains of the hinterlands of St. Clement - once people enter the Island they enter the Island with the full right to see work and so forth. In fact I think he got it wrong. He said: "Oh, there are all these Islanders saying I cannot get work, I am a very good worker." I am afraid often it is the immigrant who is seen as the better worker as the more energetic worker and the person in fact in possession of the work ethic. So that is where the real issue often arises and I am afraid we have a bit of a reality check to deal with in that regard. I do not like the idea that once you are here you somehow can go off and not be fully treated and not get the full portfolio of rights, so to speak. So I think that is a wrong idea.

[15:15]

I totally agree with Constable of St. Lawrence, let there be a light touch. I think she is totally right there and I think that is the Minister's intention. We read all the comments that employers make about the Employment Tribunal; they are never happy with it, but I think Jersey is being quite sensible. Caps have been put on compensation available, there is tremendous emphasis put on the mediation that precedes a possible appearance at the tribunal and I think it is great that all those things are in place and that one avoids ending up with too much going into what ultimately, despite the best efforts of the chair people on these occasions, often ends up as confrontational and leaves both sides often bitter and unhappy at the outcome. A bit of a curate's egg response but I do congratulate the Minister, I think it is fantastic what he has done and the department has done.

#### **8.1.7 Senator L.J. Farnham:**

I have been listening with interest to what Members have said and especially some Members who have had reservations. But I say: is it too much to ask members of our society to treat each other without discrimination and respect each other's rights and dignity? Of course it is not too much to ask. I also realise that this legislation is not likely to change the way certain people act but it is perhaps likely to change the way certain people think before they act. In time I hope society will follow too. Although in fairness I think society has come a long way in dealing with this issue over recent years. So the time for racial or any other type of discrimination is done, it is over. There is no place for it in our society. The only tinge of sadness I have today is that it is a shame that it requires legislation to facilitate its end. I have one or 2 other questions for the Minister in relation to exceptions, enforcement and indirect discrimination but I think I will leave those to a bit later in the debate.

#### **8.1.8 Deputy J.A. Martin:**

I was going to say I will be brief but as everyone has wandered around, I have to prefix my few words by saying: "You have just passed a new police headquarters that will only allow the disabled right of access by prearranged phone call." Then I will get on to the law in hand.

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

That is not correct. It is misinformation.

#### **Deputy J.A. Martin:**

No, I am not going to give way to the Minister for Home Affairs. I did not give way but he still said something, sorry, Sir. Anyway, we will agree to disagree there. I really did only have one question and it was because I went to the briefing with a lot of other States Members last week, I found it very interesting, very informative and the adviser to Social Security was there, and it does come on page 60 of P.6 and page 18. It follows on very nicely from the Constable of St. Brelade and some points that Deputy Le Hérisier started with and then turned it all around on the end and said: "Locals must be taken care of." But as soon as anyone gets off the plane or boat here they are all the same. You cannot have it both ways. I absolutely commend this, it has been an easy law to bring because wait until you come down to women's rights, maternity and equal pay, oh will we

have a fight. You know, no woman can do a job the same as a man, they can do it better. Yes, thank you, Deputy Vallois, thank you very much. The question is, and I think I might need a little bit of legal advice - I am glad the Solicitor General is in the chair - as I say, on page 60 it is the exemption to the Prohibited Acts and we were told in plain English that we need a policy on Ministerial decision to make sure that the locally ... all the work that Social Security have done in the last year or 2 to get the local - and local can be just 16 or been here over 5 years - into employment before somebody new arriving, will not be discrimination against race as long as we have an existing policy on Ministerial decision. I absolutely get that. Then I received this email, and I have said to the Chief Minister I may seek legal advice, that says: "The new Control of Housing and Work (Jersey) Law carries on from the Regulation of Undertakings and Development Law" where non-qualified persons can engage in business but local qualified people are not given priority, the firms are only normally allowed to take a certain amount of each. The Chief Minister follows on by saying: "A new policy statement is needed to accompany and support the new law" that is the Work Law, not this law: "which is being introduced on 1st July, which will be introduced by an M.D. (Ministerial Decision) and then it will allow people to continue even with this law." So my real question - to me it is legal - we are passing a discrimination law today on the grounds on race attached to a law that does not come into until 1st July with a new policy or Ministerial decision to be produced at the same time. Could that be seen as retrospective to this law? Because it is a carve-out and I think we need it. We are allowed to do it on Reg. of Uns., Housing Law and other things, a small jurisdiction we need it, I just do not want employers to come up against: "Well, you introduced this law and then did a carve-out 8 weeks later." So that is really the legal advice I am seeking.

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

I am sorry if I have misunderstood but it seems to me that supposing that the States decide to approve this law today then clearly it will not come into force until the Privy Council have considered the legislation. I do not have the dates to hand but I would be slightly surprised if the Privy Council and Royal Assent was forthcoming before 1st July this year. So it is not obvious to me at the moment that any difficulty arises.

**The Bailiff:**

Have you completed your speech, Deputy?

**Deputy J.A. Martin:**

Yes, thank you.

**8.1.9 Senator P.F. Routier:**

I think the Solicitor General has probably covered off one of the points which I knew was going to be raised about whether there was going to be any conflict with what we have decided in our Control of Housing and Work (Jersey) Law because our Control of Housing and Work (Jersey) Law works on the basis that we will give preference to people who have been in the Island more than 5 years. So licences will be granted to businesses on the basis that we would prefer them to employ people who had been in the Island longer than new immigrants so what is going to happen is there will be a Ministerial Decision giving a policy on how businesses should go about that and then the reassurance will be that because we have a piece of legislation or we have a policy to say that the States really want to employ local people that that will not be a challenge for the discrimination legislation. I really just wanted to make that point clear. Hopefully I have. On the bigger question of this legislation coming forward now, I think this is a day we should all celebrate because it is something which has been worked on for many, many years and I can recall sitting with Senator Kinnard many years ago discussing this legislation and we should all be proud that we have got to a stage today to be able to hopefully approve this legislation. If people were

questioning what my job was this morning, about whether it was something to do with social policy, I would like to say, yes, this is great as far as social policy is concerned and I think we should approve this as soon as we possibly can, and then move on to the other parts of discrimination in the future.

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

It has been questioned whether or not a law is really necessary for this and some people, I think, would like to live in the kind of world where this law is not necessary because the discrimination does not happen in the first place. Of course you could say that about any law, could we not? We could say why do we have a law for murder and for theft and for the protection of properties because surely everyone should do what the right thing is anyway. These kind of laws are because unfortunately human nature, the human condition does not universally respect that in human behaviour. You, Sir, will know that in your different hat because you see many transgressions that are made by people for a multitude of reasons. That is why we need the law. When it comes down to racism that is absolutely no different because we need to protect people. When it is inscribed in law, and there is always a chicken and egg, is there not, whether the legislature is ahead of the society or whether it is behind and I think in some cases we are both. I had an unfortunate incident this weekend when I was listening to some very good music at a town establishment - an open mic, and I compel Members to go along if they can, there is some great talent out there, it is all done for free and for the love of the arts - and a minority in there, 2 people, rather than listen to the great music, and these 2 musicians were genuinely the best ones in there that night, they chose to comment on the tone of the 2 musicians' skin rather than on the excellent music that they were playing. I was going to say they were pretty much kicked-out, not by the bouncers but by the fellows that were surrounding them because they were told that kind of comment and behaviour is not appropriate. It is sad that still goes on and we have to be mindful of that, as a salutary reminder, and there are many examples which we can think of. So legislation is necessary but in turn that will have an effect and it will change attitudes because the 2 have a symbiotic relationship. But there will be consequences of the Discrimination Law because this is going to be rolled out, as we know. I completely endorse the comments that were made by the Constable of St. John and others have said this in the past, this should have rolled-out universally. We should have sought ideally to cover the 4 areas of discrimination and I certainly believe that while this is an important component perhaps gender discrimination, which affects half of our population - certainly with regards to work - is the most urgent. But we will carry on putting pressure on and working constructively hopefully with the Ministers involved to make sure that those are rolled out. There will be consequences, for example we talked earlier about a pensioner not being able to claim carer's allowance simply because they were of pension age. But I have been contacted in the meantime to say the same applies to long-term incapacity allowance. If you are disabled as soon as you hit your pension age all of a sudden you are no longer disabled anymore because you do not need that L.T.I.A. you can get your pension. When it comes to increasing the pension age, and we talk about the elderly needing to work much past their retirement, we are going to have to face those consequences which will be consequential on what we are passing today because they will need to be able to work, they may need to claim carer's allowances while they are still claiming their pensions. So these are the consequences. We will not be able to discriminate in those areas. I am interested in the effect that this has on clubs. I see on page 49 that it talks about clubs will not be able to discriminate against their members on terms of race. Presumably that will apply to gender at some point when that is rolled out. I would certainly imagine it is. It would be interesting to see, for example, at the moment if there is a club which is entirely for Irish people because it is an Irish club and they say: "We do not want to extend membership to any other nationality" whether that will be permitted. Hopefully they would not mind opening up membership to other nationalities provided that they are Irish-friendly, whatever that means. I

probably will not ask the Solicitor General necessarily for that point, although maybe I will in a moment, but consequently what will happen for a particular men's club in Jersey who are known not to accept the membership of women, it could be any club but it could also be one on Stopford Road. They do not allow women in their brethren. Will they be told, if we are applying the same principles of race towards gender, that they have to allow women to join their club? This is probably an appropriate juncture to give way to the Solicitor General.

[15:30]

**The Solicitor General:**

We have already looked at it briefly but schedule 2 to the law provides a number of exceptions to Prohibited Acts. If one looks, please, at page 65, you will see at 14 there is in fact an exception in respect of clubs which has as its principal object providing benefits to a person of a stated race.

**Deputy M. Tadier:**

Could the Solicitor General expand on that and how it affects those clubs?

**The Solicitor General:**

If there is a club whose principal object ... if we look at the wording of the law: "Whose essential character is related to providing benefits for membership to a particular race then they are exempt from the other provisions of this law." So to use the example I think the Deputy gave of the Irish Association or Society, assuming that society or club can show that the principal object is geared towards the Irish nationals it seems to me, on the face of it, it would be exempt from opening its doors to other people.

**Deputy R.G. Le Hérisier:**

I wonder if I could ask the S.G. (Solicitor General) a further question? Does that apply to issues of gender?

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

I do not think we are there yet, Deputy, are we?

**The Solicitor General:**

Obviously not at the moment.

**Deputy M. Tadier:**

Could I ask the Solicitor General whether there will be some kind of test of proportionality applied to that and where the onus would come in? Would it be for the club themselves to prove, to show that they are applying that rule proportionately and would there be an appeal mechanism through this legislation against the decision of a club on the grounds that somebody may be of that nationality, but they did not necessarily have the wherewithal or were not prepared to disclose *et cetera*?

**The Solicitor General:**

If a club reaches the view that they fall within the exceptions set out in Schedule 2, then that would be entirely a matter for them; then they are entitled to say to a prospective member that in fact they do not have to apply the other provisions of the law. If someone is unhappy with that decision, then clearly their remedy, it is set out in this law, which is to bring an action in the tribunal.

**Deputy M. Tadier:**

I thank the Minister ... sorry, the Solicitor General; I should not really call him a Minister, because that was quite a helpful answer, which is why we pay him, I guess. Excuse me for my

discrimination there, but it was with humour intended. So it seems to me we could have a racist club, could we not? I could set up a club and say basically: "This club is only for racists and I think if you are not a racist, you cannot join it." [Aside] Yes, and it is interesting to see how this would have ... if we did have a local B.N.P. (British National Party), I think in the U.K., interestingly enough they were told that they could not discriminate against the membership and they had probably the token representative of an ethnic minority. But let us bring this back to some kind of semblance of reality. Comments have already been talked about that this is going to somehow get rid of discrimination. There is an element to which ... because Jersey does not have any proper way of dealing with immigration, let us be honest about this, we have very messy and contrived and convoluted ways of trying to keep the population of the Island down, and I had a conversation at lunchtime on the phone with a friend of mine who lives in Switzerland, and he is not a tax exile and he is not a journalist, you might be interested to know, he is simply a former Jerseyman who now lives in Switzerland. He says to me: "What does Jersey do to stop people coming over to Jersey?" He was inquiring about my partner, who is from the U.K. He said: "So in theory, anyone could come to Jersey and set up and live here and work?" I said: "Well, provided they have got the right passport, *et cetera*." I said: "Well, that is because we have this contrived way of dealing with things." So we do have discrimination, so when Senator Le Gresley started off talking and he said that depending on where one is born or where one comes from we should not be discriminating, but we do that in Jersey. If you happen to be born somewhere else and you have just come to Jersey, you have to wait 5 years to get in the queue before you can apply into the open job market, even if you are better qualified than your local counterpart, and you have to spend 10 years living often in more expensive and substandard accommodation before you even have the right to rent and buy, by which time you have probably given up the chance of saving up for a deposit and you have given your money possibly to a substandard landlord, although not necessarily. This will continue, because it is at the very heart of what we do in Jersey, because we refuse to say - as I think Deputy Le Hérisser has been hinting at - that once people come to Jersey they should be treated equally. So perhaps we should have a higher bar for allowing people into the Island in the first place and that should be linked to economic social need, and then once that is achieved everybody in the Island is treated equally and it will not matter where you come from. So in that sense, let us not be under the illusion that this law is going to solve racism or discrimination. There is a very significant issue which the Constable of St. Brelade touched on. I do not agree necessarily with the entire analysis of it, and I certainly do not agree with the underlying ethos of it, but there is a lot of pub talk going on, especially from working-class people, if I can call them that, who are very concerned that jobs are being taken from them. There is an increasing resentment which I do not think is valid and I think it is an over-simplification of the problem of it, and it is being targeted at, I think, very hard-working and welcome immigrants who do make the Island a much better place to live in. It is really as the States, we have to make sure that the unintended consequences of legislation that we are putting forward do not contribute indirectly towards xenophobia. So by all means let us have this Discrimination (Jersey) Law, and certainly in my other capacity as chairman of the Jersey Human Rights Group, we have been campaigning and we would welcome this, but let us make sure that we have joined-up policies that mean that the direct consequences or indirect consequences tie-in with anti-discrimination and a welcoming approach, which we fundamentally know Jersey is all about.

#### **8.1.11 Connétable M.P.S. Le Troquer of St. Martin:**

Very briefly, I heard my colleague the Deputy of St. Martin talk about a lot of extra work this morning that might be needed later on for other areas to be brought in, and the Constable of St. John a few moments ago suggesting all the items should have come in together. I would just like to ask the Minister: my understanding is the draft Discrimination (Jersey) Law is the enabling law, if you like, the parent law, and it is just the schedules that will come in, so there is not that amount of

work and it would just be each area added into the schedule as different parts of discrimination. I am not sure how and when he was thinking of bringing these forward. We have heard of the long delay and the 11 years or 12 years it has taken to get to this stage. There is not going to be that amount of work now, I would have thought, and the Minister might be able to advise us on just introducing the 3 or 4 further areas to the schedule.

#### **8.1.12 Deputy C.F. Labey of Grouville:**

I, like many of my colleagues here, welcome this law and I was in fact in the States at the same time as Wendy Kinnard and we worked on this together at some point. So it is very fitting she is in the public gallery today. I would like to touch on what my colleague rather made light of, but I would like an answer to the question from the Minister when he sums-up the principles, and that is of Protocol 3 and how it will work because for those of us who have this stamp in our passport it is a real issue. We are told constantly it is not an issue and for all intents and purposes it should not be, but nonetheless it is there and far from what people may assume the group is not diminishing. It did go down to about 6,000 natives, if I can use that word here, but the group is growing and it is growing quite considerably, especially among the Madeiran community. It is an issue and I would like the Minister to address it in his summing-up please.

#### **8.1.13 Deputy J.M. Maçon:**

I just looked up the word “discrimination” and the point about it, it is about treating another group either in a negative fashion or in a positive fashion. A lot of the talk about kind of discrimination has been that by default it is an absolute negative. It may not be. But that is just something to understand. I remember having long debates about how you assess and understand and set the bars and parameters when you are talking about discrimination and whether discrimination in some ways can be a good thing, and that is why in certain countries you start talking about positive discrimination and quote some things like that. So again, what I am trying to say, it is a very complicated area to think about, but it is not necessarily by default a bad thing. What I want to say about this particular piece of legislation is certainly when I go and do my door-knocking and when I am talking to my constituents, I do get strong grumbles from people working in different sectors of the economy, those who make the case of: “I am a local. My family has been in Jersey X number of generations” all these types of things, and strongly they do feel sometimes - and this is perhaps something the Minister would like to flesh-out when he sums up - it is they get very upset and frustrated, not necessarily just about the initial employment opportunity, but also more about the advancement opportunities and the training opportunities that they may get or not get. There is sometimes a strong resentment where some local people do feel that people are brought into the Island when perhaps a local person could quite easily fill that job, provided that the structure and the framework had been put in place for them to do it; although, and I have seen it as well, there are people who are brought into the Island where a local person had been doing that job for a long time and could quite easily have done it as well. So I hope that in this particular piece of legislation there is some hope for the locals in that, in being able to address those types of things, and I think that is a good thing for the local people, and I think that is probably one of the things I would want to put down in support of this particular piece of legislation. I do hate to perhaps provide a bit of realism into this debate in that even in passing this law, being able to prove discrimination again is still going to be very, very difficult, particularly what is often used is not necessarily ... the reason is: “Oh well, they may not have enough experience in this particular field” or whatever, but again, it masks perhaps the underlying reasons. It is very, very difficult to prove these types of things, so to imagine and to believe, as perhaps some Members have suggested, that this is: “This is great. We are going to have a good stamp against discrimination that goes on in the Island.” Not so. It is still going to happen, but it is providing a little remedy to that, and in that hope that it will cause a greater change to mindsets and a greater change to behaviour in how the Island progresses is what

this is trying to achieve. But I hate to bring people back to reality and say it still goes on, there are still many cases within the U.K. about kinds of things around the race discrimination, and that can be a costly process. I think also what I want to say as well around that is that ... I wanted to say it and it is gone, cannot remember it is. **[Laughter]** It could not have been that important then. But I think what I will say is when looking at discrimination, it depends very much on which group you are in. If you are in a group that benefits from whatever the structure is, then it is going to be good for you. Obviously if you are not with that structure, the discrimination might be bad for you. Again, this legislation wants to bring a balance to that. I have now remembered what the point was. It is that in addressing that type of balance, it is to do with ... no, it has gone again. **[Laughter]** I do apologise. In trying to address that balance, we have got to recognise there will be winners and there will be losers, but that is not necessarily a bad thing, it is just simply a change to how society goes forward, and it may indeed prove other problems going forward, but that just means it is back to us and try and change it again and try to improve the system. But I think there is scope within this to help local people and ...

[15:45]

I have remembered it again. The point I wanted to make is the difficulty sometimes in coming forward in Jersey to complain, because sometimes, particularly in certain industries, you get a label within Jersey society of being a troublemaker and it can be very difficult when you have these types of complaints to go forward. Again, this ties-in to my point about advancement and promotion. Again, very difficult for a local person to come forward and complain when they do feel perhaps they have been discriminated against, because they feel that if they get that label, perhaps within a certain organisation, they will not get the advancement, they will not get the promotions, they will not get the opportunities. So again I just want to frame this, that we have to have an understanding that this is not going to be a cure; there are still going to be big problems which are going to affect society, but overall is this going to be a step in the right direction which is going to be better for local people? I think overall it is, and therefore I will be supporting this. Thank you.

**Senator P.F. Routier:**

Just as a point of order, I have already spoken, but there was a matter which Deputy Tadier mentioned with regard to the preferential treatment that Jersey-born people have against people who are just new to the Island. He made comments that he thought that ... just the clarification I would like to make is the new legislation, Control of Housing and Work (Jersey) legislation, a Jersey-born person has to be in the Island 5 years before they can work and the Jersey-born person has to be in the Island for 10 years before they can have access to housing. So it was just the impression I think he gave was that Jersey-born people had the automatic right to gain those privileges.

**Deputy M. Tadier:**

The point is that Jersey-born people normally do those first 10 years before they are 10, and 10 years before they are usually working.

**8.1.14 The Very Reverend R.F. Key B.A., The Dean of Jersey:**

A couple of years ago I was standing on the corner of Bath Street minding my own business and day-dreaming and a large van came around the corner, one of those with wing mirrors that stick out a considerable way. He slightly misjudged the turn and struck me a fairly forceful blow on the right shoulder. In a mixture of shock and consternation, I called out something after the van: "Do not be daft" or something. It was very decanal, there is no ... **[Laughter]** But the chap stopped his van, wound down the window, and as I thought for a moment: "Is this the time for me to start running?" what he said was: "You are only saying that because I am Portuguese." I do not have the gift of seeing through a van's exterior and noticing the person's nationality before they have opened



their mouth. My concern was how much racism had he suffered in order to perceive that that was the treatment he was getting at this time, and it seemed therefore to me that to have a law at this moment is exactly the right thing to do. It is not that laws change everything magically overnight, but they have a way of shaping and framing culture and cultural expectations, and in doing that, this seems to be a thoroughly good thing. I do hope that the States Assembly will indeed be able to roll out the whole package, the anti-discrimination legislation in other areas, the regulations and so on, in the not too distant future. There is just one caveat I would like to put in. Deputy Le Hérissier and I were remarking that sometimes the television and radio programmes one quotes have a wonderful way of dating one, absolutely. I will run that risk. In the series Rumpole of the Bailey - the delightful actor sadly died last year - James Grout went on to play the Superintendent in Morse and so on, played the part of Mr. Justice Oli Oliphant and his summing-up to the jury always included the following phrase: "Members of the jury, you must rely on your common sense" and it seems to me that in looking at whether it is mediation or tribunals or the enforcement of this, common sense does play a great part. In my last job before coming to Jersey, I was running the Church of England's Home Mission Agency and we were required to go through every job in the organisation and work out whether you had to be a committed Christian member of the Church of the England to do that job or not. It was a bit like that Jaffa cakes and biscuits debate in V.A.T. (Value Added Tax) and so on. It does require some common sense, and I am sure that this Island would have that in plenty in the way in which the law is applied in the future.

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

Just briefly, it is clear, and quite understandably so, that the Assembly are supportive of this piece of legislation that the Minister for Social Security is presenting before us today, and that is absolutely right, one cannot imagine a democracy not having or failing to have an appropriate piece of legislation to protect people from discrimination and we are starting with race today. All I wished to stand and comment on at this point has largely been captured by the Dean's comments a moment ago, and perhaps one or 2 other Members: the need for common sense, the need for fairness. It was a point I think Deputy Le Hérissier made, and the governance of this law is going to be - and those that will follow it, as the rest of the suite rolls-out in time - absolutely critical. It has got to be seen to be fairly and equitably delivered and managed with a light touch, appropriate to the Island and with clear recognition that here in Jersey we have a community - business community, which is where my focus understandably would be - which is primarily small businesses. Over 50 per cent of the working population works within small businesses and we should never lose sight of the fact that that is where the largest impact always falls on any legislation that we pass in this Assembly. It will always fall on the smaller businesses, the disproportionate cost of application of these laws is there, and what we do not want to clearly do is present barriers that will prevent these businesses from employing people directly in the future, and that is why the governance of this law is going to be so important. We have had some examples where we looked at the current Employment Law and I have had some very helpful discussions with the Minister. I would like to take this opportunity of thanking him for reviewing the unfair dismissal element, which currently in Jersey, as Members will be aware, stands at 26 weeks. In Guernsey and the U.K. it ranges between a year and 2 years and is continually being reviewed. That is a small example of a barrier where Jersey is not currently competitive and we need to always be aware that we are and maintain our competitiveness. The Employment Law that I think should be mentioned in relation to ... and again, it was a point mentioned by several members about the mediation process and the tribunal. Now, that at face value is absolutely the right way to go and I am fully supportive, but there are always unintended consequences to such processes, even the ones that appear at face value to be correct. I will give an example, if I may, where quite a number of businesses have contacted us, raising their concerns about the mediation process, because going through it, and the statistics I think the Minister has given us in the documentation in the report and

proposition talks about 75 per cent of claims having gone through the mediation process do not get to the tribunal. At face value, we should all say: "Well, that is fantastic news. That is showing the process is working well." A piece of work is required to look at the statistics, the detail behind those statistics, because it does appear that there are settlements being undertaken in the mediation process where businesses are almost, in terms of preparing and protecting their reputations, settling in instances where they do not believe that they should be settling. That is not a good position to be in. I think the process is right, but I do think we need to continually review it to make sure there are not unintended consequences and barriers for business with regard to employment. All that said, if we can deliver it with a light touch, if we can have the common sense element and make sure that in the future we deal with this and other legislation of a similar nature in a Jersey way, then it is of course absolutely the right thing to do and I do support it. I am confident that with the Minister that we have at Social Security at the moment that that will be done.

**8.1.16 Senator I.J. Gorst:**

I do not want to say very much, but simply say many Members have talked about their input into getting this to where we are today and I would just like to stand to praise the work of the department, a department which is not always well-praised and is often criticised for the work that it has done, but let us just recap and refresh. It is the department that this piece of work was given to, rightly arising out of an amendment to Deputy Southern's proposition, and I think they ought to be praised and applauded this afternoon for delivering on something that this Assembly has asked them to deliver on. I must say from my personal experience, that is how they always work and I wish to place my thanks on record, and of course with the support and the encouragement of the current Minister. [Approbation]

**The Connétable of St. John:**

Could I put a question to the Solicitor General, please, about what the Minister said about a light touch?

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

Yes, you can.

**The Connétable of St. John:**

Yes. Given the law is such that things are black and white, Solicitor General, can it be administered with a light touch or have we got to follow the letter of the law?

**The Solicitor General:**

I am not quite sure if that is really a legal question, but the fact is that the law provides that in the event of there being a complaint there is a 2-tier process. Clearly the first stage is designed to reach some sort of mediated settlement between the parties outside of a formal setting. That is as light a touch as I suppose one can imagine in the context of resolving a legal dispute, and then Members will be aware that insofar as the matter gets before a tribunal, the tribunal has discretionary powers to deal with the case as it sees fit.

**8.1.17 Deputy S. Power of St. Brelade:**

Briefly I suppose I could say that I could be regarded myself as a minority in this Chamber, having come from John Bull's other island, but discrimination itself and any form of discrimination has always been something that I have been interested in and I remind Members that I am the States-appointed nominee on the Community Relations Trust. I have seen case studies presented to the members of the trust from time to time that have dealt in real-time with active discrimination on the Island. Thankfully these cases are not very frequent, but I do think that some excellent work has been done by the Chief Minister - who just got in before me - by the Social Security Department

and the thoroughness in which the work has been done by the Social Security Department. Both Senator Le Gresley and his predecessor are to be commended and I have to say that in my time dealing with Social Security recently under Senator Le Gresley, their response time is commendable, far better than any of mine. But on discrimination, I want to acknowledge the work that has been done, the number of different people that have inputted into this, Citizen's Advice Bureau, the Jersey Advisory and Conciliation Service and indeed the J.C.R.T. (Jersey Community Relations Trust). Just to remind Members if they are interested, the A.G.M. (Annual General Meeting) of the Community Relations Trust is this Friday, so I am grateful that this piece of legislation has come forward today after a great deal of time, effort and work, and any discrimination on this Island on age, sex, disability and race should eventually be minimised. I cannot say it will never exist, but we live in a democracy and some people do silly things. So I am very happy to welcome and support this.

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

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

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

Copious notes, and a slightly interrupted debate, so people will forgive me if I have not such a strong recollection of what happened before lunch - and that was not a liquid lunch.

[16:00]

I am very grateful for everybody who has spoken in this debate, because I believe this is a very important debate for Jersey, and we do not have debates on these sorts of subjects very often. I am glad that people have been very considered and thoughtful in what they have said. I will go through some of the questions that were raised by Members in their speeches, but the general tone has been very measured, very appreciative of the work that my department has done and on their behalf, I do thank Members who have praised the work of the department. Senator Ozouf started off the response to my proposing the principles by recognising the contribution of former Senator Kinnard and I would like to join in that thanks to the former Senator, who of course is watching these proceedings as we speak. **[Approbation]** I am sure when she first spoke to the then Policy and Resources Committee she believed that this would happen within a reasonable space of time, but having become a seasoned States Member, she probably knew it would take longer than perhaps than anybody would predict. However, we have reached that day today and I am standing in the shoes really of previous Ministers and Presidents who wished this to happen, and I am very proud to have that role. Senator Ozouf also mentioned the issue around sexual orientation and when perhaps this could be addressed as an additional characteristic and I would say to him that when we deal with the issue of sex discrimination, we will include sexual orientation within that research, and that will be next year. Deputy Young was complimentary and said that we had come up with an excellent framework and I think what he meant was - and I am sure this is what he meant - that we have produced a law which will allow us to add the additional characteristics that we wish to consider by regulation and that means that we can move quickly. Having done the consultation and drafted the appropriate legislation, we can introduce the characteristics by regulation rather than by primary law. The Constable of St. Lawrence informed us that she had an Armenian surname - which I have always wondered where that surname came from - and also a plea, which was echoed by a number of Members, that we deal with this legislation with a light touch. In my opening speech, I did stress that financial compensation was only one of 3 measures that the Employment Tribunal has at their disposal and I am sure I can give guidelines to the Employment Tribunal as to how to deal with awards for hurt and distress, and I will be doing that prior to the introduction of the Appointed Day. The Deputy of St. Peter, who of course is the chair of my Scrutiny Panel, and again I wish to thank her and the panel members for the work they did in

consultation with Parslows on the Scrutiny review, which has been very helpful to me, but she mentioned the Guernsey Disability Alliance. I am informed by my officers that their work is still very much at an early stage and that collaboration and education is really something that I would wish to see in Jersey, but at the end of the day, it is the horrible expression that States Members use, and I have just used it, there is no substitute for legal protection. The Deputy of St. Ouen of course is a member of my Scrutiny Panel and he made a number of points that were relevant to the Scrutiny review and I have a couple of answers for him. He asked why - or if - we did not do an audit impact on the public sector for the new Discrimination (Jersey) Law. This law does not interfere with other laws or written States policies. It was discussed at the Council of Ministers, the management board. Definitions were audited against other laws, Employment Law, Shipping Law, Education Law, *et cetera*, so in the opinion of my officers and certainly in my opinion too, there is no need for a further audit of the laws affecting the public sector. The Deputy also made reference to funding and this is set out mainly in the financial and manpower statement accompanying the report, but I can assure him that the budget has been allocated to pay for both the services of J.A.C.S. and the Community Mediation Services, organised through Citizen's Advice Bureau. The Constable of St. Helier reminded us of the importance of Liberation Day that we recently celebrated, quite rightly, and the process that he came through to arrive at the decision to twin with the town Bad Wurzach, and I thought that was quite enlightening, that he was prompted by racially motivated attacks on visitors, which I do recall happening with all too regular frequency during the summer months. Deputy Trevor Pitman congratulated Deputy Southern, and he is not in the Chamber at the moment, but I also would applaud him for chasing Ministers and the Council of Ministers to get this piece of very important legislation on our statute book and I would join-in with that praise of Deputy Southern. Now we come to Deputy Baudains. It is a shame that Deputy Baudains has the views that he expressed, but this is a debating chamber and we all are entitled to our own views and I am not wishing in any way to negate what he said. I think it is always important to hear the other side and hear the arguments, but I do not agree that this legislation will create division and not equality. I do not agree with that. I think the issue of whether people could employ Italian staff in an Italian restaurant was one that he raised. If it is a reasonable requirement to expect people to be of Italian origin, it would only have to be something that people could defend if they were challenged by somebody perhaps of another nationality who wished to work for that organisation. It does not absolutely prevent it, but it would have to be justifiable. He mentioned the word "fines" and I do want to quell this before it gets any further. There are no fines awarded by the Employment Tribunal. What they would award is compensation for financial loss or compensation for hurt and distress. There are no fines in this law. Deputy Southern was fulsome in his praise, which is always grateful to be received. It was difficult to work to the timetable that he set in his proposition of July 2011, particularly as I did not take office until November of that year, but with the valuable help of my Assistant Minister, Deputy Pinel, we rolled-up our sleeves and decided that this was something that we would deliver within the timescale that had been set by this Assembly. I apologise that we were 2 weeks late, but if it had not been for Christmas and New Year, we would have achieved it. Again, the Constable of St. John, he is not sure he can support it and I fully understand that he would like to see the whole package today, but it is not as simple as that. We have to remember that we have not consulted on some of the issues around discrimination for some years now and it is only right and proper that we do further consultation before we bring in other characteristics, but if I could stand up here today and introduce all 4, I certainly would do that, but I do not feel I can. This law of course is not just to do with in the workplace; it is also to do with services, associations, clubs, partnerships. It goes a lot further than discrimination in the workplace. The Constable of St. Brelade was concerned about discrimination against local people and I think the Solicitor General was able to, in a subsequent answer, clarify our particular rules around the requirement in some cases to have 5 years' residence or more. Deputy Le Hérisier had his Duffy moment; at least that is what he told us he was having. He is right though, he is right.

We do, perhaps, have some strange rules in Jersey, but we are a small island community and it is inevitable that we will have a desire, as politicians, to ensure that people born locally and people who have acquired residence over a period of time should have priority, particularly at a time when we have high unemployment. So it is a balance, is it not - which of course Deputy Maçon was telling us, the balance between what is doing right for our people who were born and bred here and people who have become part of our community - but it is difficult and we do have some rules that we have to apply. I am no expert on Protocol 3 and I know a number of Members asked me to talk about Protocol 3. All I can say is that this Discrimination (Jersey) Law relates to discrimination in Jersey and not discrimination about people working in the E.U. (European Union) so I am afraid I would have to defer to higher authorities if we wished to have a debate today on Protocol 3.

**The Deputy of Grouville:**

I do not wish to interrupt, but it is an important issue, because people can be discriminated here if they are applying for a transfer in the workplace from here to elsewhere. It does cause discrimination and I wonder if the Solicitor General has a view perhaps after the Minister has finished his summing-up.

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

Let us let the Minister finish and perhaps the Solicitor General may wish to address the point.

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

Deputy Martin was seeking clarification on the same points of reference, people working perhaps given preference over migrants. I think the Solicitor General did cover that point. Quite clearly, the law will not come into force until the Privy Council consider this legislation, which will be after the Control of Housing and Work (Jersey) Law comes into force on 1st July, or scheduled to come into force on 1st July, and that was clarified also by Senator Routier, who I thank for doing that. Deputy Tadier, in his role as chairman of the Jersey Human Rights Group, was, as I expected, fully supportive, although he, like the Constable of St. John, would like all 4 areas of discrimination introduced as soon as possible. The question around the Irish Club was resolved also with the kind help of the Solicitor General, which comes under Schedule 2, Article 14. The Constable of St. Martin asked me a number of questions regarding the timescale to introduce other characteristics, and he is absolutely correct. These will be introduced by further schedules to the law which will be brought to the Assembly by way of Regulations. The timetable that my department has set - and it is quite an ambitious timetable, although some Members might think it is too slow - is we will deal with sex and family-friendly legislation in 2014; in 2015 we will move towards considering age, and finally disability in the year after. These will all be processes of consultation and obviously Regulations will be brought to the States Assembly. I think I am getting close to the end. The Dean: I appreciate the Dean's comments and the story about the driver. He made the point of how much racism had that driver received to have that perception and I think he was quite right when he said that the Discrimination (Jersey) Law must rely on common sense when it is administered by the tribunal. The issue that I agree entirely with the Dean on is set out in Article 28(3)(c), which we will come to later, which is to do with harassment, which is an offence under the Discrimination (Jersey) Law. I was specifically anxious to put in this law the following: "That any assessment of whether a person was subject to harassment was whether a reasonable person could regard the conduct as having that effect." A reasonable person. In other words, as the Dean said, somebody with common sense. Senator Maclean understandably, as Minister for Economic Development, was concerned about the impact on small businesses and expected and hoped that the governance of this law would be light touch, but understood that we have obligations and that we have to perhaps hopefully deal with issues arising under the law in the Jersey way.

[16:15]

The Chief Minister kindly thanked my department and I have already reiterated my thanks for them. Finally, Deputy Power, as a member of the Community Relations Trust, was fulsome in praise, and like many of us today, it has been a long haul, but we have finally got there and, Sir, with that I propose ... I have done that already. I reaffirm my support for the principles and ask for the appel.

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

I just wonder, before the appel, the Solicitor General, you were asked a question by the Deputy of Grouville about the interaction with Protocol 3. Is there anything you are able to assist the Assembly with?

**The Solicitor General:**

Briefly, if one again looks at Schedule 2, parts 1 and 2 of that schedule on page 60 confirm that acts done pursuant to a law or in compliance with the law of another country are exceptions to prohibited acts, so that really deals with the Protocol 3 point, and in general terms, Protocol 3 is to some extent a rather separate issue, which would require the States of Jersey to renegotiate its position with the U.K. and Europe generally *vis-à-vis* its position in Europe.

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

Thank you. The appel is called for. The vote is for or against the principles of the Discrimination (Jersey) Law. Are Members in their seats? I will ask the Greffier to open the voting.

<b>POUR: 46</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy G.C.L. Baudains (C)		
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. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
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 A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

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

Now, the Deputy of St. Peter, your panel has already scrutinised this proposition?

**The Deputy of St. Peter:**

We have, thank you, Sir.

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

Very well. Minister, do you wish to propose the Articles in parts or how do you wish to proceed?

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

I had set out an order of 6 parts, parts 1 and 2, parts 3, 4 and 5, but because Article 12 falls within parts 3, 4 and 5, we have to, I understand, take that separately.

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

Do you wish to start with Articles 1 to 8, parts 1 and 2?

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

Parts 1 and 2, Articles 1 to 2.

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

Very well. Do you wish to address the Assembly on those Articles?

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

Yes, please. Parts 1 to 8 of this law provide the framework for protection against discrimination that will apply to all of the protected characteristics. Articles 1 and 2 set out the interpretation and the territorial application of the law. Article 1 provides, for example, that employer and employee are defined in the same way as they are defined in the Employment (Jersey) Law and it provides definitions of premises, goods and services. Articles 3 to 8 deal with the fundamental concepts that underlie the legislation. Direct discrimination is where a person is treated less favourably because of a protected characteristic. There are some exceptions to direct discrimination, but a person cannot seek to justify direct discrimination as they can with indirect discrimination. With indirect discrimination, people appear to be treated the same and the same policies are applied to everyone. However, on average, the impact of a policy disadvantages a particular group of people.

For example, a requirement for all job applicants to speak fluent English would disadvantage people from non-English speaking countries. However, the person applying the policy has the opportunity to justify it as a fair and reasonable thing to do. The law calls this a proportionate means of achieving a legitimate aim under Article 7, paragraph (2)(d). So in my example, a requirement to speak fluent English would be proportionate in some jobs, such as telephone sales, but it might not be appropriate in others, such as a potato packing warehouse. This part also provides that the schedules will set out the protected characteristics and the circumstances in which it is not prohibited to discriminate. These can be amended by regulation. I propose Articles 1 to 8.

**The Bailiff:**

Are those Articles seconded? **[Seconded]** Does any Member wish to speak on any of Articles 1 to 8 or the schedules? Sorry, does any Member wish to speak? Yes, Deputy Tadier.

**8.2.1 Deputy M. Tadier:**

It is really a question for the Solicitor General about Article 6: what constitutes discrimination and the idea about a protected characteristic, and my question is whether the perception of a characteristic, even if it does not exist, in fact would also constitute an act of discrimination. I give an example: so imagine one calls up a States department and one experiences on the phone or alleges some kind of discrimination on the fact of the race. They might think that the person is of a certain race on the phone and therefore they discriminate and it turns out that person does not have that racial characteristic, but has nonetheless been subject to the racial slur on the basis that the person speaking on the other end of the phone presumed that person had that characteristic. Would there be a breach of the law in that case?

**The Bailiff:**

Time to think about that one, Mr. Solicitor?

**The Solicitor General:**

Yes, please.

**The Bailiff:**

It sounds like an exam question. Deputy Le Hérissier.

**8.2.2 Deputy R.G. Le Hérissier:**

I was a bit taken aback by the Solicitor General's answer on Protocol 3, as was my highly-esteemed colleague. I wonder, could the Solicitor General indicate ... it strikes me under part 2 - we are still on part 2 - it says: "An act of discrimination must be committed on the Island." If the stamp is stamped on the Island, is that the act of discrimination?

**The Bailiff:**

Do you want to deal with that?

**The Solicitor General:**

I can answer that one now. If something occurs on the Island, then clearly Article 2 bites, but if we are talking about Protocol 3, then I refer to my earlier answer, whereas if you look at the schedule, there are exemptions to discrimination and one of those is complying with laws, be it Jersey laws or laws of other countries.

**8.2.3 Senator L.J. Farnham:**

Just I would like to ask the Minister for a little bit more information on something that could be classed as indirect discrimination. It sounds to me that there is a propensity for a large grey area to



develop here in relation to employment, for example, if an employer thought it was important for all of his or her employees to be able to communicate together in the same language, regardless of whether they were working in a potato shed. I think the Minister used that as an example of another area. I would just like some clarification on perhaps one or 2 more examples of what is meant by that. Am I also right in assuming that... I have some questions on exceptions. Is that going to be dealt with later in the schedule, perhaps?

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

Just very briefly, just dealing with this issue of Protocol 3, I understand the comments that the Deputy of Grouville made earlier. I too had a stamp in my passport, but I had it removed because I had the requisite number of years within the U.K. While there have been a number of comments over a number of years made about this issue, I am not aware of anybody that has been discriminated against in working in European countries... and that is there is a perception of it. I certainly worked in 2 European countries and I just think it is important that this is not an issue for today, that we do deal with ... I absolutely understand the point of it. It is not an easy issue to resolve, but the existence of the stamp does not prohibit people from working, as I did, in European countries, and if they are, then we need to help them in order to get through that bureaucratic issue.

#### **The Bailiff:**

Are you ready, Solicitor General, to answer the question?

#### **The Solicitor General:**

Yes. I can see how the point is arguable both ways, but it seems to me that if one looks at the wording of Article 6, it states that: "A person discriminates against another person, the subject, if because of a protected characteristic the person treats the subject less favourably." It seems to me the key words are "because of a protected characteristic" so in other words, if a person discriminates because of race and therefore treats the subject less favourably, it seems to me there has been discrimination. My view at the moment, having considered it for a few moments, is it does not matter whether in fact the subject happens to have that racial quality. The test is whether the person, because of race, treats the person differently.

#### **The Bailiff:**

Does any other Member wish to speak on any of those Articles? Then I invite the Minister to reply.

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

I am grateful for the assistance of the Solicitor General in dealing with some of the questions. In particular, Senator Farnham requested I perhaps should clarify the issues around language in the workplace under indirect discrimination. I will have to say from the outset it is unreasonable perhaps for Members to expect me to interpret how the law will be applied by the Employment Tribunal when cases come before it. I think that is probably exceeding my powers as a Minister to foresee. However, specific to his question, perhaps I could read something out that I had prepared on this issue, the point being that: "Can an employer insist on employees speaking a particular language?" and the response that I would give is provided the language requirement is proportionate to the needs of the job, there is no problem with this: "A requirement to speak a particular language can cause a disadvantage to national groups where that language is not generally spoken and so can amount to indirect discrimination. However, there is a defence for any such requirement which the employer can show to be a proportionate means of achieving a legitimate aim. Provided the language is needed to operate effectively in the job and communicate with colleagues or customers, then there should be no problem with the legality of such a requirement." With that, I ask that we take the vote on Articles 1 to 8 and ask for the appel.

**The Bailiff:**

Very well. The appel is called for then in relation to Articles 1 to 8. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 39</b>	<b>CONTRE: 1</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier	Deputy G.C.L. Baudains (C)	
Senator P.F.C. Ozouf		
Senator S.C. Ferguson		
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 Trinity		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Deputy R.C. Duhamel (S)		
Deputy R.G. Le Hérisier (S)		
Deputy G.P. Southern (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
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 A.K.F. Green (H)		
Deputy J.M. Maçon (S)		
Deputy of St. John		
Deputy J.P.G. Baker (H)		
Deputy J.H. Young (B)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy of St. Peter		
Deputy R.J. Rondel (H)		

**The Bailiff:**

Now, Minister, do you wish to take Articles 9, 10 and 11 on the basis that Article 12 is where there is an amendment?

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

Article 9 prohibits discrimination in selecting a person for employment and in the terms on which employment is offered. Article 10 prohibits discriminatory treatment of an employee in all aspects of the employee's employment. Article 11 prohibits discriminatory treatment of a contract worker by a principal, being the person for whom work is done, pursuant to a contract with the contract worker's employer. I propose Articles 9 to 11.

**The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on any of those Articles? Deputy Tadier.

**8.3.1 Deputy M. Tadier:**

It will not be a popular opinion and I am not sure if this is the appropriate place to raise this, but I have noticed in Schedule 2 under one of the exceptions it talks about that this legislation is more sweeping than the U.K. legislation, in the sense that it gets rid of the possibility for positive discrimination, and I think that would also be covered by Article 9. So my position on this is that I think while I fully support non-discrimination, I think that as a transitional arrangement, when there are vast inequalities in a society, it can be perfectly correct as a way to change behaviour for positive discrimination or affirmative action to be used in the correct context as a temporary and transitional arrangement in order to seek an effective change which would ...

**The Bailiff:**

Deputy, if I may, I think this is something that you should have raised under the principles, because it does not arise out of Article 9, I do not think, the fact that ...

[16:30]

**Deputy M. Tadier:**

I think it could be interpreted to do that, Sir, because there could well be ... Article 9 does not allow quotas, for example, and there could be an argument that there could be situations where a quota system be used and it could be desirable, and Article 9 does not allow that, Sir. So if I have misinterpreted it, I am happy to sit ...

**The Bailiff:**

Article 9 I think has got nothing to do with positive discrimination and the fact is that this does not appear to be in the law, so you can say you are unhappy it is not in the law, but that should have been dealt with in the principles. When we deal with Article 9, I do not think that has got anything to do with positive discrimination. Does any other Member wish to speak on Article 9 to 11? Yes, Deputy.

**8.3.2 Deputy R.G. Le Hérisier:**

Again, I may be trespassing into that area, but I wonder if the Minister could give us some comfort on a case. If, for example, a workplace essentially consists of one group of people, for example, local people, and other people apply of other ethnic origins, they apply and they basically do not succeed in breaking into that workplace. At what point can that person make a complaint and say: "Look, this discrimination is systemic. It is nothing to do with my abilities to do the job or not"? Is there a point at which they can say: "I want the workplace looked at in a more systemic way"?

**The Bailiff:**

Does any other Member wish to speak? Then I invite the Minister to reply.

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

I thank you for dealing with Deputy Tadier's points for me. As I move straight to Deputy Le Hérissier, the issue that Deputy Le Hérissier is referring to is indirect discrimination and clearly if a person applied for a job in a particular organisation and believed they were not successful, not because they were not the best person but because there was a culture of only employing people from a particular nationality which excluded other nationalities, they could bring a complaint to the tribunal and it would be for the employer to justify their policies. With that I maintain the Articles.

**Deputy M. Tadier:**

Could I ask for Article 9 to be taken separately? It is relevant because on page 18 under Part 9 it says that positive discrimination under 9 will be no longer permissible which it currently is, so that is why I would like that to be taken separately just to record.

**The Bailiff:**

Very well, of course you certainly have the right to take any matter separately. So Article 9 then will be taken separately. Are you asking for the appel on each matter, Minister? On Article 9 we are going to take a separate vote. The appel is called for then and so the matter before the Assembly now is whether to adopt Article 9 on its own. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 36</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy M. Tadier (B)		
Senator B.I. Le Marquand		Deputy G.C.L. Baudains (C)		
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				

Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Bailiff:**

Then Articles 10 and 11, you are happy to be taken together? All those in favour of adopting Articles 10 and 11 kindly show. Those against. They are adopted.

**8.4. Draft Discrimination (Jersey) Law 201- (P.6/2013): Amendment (P.6/2013 Amd.)**

**The Bailiff:**

We then come to Article 12 where there is an amendment so I will ask the Greffier to read the amendment.

**The Deputy Greffier of the States:**

Page 44, Article 12 - For paragraph (4), substitute the following paragraph: “(4) This Article applies to (a) a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994; (b) a limited liability partnership established in accordance with the Limited Liability Partnerships (Jersey) Law 1997; (c) an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011; (d) a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011; (e) a partnership established under the customary law of Jersey; and (f) any other partnership operating in Jersey that is established under the law of a country or territory outside Jersey.”

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

Quite simply, this is a result of requests from the Scrutiny Panel which I am quite happy to agree to and hence the amendment brought in my name. It is a minor amendment to Article 12(4) of the draft law to ensure that any partnership wherever formed may fall within the scope of Article 12 of the draft law. The opportunity is also taken to clarify that partnerships formed under Jersey customary law fall within the scope of Article 12. I propose Article 12 as amended.

**The Bailiff:**

We will just take the amendment, Minister. Is that seconded? **[Seconded]** Does any Member wish to speak on the amendment? All those in favour of adopting the amendment kindly show. Those against. The amendment is adopted.

**8.5. Draft Discrimination (Jersey) Law 201- (P.6/2013) - resumption**

**The Bailiff:**

Do you now propose Article 12 in its amended form then, Minister?

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

Yes, Sir.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak on Article 12? All those in favour of adopting Article 12 kindly show. Those against. Article 12 is adopted. How do you wish to proceed after that, Minister? Do you wish to take the rest of Part 3 or more than that?

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

I think I would like to take Articles 13 to 26 *en bloc*.

**The Bailiff:**

Very well, Articles 13 to 26.

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

Article 13 prohibits a professional or trade organisation from discriminating against an applicant for membership and in the treatment of members. Article 14 prohibits an authority that has the power to issue an authorisation or qualification which is required in order to carry on a trade or profession from discriminating in the exercise of that power. Article 15 prohibits a person who provides or arranges vocational training from discriminating against a person who is either seeking or undergoing such training. Article 16 prohibits an employment agency from discriminating in the provision of its services both for employers and for persons seeking work. Articles 17 to 20 protects voluntary workers as well as those undertaking work experience, unpaid work experience. For example, as part of the Advance to Work Scheme the acts of discrimination that relate to voluntary work are similar to those covered in paid employment i.e. recruitment and selection, terms and conditions. The law also prohibits discrimination by organisations for voluntary workers against applicants and members and discrimination by agencies that provide guidance and services relating to voluntary work. Articles 21 to 26 set out the prohibited acts of discrimination in other areas. These are education; both the public and private sector are covered, for example, by refusing to accept an application for admission to a school; in the supply of goods, facilities and services to the public, or a section of the public, for example, in the manner in which services are provided to a person; access to and use of public premises, for example, in the terms and conditions on which a person is allowed to use the premises; in the sale or letting of premises, including residential and commercial premises, for example, in the terms on which premises are offered to a person. Certain exclusions apply to this clause which I will come to in Schedule 2. Clubs with 25 members or more, for example, by denying a member access to any benefit provided by the club, again, certain exceptions apply which I will come to in Schedule 2, and by requiring or requesting information in connection with or for the purpose of performing an act of discrimination. I propose Articles 13 to 26.

**The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on any of Articles 13 to 26?  
Deputy Young.

**8.5.2 Deputy J.H. Young:**

Just a question. Article 14 - professional bodies: obviously the Article includes bodies that maintain registers for practising a profession, carrying on a trade and so on and we know there are many cases where people have to be registered nationally and then also in some cases even I think that people have to be registered under local laws. What is the situation if a registration is denied because they are not resident in the Island; have a residential address outside the Island, does that cause any problems here?

**8.5.3 Deputy M. Tadier:**

With Article 26 it seems that one of the unintended consequences, although it may not be that common, about not being able to ask an applicant for information in connection with the ethnicity or other origin, the reason that question may be being asked is because the club in question wishes to ascertain that it is not being racist. So if it is a very large club they may, in the same way that an employer may have, specifically have put that in so they can verify that they are getting a good cross-section and that the amount of memberships that are received from any one ethnicity are being put through *pro rata* or proportionally. It may well be that the club who operates that kind of

system can no longer verify whether they are maintaining the best practice. That is my first point. I would ask whether or not that tallies with just work in general when employers are perhaps at the moment for internal purposes, and they may be offices which have got their headquarters or the parent companies in the U.K., their best practice is to operate a similar system of questioning for purely benign and in fact for positive reasons, would they no longer be able to do that?

**The Bailiff:**

Does any other Member wish to speak? Then I invite the Minister to reply.

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

Deputy Young raises a query regarding professional organisations which are national which a person may wish to apply for membership. I have to say that this law only deals with Jersey and therefore it would only apply to professional organisations which operate in Jersey.

**Deputy J.H. Young:**

Can I ask for clarification?

**The Bailiff:**

You have not spoken before, Deputy.

**Deputy J.H. Young:**

My question was about local registration. Some bodies require national and local registration and the local registration at the moment requires local addresses and local residents.

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

I have to profess I am not an expert in this question. I do not know if I can ask the Solicitor General perhaps to clarify if he is aware of the difference between local and national organisations.

**The Solicitor General:**

If one looks at Article 2 it states that this law applies to acts of discrimination committed in Jersey, so in my view it seems to me insofar as there is an act taking place in Jersey such as a professional body registering a professional in Jersey then the law abides. If the professional body is located in Australia, clearly it does not abide.

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

I thank the Solicitor General for that. I think in his answer he also really answered Deputy Tadier's question which is related to clubs which have perhaps a head office or headquarters outside Jersey but a Jersey branch. Again, the same interpretation would be as that described by the Solicitor General, so with that, I maintain Articles 13 to 26.

**Deputy M. Tadier:**

With respect, that did not answer my question at all. The question is: clubs may want to use this mechanism of asking people of their ethnicity so that they can ensure as a club they do not discriminate against applicants whether or not they are part of a wider club or it could be an entirely local club. It seems to me as if this could be an inadvertent way of putting unneeded red tape on a club when they will be asking for this information for positive reasons and they have been told that they cannot ask for it. That is the reason I am asking for this and I would ask for that Article also to be taken separately.

**The Bailiff:**

Which Article do you want separately, Deputy?

**Deputy M. Tadier:**

It is Article 26.

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

Sir, can I again refer to the Solicitor General?

**The Solicitor General:**

One needs to look closely at the wording of Article 26. It is not creating a blanket ban on the requesting of information. What it is stopping is the requesting of information for a particular purpose and that particular purpose will be an act which is prohibited by this law. So if one is asking for information that is not connected with or not for the purpose of performing an act which is prohibited by this law, then there is no difficulty.

**The Bailiff:**

Very well, do you still wish a separate vote on Article 26?

[16:45]

**Deputy M. Tadier:**

Could I ask the Solicitor General, it says in the explanation for Article 26: "It prohibits a person discriminating by requesting or requiring information." It does not say that if the purpose of requesting the information is for discrimination. So it seems to me that the mere act of asking for information under Article 26 would contravene that particular Article and that the intent of asking for the information would not even be brought into question, it would simply be not permitted. Is that not the case?

**The Solicitor General:**

For the reasons I have just given, as I invited the Deputy and all States Members, if one looks closely at the wording of Article 26 itself at page 50: "A person shall not discriminate against another person by requesting or requiring information in connection with, or for the purpose of performing, an act which is or would be prohibited by this law." So it is not just the request of information. It must be connected with or for the purpose of performing some act which this law prohibits.

**The Bailiff:**

Do you still wish Article 26, Deputy?

**Deputy M. Tadier:**

No, I am satisfied with that thanks.

**The Bailiff:**

Very well, then all those in favour of adopting Articles 13 to 26 kindly show. Those against. Those Articles are adopted. Which Articles do you wish to take next, Minister?

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

I would like to take Part 6 which is Articles 27 to 33. Articles 27 to 33 make detailed provisions relating to harassment, victimisation and other acts that are treated as unlawful acts of discrimination. Victimisation is a form of discrimination. A person is victimised where they are treated less favourably because for example they have made or supported in good faith a complaint in relation to an act of discrimination. For example, a person acts as a witness for a colleague in a genuine race discrimination complaint and is later overlooked for promotion. Harassment is also a



form of discrimination. It involves unwanted conduct which is related to a protected characteristic which creates or is intended to create a hostile, intimidating or offensive environment or for the purpose of violating the person's dignity. In this case the tribunal is specifically directed to consider whether a reasonable person could regard the conduct as harassment. The law also protects a person who has suffered discrimination after a relevant relationship has ended, such as the refusal to give a reference to a former employee because of their race. It is unlawful for a person to instruct, cause or induce someone to discriminate against another or attempt to do so. The law protects both the recipient of the instruction and the intended victim. The law ensures that a complaint can be made about a person carrying out a prohibited act as well as any person on whose behalf or with whose help that person was acting. A person who knowingly assists another person to do a prohibited act is treated as having done an act personally unless the person has been told that the act is not prohibited and they reasonably believe that to be true. For example, both employees and employers are liable for acts done in the course of employment. However, the employer will not be liable if they can show that they took all reasonable steps to prevent employees from discriminating, such as providing training. Conversely, an employee will not be liable if the employer advised that the act was not prohibited and it was reasonable for the employee to believe that to be true. This applies similarly in the case of agents under the control of another person, for example, an estate agent and a landlord. I propose Articles 27 to 33.

#### **The Bailiff:**

Is that seconded? [**Seconded**] Does any Member wish to speak on any of those Articles? Deputy Martin.

#### **8.6.1 Deputy J.A. Martin:**

It is just really a question, and probably I am totally misreading it or not understanding, Article 29(3) where it states: "It does not matter whether the relationship ends before or after the commencement of this law." Could the Minister just expand on that? I am totally confused about that line. Thank you.

#### **8.6.2 Senator L.J. Farnham:**

A quick question: harassment and victimisation are rightly acts of discrimination described in these Articles but they can also be argued to contravene the Employment Law as, for example, a part of a constructive dismissal claim. Which offence, I suppose, for want of a better word, would take precedence in such a situation?

#### **8.6.3 Senator P.M. Bailhache:**

I just wanted to be clear about the extent of the provision in relation to harassment in particular. My question really, which may be for the Solicitor General rather than for the Minister, arises out of the speech that Deputy Tadier made this morning on the principles of the Bill where he was recounting an event which took place at a concert or public house in relation to some musical event where comment was being made by some of the members of the audience upon the colour of the skin of the performers. It occurred to me in passing that that was dealt with entirely appropriately by the members of the audience expressing their disapproval of what was clearly very coarse and inappropriate behaviour and by those who were guilty of that conduct either being bundled out or being told to desist. But it is in that context that I wanted to be clear whether it amounted to unlawful discrimination under the law. Looking at Article 6: "A person discriminates against another person if, because of a protected characteristic, the person treats the subject less favourably than the person treats or would treat others" so, on the face of it, this would seem to have been direct discrimination. If one looks at Article 28(1): "Harassment is an act of discrimination prohibited by this law [on the face of it, that might be covered] where it occurs in any circumstances where an act is prohibited under Parts 3 to 5." If one looks at Parts 3 to 5 one sees

prohibited acts of discrimination in relation to paid work, in relation to voluntary work and in relation to other areas and clubs and so forth. It seems to me - and I would just like to be clear that my assumption is correct - that the circumstances described by Deputy Tadier, very undesirable as they may be and perhaps constituting other offences under the customary law maybe, do not in fact constitute unlawful discrimination under the draft Discrimination (Jersey) Law 201- because it is important, it seems to me, to be clear of how far these provisions in relation to discrimination go. They are at the moment, as I understand it, constrained by Parts 3, 4, 5 and 6 and would not cover the circumstances described by Deputy Tadier.

**The Bailiff:**

Does any other Member wish to speak upon Articles 27 to 33? Then I invite the Minister to reply.

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

In relation to Article 29(3) which was a question Deputy Martin raised, and she was concerned that (3) does say: “It does not matter whether the relationship ends before or after the commencement of this law.” The best that I can do to assist the Deputy is to read the following: “Article 29 makes it unlawful to discriminate against someone after a relationship in which a prohibited act of discrimination could occur, has ended. It covers any former relationship such as in employment, or in the provision of goods, facilities and services. It is designed to ensure that treatment of the kind made unlawful by the law which results from, and is closely linked to, the existence of a relationship is still unlawful even though the relationship no longer exists. An example might be where a school or employer refuses to give a reference to an ex-pupil or ex-employee because of his or her protected characteristic. This would be direct discrimination.” I hope that is of some assistance. She is not smiling at me so I am not absolutely sure. I hope that has covered her question. Senator Farnham wanted to clarify whether harassment and victimisation, which are both acts of discrimination under the law, can be coupled with a constructive dismissal claim and the answer is that, in most likelihood, the new Employment and Discrimination Tribunal would hear both those cases at the same time because there would be 2 pieces of legislation to consider: the Employment Law and the new Discrimination Law. With regard to Senator Bailhache’s inquiry about harassment, I will again defer to the Solicitor General, if I may.

**The Solicitor General:**

In summary, I agree with Senator Bailhache’s assessment of the law. Harassment is limited to the circumstances that pertain to Parts 3 to 5 of the law.

**The Bailiff:**

Very well, the appel is called for then in relation to Articles 27 to 33. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 38</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Connétable of St. John		Deputy of St. Ouen
Senator P.F.C. Ozouf		Deputy G.C.L. Baudains (C)		
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Lawrence				

Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
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 of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

**he Bailiff:**

Very well, Minister, how do you wish to proceed next?

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

Sir, I would like to do Articles 34 to 49 which are Parts 7 and 8 of the law.

**The Bailiff:**

Very well, Articles 34 to 39.

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

Parts 7 and 8 set out the enforcement and miscellaneous provisions. Articles 34 to 43 provide the details relating to conciliation, the tribunal and the remedies where an act of discrimination occurs. Where discrimination occurs in the field of employment, a complaint will be referred to J.A.C.S. for conciliation. Where discrimination occurs in other areas that are not employment related, for example, supply of goods and services, the complaint will be referred to the Community Mediation Service which is a service arranged by the Jersey Legal Information Board and administered by the Citizens Advice Bureau. Complainants cannot be forced to conciliate or mediate if they do not agree, or if attempts have been unsuccessful the complaint is referred for a tribunal hearing. In practice, the process of making a complaint to the tribunal will not change very much. Where a complaint includes both employment and discrimination issues, a tribunal will be constituted that will hear all of the complaints together. The tribunal will consist of a chairman or deputy chairman with 2 side members, one employee representative and one employer representative. Where a complaint relates solely to non-employment related discrimination, a tribunal would consist of the chairman or deputy chairman with 2 discrimination side members. Later this year, I will propose to

replace the current Employment Tribunal Regulations in order to establish the Employment and Discrimination Tribunal. This will allow us to recruit an additional pool of up to 8 discrimination side members to hear non-employment related discrimination complaints. As I mentioned in my opening speech, the tribunal will have 3 different remedies at its disposal. First, a declaration as to whether discrimination has taken place; secondly, a recommendation to an employer or business, for example, to change a recruitment policy or make a service available on a non-discriminatory basis with an award for compensation if the respondent unreasonably fails to comply; and, thirdly, compensation where the discrimination has resulted in the claimant suffering financial loss or significant hurt or distress. Compensation is limited to £10,000 and of that no more than £5,000 can be awarded for hurt and distress. Articles 44 to 49, various miscellaneous provisions, including a police officer is treated as an employee of the Chief Officer of the Jersey Police Force so that the law applies to the Jersey Police. J.A.C.S. may not charge a fee in respect of the services that it provides as a requirement of this law. J.A.C.S. does not normally charge anyway for conciliation services under the Employment Law. Codes of practice may be approved by the Minister in the same way as codes of practice are approved under the Employment Law. I do not envisage issuing any codes of practice relating to race discrimination. However, it may be necessary to issue codes of practice as other characteristics are introduced in the future. Detailed plain English guides will be prepared to explain the requirements of the law and provide practical examples. The law will be brought into force by Appointed Day Act. The earliest would be the quarter 4 of 2014 given the likely delay for Privy Council approval.

[17:00]

There is no fixed timescale for the implementation of this law and so we will have the opportunity to make sure that everything is in place: guidelines, training, Regulations and Orders before the appointed date. I propose Articles 34 to 49.

**The Bailiff:**

As well as Schedule 3.

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

Sir, I was going to do the schedule separately.

**The Bailiff:**

It was attached to Article 48 so I think you should do the schedule at the same time.

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

Is that Schedules 1 and 2?

**The Bailiff:**

No, Schedule 3. Schedules 1 and 2 have been done already.

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

Schedule 3 amends other laws. A number of amendments will be made to other laws as set out in Schedule 3 to reflect the expanded jurisdiction of the Employment Tribunal and provide consistent procedures in relation to tribunal hearings, including an expanded list of Order-making powers for those procedures. In order to provide consistency in the terminology and the territorial application of this draft law, the Employment Law 2003, Jersey Advisory and Conciliation Law and the 2000 Employment Relations Law to clarify the procedure for the recovery of award in relation to discrimination complaint of an employment complaint. So I also propose Schedule 3.

**The Bailiff:**

Is that seconded? **[Seconded]** Deputy Young?

**8.7.1 Deputy J.H. Young:**

I would like to, under Article 48, Schedule 3, Article 1 of that Schedule, the new clause 70A, which goes in under the Employment Law... First of all, the Minister may need the Solicitor General's views to confirm my understanding of this and if so, I have concerns over its effect if I am right. It says that an employee dismissed will be unfairly dismissed if the principal reason was discrimination. The following part then has the effect, I think, of removing the 26 weeks requirement for an unfair dismissal, which seems to me to create a kind of 2-tier situation where an unfair dismissal - which is an ordinary one - is subject to a 26 weeks qualifying period whereas an unfair dismissal - which is a discrimination one - the 26 weeks does not apply. I hope I have misunderstood it but that does not seem to be a good situation if that is right.

**8.7.2 Deputy J.A. Martin:**

Thank you for the Minister's explanation under 29(3) but that again brings me on to ... I am really not being picky, I just cannot understand. Under 37(2): "Making a complaint", which is the enforcement part: "The Tribunal shall not consider a complaint - (a) where the act complained of occurred entirely before the coming into force either of this Law, or of Regulations made under Article 5, amending this Law." Then 37(b) says before 8 weeks or a period that may be extended but does not end before 8 weeks. Again this mentions ... will not be enforced or will not consider a complaint that is brought in before this law and I cannot understand how that ties-up with 29(3). I am sorry to be picky but I really would like to understand that because if it cannot be enforced, why is it in 29(3)?

**8.7.3 Senator L.J. Farnham:**

I have a brief question but can I just ask a point of clarification of the Chair, Sir? I thought I heard you say that Schedules 1 and 2 had gone. I had a particular question on Part 2 of Schedule 2 so I did not hear the Minister propose either of the Schedules with any of the ...

**The Bailiff:**

Well, I was not in the Chair at the time but they were attached to earlier Articles which have been adopted and therefore if you adopt the Article which says Schedule 1 shall have effect, you are in fact adopting Schedule 1.

**Senator L.J. Farnham:**

I am not sure that the Minister was even aware that those Schedules had been adopted. Is it too late to speak? **[Laughter]**

**The Bailiff:**

Why do you not ask him a question on Schedule 1?

**Senator L.J. Farnham:**

Well, it is Schedule 2, Part 2, Sir and I just wondered if he could elucidate on the exceptions to the prohibited acts on grounds of race. I am interested to hear a bit more of what could be an exception. Also, Articles 34 to 49 just talk about compensation. Under the 3 options open to the tribunal - declaration, recommendation, compensation - am I right in assuming that a recommendation or compensation are both capped at £10,000 or the compensation under a recommendation from the tribunal is slightly less. I might have misinterpreted it. I just wondered if you could clarify that, please.

**The Bailiff:**

Does any other Member wish to speak? Solicitor General, do you wish to answer the questions which have been posed to you?

**The Solicitor General:**

Yes, can I start with the amendment in Schedule 3 to the Employment Law, which I think was asked by Deputy Young. It is right to say that the Schedule 3, if adopted, will amend the Employment Law so that there would be no requirement for there to be a minimum 26-week period before someone can bring in an unfair dismissal claim based on discrimination. The second question, I think, was from Deputy Martin and forgive me, I only heard half the question but I think I know what the question was. It related, presumably, between the interaction between 29(3) and the ability of the tribunal to only hear complaints that relate to a period of time some 8 weeks before the commencement of the law. I think the position is this, is that Article 29 is really dealing with the background to the discrimination. So all it is saying is that in some point in the past, there has been some sort of relationship established between, let us say, 2 people, for example. So that is the background and that can happen at any point in time but then the actual harassment is the key to generating a complaint and therefore that has to fall within the requirements of Article 37. That is to say, if you look at it, it has to either be after the law comes into force or 8 weeks beforehand. So the relationship could have existed many years ago but the harassment itself has to be much more recent and in accordance with Article 37. I am sorry, Sir, I believe there was a third question but I simply cannot remember what it was.

**The Bailiff:**

I think Senator Farnham asked a question of the Minister. I am not sure whether the Minister was going to deal with it.

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

I am going to attempt to deal with it. The Senator asked the question relating to Schedule 2 to do with a recommendation of the tribunal. When the tribunal makes a recommendation, it is incumbent on the respondent to carry out certain acts that are recommended by the tribunal. If those acts are not carried out the tribunal could then move to order compensation, which would also be capped at £10,000. So the fact is that a recommendation does not incur compensation unless the respondent fails to carry out the appropriate recommendation. I thank again the Solicitor General for his assistance with the other questions. I would just add for Deputy Martin's benefit, with regard to Article 37, there are occasions where any act of discrimination that occurred before the coming into force of the Law or the coming into force of Regulations made under Regulation 5, where the act continues to occur on the date of the Law or when Regulations come into force, is treated as having been on the due date of the Law. However, it is not proposed the Law should be retrospective. Accordingly, a prohibited act of discrimination which, for example, occurs the day before the Law or Regulations come into force and does not reoccur on the coming into force date, cannot be entertained as a complaint under the Law. So I hope with that further clarification I may now maintain Articles 34 to 49 and Schedule 3.

**Deputy J.H. Young:**

Could I ask for clarification of my questions? The Solicitor General did tell us that 26 weeks does not apply for unfair dismissal because of discrimination. Could the Minister just tell me, does this mean that the full compensation awardable in that case would be £30,000 for unfair dismissal plus £10,000 for discrimination? Does that have the effect that a dismissal less than 26 weeks for discrimination would be liable to compensation up to £40,000?

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

Any compensation under the Employment Law relates to breaches of the Employment Law. As far as Discrimination Law, as I have said on a number of occasions, there are 2 aspects to the cap of £10,000. The cap of £10,000 can relate to financial loss but if the claimant also claims hurt and distress then the cap there is £5,000 but the overall cap for the Discrimination Law is £10,000 so the Employment Law caps remain as far as any Employment Law breach.

**The Bailiff:**

I think the question was if you are unfairly dismissed because of discrimination, is the total £40,000? Is that what you were asking, Deputy?

**Deputy J.H. Young:**

Yes. That is absolutely right, Sir, and if that is the case I would like this one taken separately.

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

I wish I was a judge because I could answer these questions.

**The Bailiff:**

One of the nice things about being a judge is you ask counsel the questions. **[Laughter]**

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

I may have to defer to the Solicitor General **[Laughter]** but it does seem to me that we have 2 pieces of legislation. If you break the Employment Law, you are entitled to the compensation that law allows at the discretion of the tribunal and similarly, if you break the new Discrimination Law, the tribunal can deal with compensation under that law. But I will defer to the Solicitor General.

**The Solicitor General:**

Clearly a person may well be entitled to compensation arising out of any unfair dismissal claim and they may well be entitled to additional compensation insofar as they have proved discrimination as well. So I suppose the short answer is, yes, very possibly.

**Senator L.J. Farnham:**

A quick piece of clarification. Just on the options open to the tribunal, the second one is a recommendation that something is carried out. The Minister said if the recommendation was not carried out, compensation could be paid or could the tribunal make a recommendation and also charge compensation. I just need him to be clear on that. I need to understand that. Thank you.

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

The Employment and Discrimination Tribunal has 3 options. It can use all 3, it can use one or it can decide that having made a recommendation, as I said before, and not awarding compensation that the failure to comply with a recommendation by the respondent could result in the case coming back to the tribunal for an award of compensation to the claimant.

**The Bailiff:**

Very well. All those in favour of adopting Articles 34 to 49 in Schedule 3, kindly show?

**Deputy J.H. Young:**

Could I ask for Article 48 to be taken separately?

**The Bailiff:**

Yes, very well. Did someone ask for the appel? First of all, Articles 34 to 47 and Schedule 3. The appel is called for, so the Greffier will now open the voting.

<b>POUR: 44</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy G.C.L. Baudains (C)		
Senator A. Breckon				
Senator S.C. Ferguson				
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. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
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 A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

### **The Bailiff:**

So what is before the Assembly now is Article 48, together with Schedule 3. That is to be taken on its own. Is the appel called for in relation to that one? Then the Greffier will now open the voting in relation to Article 48 and Schedule 3.

<b>POUR: 38</b>		<b>CONTRE: 6</b>		<b>ABSTAIN: 0</b>
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Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Connétable of St. John		
Senator A. Breckon		Deputy M. Tadier (B)		
Senator B.I. Le Marquand		Deputy T.M. Pitman (H)		
Senator F. du H. Le Gresley		Deputy G.C.L. Baudains (C)		
Senator I.J. Gorst		Deputy J.H. Young (B)		
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. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Bailiff:**

That leaves simply Article 49. All those in favour of adopting Article 49, kindly show? Those against? It is adopted. Do you propose the Bill in Third Reading, Minister?

[17:15]

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

If I may say just a few words in concluding this debate. This has been, as I said in my opening speech, a long haul for Jersey. I do believe that we have produced a law today that is fit for purpose and I am sure that those involved in applying the law, in particular the new Employment and Discrimination Tribunal, will be very mindful that this is a new piece of legislation and that particular smaller employers will need time to make sure that they are compliant. However, I merely wish to say now that I wish to name, if it is possible, thanks to a number of people who have helped the Assistant Minister and myself draft this law. In particular the policy team at Social

Security [**Approbation**] but Kate Morel, our Policy Principal, who has done a lot of the groundwork, if not most of the groundwork, ably assisted by Mr. Darren Newman, who is a U.K. employment and discrimination law expert [**Approbation**] and who met a number of States Members who came to presentations. Finally, I would like to thank the Law Officers' Department and the Law Draftsman's office and in particular, Jacquie Miller, Assistant Law Draftsman, who worked on this law over a number of years. I think today is a major day for Jersey and I would just like to conclude with the words of Senator Barack Obama and this is from his speech on race in the Presidential campaign of 2008. These were his words: "In the end, then, what is called for is nothing more, and nothing less, than what all the world's great religions demand - that we do unto others as we would have them do unto us. Let us be our brother's keeper, Scripture tells us. Let us be our sister's keeper. Let us find that common stake we all have in one another, and let our politics reflect that spirit as well." I propose the new draft law in the Third Reading and ask for the appel. [**Approbation**]

**The Bailiff:**

Is that seconded? [**Seconded**] Does any Member wish to speak in Third Reading?

**8.8.1 The Connétable of St. John:**

I am not supporting this. It is not because I am against this at all. It is because I wanted to see the whole package in one and it is unfortunate that we will only probably see it now by Order from the Minister as it comes in in a piecemeal form. That being the case, I will not be supporting it.

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

Could I just clarify that it would be Regulations that we bring in new characteristics, which will be a States decision.

**The Bailiff:**

Very well. Does any other Member wish to speak in Third Reading? No. Minister, do you wish to reply?

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

I just hope that the Constable of St. John may change his mind at the very last moment.

**The Bailiff:**

Very well, the appel is called for then in relation to Third Reading and the Greffier will open the voting.

<b>POUR: 45</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy G.C.L. Baudains (C)		
Senator A. Breckon				
Senator S.C. Ferguson				
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. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
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 A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

## **9. Draft Procureurs du Bien Public (Terms of Office) (Jersey) Law 201- (P.45/2013)**

### **The Bailiff:**

Now, given the time, would Members agree to take what appear to be 2 short matters, unless I am informed otherwise - Projet 45 and then Projet 49. Very well, if Members agree then I will ask the Greffier to read the citation in relation to Projet 45, which is the Draft Procureurs du Bien Public (Terms of Office) (Jersey) Law, lodged by the Comité des Connétables.

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

A Law to make provision as to the terms of office of Procureurs du Bien Public; and for related matters. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

#### **9.1 Connétable J.L.S. Gallichan of Trinity (Chairman, Comité des Connétables):**

This is very simple. It is just to standardise the election dates of the Procureurs du Bien Public. At present they are a random process across the Parishes and in some Parishes there are different election dates but in others, both Procureurs du Bien Public are elected on the same day. In the latter case, if neither is re-elected or both choose to retire at the same time, the Parish could be without a Procureurs du Bien Public with some experience. This is very similar to the way we

changed the Centeniers election a few years ago where we now do the elections for Centeniers every 9 months. So that is much easier for the Parish and the Connétables, maybe sometimes where there was a difficulty in finding a Centenier, it spread the load, rather than when you had to find 3 Centeniers on one night. That seems to work very well and all we are asking for with this is that we do exactly the same with the Procureurs. They will be elected at 18 months, so in other words, half of their 3-year term. The senior Procureur of the moment will be the first one to come up for re-election. It will only be a one-off because once we have the dates set, they will be automatically re-elected or elected on an 18-month date change.

**The Bailiff:**

Do you propose the principle?

**The Connétable of Trinity:**

Yes, Sir. I propose the principle.

**The Bailiff:**

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

**9.1.1 Senator L.J. Farnham:**

I am delighted the Constable is supporting rolling elections. **[Laughter]** A bit like those we are just about to get rid of in relation to the office of Senator and I hope he applies that thinking at the appropriate time when the forthcoming debate on the referendum is done. **[Laughter]**

**9.1.2 Deputy R.G. Le Hérisier:**

Does the Connétable consider that these reforms will lead to more candidates?

**9.1.3 Deputy M. Tadier:**

I am still waiting for an answer to a written question from a couple of weeks ago, which was before the referendum when everyone was busy, to ask about the turnout in elections and perhaps I will have to resubmit that question. Does the Chairman anticipate that we will see a greater turnout for contested elections when they do occur for Procureur because they will be elected all at the same time? Does he think that the Parish elections should all be coincided so that you can change your Parish administration if you want to all in one go in the same way that the greater electorate can change the Government with a general election if they want to?

**The Bailiff:**

Does any other Member wish to speak? Yes, the Connétable of St. Martin. I am so sorry.

**9.1.4 The Connétable of St. Martin:**

I did not think there was going to be much of a debate in this proposition. I think it is very important and I urge Members to support it. From my experiences at the end of 2008 and beginning of 2009 where we had 3 candidates in the Parish of St. Martin for 2 positions and 2 of those candidates were new candidates, including myself. The Parish of St. Martin was one of those Parishes that had their election for Procureur on the same day and there are several Parishes in the same position. I will thank the Comité des Connétables for bringing this forward, because after my election - and I did have the election - for Procureur, I wrote to the then Chairman, Mr. Ken Vibert, and asked him to bring this matter forward. It was quite interesting; I put 2 reasons for it. One of them, obviously there was a lot of tactical voting and that is just too bad. I mean, that is something that is going to happen in elections. The second part was the experience of the Procureurs, of having experience to take things forward rather than having 2 brand new members, which could have happened in St. Martin where we had 3 good candidates, I would like to say being one of

them. Of the 3, we could have had the 2 with no experience whatsoever in the Parish and we have seen in the last 2 or 3 years the importance of the Procureurs and the role that they play. The States have controls on their finances and everything else and the Auditor General and issues like that. The Procureurs are our Auditor Generals. They are not paid, they are a voluntary function and they give a lot of time. I understand that in a similar role in France, you get paid. They do not get paid and I have full trust in the 2 Procureurs who advise me and support me right the way through. They do not just oversee the rates, the Procureurs in the Parishes look after the charity trusts that we have got, the accounts, they can get free advice from the Royal Court and there are stated cases to support that. They support, they advise, they are a scrutiny to the Parish and they provide stability. Now we have the important role coming up because of the miscellaneous provisions where we are splitting up the honorary roles where the Chef de Police will take over the responsibility for the policing and the Senior Procureur, in particular, will take on the role of the parochial part in the event of the Connétable being absent. I would just ask Members to support this and I thank at the same time, and I think the Chairman might say that, but for the Secretary to the committee who did so much work towards this.

**The Bailiff:**

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

**9.1.5 The Connétable of Trinity:**

To Deputy Tadier, obviously this is a public election law, it is not just done at the Parish Hall. This is under the Election Law so we had to have the same nomination paper for a Procureur du Bien Public as a Centenier, so this will be done in that way. As for Deputy Le Hérissier, I think it is fair to say, as the Connétable of St. Martin has said, there was certainly a better turnout in St. Martin for Procureur du Bien Public than there would be for any election in St. Helier. Can I just say that a good parochial election is still by far the best that generates interest in the Parish and I think it has stood up for a number of years if you get 2 or 3 candidates where they knock on the doors regularly, you will get a turn out, and that is a parochial election at its best. I do not think there is anything else to say; this is common sense and I move the Article and I ask for the appel.

**The Bailiff:**

Very well, the appel is called for then in relation to the principles. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 47</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 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. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (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 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. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Bailiff:**

This matter falls within the remit of the Corporate Services Scrutiny Panel. Senator Ferguson, the Chairman, do you wish this matter referred to your panel?

**Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel):**

No, thank you, Sir.

**The Bailiff:**

Do you wish to propose the articles *en bloc*?

**9.2 The Connétable of Trinity:**

*En bloc*, Sir.

**The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles or the Schedule?

**9.2.1 Senator L.J. Farnham:**

I just wanted the Constable to remind us when they last did have an election in Trinity?  
**[Laughter] [Approbation]**

**The Bailiff:**

No, no. You will get your turn. [Laughter]

**9.2.2 Deputy M. Tadier:**

I will be asking for Article 2 to be taken separately because I think there is obviously a tension here between the benefits of having a rolling election, which we have understood as a States Assembly the ability to change one's government has to take precedence over whatever stability one might argue for... There is a question to be asked, I guess, at the Parish level and I ask it humbly but certainly not whimsically, about the fact whether the Procureurs are political by nature or whether merely accountants of the Parish. Because I think, if we are to develop stronger Parish communities, which have some political import, then I certainly would favour elections for all Parish officials on the same day so that we can change our Parish representatives if we need to. I completely accept that comes at a certain cost for stability. We heard from the Constable of St. Martin talking about the fact that if there had been a wholesale change, there would have been no one to run the ship. I am sure there can be mechanisms in place for the continuation of that to happen from the paid members of the staff from the Parish who would not be elected. But if we are to have elected representatives at Parish, it seems to be that the same basic principles of democracy should apply, so I will not be supporting this particular aspect of the law, although I support it in principle.

**9.2.3 Senator S.C. Ferguson:**

Just a quick one. A comment on Deputy Tadier who seems to think that keeping the corporate memory alive in an organisation detracts from democracy. It does not do in the United States so why should it do in the Parish? [Approbation]

**9.2.4 The Connétable of St. John:**

It is obvious that Deputy Tadier does not understand how the parochial system works and I would dread the idea of losing all my Honorary Police, my roads inspectors, rates committee, rates assessors, *et cetera*, all in one day and have an election for some 40-odd people. It would be, I would say, a nightmare for the Parish if they all decided to leave at the same time, just to try and get these people to give the honorary service that all of these people within the parochial system give. I sincerely hope that that never ever happens, that we have to have a whole election in one day as is being recommended by the Deputy.

[17:30]

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

Just very briefly, again, what Deputy Tadier was saying ... in fact, the Procureurs, I do not consider, are part of the government of the Parish at all. The government of the Parish is vested in the Connétable. What the procureurs are there to do is to hold the Connétable to account and report to parishioners on anything that they feel is needed to be brought to their attention on the financial administration of the Parish. I think if all 3 were removed at the same time or changed at the same time, it would not be in the best interests of parishioners.

**The Bailiff:**

Does any other Member wish to speak? Very well, I invite the ... oh, I am so sorry. Deputy Baudains, you put your light on.

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

I am sorry, Sir, my light is invisible to you. Just a note, something I have raised in the past, which I think would be helpful for other people bringing propositions in the future. Article 6, *Loi au sujet*

*des assemblées paroissiales*; Article 6 of that is repealed but we do not know without looking that up exactly what has been repealed. I think in future it might be helpful if the actual article was laid out in the proposition.

**The Bailiff:**

Very well, I invite the Chairman to reply.

**9.2.7 The Connétable of Trinity:**

Interesting. I can tell you the last time we had an election for Procureurs du Bien Public in the Parish of Trinity was between Richard Le Sueur and Deputy Anne Pryke, and Deputy Anne Pryke lost. **[Members: Oh!]**

**The Deputy of Trinity:**

Not by many votes. **[Laughter]**

**The Connétable of Trinity:**

No, and to give you some idea how, when I stood for Procureur du Bien Public, it was at the Parish Hall, there was no public election and I polled 224 votes and the opposition polled 222. **[Approbation]** So if you want to work that out, if there is still interest in parochial elections, 446 turned up at a Parish Hall in that evening, which is quite something. I think we have gone on for far too long. This is quite simple. I think my other Connétable has explained to Deputy Tadier what is Parish administration and I will go no further. I ask that we have the appel.

**The Bailiff:**

The appel is called for then in relation to Articles 1 to 8 and the Schedule. The Greffier will now open the voting.

<b>POUR: 46</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy M. Tadier (B)		
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator S.C. Ferguson				
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. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
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 T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
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. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Bailiff:**

Do you propose the Bill in Third Reading?

**9.3 The Connétable of Trinity:**

Yes, Sir.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak on Third Reading?

**9.3.1 Senator L.J. Farnham:**

I just wanted to say when they do have an election in Trinity, it is a good one. **[Laughter]**

**9.3.2 The Connétable of St. John:**

On behalf of the Constables, can I thank all the Island Procureurs and all the members of the honorary system throughout who all give their time for nothing and it is a pleasure when I go to court and you are in the Chair, Sir, or the Deputy Bailiff, when they take the time to thank the officers for the time and the work they do because it is all done on a voluntary basis. **[Approbation]**

**The Bailiff:**

Does any Member wish to speak on Third Reading? Then I invite the Chairman to reply.

**9.3.3 The Connétable of Trinity:**

I would like to reiterate all those things that the Connétable of St. John has just said but also could I add my thanks to our secretaries, Sue De Gruchy, as you know, is a meticulous ... I am disappointed that Deputy Higgins is not here because we changed: *“La charge de Procureur du Bien Public, en chaque paroisse, est limitée à 3 ans; après lequel temps il sera procédé à un nouveau choix.”* We translated it for him and he is not here. **[Laughter]** **[Approbation]**

**The Bailiff:**

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

**10. Manual Workers' Joint Council: Employers' Side membership (P.49/2013)**

**The Bailiff:**

Perhaps that was not quite as short as the Chair imagined, but do Members wish to take one more matter? Yes? Very well, then we will take Projet 49, Manual Workers' Joint Council: Employers' Side membership, lodged by the States Employment Board. I ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion - in accordance with their Act dated 9th November 1961, as amended, concerning the membership of the Manual Workers' Joint Council, to approve the nomination of the 5 representatives of the States to serve as members of the Employers' Side of the Council for 2013, as follows, Senator Paul Francis Routier, Deputy Judith Ann Martin of St. Helier, Mr. John Rogers, Chief Officer, Transport and Technical Services Department, Mrs. Julie Garbutt, Chief Officer, Health and Social Services Department, Mr. Mario Lundy, Chief Officer, Education, Sport and Culture Department."

**10.1 Senator I.J. Gorst (Chairman, States Employment Board)**

It gives me pleasure to propose the membership as just read out by the Deputy Greffier for the Manual Workers' Joint Council. It is the same membership and I thank them for their service throughout 2012. They are of course joined by the Connétable of St. Helier as an employer representative and I maintain the proposition.

**The Bailiff:**

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

**10.1.1 The Connétable of St. Martin:**

Can I ask the Chief Minister why it is in May 2013 for the year 2013, please?

**The Bailiff:**

Does any other Member wish to speak? Then I invite the Chief Minister to reply.

**10.1.2 Senator I.J. Gorst**

That is a very good question. I do not know the answer to it but it is for the full year. I think it is one of those administrative issues that needs to come to the Assembly every year. It does not seem to be efficient to me and therefore we need to, I think, bring amendments to the law so that we do not find ourselves in this position again.

**The Bailiff:**

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

**Senator P.F. Routier:**

I propose the adjournment, Sir.

**The Bailiff:**

The adjournment is proposed. Would it be helpful just to clarify which matter we are going to take first tomorrow morning? **[Laughter]** The Connétable agreed to take his first but that was at a time when Deputy Southern was not sure that we would ...

**The Connétable of St. Helier:**

Now that Deputy Southern does have time to read the paperwork, I am quite happy to go back to the original order.

**The Bailiff:**

Very well. The Assembly will start with the Housing Transformation Project tomorrow. That concludes the Assembly's business. We will reconvene at 9.30 a.m. tomorrow morning.

**ADJOURNMENT**

[17:37]