

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 30th APRIL 2014

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[9:30]

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

PUBLIC BUSINESS

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

Could I ask for the défaut to be lifted on Deputy Southern, please?

The Greffier of the States (in the Chair):

Yes.

Deputy A.K.F. Green:

I was going to do that. Also, Sir, can I just apologise to Members that I will be absent for a short while this morning attending a friend's funeral?

The Greffier of the States (in the Chair):

Very well. Members agree to lift the défaut on Deputy Southern? The défaut is raised.

Senator S.C. Ferguson:

Would Members please raise the défaut on Senator Maclean?

The Greffier of the States (in the Chair):

Are Members content to raise the défaut on Senator Maclean? Very well, the défaut is raised. I was just about to say: "The debate continues" Constable. Do you wish it to be?

1. Elected Speaker of the States (P.160/2013) as amended - request of the Connétable of St. Helier to withdraw the proposition

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

Yes, if I could. I will just say the following, Sir. The States has indicated its wish that the question of whether to replace the Bailiff with an elected Speaker should be put to the public in a binding referendum. I suggest the Privileges and Procedures Committee now has a clear steer to bring this forward in due course. However, P.160 as amended, if adopted, risks complicating an already difficult general election with a second referendum on 15th October, therefore I would like to seek leave of the States to withdraw P.160.

The Greffier of the States (in the Chair):

Very well. It is a matter for the Assembly. Those in favour of granting leave for the Constable to withdraw, kindly ...

Senator P.M. Bailhache:

May I speak?

The Greffier of the States (in the Chair):

Yes, you can speak.

1.1.1 Senator P.M. Bailhache:

I would like to speak, because I think it would be entirely wrong for the Constable to withdraw the proposition at this stage. It would be extremely unfair to the Crown Officers and leave them hanging in limbo, not knowing whether the Assembly wishes them to preside over the Assembly or not. If the debate takes another hour, so be it, but the Assembly, in my view, must make a decision.

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

I think Senator Bailhache is slightly wrong there. If I remember correctly, the referendum that is going to the public is on Clothier, and Clothier includes provisions about the Bailiff and therefore they would not be left in limbo.

The Greffier of the States (in the Chair):

I think at the risk of Members being confused, there was some discussion yesterday on this topic. The States decision, although it referred to propositions contained in Clothier, it was clearly on the issue of a single category of Member. There was no suggestion the whole of Clothier was going for referendum.

1.1.3 Deputy M. Tadier of St. Brelade:

Sorry, Sir, I was listening to you, but I did want to speak at some point.

The Greffier of the States (in the Chair):

Yes, go ahead.

Deputy M. Tadier:

I do not think it follows that the Crown Officers will be left in limbo if the debate does not proceed, because the status quo would obviously remain and it just means that the question will not have been raised, it will be deemed procedurally to not have been raised and therefore things carry on as they were until a future point, at which the role of the Bailiff in this Assembly will be raised again. So I do not accept that argument. Of course there is an argument to say that we should deal with it here and now and of course that is the argument which should have been pressed yesterday, rather than seeking - for some of us perhaps - spurious reasons to try and bring amendments to what was ultimately a simple question to say: "This needs to be put to the public", et cetera. We should have really grasped the nettle and decided one way or the other. We should have had the courage of our convictions to say: "We do not want the separation of powers. We are quite happy as we are, thank you very much. We do not accept the various reviews that have taken place." That did not happen and we are now left in a position where we have a choice of rejecting this altogether today by not debating it or by debating it and rejecting it, or by passing this and putting to the public a spurious - if that is the word - or a slightly unsatisfactory, very unsatisfactory, question, although it does not necessarily need to be unsatisfactory, because it is ultimately a straightforward message. So for my part, I would be quite happy for this to be debated today. The Assembly should not be seeking to abdicate its responsibility for what is a very simple decision, when it comes down to it. It may be profound, but it is a simple decision as to who is able to chair the meetings of our Assembly and who we, as a parliamentary body, wish to chair our Assembly. For my part, I would encourage the Constable of St. Helier - although I fully appreciate the difficult predicament that he is in - to consider maintaining the proposition as amended and letting this debate take place today.

Senator L.J. Farnham:

I presume, Sir, the issue, if the Assembly agreed to allow the Constable to withdraw this, would just fall away and rely on the P.P.C. (Privileges and Procedures Committee) bringing back the question as a referendum proposal. Can I just be clear ...

The Greffier of the States (in the Chair):

The entire matter falls away if it is withdrawn, including the amendments. Deputy Southern.

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

An unusual precedent if we were to say that the tenor or the tone or the feeling expressed in a debate expressed the will of this Assembly. This Assembly expresses its will by voting. That is what we do, that is what we owe our electors.

The Greffier of the States (in the Chair):

Hopefully we will not spend too much time debating whether to debate it, but one or 2 more Members.

1.1.5 Deputy J.A.N. Le Fondré of St. Lawrence:

The only other additional comment I would make to both Deputy Southern and Senator Bailhache and Deputy Tadier, is the media reporting at the moment is that the States will hold a referendum where the public will decide if we agree to remove the Bailiff. That is kind of how it was being reported this morning, so in other words, we do need to vote one way or another, because otherwise if the P.P.C. followed the Connétable of St. Helier's comment that there is this clear steer for a referendum, it would also be interpreted that the States had given a direction that they support the removal of the Bailiff. I think one needs clarity on that and therefore to seek closure on this debate and vote on it.

1.1.6 Senator P.F.C. Ozouf:

I think the Constable is doing the right thing. We have arrived at a situation where, because of the way that this debate has happened, we have an unsatisfactory situation where we have effectively mixed the issue of civic head and elected Speaker. Senator Bailhache cannot, I am afraid, have it both ways. He brought the proposition and then he said he was going to reject it and then he was going to argue against it. The proposition I do not think is going to be accepted. I think presumably that is why the Connétable of St. Helier is not wanting to waste the Assembly's time. I am afraid on the question of whether or not the Crown Officer has certainty, if this Assembly does vote in favour of a referendum there is no certainty. Then, in any event, I am afraid there is the ongoing issue of the separation of the issue of the civic head and elected Speaker, of which there is a serious issue. There are serious issues to be debated, which I am afraid is not going to be dealt with by a simple referendum, which is not capable of happening in October. I am afraid I absolutely support Senator Bailhache cannot have it both ways. He brought this amendment, he has amended it, he has made it more difficult because of the representations he has made and we now must abandon this and come back to it. There is no certainty in life. That is democracy.

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

Just very briefly, I would seriously ask Members to consider that if we support the withdrawal of this particular proposition, what message will we send to the public? I will leave it at that.

1.1.8 Senator F. du H. Le Gresley:

I did warn you this would happen yesterday, but here we are again, but what we must do is allow the Constable to withdraw this proposition, absolutely, because the proposition has been changed so substantially by the amendments that he cannot support it. How can you ask the Constable to proceed with a debate where he has no longer the wish to be the proposer or even sum up? It is ridiculous. We have to go with the Constable's request. We have to stop this debate here and now.

1.1.9 Deputy J.H. Young of St. Brelade:

I agree with the last 2 speakers. I completely agree with every word that Senator Ozouf said. I think we have got ourselves in an absolute mess and I think to carry on with the debate will further compound the mess. I think the only thing to do is to stop it and let us get on with other business.

1.1.10 Connétable J. Gallichan of St. Mary:

Somebody said earlier in this debate, probably for the wrong reasons, that P.P.C. had now been told what the Assembly wanted to do. I think that is completely incorrect. Things have changed

beyond all recognisable thought, but the fact is that this Assembly, of its own volition, made those changes.

[9:45]

We need to see this through, because there are things that now need to be said, and if they are not said now, then they will be said the next time this is brought. Sooner or later we have got to grasp the nettle of how we deal with this. The issues need to be aired now so that even if this is not taken right the way through, if the substantive proposition is not accepted, that we know what the views are that people need to express, because there are things that my constituency have said to me that have given me some cause for concern that have not even been raised yet. I would like to raise them so that people can air them and we can decide if that is the sort of question that we should be asking the public between now and the next time that this is debated, so we do not end up in this ridiculous mess next time.

The Greffier of the States (in the Chair):

Something new to add, Deputy Le Hérissier?

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

I am not sure of that. As somebody who muddied the waters, I totally agree with the Constable of St. Mary, I think we must go ahead. I do not want this debate, in the sense that the public are absolutely fed up with our obsession with Government reform, so-called reform, fed up, and I would much prefer ... well, I am not sure I would much prefer to be discussing population, but I think that I would like to hear Members' views on population; we have not aired that properly at all for the last several years. But we have started this, we have set up public expectations, I am afraid, and I think we have to see it through. As the Constable said, we have to see it through.

The Greffier of the States (in the Chair):

I call on the Constable to reply.

1.1.12 The Connétable of St. Helier:

Senator Le Gresley said, perhaps far better than I can, the invidious position a Back-Bencher is in when they bring a proposition, which in this case was a simple question about whether to have an elected Speaker or not, which was subsequently amended to produce something which is very difficult for me to support. I have done it once before, I brought a proposition which I ended up voting against, so it will not be that difficult to do, but I suggest that the Assembly has got far more important things to do this week than to spend half a day, if not longer, as Members bring out the speeches that I know some of them have been up since 5.00 a.m. this morning writing. I must say there are things I would like ...

The Greffier of the States (in the Chair):

I thought we heard them yesterday, Constable.

The Connétable of St. Helier:

There are things I would like to say particularly in reply to some of the comments made yesterday, but I am quite prepared really to sit on my hands and not to say those things in the interests of getting on with the other business, but I am in Members' hands. If Members wish to have the debate, so be it.

Deputy E.J. Noel of St. Lawrence:

May I raise the défaut on the Deputy of St. John?

The Greffier of the States (in the Chair):

Yes, propose the défaut on the Deputy of St. John be raised. Those in favour; those against. The défaut is raised.

Deputy E.J. Noel:

Can I ask for the appel, please, Sir?

The Greffier of the States (in the Chair):

Very well, the appel is called for on the proposition of the Constable of St. Helier, so if you wish to allow the proposition to be withdrawn, you vote pour, if you wish to carry on, you vote contre. The Greffier will open the voting.

POUR: 23	CONTRE: 27	ABSTAIN: 0
Senator P.F. Routier	Senator A. Breckon	
Senator P.F.C. Ozouf	Senator S.C. Ferguson	
Senator B.I. Le Marquand	Senator A.J.H. Maclean	
Senator F.du H. Le Gresley	Senator P.M. Bailhache	
Senator I.J. Gorst	Connétable of Trinity	
Senator L.J. Farnham	Connétable of St. Clement	
Connétable of St. Helier	Connétable of St. Peter	
Connétable of St. Lawrence	Connétable of St. Mary	
Connétable of St. Brelade	Connétable of St. John	
Connétable of St. Saviour	Connétable of St. Ouen	
Connétable of Grouville	Connétable of St. Martin	
Deputy J.A. Martin (H)	Deputy R.C. Duhamel (S)	
Deputy of Grouville	Deputy R.G. Le Hérisssier (S)	
Deputy M. Tadier (B)	Deputy G.P. Southern (H)	
Deputy T.A. Vallois (S)	Deputy of St. Ouen	
Deputy M.R. Higgins (H)	Deputy J.A. Hilton (H)	
Deputy A.K.F. Green (H)	Deputy J.A.N. Le Fondré (L)	
Deputy J.M. Maçon (S)	Deputy of Trinity	
Deputy of St. John	Deputy S.S.P.A. Power (B)	
Deputy J.P.G. Baker (H)	Deputy K.C. Lewis (S)	
Deputy J.H. Young (B)	Deputy E.J. Noel (L)	
Deputy R.G. Bryans (H)	Deputy G.C.L. Baudains (C)	
Deputy N.B. Le Cornu (H)	Deputy S.J. Pinel (C)	
	Deputy of St. Mary	
	Deputy of St. Martin	
	Deputy R.J. Rondel (H)	
	Deputy S.Y. Mézec (H)	

1.2 Elected Speaker of the States (P.160/2013) as amended - resumption

1.2.1 Deputy S. Pinel of St. Clement:

As Members will know, I am not a fan of repetition, and as yesterday was largely that, I have curtailed my original speech. If the public was confused yesterday, they certainly will be very confused today. May I also ask, is it reasonable that a Member should not be able to hear an opinion or, as happened yesterday, a summing-up because of Members constantly talking? I would think it was a matter of good government, if not courtesy, to listen when others were speaking. **[Approbation]** While I fully accept the need for Jersey to portray itself and to be understood to be a modern, well-regulated and democratic jurisdiction, we also have a unique heritage and tradition that must be protected. The removal of the Bailiff from the presidency of the States Assembly would undoubtedly have a negative effect on the concurrent important position as civic head.

Many modern - for example, Caribbean - constitutions have developed over a few decades. Jersey's has evolved over centuries. As a Government, we have a history of attempting to introduce piecemeal changes without recognition of the implications on the bigger picture. The last Government reduced Senators by 4. We are now debating separately to remove the Bailiff. Taking the proverbial brick out of the wall would be destabilising in already uncertain times. The suggested alternative of a Speaker of the House: "The role of Speaker should improve democracy." A quote from the Minister for Treasury yesterday: "Since the inimitable Betty Boothroyd, there has been little credit accrued by elected Speakers and Deputy Speakers in the Houses of Parliament in the U.K. (United Kingdom)." So this is not a model we need to follow: "As President Speaker of the States of Assembly, a strong legal background would be required to interpret Standing Orders and make fairly instant decisions in rulings. Impartiality is imperative, a deep understanding of the Constitution is essential, an ability to command authority and act with dignity at all times is a prerequisite." I suspect the above job description would somewhat limit the choice: "It is also very important to provide consistency and length of service, which a new Speaker selected before each election would not necessarily produce. The argument of a breach of the European Convention on Human Rights is strongly denied." I quote Mr. Rabinder Singh Q.C. (Queen's Counsel): "On the current state of the authorities, in principle there would be no breach of Article 6 of the European Convention on Human Rights if the status quo were to be maintained." The Office of Bailiff as Chief Justice, President of the States Assembly and civic head stretches back many centuries. There has been no breakdown or failure in the occupants of that office. Why should we dispense with that record of history and good governance? Furthermore, what would happen to the mace presented to the Bailiff by Charles II, which precedes the Bailiff at every States sitting over which he presides? To quote from our esteemed *Jersey Evening Post*: "How many establishment States Members does it take to change a light bulb? None. There is nothing wrong with the light bulb."

1.2.2 Senator F. du H. Le Gresley:

This is going to be a bit like chalk and cheese. We have just had the chalk and here comes the cheese. With all due respect to my much-valued colleague, this is a completely different speech. This proposition, if approved today, will change for ever Jersey's traditions and heritage. Some Members will balk at taking these steps towards a more modern, democratic and accountable Government, relying on the age-old adage: "If it ain't broke, don't fix it" and that is just what we have heard from the last speaker. But time is running out for Jersey to show our serious commitment to achieving true independence of the 3 branches of Government, the Executive, the Legislature and the Judiciary. As a member of the Commonwealth Parliamentary Association, we should by now be fully compliant with the principles of the Latimer House Guidelines on the accountability and relationship between the 3 branches of Government, which was approved by the Commonwealth heads of government back in 2003. Yet we hide behind the skirts of tradition and meekly accept that the Bailiff's dual role can continue on the basis that the Latimer House Principles state that it is recognised that the special circumstances of small or under-resourced jurisdictions may require adaptations of these guidelines. We may be small, but we are hardly under-resourced. Our G.V.A. (Gross Value Added) would surely top the charts of Commonwealth members. In researching for this speech, I have come across a number of interesting reports and letters. As I said yesterday, I have also read Hansard on the debate in February 2009, which was the proposition of the former Deputy of St. Martin to conduct a review of the role of the unelected Members of the States, which led to the Carswell Review of 2010. A short speech by former Senator Ben Shenton during this debate caught my attention, and I quote: "Last year the Bailiff" that is the former Bailiff, now Senator Sir Philip Bailhache: "and his learned colleagues carried out a review looking at what the Island would have to do if it was to seek independence. The review clearly stated that there would have to be a separation of powers between the Legislature and the Judiciary and the Bailiff's role in the Chamber would have to be removed." The review the former

Senator was referring to was the second interim report of the Constitution Review Group chaired by the former Bailiff, now Senator Bailhache, and presented to the States on 27th June 2008. The Chief Minister refers to this report in his comments on page 4. I have this report with me today, and in the section on internal constitutional considerations, paragraph 76 of the main report, it is stated that: “The dual role of the Bailiff as President of the Royal Court and President of the States would have to be reviewed in the event of independence.” The report then goes on to say: “While the dual role can be justified while Jersey is a Crown dependency, because the Bailiff has a representational role and is the guardian of the Island’s constitutional privileges, the latter justification would not exist post-independence. Jersey’s constitutional privileges vis-à-vis the U.K. would cease, because Jersey would have the greater privilege of sovereign status. In those circumstances, it would arguably be of greater importance to avoid any perceptions, however misconceived, that the independence of the Judiciary might be compromised by making provisions for an elected or appointed Speaker other than the Bailiff.” Of course there are currently no plans to seek independence from the U.K., as far as I am aware, but what this extract from the Constitution Review Group’s report of 2008 shows is that the dual role of the Bailiff has and was already under consideration by not only the Judiciary, but also the Executive. The review group concluded each section of their report with a number of recommendations for actions, which were said to be consistent with the aim of the Chief Minister of securing greater recognition of Jersey’s international identity. The recommendation that caught my attention was the creation of a Judicial Appointments Commission. The review group were advised by a Professor Jowell Q.C. and his detailed report is in appendix 3 to the main report. He had this to say about judicial appointments: “Judicial independence is the fundamental tenet of democracy and the rule of law and a necessary ingredient in a fair trial. In particular, it is necessary to avoid judges being or appearing to be biased towards the Executive. An independent judiciary ensures that governments and administrations may be held to account and that duly enacted laws are enforced.” Professor Jowell made a clear recommendation that Jersey should adhere to the principles set out in international tests, such as the 1985 United Nations *Basic Principles on the Independence of the Judiciary* in any future constitution for Jersey.

[10:00]

I am sure that there are Members who, like me, are surprised that we do not have a Judicial Appointments Commission. The Island is currently going through the process of choosing a Deputy Bailiff, our second most senior judge, but we appear to be relying on the tradition of involving political representatives from both the Executive and the legislature in the selection process. This is in conflict with the *Bangalore Principles of Judicial Conduct* which state that: “A judge shall not only be free from inappropriate connections with and influence by the Executive and legislative branches of government, but also appear to a reasonable observer to be free therefrom.” The Chief Minister has lodged comments on this proposition, and in my opinion, these summarise succinctly the arguments for ending the dual role of Bailiff. The fact is we simply cannot go on with the current arrangements. When the former Deputy of St. Martin brought his proposition in 2009, it was hoped by many who voted for it that this matter should have been resolved, would have been resolved, well before the departure of the current Bailiff. I have to say that in my time in the States I believe successive P.P.C.s have ducked this issue. We should be grateful to the Constable of St. Helier for bringing his proposition. Our current P.P.C. have shown in their second comments paper that there is sufficient time before the next election to deal with the legislation required for an elected Speaker. However, the approval of the amendments yesterday will certainly delay the process. The concept of the separation of powers of the judiciary, legislature and Executive is believed to date back as far as 1748, when it was first articulated by Montesquieu in his publication, *De l’esprit des lois, On the Spirits of the Law*. Jersey is rightfully proud of the historic role of the Bailiff in Island affairs, but to quote Lord Carswell: “It might be

said that the Jersey institutions have functioned satisfactorily more because of the way in which those who occupy the posts have carried out their duties than because of the inherent suitability to the modern age of the institutions themselves.” Today we can take a giant step forward in modernising our democracy and I urge Members to support the proposition.

1.2.3 Connétable P.J. Rondel of St. John:

Was it not Abraham Lincoln who said: “Do not interfere with anything in the Constitution”? That must be maintained, for it is the only safeguard of our liberties. I rise as a result of deep concerns I have that we are seriously contemplating the removal of the Bailiff from this Chamber. One of the few things that separates us from other places in the world is our ability to call on the experience of somebody so qualified as our Bailiff. While others will say that this is not right because he has not been elected, we need to remember what his role is. He is the guardian of our Constitution, our President of the Assembly. He is not just another Member of the States or indeed just a Speaker. Listening to others or listening to those, I have heard suggestions he should be removed. They would do very well to look at recent history and see how important it is that our Bailiff has a political role to play. Given the United Kingdom is ever keeping a watchful eye on us, and I would suggest treating us wrongly, we need somebody with the ability and knowledge to be able to take stock and tell them when they are acting incorrectly. To those who say that he should not be a judge and sit in the Assembly, it has to be put on the record that we have our checks in place to prevent any wrongdoing. A Bailiff or Deputy who presides over us cannot then go and sit on a case which discussed the same law. Now perhaps we should turn to the practical consequences of what the removal of the Bailiff would mean to this House. Who is supposed to act as Speaker? If we turn our attention to the comments made by the Privileges and Procedures Committee, they have suggested that they could be elected from within the Assembly or from outside. What are they suggesting? We have to remove a Bailiff because he or she is not an elected representative and at the same time they are saying that we shall be able to elect somebody who is not a member of this Assembly. It cannot be right that on the one hand those against the Bailiff are arguing for democratic accountability and on the other they are arguing that we could replace the number one judge of the Island for another person who is unelected and less qualified. That argument does not stand up. It does not hold up at all. If we read the comments of both the Solicitor General and the Attorney General we can see that there is nothing wrong with the position of the Bailiff. If it is a choice between voting to keep the Bailiff, a position which has been sown into the fabric of our society for hundreds of years, for hundreds of years, or support a proposition so short-sighted, I know which way I will be voting. Further to this, I note the Chief Minister also wants to remove the Bailiff as head of our Assembly and I asked myself why. Why? Could it be that he wishes for more power? Or is it that he comes from another place; he is homesick and he plans to turn Jersey into some UK backwater? Or has he been put here as a stooge from the UK?

The Greffier of the States:

Constable, I think these are becoming very personalised attacks on the ...

The Connétable of St. John:

Sir, this is of concern to me. We are aware of the position of the Chief Minister has taken on this.

The Greffier of the States:

He has made clear in his comments why he is bringing those comments and you are attributing improper motives. He has made it clear he is ...

The Connétable of St. John:

I will withdraw that particular remark, Sir, and I will continue. It is known that the Chief Minister does not want the Bailiff in the Chamber. I sincerely hope that when he comes to speak and/or

consider voting, he will reconsider his position because it hurts me to think that a person we elected just under 3 years ago as Chief Minister, and I did vote for him, wants to change our constitution so radically that we will lose something that the Island has cherished for something like 700 years, probably closer to 800 years. I will not support the removal of the Bailiff. Given between 1948 and 2006, this Island had the most successful period in its history and everything we have today ... apart from the pre-1945, everything we have, these Members in this House have today comes from the hard work done by our forefathers in the last 60 years. It is a shame that back in 2004, 2005 when Clothier was debated, we allowed, by only a small majority, to go for the reform on the back of Senator Horsfall's proposal. He did tell us, in this Assembly: "Adopt this proposition in principle and we will put the meat on the bones later". The meat has never been put on the bones and we finish up with a system that does not work - a system that does not work - so much so we have spent the last 10 years, 9 years, trying to reform that system. Until you get that system right, you should not - you should not - remove the only stable bit of Government we currently have, which is our Bailiff. I will not be supporting the Constable of St. Helier's proposition.

1.2.4 Deputy M. Tadier:

Members, do we remember the good old days when all life was in the sea? Was it not so much better then, before the audacious aquatic creatures dared to come on to our land, which had not even been formed yet? It was much better then when life was all pre-existing in the sea. Life was a lot better then but these bastard fish, because that is what they were - they did not have any fathers or mothers - dared to come out of the sea and dared to progress. How dare they? But even then, that was too much. Do we remember when protozoa were ruling the world? Protozoa, back in the day, protozoa, they did not need democracy. They did not need an elected stooge from the U.K. coming over to tell them that their protozoa were not sufficient and they should split their cells; they should form into reproductive organs; they should have all sorts of things; they should ingest oxygen; they should have a cardiovascular system. No, they did not need that, those protozoa. They did not need these people with their new-fangled ideas saying: "This is the way we have always done it without single form life cells. You can keep your multiple cell life forms and your reproduction and whatever way you do it." But even then, before that, do we remember when the earliest life forms in the earth existed at least 3.5 billion years ago, which is what scientists think ... those scientists who did not want to stay as protozoa. But what about before that? Do we remember when there was nothing, 4.5 billion years ago? Nothing? There is nothing: "Oh, was it not so good back in the days? There is nothing, nothing. There is nothing." Was it not so much better then? We did not have a mace because the mace had not been created. Now, all of these arguments that we are hearing today are basically nostalgia and what did we have before a Bailiff? There presumably must have been something. There would have been those harking back to the druids saying: "We do not need this Bailiff who has been sent over here." I am reminded of the old Monty Python quote when the king is walking through in the *Holy Grail* saying: "Who's that?" He goes: "It's the king." "How do you know it's the king?" "Because he doesn't stink of the proverbial." "Well, what's a king? I never voted for him" et cetera. So really in one sense this debate is futile because we have got the conservatives in the Assembly trying to bring reforms. We have got the progressives since the 17th century, 18th century trying to reform. Now it is the conservative element in the States that are trying to reform. But it is the reactionary element who are the block, as they have always been. The house of cards is probably quite an appropriate metaphor for what is going on in Jersey currently; 52 cards in a pack, 51 States Members and a Bailiff. If we get rid of the Ace of Spades or possibly the Ace of Hearts, we have got 12 other court cards in the pack thinking: "Oh, if the Ace of Spades goes, what about me?" The court cards, quite literally court cards because that is where their allegiance lies, they are going to be the next ones on the agenda. They know that their positions logically are not tenable. It does not mean as individuals they do not have a place in our constitution but their place ultimately is to be elected in

the same way and not to give disproportional benefit to the country Parishes. Essentially, this is why it hits and it is visceral. The issue of the Bailiff is nothing to do with who chairs this Assembly because we could find somebody to chair this Assembly. A question, is there anybody in our number who is capable of chairing this Assembly? No. Okay. There seems to be at least one Senator among us who would be capable of chairing this Assembly adequately, and that is Senator Bailhache, because he has done it in the past, so there is, at least, somebody who could do that. If Senator Bailhache is such a good chairperson, it would be remiss of us because all of the Bailiffs, as we know, have always been excellent chair people as well as indisputably immaculate individuals, like the Pope, that they cannot do anything wrong and Carswell basically told that as well, which is salutary reminder. So we could choose somebody from within our number and in the absence of that particular individual we know that the Constable of St. Clement has also chaired very satisfactorily. **[Approbation]**

[10:15]

So let us not make this argument about what it is not, because what it is is very simple, and I am always amazed at how readily this Assembly will give up its sovereignty. We are going to see that very soon in the P.33 debate, where I believe, judging from the mood of the Assembly, that the Assembly is quite willing to give the two-way whip, which we will see in that, whatever they want and give up our powers, although this is a completely different debate. The Assembly holds itself ... and we often hear about how the public holds us in low esteem but this Assembly holds itself in such low esteem that it believes that we cannot and can never in the future be such a mature democracy, mature parliamentary democracy that we can do what almost every other parliamentary democracy in the world seems capable of doing, and that is choosing a Member from within their own number to basically chair their meetings. We do not ask the Bailiff to chair our other committee meetings. He does not chair our P.P.C. meetings. He does not chair our Scrutiny meetings and that is because we are quite capable of doing that ourselves. I go back to the argument that I touched on yesterday. Is the role of the Bailiff, is the esteem, the civic headship of the Bailiff so precarious among the public that he needs to be in this Assembly to chair meetings in order for them to respect that role? I do not know what the public think and the public is not one homogenous mass who have an opinion on our traditions. For some of us, the appearance of the mace at every sitting is something that maybe strikes a chord with all of us and it makes us wonder how we can even function today when we do not have the mace in front of us. Some of us can barely hold it together and have had to leave the Assembly already. The issue of the mace is quite simple. What we do as soon as we remove the Bailiff from this Assembly is we melt it down and we make a crown for the new elected Speaker. But we do not have to necessarily make a crown. We could also make a chain, a bit like the one that the Constable of St. Helier has. So the ideas as to what to do with the mace are multiple. We could even sell it off for charity in its current form; auction it off in order to pay for food parcels for the poor or to open a new shelter for the poor in St. Aubin, something akin to that. Is that not a shocking indictment of what we, as an Island, allow to go on happening in the Island? We make great clamour about the perceived tradition, in fact, which is not a universal tradition necessarily. It is history which has been recorded in some ways by some people and all of the other stories about the Bailiff in 1769 who did not listen to the people when they asked for justice, and it was the U.K. who had to come over and intervene, those stories are not necessarily recorded, even though we do now have a reform day, because it is an embarrassment to the ruling establishment and what they have been historically. So please spare me some of this nonsense rhetoric that I am hearing from the political dinosaurs who should have no place in the current Assembly, save for the fact that they have been put here democratically like the rest of us, which I do nonetheless respect. The issue I have got here today is that we are not simply debating clear cut whether or not the Bailiff should be chairing our meetings. What we are doing, however, is that with certain caveats because we have decided that it was too simple a

question and that it needed to be complicated. So the proposition before us, which has kindly been circulated by the Greffier, says all of that but subject to the approval of the public voting in a referendum to be held on 15th October 2014 on the question: "Should the Bailiff cease to be President of the States?" But even that has got a further caveat now: "Provided that the referendum shall not be held unless the States have already adopted legislation to give effect to the change, which contains a commencement provision which specifies that the legislation shall automatically come into force if the change is supported by a majority of those voting in the referendum subject to a minimum turnout threshold to be specified in the legislation and shall not come into force if it is not." All of that without a comma. There is no comma there so I had to basically just take breaths when I could, although there were parentheses. What does that mean? Do any of us clearly know what that means? It means that what we are debating now is not the dual role of the Bailiff. It is whether to have a referendum on the dual role of the Bailiff, which is a completely different proposition, because some of us think that absolutely the first proposition was clear and we could agree with it. We cannot necessarily agree with the idea of a referendum because it is not necessarily the subject of a referendum. But some of us are willing to go with that. If the States seem to be wanting to make fools of themselves, let us take that to the public and highlight the fact because the underlying issue remains the same. But we have asked P.P.C. to bring forward legislation which will give effect to the change which contains a commencement provision, which specifies that legislation should automatically come into force. How do we do that? At what point will P.P.C. be bringing back legislation? It is a completely different proposition that we have been asked to ... and that is why I changed my mind during the course of the debate, that the Constable of St. Helier should be allowed to withdraw this. Probably time to sum up, I think. By the way, I should admit on the record that I plagiarised some Stewart Lee, the stand-up comedian's work earlier when I did my little spiel about the protozoa. He was taking off on U.K.I.P. (United Kingdom Independence Party) about that. Recommend it very highly. But it seemed to work for this particular debate. Should the role of the Bailiff be separated? Absolutely it should be separated because we can and should elect somebody from within our own number, and to those in the Assembly who say we do not know what the future plans will be, we do not know how we are going to elect our own number, I would suggest that the only way forward it to elect him or her from within our own number. The suggestions that have been made that we could elect a President externally is a nonsense because it has to be somebody who can be held accountable by this Assembly and be accountable to the Assembly, and it is the same argument which some have made in the past for Chief Minister: if the public were the only ones who can elect a Chief Minister, how on earth do we work with that individual? So while it might be an appealing thought, it is not going to be workable, I am afraid. We will, at some point in the future, have to grasp the nettle of the dual role of the Bailiff ... the triple role of the Bailiff. There are arguments to be made as to whether or not even the Bailiff should be civic head as to whether or not we need a civic head and if we do need a civic head, why that person should not be elected directly from the public or even on a rolling random selection process whereby we can just pull someone out of a hat: "Right mate. It is your turn to shake the hand with the Queen this week." "Do I have to?" "Yes, I am afraid you do, otherwise you will get thrown in jail." "Okay. I suppose I will do it in the same way I do jury service." That is the speech for what it was. It was not particularly well planned. There will be others who make more eloquent speeches but it is very difficult when you are arguing, fighting against a phantom when you are not fighting against real arguments but arguments which are just being made up, straws which are being clutched at to move things forward. But that is my contribution, for what it is worth. I am sorry if it has been longwinded and I look forward to other speeches and change perhaps, if not in this millennium, perhaps in the next.

The Connétable of St. John:

Sir, can I make a correction to my last speech? I said I voted for the Chief Minister. In fact, I voted for Sir Philip Bailhache in that election but I threw all my weight behind the Chief Minister when he got the position. **[Laughter]**

The Greffier of the States:

That is a good correction. Senator Bailhache. Supporting?

1.2.5 Senator P.M. Bailhache:

I am delighted that the Constable of St. John can hedge his bets in that way. **[Laughter]** The issue of whether the Bailiff should preside over the States is one that has been around for more than 150 years, even if the arguments for change have become more strident in recent years. In 1999 I wrote an article for the *Jersey Law Review* entitled *The cry for constitutional reform: a perspective from the office of Bailiff*, and I hoped to lay the foundations for intelligent debate but I was disappointed. The Clothier Panel dismissed the opposing contentions in a few short paragraphs and reached their conclusion the basis of arguments that were flawed. Lord Carswell and his committee, to be fair, made a much better job but that might be expected from a retired law lord. The Chief Minister has given us a report that, for the first time, addresses the arguments, or some of them, better than anything that has gone before. Senator Ozouf seemed to suggest that there was only one rational answer to this controversy but he is wrong. There is more than one rational answer and debating the conflicting issues for the first time, as we are doing today is, it seems to me, the right thing to do. All of the reports that are before the Assembly approach the question, if I may say so, from a preconception that anything that is different from the norm is quirky and therefore wrong. As a Jerseyman with a streak of stubbornness I want something a little more persuasive than that before I part with traditions that have served us well for 500 years. To have a chap called a Black Rod banging on the door of the House of Commons in dress of the 17th century and having the door slammed in his face is quirky too, although I do not put the Bailiff's role in that boat. But the point is that the traditions of each country lend colour and individuality to their processes. If we want to become a thoroughly modern Commonwealth Legislature with a brand new mace instead of the historic royal mace of Charles II, should we not consider the position of the Lieutenant Governor? Should His Excellency be here in a really modern Legislature? They have pushed him out in the House of Keys in the Isle of Man. What about the Dean? Should he be here? If we are severing the historic link with the Royal Court, should we really be sworn in before the Court? That is very quirky too. In modern parliaments, most of them, if an oath is taken, it is taken before the Parliament itself. Should the Viscount, whose principle duties are to the Royal Court, continue to be our executive officer? He will not be needed to carry the royal mace so perhaps there should be a States enforcement officer instead? The truth is that all these things do need to be considered from time to time because traditions should not be allowed to stand in the way of necessary change. So I think, although it took me a little time to get around to this conclusion, that the Constable of St. Helier was right to bring the proposition, even if the manner in which it was presented left something to be desired. The Chief Minister asked me on Monday evening whether an elected Speaker was not a necessary preparation for independence. I think he was teasing **[Laughter]** but perhaps it was a serious point. If it was serious, the answer is that we probably should be looking, in the round, at the kind of Legislature we would need if Jersey became a sovereign state. If we were independent we would have no constitutional privileges that needed protection by the Bailiff, as guardian of the constitution. We would have the greater privilege of sovereignty, as Senator Le Gresley reminded us from the report of the Constitutional Review Group. We would no longer be a bailiwick and so perhaps it would not matter that the Bailiff was not the head of it. We would not have a Lieutenant Governor. We would have a Governor General who might more naturally assume the role of the Island's chief citizen.

[10:30]

But at the moment, we are not an independent state and, so far as I know, we are not planning to become one. So I return to the question: is change necessary? My answer to that is that change is not necessary. There was an email from Deputy Mézec over the weekend which suggested that the Sark case before the English Court of Appeal was authority for the proposition that the position of the Bailiff was contrary to the European Convention on Human Rights. I am not going to argue law with the Deputy because the legal position has been clearly set out by Rabinder Singh Q.C. in his report to advise Lord Carswell, and by our own law officers. They are higher authorities on matters of law than elected Members of the States. The position of the Seneschal was very different from that of the Bailiffs of Jersey and Guernsey but the Sark case was referred to by Rabinder Singh in his report and he concluded, and I quote: "There is no reason in law why the present constitutional arrangements in respect of the Bailiff should be altered." That seems to me to be pretty clear. It is true that Mr. Singh then looked into a crystal ball and suggested that things might be different in 10 years' time but the up to the moment advice of the law officers of the Crown is that they are, and again, I quote: "Not aware of any case law in the 3-plus years since the publication of the Carswell Review that supports the notion that the approach of the European Court is likely to change." If one reads the case law, and I hope that Deputy Mézec has, abstract notions like the separation of powers do not influence the European Court. They are concerned with the substance of the matter: is the court independent or not? At the moment, there is no legal reason demanding change. So we come to perceptions, and they are, it seems to me, a notoriously unreliable basis for making a serious constitutional change. The Chief Minister's report refers to the *Latimer House Principles*, the *Bangalore Principles* and other Commonwealth documents that speak of the importance of judicial independence and Senator Le Gresley made much of those documents in his speech this morning. The *Latimer House Guidelines*, which are the foundation of these documents, were drafted in 1998, I think, and I can assure Members that the drafters had absolutely no intention of suggesting that the position of the Bailiff in the Channel Islands was inappropriate. I can say that with authority because I was there and took part in the discussions and debated the paragraph about small states that Senator Le Gresley has referred to. I was one of the 60 judges, parliamentarians, academics and lawyers who drew up the *Latimer House Guidelines*. The concern for judicial independence is a very real one in the Commonwealth because in some Commonwealth countries judges are sometimes threatened, cajoled and even bribed to carry out the wishes of the executive. That does not happen in Jersey and the fact that the Bailiff presides over this Assembly is not, in my view, going to make it any more likely that it would happen. So should we worry about what people outside the Island might think? For me, it is the substance that is more important. The reports from Clothier, Carswell, and I think the Chief Minister too, speak of it being wrong that the Bailiff should play a part in making the laws and in interpreting them. Can the Bailiff be both lawmaker and judge? Put in that simplistic way, the answer is obviously no. But is the Bailiff a lawmaker in any real sense? He does not propose laws to the Assembly. He does not speak on any debates in the Assembly. He does not vote at the end of those debates. He is not a lawmaker in any real sense of that word. He is an impartial chairman, applying the Standing Orders that we, the elected Members, have laid down. I do not think this is the time for change. There is no need for the Assembly to be frightened of its shadow. If there were anything wrong in substance or in law then that would be entirely different. But there is not. I think that the Constable's proposition will be rejected because Members are not persuaded of the need for change but some good, I think, can come of the debate, because one of the reports, I think it was from the P.P.C., suggested that there was some inability to conduct outreach with schoolchildren and students and others, explaining what the Assembly did and engaging the public in democratic processes because the Bailiff was the Speaker. I do not think that is right. I hope that the P.P.C. will take up responsibility for outreach for the Assembly and that they will, perhaps also in the spirit in which we ought to be engaged in these things, invite the Bailiff and the Deputy Bailiff to take part from time to time. They may not be able to do it very often but I would be surprised if

they would not welcome an invitation from them. The Chairman of the P.P.C. should be in the lead, as is right, but it could be that the President and Vice-President would be willing to assist. I made a speech yesterday about the civic head of the Island. I am not going to repeat all that stuff, but that is another compelling reason for me why this proposition should be rejected and I am going to vote against it.

Deputy J.M. Maçon of St. Saviour:

On a point of clarification, if I may. I did not want to interrupt the speaker while he was speaking. He talked about the P.P.C. comments discussing possible outreach abilities. That was in reference to what a Speaker of the Assembly might do in their role as Speaker. That is not to say that it should not be done now or whatever. It is just saying what the potential new role could be doing and that is what we were referring to, just so Members are aware of that.

1.2.6 Deputy A.E. Pryke of Trinity:

I think it is sad day that this Assembly wishes to throw away 800 years of heritage and tradition by removing the role of Bailiff as Speaker. Yet again we are looking at tinkering with a system that has served this Assembly and this Island well over hundreds of years; a unique cultural heritage which we just want to throw away. The Constable, in his proposition, puts the case for change in just 13 lines. That is all; 13 lines. Like many Members, I have taken part in days when primary schools visit this Assembly to learn and understand our cultural history and to take part in debates. One of the excellent presentations done by the Assistant Greffier and Rod McLoughlin ... sorry, I do not know what his title is.

The Greffier of the States (in the Chair):

Cultural Development Officer.

The Deputy of Trinity:

Thank you, Sir. They do a very good job and the children are enthralled. They explain the role of the Bailiff, the importance of the historic mace, which only sits before us when the Bailiff presides. The young people there, the children there are enthralled and listen, and the questions that they ask afterwards are very thought provoking and very direct and to the point. The role is our heritage, so if this proposition is approved then it all goes, but the role also commands dignity. Would that be the same from an elected Speaker? We need to start to think what we may be doing here in approving this proposition. Is it going to improve this Assembly? We have no information on what, who would take over the role, what will be required. Will we need a Deputy Speaker, an office? We have no idea of the cost. I went to hear Lord Carswell and listen to his concerns on how our Assembly may be perceived in other countries, but I am proud of my heritage, this Island's heritage, and I am proud of the role of the Bailiff as Speaker of this Assembly. A number of jurisdictions do have split roles, but why do we have to follow? This is a major constitutional change and we need to discuss this change with the public because once it is changed it is changed for ever. As you will guess, I will not be supporting this proposition.

1.2.7 Deputy J.M. Le Bailly of St. Mary:

Just as the Constable of St. Lawrence, I have also been questioned by parishioners on why it is considered necessary to remove the Bailiff from the States Assembly. I have not received comment from anyone wanting that to happen. In my recent Parish Deputy flyer, which goes out to everyone in St. Mary, I asked the question on retaining the Bailiff and invited comment. I received many replies, all of them wishing to retain our Bailiff in the States Assembly. More to the point, people cannot see the need for this proposition. I can safely say that I am speaking for the Parish electorate and others who have made their view clear to me. If this gets approved it will probably be the slippery slope to yet more unnecessary political correctness and I am wondering how long it

will be before someone brings a proposition to boot the Dean out. Sorry, Dean, I did not wish to alarm you. However, you may be glad to get out of this asylum. I know that this would be welcomed by the anti-Christians among us. If you all remember, it was not so long ago that we had to defend the right to keep prayers at the start of each Assembly. If the Bailiff's role is controversial, then surely the same applies with political and religious presence side by side. After all, there was a time when the Parish Rectors were part of this Assembly, so that could happen. For Senator Ozouf to insinuate that the public could not cope with a 5-box vote at the election is an insult to their intelligence. The Senator should realise that our electorate are smarter than he thinks. The removal of the Bailiff would be just another erosion of our traditions and constitution with absolutely no benefit to the public. If change is necessary, the reasoning has to be approved by the Island electorate. I will vote against this because I do not believe that we should make the decision today to remove the Bailiff, certainly not without public approval, although it seems clear to me that the public are very happy with the status quo.

1.2.8 Senator S.C. Ferguson:

When I first came over to the Island I was intrigued by our funny little ways and for a short time I said: "Why are we not doing them efficiently like the U.K.?" I was led gently by the hand, so to speak, metaphorically speaking, and after the explanations that were made it started to make sense. Frankly, it is not that difficult to understand. I feel very much for the people on the radio this morning who were absolutely insulted by the way people did not think they would be able to understand the voting slips and so on if we had changes. As the Deputy of St. Mary said, the electorate are a lot more canny than they are given credit for, particularly in this Assembly. It is assumed that the Westminster system is perfect but what about Tony Blair's mentor appointed on a reforming agenda, followed by the pathetic attempts to put a load of political appointees in the House of Lords?

[10:45]

Has the U.S. (United States) got anything to offer in this regard? At the moment, I do not think it has because the judges in the Supreme Court are currently being appointed on a purely political basis. Is this the answer? Their Executive, Legislature and Judiciary are meant to be separate. It is fine to have what is alleged good democracy but it is no guarantee of good behaviour, and there are plenty of examples in the Commonwealth or who have just been expelled from the Commonwealth. We hear cries of human rights but the British Isles have a tradition of common law derived from Magna Carta, the Bill of Rights and various other pieces of legislation, and the very important principle of habeas corpus. No doubt my legal colleague sitting behind me may correct me, but I think the gist of it is correct. It is a totally different system of law to the Continent. The Bailiff's position, I think, as Senator Bailhache says, is more a case of keeping order even than chairing a meeting. The Bailiff has no casting vote but he has stayed calm at times when I think his patience must have been sorely tested. The Chief Minister has come out in favour of the Westminster approach, but has he discussed this with Guernsey, since we are both in the same boat? The Harwood Report said: "The final judgment given by the European Court did not follow the recommendations in the earlier report of the Commission. In particular, the judgment affirmed that there is no legal basis for contending that there should be a separation of the judicial and parliamentary roles of the Bailiff." That is very much on the same lines as Mr. Singh. Certainly my communications from the public are firmly in support of the current position so I will not be supporting the proposition.

1.2.9 Senator P.F. Routier:

I like to think I am a traditionalist who cherishes our heritage and enjoys being a stubborn Jerseyman. This debate has been extremely useful for a couple of reasons. It has given Members

the opportunity to discuss roles and responsibilities and where they should lie. It has focused on the role of Speaker of the Assembly, which currently is part of the functions undertaken by the Bailiff. The suggestion is that there is a conflict with the role and that there can be difficulty in the Bailiff making decisions or becoming involved in political matters. I have served as a Member of this Assembly for coming up for 21 years and during that time there have been accusations by some Members that the Bailiff has been involving himself in political matters. Whether that is right or wrong, we will all have a different view of that. Having read Carswell and Clothier again, it is clear that there is a logic in ensuring that there needs to be a real separation of roles. What I find ironic is that some Members who have spoken in favour of separation of powers are the very same Members who have in the past wanted to become involved in judicial matters, querying prosecution decisions and making claims that the judiciary have not carried out their duties correctly. I have come to the conclusion that the demarcation and separation of roles for politicians and judges needs to be very clear and that both need to ensure that they do not overstep the mark. The question for me is how to deal with this proposition. I have to say with respect to everyone, politicians, judges, Bailiffs, Deputy Bailiffs, and I hope it does not offend anybody, I would hope that this debate has sent a shot across the bows of both States Members, the Bailiff, the Deputy Bailiff, that we all need to respect each other's roles and stick to our own responsibilities. States Members need to leave judicial matters to judges and judges need to leave political matters to politicians. **[Approbation]** At this time I find it difficult to support the proposition but, in saying that, I could very well do so in the future if circumstances change.

1.2.10 Senator B.I. Le Marquand:

Many Members of this Assembly may recall a decision in Australia some years ago to part with the Crown and the Governor and to become a republic, followed by a complete failure to agree on what the Crown and the Governor should be replaced with. It seems to me that is exactly where this proposition takes us. We do not know where. In fact, we do not know where this proposition takes us. I sometimes refer to such a decision as Abrahamic. According to the writer of the *Book of Hebrews*, Abraham set out not knowing where he was going. A favourite Greek philosopher might put it this way: "If you do not know to which port you are sailing then no wind is favourable." The uncertainty here does not just relate to the Australian question: what will we replace the Bailiff with? It also relates to the question: what will the effect of this change be? This is not just an issue of who will decide as to whether propositions, questions and debates comply with Standing Orders. It is also an issue as to what effect will it have on the role of the Bailiff, in particular what effect on the role as civic head. It is interesting that the Chief Minister and others who are supporting the proposition want to retain that, and there I think they have a serious problem. Supporters of the proposition have argued that nowhere other than Guernsey has a judge who chairs a Parliament. However, I have another question. Please can someone tell me where, other than Guernsey, there is a chief justice who is a civic head? My point is that Senator Bailhache is absolutely right. If the Bailiff ceases to have a role in relation to the States then he will very rapidly cease to be the civic head. I believe that the effect is that will lead to the enhancement of the role of Lieutenant Governor. That is certainly what I observed in the parallel jurisdiction of the Isle of Man where not having a civic head and that not being the role of the Speaker of the Tynwald, it is quite clear that the role of Governor is massively enhanced. But also, of course, there is the possibility of the role of the new Speaker leading to that person being viewed, because of their links with the States, as the civic head, or indeed the possibility of the Chief Minister - and I think any sensible Chief Minister would avoid this - being dragooned into doing more and more civic head types of things. Unfortunately we do not know exactly what will ensue. The law of unexpected consequences is highly likely to come into play. When I voted for a reduction in the number of Senators, I totally failed to foresee that certain Members who castigated me for so doing would soon do a complete volte-face and support option B which removed them altogether. I failed to predict that. However,

I did not fail to see the consequences of the States decision to go to a 3-way referendum with the most popular option “none of the above” missing. I absolutely correctly predicted that. If anyone would care to read Hansard they might think I was a prophet, which I am not. Today I am again warning this Chamber that the outcome of a pour vote for the proposition, if we leave aside the referendum aspect, will lead to the Bailiff losing his role as civic head. So, in my view, we really should not set out not knowing where we are going. I am going to come on to my second area of argument in a moment. Before I do, I want to deal as gently as I feel able to with one of the statements made by my esteemed colleague Senator Ozouf, which I did find somewhat extraordinary. He told us that a large percentage of the public are dissatisfied with this Assembly. That is undoubtedly so. I suspect that has always been so in fact but, there we are, maybe it is particularly so at the moment. He did not, however, tell us that the satisfaction rating of the courts was much higher, yet he told us that removing the Bailiff’s role in the Assembly would improve our satisfaction rating. I am really struggling with that because is the Bailiff not the senior member of the courts and does the Bailiff not have a much higher satisfaction rating and is it not likely, in fact, that his removal will mean that we are viewed at an even lower rating than at present? However, I now come on to my second limb of argument. There is a further problem, which is that it is impossible to achieve the referendum part of the amended proposition within the time period. That is why this morning I voted in favour of us not continuing with the vote at all on the basis it simply was not practicable. Firstly, P.P.C. - and I am a member of P.P.C. at the moment and therefore must confess a potential conflict of interest here - simply do not know what they are supposed to be replacing the Bailiff with. What are we supposed to be coming back with? We do not know. Nobody knows. We have had no debate on that whatsoever. That will take quite a long time to work out. There is also the problem of whether a law can be passed in the form proposed, with the kind of conditional wording. I have never seen one in Jersey. I am not sure whether that is possible or not. There is also the problem, which the Chairman of P.P.C. has highlighted: how can we create a binding referendum when the Referendum Law does not allow for this and we do not have sufficient time in which to pass an amendment to the Referendum Law to enable that? It seems to me that there are 2 groups who should vote against the proposition, those who do not want to set out not knowing where they are going, and I am certainly one of those, and those who do not want to task P.P.C. to do something which simply cannot be done within the time available, and I am also one of those. Thank you very much.

1.2.11 Deputy R.G. Le Hérisier:

I wondered when the speech on the downfall of Western civilisation was going to occur and I do thank the Senator for filling that rhetorical gap. The irony of this situation is that the British constitution has developed organically, pragmatically, and all these things that we are fretting about have occurred. The monarch has become emasculated. She, as now is the case, has moved, as Bagot said in the 19th century, to the ceremonial totally, has hardly any powers. There was a problem with the appointment of Prime Ministers, I remember, in the 1960s, the ability to call on a person to form a government when the Conservative Party had not got its act together so it was quite important who was called, but that has since been dealt with. The notion that by removing the Bailiff the world is going to collapse around our ears is, I am afraid, negated by what has happened in the country to which, for good or for bad, we sometimes look for constitutional direction. So I would tell Senator Le Marquand: “Be of bold heart.” The world is not going to collapse. Constitutions evolve, offices evolve and we are not looking into the abyss, as he seems to think. He also said it is the dignity of the Royal Court which enhances the office in the States, but indeed pre-war it was said, in evidence to the 1947 Commission, that the Bailiff’s role in the pre-war States was often seen as that of the President of the Royal Court in the States. Surely that is wrong? It should not be seen in that context at all. It should be seen in another one.

[11:00]

The other point I would like to make, which is slightly off the point, is the members of P.P.C. have gone on - Deputy Martin made this point yesterday and Senator Le Marquand has now made it - about the terrible difficulties that would impose. I should add that it was on 22nd January that I moved another proposition about a binding referendum, which was passed by this House, which asked, in a slightly less prescriptive sense than yesterday's proposition, could they please ensure that the terms of engagement for the referenda in October were clear in terms of the threshold and so forth. That was 3 months ago, 3 months ago, and we are now being told the terrible difficulties that would impose by yesterday. I would be interested to hear what discussion and what conclusions have been reached about the 22nd January proposition before Back-Benchers get further criticised in that regard. One of the problems I have had with this proposition is that it is not complete enough. It certainly is quite puttable as a referendum question, no doubt about that, but it is not complete enough and this was raised ... the major point I thought that was raised by the Chief Minister yesterday was the role of guardian of the constitution because it strikes me that is the role where the Bailiff is most capable of exercising, should he wish, political influence. This has no doubt been the case because the constitution, rather sometimes like planning laws at times, is not a defined constitution where you can go to a country like America, although that is infinitely elastic, as we know, in many respects, and say: "This is the constitution. These are the people who play a role, these are their powers. This is how they relate to each other." It is not that way. It is enormously elastic and the Jersey constitution is not written down. Bits of it are written down in places like the Code of 1771, but in a coherent sense it is not written down. So that gives somebody like the Bailiff an incredibly influential role, should they wish to exercise it, and that happened very recently, in 2005, when the first big attempt at implementing Clothier was put before the States. The then Bailiff made a statement saying - from France actually, I remember it quite clearly, where he was on a visit - that this was interfering with the traditions of Jersey. That, it strikes me, are the very sentiments that have been discussed several times today. That strikes me as interfering with ultimately what should be a political decision, because what do you mean by traditions? What do you mean by the constitution? These issues would take immense debate if we were to say we had thoroughly discussed them, as opposed to what is happening here today, just references to nostalgia and history and so forth. That struck me as a very clear political intervention and that strikes me as a real reason why this role, which was, as I said, mentioned only by the Chief Minister yesterday, really needs to be reduced. I am afraid if we are going to reform the Bailiff's office we have to reform it properly or not at all. That would have been my view, because I think Senator Bailhache and his supporters in that sense are right. Once you start interfering, if you remove the elected Speaker's role you start unravelling the whole thing and you have to ask yourself serious questions about the civic head. Again, I would say to Senator Le Marquand we have had, even within the Commonwealth, the evolution of states who for political reasons, states like Ireland, could not, would not accept the Queen, for example, as their head of state and they remained, although they got out eventually. But there were several states like India who remained in the Commonwealth as republics. There was no problem about that. It was not the end of civilisation as we know it. They quite happily accommodated to that and the Commonwealth accommodated to them. They attend the conferences and the Queen presides over the ceremonial meetings of those conferences, the major conferences, and it all went on very happily. So the idea that the world is going to fall in simply because we change the Bailiff's role is not by any means necessarily the case, but I think people are forgetting that, that it is the guardian of the constitution role which in my view is very susceptible to being a political role and has really created problems. What has happened with the evolution, as I see it, of Jersey's "constitution" is that we have got stuck. We never fully, if I may use the phrase, emasculated the role in the way that the Queen's role was emasculated, or that the monarch's role was emasculated, and that the monarch moved to essentially a ceremonial role. Now, there are some people who do not like that. They wish to move to a more republican role but I think it can safely be said they are a small

minority. The compromise works, I would tell Senator Le Marquand, and I would tell him not to excessively worry. The last thing I would say is I thought Senator Ozouf made an excellent speech yesterday. Some of us had put him down as not an enemy of democracy but, after his last major proposal in front of the States, we were a bit worried where he stood when he made Custer's last stand for electoral reform. But I thought it was an excellent speech, it raised a lot of good points, and I thought one of the points he made was a Speaker is a person who is tasked with the responsibility of reforming procedure, of looking at how the House as a whole works and promoting procedure in an independent way saying: "This is not working. Question time is out of control. People are not feeling involved. I have to find different mechanisms or suggest different mechanisms," et cetera. I think the Senator was quite right to say that there is a vacuum which at the moment P.P.C. have to fill. It is basically P.P.C. who have to fill that vacuum, and as they keep telling us they are enormously burdened down with all sorts of issues, which is presumably why they have not been able to attend to my 22nd January proposition with the speed that I might have wished. So those are the points I wish to make. I will vote for the proposition, but I do think it is incomplete. I think we have to recognise the fact that constitutions evolve. They do not lead to the collapse of civilisation as they evolve. The British, in fact, it has to be said, do have a genius for evolving these matters in a highly pragmatic way where power is removed from an institution, faces saved and everybody sails on in a fairly happy fashion. There is not the chaos and the collapse of institutions that Senator Le Marquand was predicting.

1.2.12 Deputy G.P. Southern:

It is a very short list. I suppose yesterday I came here fairly naively expecting to be able to support wholeheartedly my Constable's proposition that we should review and reduce the role of the Bailiff. How naive I was, how innocent and how foolish. I fully expected to be able to support that piece of reform because it is long overdue. However, it has to be said, it has been subject to amendment. I believe that what we have got now finally, with a binding referendum and a threshold, is a blocking mechanism to make sure that for those who felt they might not be able to defeat the proposition originally they will defeat it by the back door by blocking any way forward. Because I can imagine what happened ... well, I know what happened on the last referendum. We allowed a Member of the States to conduct it. We allowed it to have a multiple choice, one, 2, 3 options, and not to be a yes/no referendum. We disobeyed all the basic rules of how to have a referendum. This time we have a different type of referendum that hopefully might say a simple question, yes/no. But what will the question be? "Would you like to remove the Bailiff from one of his roles in the States of Jersey and upset that very nice Mr. Bailiff?" It will not say that but it could be presented as that. Or: "Would you like to ensure that perceptions - only perceptions - in the rest of the world that there may be something wrong with the structure of our democratic Chamber because the law interpreter, the administrator of the law, sits in that Chamber, would you like to remove that doubt in the minds of the rest of the world, or the possibility of that?" It might be presented as that question. Vote yes or no. A simple question, but presented in one way or the other to get one answer or the other answer. Yesterday I may have been innocent. Today I have recovered my cynicism and I suspect that that is the purpose of this particular amended proposition as it stands now, to get a "no" vote to make sure that we kill this particular reform for the next, I do not know how long, decade at least, before we come back to another one of these tortuous debates where we go through the history and we bring up 400 years of history and say: "We cannot possibly change it" and we come across the tradition that says nobody tells this Island what to do ever. Indeed, this Chamber cannot control the way it conducts itself and what its structure is. We have to go to the people with some sort of question, a question designed - and I am sure it will be - to produce a "no" vote in the country Parishes as we go round the Parish Halls. That is the reality. That, I am afraid, is the reality, and I get some looks from across the Chamber, some rolling of eyes; how dare I say this. But that is the reality. We have only just got down to debating what we

need to do, what would be advisable to do. We do not need to make this change but it would be advisable to do it. Senator Le Gresley is probably the only person today who has really focused on the decision we are making today. If it were the original proposition I would have no problem voting for it. This amended blocking proposition I cannot support at all.

1.2.13 Deputy S.Y. Mézec of St. Helier:

I rise to explain partially why I disagreed with every single word that was said by Senator Bailhache before summarising why I will be voting exactly the same way that he will be. **[Laughter]** But before that, I was contacted by a constituent last night who was listening to the debate yesterday and asked if I could start my remarks by first saying what an exemplary job you, Sir, are doing chairing this debate and how this is just an example that when a non-Bailiff chairs the States Assembly it is fine, the Assembly works fine. I have been checking Twitter throughout this debate just to find out what is going on in the outside world. The sky has not fallen down. Society has not descended into chaos. Jersey is still Jersey. It has not morphed into Hampshire yet. Everything is fine. It does not matter. This constituent also said that he remembers on occasion hearing the Constable of St. Clement chairing the States before and he does a fine job as well when he does it. In fact, the very first time I ever came into this room was when I was 16 years-old for the Youth Assembly when the Constable of St. Clement was chairing it. Me as a 16 year-old, not an expert on Jersey politics, I thought the Constable was the Chair, such a good job he did. **[Laughter]** That was shortly before the first time I also met Senator Bailhache. I was a finalist in the Baker and Partners Youth Advocacy competition, which he chaired when he was then Bailiff, which took place in the Royal Court. He was very kind enough to give me a signed copy of his book afterwards, which I still have. **[Laughter]** It is good reading. I was thoroughly impressed at the job he did presiding over that. I had been to the Royal Court a few more occasions because I was studying law at the time and was thoroughly impressed at the job that Senator Bailhache did as Bailiff presiding over these court proceedings. Again, as a 16 year-old who did not know much about Jersey politics, I thought he just was a judge. To me, seeing what I thought was Jersey's constitutional position, was completely normal. It worked. I had no problems with it at all. It is only when I get older that I look into and start understanding Jersey politics properly, especially when the first election came up a year later. That is when things started in my head going: "Hang on, this is not quite right. That is not really how it should be" coming from a perspective of a young person studying law at the time.

[11:15]

Before I then go into the rest of what I have to say, I should really pay tribute to my predecessor in St. Helier No. 2, the former Deputy Shona Pitman, who lodged a proposition to end the dual role of the Bailiff before the Carswell review was done, but she lost it, of course. I think hopefully sooner rather than later she will be regarded as having been ahead of her time by them because this is a change that is long overdue and will one day happen sooner or later. I think the Chief Minister and the Minister for Treasury and Resources supporting the Chief Minister have to be commended for the comments on the proposition which the Chief Minister lodged, which I suspect, given the divisions that have become very obvious in this debate, was probably very difficult to do politically. I think those comments are absolute dynamite. In my opinion, they lay it out clear as day, black and white, and they do not even go as far as having to mention Sark. They are absolutely great comments and I was really, really pleased when I saw them put in my pigeonhole. Since I began studying law when I was a teenager, my view on this subject has remained exactly the same. On the first day of any law student's course when you go to your public law lectures, you are told about the 3 branches of Government and you are told about the overall principles that govern it, things like the rule of law and separation of powers. It is simply unarguable that the position of the Bailiff presiding over this Assembly is completely incompatible with that principle

of separation of powers. Democracy takes all sorts of shapes and forms across the world, but principles like the rule of law and separation of powers are absolutely objective and non-negotiable. If you do not have those in your democracy, your democracy is deficient. Jersey and Guernsey are the only places in the world that have a chief judge that presides over their Parliament. Some will defend that. Senator Bailhache used the word “quirky.” Yes, some people would say that. That is just quirky Jersey. That is what makes us special. But that is not a good excuse. I would rather Jersey was special because of it having an absolutely pristine democratic system that was the envy of the world because it is absolutely not that at the moment. If you go round and speak to people from around the world, they are not impressed when you tell them that a judge presides over our Parliament. If they say anything else, I can assure Members they are just being polite. When I was studying in the U.K. I used to brag to everybody I knew about Jersey. I reckon I must have really, really bored them. I used to brag about how great our beaches are. I used to brag about the culture. I used to brag about the nightlife, which I am going to stop doing after the weekend. **[Laughter]** When I spoke to my law lecturers and law professors, they obviously were quite interested in hearing about Jersey’s independent and unique legal system. When you told them about things like the Clameur de Haro, for example, they thought: “That is pretty interesting, that is pretty nifty. There is quite a lot of merit behind something that is quirky like that.” But then you tell them that the chief judge in the Island presides over the Parliament. They always raised their eyebrows in disbelief: “What? Why? Why on earth would you do that? That makes no sense whatsoever.” They all considered it to be completely inappropriate and I never met anybody who said: “Oh, yes, that is a good idea to have the same person do those 2 jobs.” In 2011, I was lucky enough to represent Jersey at the Commonwealth Youth Parliament in London and one of the events we got to attend was hosted by John Bercow M.P. (Member of Parliament), who is the Speaker of the House of Commons. We had the opportunity to ask him questions. You had some representatives who asked pretty vacuous questions like: “Who was your favourite Prime Minister?” but me being a bit of a troublemaker I decided to use that as an opportunity to ask him what he thought about Jersey’s system and whether he thought it was a good idea for the Speaker to also be chief judge. He described it as being completely unacceptable. He was absolutely unambiguous in his view that the Speaker should be its own job. It should not be crossed over with anything else. Somebody else asked a very good question there that I have just remembered. Somebody asked him if he as an M.P. in a single seat constituency became Speaker he has to resign his membership of his party and he also does not have a vote anymore. Some people asked: “Well, does that not make you lose your ability to be able to represent your constituents?” I think he came up with a very good answer to that. He said that representing constituents on their day-to-day matters becomes better when you are the Speaker because if you have to deal with a Minister over an issue for a constituent and they have on their desk an envelope put down from the Speaker’s Office, it goes to the top of the pile because every Minister and every Member would want to have a good reputation with the Speaker so they will be able to have the help they need when drafting their propositions. Forgetting those anecdotes, I think the most important thing we have is 2 comprehensive and independent reports that have come to exactly the same conclusion. It does not matter how many more reports we have. It does not matter whether we have a Royal Commission into Jersey’s system, as has been suggested in the past, and I am now coming to the idea that that may be a good idea. It does not matter how many of these commissions we have, they are all going to come to the same conclusion and that is that it is unacceptable to not have this separation of powers. In the *J.E.P. (Jersey Evening Post)* a few months ago when this was first proposed, a former Senator wrote in and tried to explain that it is acceptable for Jersey to have a Bailiff as a Speaker of the States because the Kilbrandon report said it was okay. This despite the fact the Kilbrandon report was 40 years ago and the purpose of it was to examine the whole of the United Kingdom constitution, of which the Jersey element was a tiny part. That committee probably only wrote the section on Jersey on a Friday afternoon and little else in their minds other than getting to the pub afterwards. This is at the

same time when they are considering such important things like devolution for Scotland and Wales, the European community and all sorts of things. They probably dedicated very little time to Jersey's system and probably just did not want to rock the boat. So that 40 year-old report is completely irrelevant. We have 2 independent reports that I think are much more relevant, especially given how concise their terms of reference were, particularly the Carswell review. Over the weekend, I sent States Members a copy of the court judgment from the Court of Appeal case on the subject of Sark's reformed laws. Hopefully Members will know the process that happened in Sark to get to the situation that they are at from feudalism to now a model of democracy. How ironic that is that the Island that was the most backwards in terms of its democracy a few years ago is now the Island with the most exemplary system. I just want to read one section of that judgment because I think it addresses some of the points that Senator Bailhache made before. It says: "This is not slavish adherence to an abstract notion of separation of powers but a recognition that it follows from the Seneschal's functions in his non-judicial capacity and Chief Pleas that his independence and impartiality are capable of appearing open to doubt. In this respect, the smallest of the community aggregates the problem. The same people and issues which he is likely to be dealing with when presiding at Chief Pleas, including issues arising from the reform law itself and the Guernsey Human Rights Law, may be the subject of litigation in his court. My conclusion on this aspect of the appeal in no way impugns the good faith or competence of the present Seneschal. The law must provide a structure in which those who do or who may come before the court can be confident in the independence and impartiality of the judge. The Seneschal's power to recuse himself, though constructive and advantageous in itself, does not rectify the situation. The position of the Seneschal sitting alone in my view falls on the wrong side of what is Convention compliant." I cannot see anything different between the case of Sark and Jersey at all, which is why it was strange when reading the Attorney General's comments saying that there is no judicial authority to say that it is likely that the Bailiff's position will one day be non-compliant with Article 6 of the European Convention on Human Rights. It also contravenes, in my view, what Mr. Rabinder Singh Q.C., a human rights law expert, said to the Carswell review, which was: "The international trend suggests that the law will change in due course. Within the next 10 years my view is that the present arrangements will come to be regarded as incompatible with the concept of judicial independence as embodied in Article 6, in particular because the Bailiff and his deputy are both judges and presiding members of the Legislature." I think that he is absolutely right. In a few decades' time people, particularly young people, will look back and say: "What on earth were they thinking? How on earth did they think it was acceptable that a judge could preside over a Parliament?" Some do not seem to think this is an important issue, that people are quite content with it as it is. Well, perhaps people do not understand just how important the separation of powers is. The reason that it is important is because it is the job of each branch of Government to act as a safeguard to the excesses and the mistakes of the other branches. Senator Routier before was criticising some Members for criticising the Judiciary. Members are more than allowed to criticise the judiciary as long as they are separated. That is the whole point. We are meant to be checks and balances to each other. The Legislature and Executive are entirely capable of making absolutely huge mistakes and they are even capable of being corrupt. I am, of course, not suggesting we are corrupt but it is entirely possible that one day a jurisdiction could end up with a corrupt Government. There are all sorts of examples of it across the world. In the case of that happening, it is not only legally necessary but it is morally desirable for the judiciary to perhaps produce a ruling that is absolutely damning of the actions of the Government and potentially even so politically embarrassing that it ends up ending that Government. That is a fundamental democratic safeguard to our freedom and we really should not ignore that. As it stands now, a big mistake from the Legislature or the Executive could end up coming before the Royal Court in one form and the Bailiff could find himself completely conflicted in that he might realise that the legislation was not lawful, it had a big problem with it, or that the actions of a Government had potentially been

ultra vires, but in his capacity as Speaker, maybe not negligently, maybe just by pure accident, maybe he did not raise the concerns as Speaker as he should have at the time. He would be issuing a ruling that would be a judgment on himself and we all know that that is completely inappropriate. You cannot judge yourself. You have to be judged by someone or something else. The obvious solution to that, as is done all around the world, is to have 2 separate people doing each job. They would owe no loyalty to each other as colleagues or as friends but would only owe a loyalty to democracy and to the people of this Island. That is the only democratic safeguard that will work and the people of Jersey deserve absolutely nothing less. I want to make a few comments on some of the comments that we have heard from other speakers today. Some have looked back on the Bailiffs as if they have all without exception throughout history been paragons of virtue. That is just not true. Anyone with any understanding of history knows that Bailiffs are human beings. They are capable of making mistakes and they are capable of being very unpopular as well. We had a Deputy Bailiff in the early 1990s who had to be kicked out of the job because they were not satisfied at how he was performing as Deputy Bailiff. Well, for all we know he may not have been a very good Deputy Bailiff but perhaps he was an incredible Speaker at the Parliament. So you are having to cut it in 2 and end up without one when perhaps it would have been good. So Bailiffs are human beings. They are capable of making bad mistakes. For hundreds of years, most of the Bailiffs of Jersey did not even live in Jersey. They lived in England and appointed Lieutenant Bailiffs here, so how people can be nostalgic about that I do not quite get. In particular, in the 1600s during the Civil War, I think George Carteret even had troops abandon him at one point; that they lost so much faith with how he was conducting the Civil War. In fact, he was given New Jersey in America as a thank you for his loyalty. Well, it was definitely his personal loyalty because the majority of the people of Jersey were parliamentarians during that conflict. The Bailiff had to be locked up in Elizabeth Castle while it was besieged. The Deputy of Trinity said that the role is part of our heritage. Well, I am sorry but I am a Jerseyman. I am a British Jerseyman, to use Senator Ozouf's phrase. My identity as a Jersey person is not compounded and categorised by our archaic political institutions. I am a Jersey person because I was born here, because I grew up here, because I am part of this Island's culture, and because I absolutely love this Island. That is what makes me a Jerseyman. It is nothing to do with who presides over the States Assembly. If you go to parts of my constituency like Convent Court or Journeaux Court or whatever and knock on their door and ask them what they think about who chairs the States meetings, they could not care less. It does not bother them at all. They are much more concerned about their job prospects or the quality of their housing. They are not proud of the fact that the Bailiff chairs the States. It just does not matter to them. Some have said that this change would potentially alter Jersey's tradition and heritage for ever. Well, that is a good thing. Traditions become outdated over time. There was a time when public hangings would have been tradition. Oh, there is a public hanging today. Let us go down to the Royal Square, or wherever it was held, and go and watch it. But those traditions go because they are outdated and eventually they become inappropriate. As Mr. Singh Q.C. said, this is going to be inappropriate sooner rather than later so we should get on board with that change, control that change, and do it in a way that suits Jersey's needs properly and our new tradition, our new heritage, can be an Island that is a beacon of democracy because it is not at the moment.

[11:30]

I am not even going to read that comment out. One comment that really got to me was a comment from the Deputy of St. Mary, who said that those of us in this Assembly who may not believe that the Dean should be a part of this Assembly or that there should be prayers in the morning are somehow anti-Christian. That really bugs me because I am not a Christian myself and I do not believe that the Dean should be in the States, but I am not anti-Christian at all. I have a huge amount of respect for Christian tradition. I consider Jesus to be one of my political heroes. The Sermon on the Mount is a great political manifesto, is it not? I am not anti-Christian at all and I

think that this, combined with the arguments about Jersey tradition and heritage, is just another way of saying: “If you do not agree with us, if you do not agree with the reactionaries, somehow you are anti-Jersey.” It is a way of insulting people rather than taking on the substantive issues of their argument. It really bugged me when he said that because it was completely out of order. One argument has been that if this is passed and if the referendum does get passed, we will not know who the Speaker will be. Will it be an elected Member of this Assembly? Will it be somebody appointed from outside the Assembly? I am personally quite easy about either of those. I think it would be more appropriate for it to be an elected Member of this Assembly, but if there were somebody from outside the Assembly who had public confidence and who we could appoint ... I think Gibraltar’s Parliament appoint somebody from outside who is well regarded in the community. I do not think that would be bad, but the fact is whether it is somebody elected from this Chamber or whether it is somebody appointed from outside the Chamber, both of those are the only potential solutions we could have and they are both better than the situation we have at the moment. So really it does not matter. The referendum question or just getting rid of the Bailiff at all would be getting rid of the worst option. If there are 3 options, it is just to eliminate the worst, so we are making progress regardless. The Constable of St. John quoted at the beginning of his speech former American President Abraham Lincoln, saying do not change the constitution. I quickly got out my phone and went on Wikipedia. Abraham Lincoln did change the American constitution and he did so to abolish slavery, which he was killed for. He was assassinated because he did that. That was an example of a reformer changing the constitution to objectively make things better and now, 150 years or 160 or whatever it is later, nobody would ever go back and think: “Oh, yes, bring back slavery, that would be a good idea, would it not?” History will judge this Assembly. I am the youngest Member of this Assembly. I am 23 years old. In 40 years’ time when, fingers crossed, I could be Father of the House **[Laughter]** - I could even be Speaker for all I know - in 40 years’ time looking back on the people who are now at my age, they will look back at this Assembly and they will not look back on this as a proud day. They will think that this debate was an utter shambles in the way it was done. Senator Ozouf described Senator Bailhache’s amendment as a wrecking amendment. That is exactly what it has done. It has absolutely wrecked what was a golden opportunity to make a non-controversial reform, to get it done. It was the best opportunity because it is done on the retirement of a Bailiff. For all we know, the next Bailiff could be there for over a decade, so we would have to wait even longer to do that, or we would have to embarrass that Bailiff by doing it in the middle of his term, even though it may be perceived as being some sort of personal attack on him, which would be very, very unfair, I think. So we have missed an absolute golden opportunity here. I think the most positive thing of this debate has been to see the Chief Minister and the Minister for Treasury and Resources - and I do not know what other of their colleagues - believe this is important. I think that has been a really positive thing to see that they have now come to the view that this is unacceptable, that it does have to change. I think the writing is on the wall. No matter how many more independent reports we have, they are all going to say the same thing. This is completely unsustainable. In a few decades’ time, the Bailiff will not be Speaker of this Assembly. We should sort that out sooner rather than later and it is with great regret that I have to vote against this proposition. One of the reasons this Assembly fails to get anything done in terms of meaningful democratic reform is because of how poor our electoral system is. It is completely weighted in favour of the country Parishes. It is not a representative system. We have had opportunities in the past to fix it that have been missed. We have a great opportunity on 15th October this year to have this referendum on the Clothier report on the composition element, which would mean for ever that would no longer be a problem. The voting patterns in the States would be proportional and they would represent much more accurately what the Island-wide view is, so further reforms would become easier. Having a referendum on the same day on the elected Speaker wrecks that referendum and it wrecks the Clothier one as well because it makes it an utter mess, people handed 5 ballot papers, no proper debate being able to be

had. It wrecks both of them and it will push reform into the long grass for 10, maybe 20, years and passing this will wreck any chance we have of a meaningful reform. I hope Members of this Assembly reject it.

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

I have noticed during my term of office that problems can arise in States debates when individuals circulate legal advice without reference to the Law Officers. This may sound obvious, but I wish to underline the point that the Law Officers are not here to ventilate various legal arguments that can in theory be put forward in a courtroom. My function is to tell you, States Members, what the correct answer is, that is to say: "What would the courts ultimately decide?" is the correct answer in the event of any legal dispute. The circulation of different legal opinions which may be arguable but will not ultimately succeed is very easy to do but, in fact, simply interferes with my task in terms of providing Members with accurate advice and the right answer on the law. As Solicitor General, there have been 3 occasions in which I have been involved in giving legal advice in the face of the production of external legal advice and/or other legal comment. There was argument in 2010 in this Assembly about public law family proceedings and whether or not children required a lawyer in all cases. Slightly more recently, there was of course the argument as to whether or not the States should, by compulsory purchase, acquire land on the north coast of this Island and, thirdly, now this debate. The 3 debates are totally different topics of course but they have this common theme and it is this. I have had to or will be about to find myself highlighting the somewhat startling lack of reference to relevant legal principles and I find myself having to materially correct the external legal advice or other legal comment that is being distributed to States Members. If I start, if I may, with the Sark case that has been referred to by 2 States Members, I believe, in the course of this debate. I quote from Mr. Singh QC - so do not take my word for this - but this is what Mr. Singh said about the Sark case which of course was not highlighted to date. Mr. Singh says this: "The Sark case does not assist in respect of Jersey as the Seneschal is not legally qualified and the decision turned on the very particular nature of the various roles played by the Seneschal in Sark." The English Court of Appeal, Mr. Singh noted, were at pains to stress that there is no requirement in law for, and I quote again: "The slavish adherence to an abstract notion of separation of powers." I agree. The Sark case is not relevant to the constitutional position in Jersey. As Mr. Singh rightly points out, it turns on its own facts and one indeed might go further and note that the Court of Appeal took its decision in the Sark case without hearing any submissions from the relevant authorities in the Channel Islands. Although this particular point was not litigated further, the Supreme Court would later overturn other aspects of its judgment. I agree with Mr. Singh. Sark is not relevant and States Members should know it is not relevant in terms of understanding the legal position. Indeed, the Law Officers and Mr. Singh are in agreement that there is no significant human rights issue at this time. We agree on that. As Members no doubt will be aware, the difference arises in our respective opinions as to what the future might bring. English counsel predicted that there might be a change in this area within 10 years of writing his advice. That advice is dated 30th August 2010. We are nearly at May 2014. Not only has there been no change in the law, there is no sign of a change in the law and, for my part, I do not regard that as terribly surprising when one looks at the reasoning that underpins English counsel's opinion. The prediction of change is primarily focused on the suggestion that the European Court has not yet fully developed its case law in respect of the principle that a court must be independent as well as impartial. Indeed, it is even suggested that the European Court has not properly understood these principles in certain cases. With respect, in my view, this is not seriously arguable and it would have been much better if there had been an acknowledgement somewhere in the written advice that the European Court has in fact repeatedly considered the issue of independence in its case law and has stated on more than one occasion that the principle does not require the separation of powers. See the 2004 case of *Kleyn v Netherlands* for example. There are relevant cases cited in the

comments lodged by the Law Officers. You will not find any mention of them in the opinion of English counsel. I return to what I said at the beginning. I find myself again having to correct an argument that, although may be arguable in the sense that one can stand up and say it is not going to succeed in a court of law, it is just basic principles. A legal opinion that makes no reference at all to relevant principle and relevant case law will not succeed and no reference to international judicial guidelines is going to rescue such an argument. International guidelines do not change the ambit of Article 6 of the Human Rights law and, in any event, were published before many of the European Court's decisions. See the case I have already mentioned, *Kleyn*, in 2004 and *Sacilor* in 2006. In any event, one needs to be clear about the purpose of judicial guidelines. Their purpose is to ensure that a judge is protected from political interference and is free to take decisions. Senator Bailhache gave us some examples of problems that can arise and one can think of jurisdictions in which those problems occur but not here. The Bailiff is appointed by the Crown and, in that way, he is protected from political interference. It is, frankly, hard to take seriously any suggestion that decisions taken in the Royal Court are unduly influenced by politicians. I would also observe that it is highly unusual for any lawyer to predict how, if at all, a court might develop its jurisprudence many years in advance. If one steps back and considers legal systems generally, the higher courts - and, by that, I mean the Privy Council, the Supreme Court and the European Court - are not revising their fundamental principles every 5 or 10 years. That is what you are talking about when it comes to the European Court's principle that Article 6 does not require a separation of powers. On the contrary, if one thinks about how a legal system works, the higher courts set the fundamental principles which are then applied by the lower courts for very long periods of time. Just to give you a very simple example, this year I conducted a piece of civil legislation. The relevant House of Lords case is dated 1992. It is still relevant today. It was recently endorsed by the Privy Council in 2009 and the bottom line is that fundamental legal principles just do not change in a 10-year period. There it is. I will leave it there. Thank you.

Deputy M. Tadier:

Sir, a question for the Solicitor General. He started off by saying that his job was made difficult when he was provided with conflicting legal advice because it was his job to provide the right answer.

[11:45]

Does he agree that as a lawyer and adviser to this Assembly, as one of his roles, there is no objective right answer but what he is providing the Assembly is legal opinion on what he believes is hypothetically what the court would argue in the future and, therefore, he cannot say it is right or wrong? He can simply give the answer to the best of his knowledge and that alternative legal opinions may also be correct, although he may not agree with that.

The Greffier of the States (in the Chair):

Do you wish to comment on that?

The Solicitor General:

No, thank you.

1.2.15 Senator P.F.C. Ozouf:

I think we should be grateful to the Solicitor General for his advice. **[Approbation]** If I may say, the Solicitor General in his remarks just now, are the very perfection, in my view, of legal advice given without straying into the politics of the argument. I accept, for the avoidance of any doubt, that it is not unlawful that the dual role of the Bailiff and Chief Justice would be challenged. I accept that and, if I may say, I also have read the letter from the Bailiff on this matter which I think was incorporated in P.P.C.'s comments where he, in his most diplomatic and proper way, said that,

ultimately, of course this was a political issue and not a legal one. This is a political Chamber in which we take legal advice but the decisions that we make are political ones and it is on a political reason, not a legal reason, that I support the ultimate separation or rather, I am going to use the word “creation”, of a position which allows this Assembly, for the majority of its working, to have an elected person as Speaker. Now I am not going to waste the Assembly’s time because I, like many others, are put into a position because of the amendment - and I will explain why I believe it is meant that it is impossible to agree it - have to vote against it. As we are having the debate, I feel that I must address the Assembly on the reasons why and where I think this Assembly will go and must go in the future. I am not a left-winger. Apparently I regard myself as a centre-right but some people would wish to say that and this is one of the great things about this Assembly which is there sometimes are cross partisan or left and right economical divides. It has been suggested on social media that I was joining Reform Jersey. I am happy to join Reform Jersey on reforming some important aspects of our constitution in this issue. I do not agree, I suspect, with Deputy Mézec on some of the other issues that are on our agenda today and that is fine. He, if I may say, was right. The sky did not fall in in the past when we have had somebody other than the Bailiff presiding over our proceedings. Sir, you are I think extremely highly regarded in the way in which you chair and I am not buttering up the Chair, Sir. You are highly regarded. Indeed, we, I think, have had a golden era with the current Bailiff in the way that he has not entered the political fray and I think that is one of the reasons why there has not been perhaps the hastening of the change. I think it is to the future that we look and we look perhaps to the future with some concern. I believe in tradition. Now tradition needs always to be maintained but society changes. I am not a left-winger but I recall, when the late Tony Benn died, a quote on his views of change. He said: “First, they ignore you, then they say you are mad, then dangerous, then there is a pause and then you cannot find anybody who disagrees.” I am not sure the Deputy of St. Mary quite said that I was mad but he certainly said I was bad. He said certainly: “It was dangerous.” There is going to be a pause of reflection following this debate and there will be change as change inevitably happens as every night follows day. Senator Bailhache, if I may say, has changed. I respect his changed view. I respect the position that he now holds. I think he does a very good job as Minister for External Relations. That is a different position. He stood for Chief Minister. When Clothier was originally published, in his position as Bailiff, he criticised it and said that it was not the solution for Jersey. However, now he is part of that ministerial government that Clothier put in. There may be other issues that he stills disagrees with. Senator Bailhache pulled at the heart strings of tradition and almost said that you are almost being treacherous in not wanting to change or to say that we should not have traditions. He spoke about Black Rod. He pulled at the hearts strings as to whether or not the Lieutenant Governor should be here. He pulled at the heart strings about the mace and about the Viscount. He raised the issue of the Dean. Other Members have spoken about the Dean. The Dean is here but, by convention, he does not enter or he should not enter too much into the political fray. If he did enter the political fray and perhaps entered the debates more than on simply sometimes talking to us about the moral issues, I think that the position of the Dean would be quickly ended because he is unelected and he has no mandate. Perhaps he has some divinity. I will come back to the divinity of the Bailiff in a minute **[Laughter]** but if he would enter the political fray, then he would not command the respect of Members. We have also had the heart tugging of the mace. The mace, as Deputy Mézec rightly said, was given to the Island by Charles II in support of his loyalty to Sir George de Carteret. The mace is, in other places, a symbol of authority. I have to say in 100 years’ time, the mace may well be here and it may - and I hope it is - be the symbol of authority but it may have to be shared with the Bailiff. It may have to sit here with an elected Speaker without the Bailiff always being here. That is what has happened in other places. I cannot find who gave the mace for the House of Commons but I think there is a mace given by Charles II in the House of Commons. I am not sure the owner or the Sergeant at Arms or whoever was given the mace held on to it and said: “It is mine and nobody else’s and I am going to hold on to it for all

of time.” The point I would say to Senator Bailhache is that Black Rod, the Lieutenant Governor and all those people who wear fine gowns, et cetera, there is a difference. They are ceremonial. They are not part of and do not influence or certainly should not influence democracy and democratic debate which is the role of elected individuals and why we are here.

Senator L.J. Farnham:

Would the Senator give way very briefly? Just to be clear, was he inferring then that the current position of the Bailiff does have influence? You referred to the ceremonial positions of Black Rod, et cetera, having no influence. I wonder if he could just ... I think he was.

Senator P.F.C. Ozouf:

I will deal with the issue of civic head. This debate has been an absolute confusion and there has been sand put up and fog put up partly to stop really a debate happening and we cannot have a referendum on the presidency of the States and talk about the issues in a rational way in the middle of an election without a referendum. It is simply going to be impossible. We would be doing a disservice to the community in which we serve. I am not saying that our electorate is incapable of making the decision but we are not going to have a debate about the future of the presidency of this Assembly, civic head and the speakership of this Assembly in a rational way between now and October with all of the other issues. That is why many of us are going to vote against this. Senator Bailhache said that this issue needed to be resolved. This issue is not going to go away. As that quote from Tony Benn said, it is the start of it. “First, they say you are mad” and then there is that interregnum, then there is silence and it will come back. It must come back and it has to come back and saying it is coming back is not saying that I have somehow gone against my absolute traditional values and all that I hold dear of being a Jerseyman. It is not. It is I think important in the future perhaps - and in this debate, we have learnt quite a lot - that the issue of the presidency of the States and the civic head issue perhaps now have almost been confirmed. It is almost that we want to keep the officeholder of the Bailiff - subject to some things I will say in a few moments - almost in this preeminent civic head position. I think it is going to evolve because we have a Chief Minister now. I am sometimes thinking about what the Chief Minister Bailhache would have looked like and how that issue would have evolved in terms of civic head. I am sure that Senator Bailhache, if he were to have been Chief Minister, would have certainly wanted to be chief citizen of Jersey, if I may say, and that would not be a bad thing if that would have happened. I have said: “Change does happen.” People’s views do change. People’s views do change on what is right. The Solicitor General has said what the legal position is but that legal position may well evolve in the future, but I accept it is not there at the moment. I have to say my final words. This issue will come back and we will have to have a discussion at some point or this Assembly, whoever is here, will have to have a discussion about the role of elected Speaker. Two final points. Deputy Pinel spoke about the fact that the Speaker of the House of Commons is not held in high regard. That may or may not be the case, it may not be the concern but all I know is that Speakers of parliaments have massively important roles and I am afraid that the Bailiff, as Chief Justice, being unable to enter into the political fray that needs to be entered into in raising standards of parliamentary debate, in being tougher on us, many of us sit here or stand here and are calling on the Chair to be tougher. I am perhaps speaking too long on a debate that is going to be **[Approbation]** ... that was indubitable foot stamping, I understand. **[Laughter]** But sometimes we are going to have rules of procedure which are going to have to change. The Chair is going to have to be bolder. Many of us want a Chair to be bolder in terms of encouraging time limited debates, et cetera. Somebody spoke about a vacuum. There is a complete vacuum in the role of the political leadership in the speakership of this Assembly. It is not happening. It has not happened by P.P.C. and it cannot happen by effectively the Chief Justice operating as the dual role here. This is a political issue; not a legal issue. I want a Speaker that is going to be part of a group of elected parliamentarians to change

procedures of this Assembly to make us more concise to make debates more organised. There is not virtually any other parliament in the world that allows debates just simply to go on and on. Organising of public business, organising and tabling in terms of government business, Back-Bencher business, 5-minute speeches for Back-Bencher business, First Readings and Second Readings. I am afraid we have to raise our game. We have to raise our efficiency. The important role to try and achieve that is having a Speaker that is elected.

[12:00]

Perhaps there is a solution in continuing to have a Bailiff as President of the States but also having, as Deputy Mézec and others have said, an elected Member who, for the majority of the time, is the choice of this Assembly in terms of being Speaker. Maybe we want the Bailiff. Senator Farnham said yesterday that word “our”. That is that Radio Jersey word that says: “Everything that is ‘our’ has become somehow ‘you’.” It is certainly our Bailiff but a modern democracy and parliament wants their Speaker. That is what has happened. I am amazed that this debate with elected parliamentarians are not having the real debate that happens about what they need in terms of their elective democratic responsibilities in terms of what we need as “our Speaker”. I mean no disrespect to the Bailiff and his predecessors, who I think have performed fantastically well. But it is not our Speaker, it is a Speaker who is imposed upon us, and that, in a democratic parliament, is a political issue which many outside people would find odd, and I find more people involved in politics does not find today an issue which has got to be resolved. I wrote to the Bailiff and to the P.P.C. saying that previously we used to have a convention when the Bailiff was not available, and perhaps we have had a gold era with the current Bailiff and our Greffier who does preside over, that an elected Member did speak, did take the Chair. I wanted to see, and the Connétable of St. Clement has done it, he has presided over debates, and he has done so well. I think we should have an elected Member presiding over us. It is not our Speaker, in terms of our choice, and that is the issue. That is the reality of where we, as democrats, as parliamentarians, as wanting ... if we really want to raise the level of debate in future, if we really want to change the way this place operates in terms of efficiency, timeliness, importance, in terms of curtailing speakers, we are going to need a much tougher Speaker. We cannot have that, I am afraid, with an appointed Bailiff that we have no choice over, and that we also cannot mandate because they feel incapable of entering into that fray of saying to a Member: “Be quiet, sit down.” Or encouraging, for example, a 5-minute rule. We are in a vacuum and we have to fix it. I am concerned and I have written to the Bailiff about appointment of Crown Officers. I am not going to go into details it would be inappropriate. But there are issues about appointment of Crown Officers that cannot be ignored. Currently, Crown Officers are appointed with a judicial role and there is a consultative panel involvement which I am afraid falls short, in my view. I am sorry to say it, but I am not happy. We get the outcome of an imperfect system and we are going to get the outcome in future of an imperfect system, in my view. As an elected representative I think that I am in a position to say that, even if it offends and even if it upsets people. This debate is lost; this debate has been, in my opinion, wrecked but it will not go away. We have to do a lot more to change our constitution, our composition and this is not simply ... let me say very clearly, there have been some shots put across people’s bows. Well, okay, we have had a debate. This issue will not go away, there are some lessons and there are some takeaways from the successors in terms of Crown Officer appointment, about entering politics and what is appropriate and what will not be appropriate. Things have already changed a lot since Senator Bailhache was Bailiff. The issue of the Bailiff being the principal interlocutor between the Home Office, as then was, and the Ministry of Justice. That has now changed. The proper process ... Senator Bailhache would be aghast if his position as Minister for External Relations would be interfered with by the Bailiff, as would have been perfectly normal 10, 15 years ago. That has changed, and it is right that it has changed. The Bailiff must not be involved in issues of politics, and if the Bailiff does get involved in issues of politics, there is going to be political difficulty,

there is going to be political trouble. I think that we have to find a solution in order to make sure that roles and responsibilities are absolutely clear, going forward. We have ended up with an unsatisfactory outcome today, we have ended up with a wrecked proposition which cannot be supported. But this issue will not, as long as I am in this Assembly, go away. There has to be discussion about what we do; mature, proper, informed, and yes, we can hold on to traditions, I say to the Deputy of St. Mary and to the other traditionalists, which I am a traditionalist too. I respect the authority of the Crown but I am a democrat, and democracy and democratic parliamentary debates must mean there must be a change, and I regret and I am sorry that we have wasted our time, but not completely.

The Greffier of the States (in the Chair):

Thank you for your 21 minutes, Senator. **[Laughter]** Senator Farnham. Yes, Deputy Pinel. I think Deputy Pinel is raising a Point of Order.

Deputy S. Pinel:

Just a point of clarification on the comment by Senator Ozouf. I did not say that the Speaker of the House of Commons was not highly regarded. What I did say was that since Betty Boothroyd there had been little credit accrued by elected Speakers and Deputy Speakers in the U.K. Thank you.

Senator P.F.C. Ozouf:

I apologise if I said that.

The Deputy of St. Mary:

Another point of clarification, please. I did not say or claim that the Senator was mad. **[Laughter]**

Deputy G.C.L. Baudains of St. Clement:

Some of us do.

The Deputy of St. Mary:

I am in no way qualified to assess such a thing. **[Laughter]** **[Approbation]**

1.2.16 Senator L.J. Farnham:

Which Senator was he talking about? Well, I am pleased to follow Senator Ozouf and I just want to correct him on one thing. He accused Senator Bailhache of tugging at the heartstrings, whereas Senator Bailhache's speech was a very factual speech, and then after accusing Senator Bailhache of tugging at the heartstrings, he then went and twanged on the heartstrings of every Member. He twanged so hard he broke mine. **[Laughter]** But here we are, and it is important. I think what we must not lose sight of in this very important debate is the method that we adopt to deal with this issue and that is one of the problems I have. I think we are adopting the wrong method. I think it is completely wrong to try and change this position, without detracting from the Constable of St. Helier with his proposition, with a Back-Bench proposition without having properly consulted all the relevant parties, not least the people of Jersey, and I did not say "our", I said "their Bailiff" because it is their Bailiff. Senator Ozouf might like to use the word "mine" more often than "our" but it was their Bailiff, and that is very important. Also, I think it is important to remember that the Bailiff presides over this Assembly and administers his duties in line with the instructions we give him. We give him the Standing Orders and if we need to make those more robust let us adjust them, let us give the Presiding Officer the tools to be more democratic, if that is what the Senator and other Members want. Let us do that. I notice there, the P.P.C. have tabled some amendments to Standing Orders coming forward and I look forward to debating those, but that is the tool we should be using perhaps in the first instance if we want to change the dynamics of the position of Presiding Officer or Speaker, as some Members now have renamed the position. Another question

I have asked myself and that is: has the independence of the Judiciary or this legislative Assembly ever been compromised by the dual role of the Bailiff and I do not think it ever has and I think it is highly unlikely that it ever will be, and it is not because of the office. I mean, there is a saying, honest men and women are true. The Members of the Legislature and the Judiciary, and I have a great deal of respect for every Member of this Assembly for the very fact that they are sitting here and trying to do their best for the people of Jersey. But has anyone here ever felt influenced by the dual role of the Bailiff? Or anybody carrying out their duties in the Judiciary. I do not think they give it a thought. But now, having said that, I want to make it absolutely clear that I am not saying this is a wrong position to aim to. It is certainly wrong to have a bit of a knee-jerk. I, too, sit on the Bailiff's Consultative Panel. I, too, am very unhappy at the procedure for appointing the Bailiff and Crown Officers, but I think it is wrong to cite that as a reason right now for removing the Bailiff from the dual role. We have made great steps recently in this Assembly by shifting political responsibility for judicial matters to the Chief Minister's Department and that is a very important start. What I suggest we do when we are looking at the method of dealing with this is look at changing. Quite properly and quite rightly we need to change the appointment process. I am not comfortable as being able to give an opinion on appointments of Crown Officers but that is no reason to rush ahead with this proposal in this form. Now, I disagree with Deputy Mézec, and I have got a great deal of respect for Deputy Mézec, I think he has come in, it has been a bit of a breath of fresh air to have a new young States Member whose contributions have been thoughtful and well considered. But just because the current Bailiff is retiring I do not think that is a reason to have to change this. We could change this at any time with the incumbent Bailiff. It is certainly no good reason to do it now. It might be convenient, it might be seen as being convenient but it is not, and again, it is the wrong sort of catalyst to cite. Also, I think there is a difference between the skills of the Crown Officer, especially the Crown Officers that reach the top of the tree, as it were, the Bailiff and Deputy Bailiff, as opposed to Members of this Assembly, with some exceptions. There are some lawyers and accountants and professional people in here but generally we are all, I think ... I would like to say we all come here with first class honours degrees from the university of life, and arguably that is more important than holding professional qualifications when you are representing the people in a legislative Assembly. But I think we are fortunate to have learned professional people who have reached the top of their field who can apply those skills to presiding over this Assembly. So I think we are fortunate indeed to be able to draw upon that and we should not throw it out without full deliberation. So, to finish, I want to reiterate that I am not opposed and I think Senator Ozouf is right, I think this issue will not go away, we shall keep revisiting it. But next time we revisit it, let us do it by adopting the proper method ... I will not attempt that word, proper method. Let us make sure we consult with all the relevant parties, including the people, whether it be by referendum or in some other way. I believe that the proposition should come as a proposition from the Government, from our Government or from the Chief Minister, who will have worked closely with the Crown Officers in coming to an accommodation to bring it here with the support of the majority of the people of Jersey. That would be a far more acceptable way of dealing with this issue, and it is for that very reason that I am uncomfortable with this and why I cannot support the proposition. Thank you.

1.2.17 Senator I.J. Gorst:

I will try to be short. I am sorry that the Connétable of St. John is not in the Assembly, I hope he is listening while he is having a cup of coffee. I am a traditionalist and I have always considered myself to be a traditionalist and I have been privileged to marry into a very traditional family, and yet I accept that in the round of political debate accusations can be made which may be unfounded. In fact I am so supportive of tradition that I believe in setting up new traditions. I believe that tradition should be the bedrock of not only communities and institutions, but also of families and

smaller units because it binds together; it can bring a common aim and a common goal in life. Therefore, I guard, protect and want to ensure that we have traditions into the future.

[12:15]

Institutions in the world in which we find ourselves today are being broken down, are finding themselves not able to cope with the modern world in which we live. We see it in other parts of the world and we are going to talk, no doubt, about political parties later at this sitting. But the general trend of political parties, certainly in our part of Europe, are that membership is declining because people are being disconnected with tradition they are wanting to deal with issues on their own merits and the institutions of government, the institutions of the Judiciary and various other ... the institutions of the church, certainly in western Europe, are struggling to deal with the change in the community in which we find ourselves. But I believe that institutions and tradition have a strong part to play in our communities going forward, but in order to have that strong position those institutions have to evolve, they have to change and they have to modernise. That is why I supported the Connétable of St. Helier bringing this proposition because part of that change, part of that evolving, part of that modernising is ensuring that those institutions are under review and that we, as an Assembly and as a community, have time to consider them and to decide how that modernisation, that change, that evolving can make sure that those institutions have a long and productive and important life in our community. Some have said that this is an issue of left and right; it is not. This is an issue about whether we want to see, I believe, the role of Bailiff have a long future in our community, and I believe it can only have that if it evolves, and I hear what some Members have said about the process that we have been undertaking today and they feel that different perhaps methodology should have been undertaken. But be in no doubt, our institutions have to evolve, they have to respond to the modern world in which we find ourselves, otherwise they will wither and they will not be able to carry out the functions that we wish them to carry out and they will become irrelevant. If we search ourselves in this Assembly, the fact that we have not been able to modernise, reform and evolve is one of the reasons why we are not held in the regard that any parliament should be held in within a democracy respecting community. So it is not a matter of left and right, it is a matter of whether we wish to see the institutions that have served us well throughout our history evolve and change. In this debate I appear to have been praised and criticised in equal measure. I always take that as a compliment because when that is the case, often one can feel vindicated. I would like to praise Senator Bailhache for his speech because I think it touched on some of the important issues that not all contributions today have, and he and I have spoken on a number of occasions about this issue, as you might expect, and he is right, and the Solicitor General carefully said this as well. This is not a matter of whether the position we find ourselves in is illegal or not but it is an important matter of perception, and equally, I believe, it is an important matter of whether our Judiciary complies with the important principles, as I outlined in my comments, coming from the *Bangalore Principles* and the *Latimer House Principles* and we heard what Senator Bailhache had to say about that. Of course, that may have been the intention of the writers of the *Latimer House Principles* but it would still seem, and it is still the case today, that we with our sister Isle, Guernsey, are the only entities throughout the Commonwealth area that do not comply with those principles. So we have to use that as well when we are considering these issues. We can think of that as being quirky; that is maybe how we wish to think of it, but I cannot think of it as quirky, I can simply think of it that we are not complying with those principles, and some Members obviously are satisfied with that. Others, and I am one, who are not. I think the other important thing that we should take away from this debate today is a recognition, I think, even of some Members who are more traditional than I am and do not want to necessarily see institutions evolve, is an acceptance that this change is coming; an acceptance that this change will happen. It is perhaps only a matter of timing, and I think that, despite what Members might have thought Senator Bailhache said, or heard him say, in the conversations that he and I have had the thing that

we have disagreed about is the timing, not that the change will ultimately arrive, but the timing. We heard Senator Bailhache talk today about if we had the prize of sovereignty then we would have to change this role anyway and I made the point yesterday that if that is the case, I believe that we should do it now because why should we not comply with the highest possible standards just because we are a Crown Dependency rather than being a sovereign nation. But I accept that Members have not accepted that argument. The other thing that struck me about the debate over the last day or so is that, with the greatest will in the world, I am not sure that the role of the Bailiff is fully understood because there are a number of roles that the Bailiff must undertake, and perhaps I could say that the ... Senator Farnham kept referring to the Bailiff as “their Bailiff” or “your Bailiff”. Actually the Bailiff is Her Majesty’s Bailiff appointed by the Crown and ultimately responsible to the Crown. So we just need to clarify that point. But there are roles of the Bailiff, there is the role of civic head, there is the role, as I spoke about yesterday, of guardian of the constitution, there is the role of Speaker of the Legislature - the Senator seems to be frowning but I think he will find that is the case - and there is the role of chief judge. Senator Bailhache quite eloquently has argued that he does not believe that those roles can be separated. He believes that they are intricately entwined and therefore we can only change one at the peril of the effect that it might have upon the other. As I said yesterday, I do not accept that argument and I think the only basis that I have seen for that argument is why should a chief judge be civic head of a community, and I would counter that with, why should a Speaker of an Assembly be civic head of a community? There is no greater rationale for one or the other, and if the only rationale is that that individual has to have a foot in both camps, then we go back to the principles; the *Bangalore* and the *Latimer House Principles* which says that that should not be the case and that creates other difficulties for us. But what I am trying to say here is it has become apparent during the course of this debate that the role of the Bailiff is not well understood. The relationship of those roles vested in one individual is not well understood, and I think it was the Chairman of P.P.C. yesterday that said one of the reasons that he felt that we could not have a referendum was that there would need to be a work of education and understanding with regard to the different roles and how they related to each other. I think, having heard what I have heard in the Assembly today, I think that is absolutely right. Of course, I have not, in this speech, spoken about the independent reports, 2 of them now, which have said the roles should be separated as well, that have been commissioned by this Assembly in the past. I would just say on this point to the Connétable of St. John, I do not mind him criticising me that is part of my job, I get criticised every day, that although those reports were chaired by independent people who were not from this community, the ... if he looks at the list of the membership of those committees, he will see, he might even be related to - heaven forbid, he might even be related to - some of them, as have some of those people who have criticised the position that I have taken on this particular issue, but that is by the bye. So it is not about nationality or where one might have come from, it is, for me, about fundamental principles. It is about the modernisation of an institution which I want to see serve this Island into the future in the same way that it has in the past, and unless we modernise and evolve, we will find that those institutions, perhaps like this one, fall into disrepute in some way. So, it is, having set out on this debate yesterday supporting the Connétable of St. Helier, for the reasons that I have just said, I find myself in a position today of not being able to support his now amended proposition because P.P.C. simply do not have the time to bring forward the legislation and the changes in time for the change in Bailiff. That is why, while you ruled that Senator Le Gresley was incorrect yesterday, having thought about it overnight, I am inclined to concur more with his position and the points that he made yesterday, but there we are. So I think there is a lot of work that needs to be done. Senator Farnham talked about methodology as well and sometimes methodology is extremely important in regard to these issues and I accept that point as well. But I believe that every Member of this Assembly who respects democracy, and I believe that is every Member of this Assembly, who wants to see and knows that an independent Judiciary is an incredibly important part of our

autonomy, would want to make sure that the judicial principles, as outlined by the *Bangalore Principles* and the *Latimer House Principles*, are complied with in our community, and I think that that is very important. I accept that today this debate is going to be lost and I am going to vote against it for the reasons I have just said. But I, like many other Members, have said it is not going away. We do not suddenly comply with those principles because the debate is lost and we do not suddenly comply with those principles because we think a particular part of our tradition for 500 or 800 years is very important to us, and I do not underestimate that view. But the fact that we are not complying does not go away and I think we just need to consider that as we hopefully move towards the vote, but certainly as we move towards lunch. Thank you.

The Greffier of the States (in the Chair):

I know this is an immensely important debate but I would just remind Members it is nearly Wednesday lunchtime. There is a huge list of business to get through so I am sure Members will bear that in mind when making their contributions. Deputy Maçon.

1.2.18 Deputy J.M. Maçon:

I will try to just bring back some points about where we are now. I think that it is unfair to criticise the Constable of St. Helier for bringing forward his report and saying: “Well, it is only made of 13 lines.”

[12:30]

Of course, the whole point is that underneath the Connétable’s proposition was the whole Carswell report which the Island spent a great amount of money on, which was done independently, one with a Chair from outside the Islands and with 4 members from within the Island; all contributing to that report. Certainly for me it is a frustration that once again we are going to be going down the lines whereby, simply because we do not like the recommendation of an independent report, we are not going to do it, regardless of how valid those recommendations are. But that is what the States Assembly does. I just want to clarify some points. Looking at the Scottish referendum there was a discussion about whether there should be 2 questions, about whether there should be one about having full independence and whether there should be another question about “devo max”. After review of that it was thrown out that you should ask 2 questions to the public at once, not because they could not understand it, not because they would not necessarily have the ability to understand what is going on. But the fact of the matter is good principle is that if you go to a referendum, you ask the public one question at a time so that the minds can be concentrated on that one focused issue. That is just good standard practice. Because of that, that would be another reason why I will not be supporting this particular proposition because I think yet again we will be confusing and muddying the waters and doing something which is not good practice, which the States has yet again possibly found itself wandering into. There was a question in Senator Bailhache’s speech which asked: “Under what authority would the Bailiff, if he was not President of this Assembly, have to be able to greet the monarch when they came over the Island?” Of course, the answer in my mind to that is quite simple: because he is appointed to letters patent and therefore he is appointed by the Queen. So it would be quite natural for the Bailiff to greet the monarch when they visited the Island, so I do not see that as an issue. Another point which we need to get to is looking at the situation whereby we find ourselves in a chicken and egg situation. For example, if this was approved, I think that P.P.C. would have to come back to the States to get an agreement to say what would replace the Bailiff because I do not think it is right to go to the public and say: “Should this role continue or not?” without knowing the consequences, going into a vacuum. I do not think that is right. I will probably lose the argument but in order to do that, P.P.C. would have to come back to the Assembly. Again, in the timeline that we have got in order to make that decision, I really do not feel that we could reasonably do that and have it all in place with the timeframe that has been

outlined. I thank the Chief Minister, just referencing some of the other points that I have made. One final point which I do want to make is that the Bailiff's role through its history has changed over time from what was originally appointed and becoming head of the Royal Court, to then the establishment through the States Assembly and how that role has evolved over time. Inevitably all roles will evolve over time and I think that to say that any position should be set in stone and not changed over time is not reasonable and also it is not in the nature of the role itself, from where we find ourselves today. Finally, just one point about the mace. Again, I would have thought that if the Bailiff was not presiding in the States it would go into the Royal Court where there is already a space for it to be fixed. So, I do not think that that is problem whether it is in the Assembly or not. I do not think the credibility or authority of the States Assembly is down to what particular item of furniture we happen to have in here. I just wanted to address those points which I do not think necessarily have been made.

1.2.19 Deputy G.C.L. Baudains:

When Senator Ozouf spoke a short while ago he mentioned ... well, apparently as far as I can understand, the need of a Speaker so that stronger enforcement of speaking and Members could take place, so especially those who spoke too long or went off subject or whatever. Well, I have to say, having endured many of the Senators' lengthy speeches, I was almost persuaded to agree with him. But being mindful of the adage: "Be careful what you wish for" I managed to divert my mind from that. When I came here this morning I found my car was running perfectly well. There were no obvious malfunctions of any sort; it was pleasant to drive here. For that reason, I shall not be taking it to bits when I get home. I shall adopt the same strategy with this proposition. I believe in common parlance it is: "If it ain't broke, don't fix it." I have to start, unfortunately, by saying I am less than impressed with the Constable's proposition and that is for a number of reasons. This is not a pavement writing exercise. This is a very serious matter. We are talking about the possibility of abolishing hundreds of years of history and ultimately probably the position of Bailiff as well. But all we get from the proposer is a very short report which does not cover the issues involved. I know he referred to the Carswell Report. But it does not cover the possible ramifications. I will not go into the serious issues that could very well follow adoption of this proposition, such as, as I said, the possible eventual demise of the role of Bailiff altogether, because that was adequately covered by Senator Bailhache in his report and to his amendment and also as he so eloquently put it yesterday. But what of the narrow issue of an elected Speaker? Well, at present several people preside over this Assembly: the Bailiff, the Deputy Bailiff, the Greffier and occasionally the Assistant Greffier. I recall occasionally, as Senator Ozouf alluded to as well, one time when a senior Senator occasionally took the Chair, and, I have to say, he confided in me that he found it quite stressful. Is the proposer suggesting, in advocating an elected Speaker, that they are all conflicted or incapable? In my view, what is the point of changing something that works perfectly well and is a cornerstone of our uniqueness? I would not dream of going to another country and telling them how to run their own affairs and I am sure it would not take them long to tell me where to go. Yet we listen to people like Clothier and Carswell. I was thinking: just look at the mess we are in by following Clothier's advice and changing to ministerial government. Ten years down the line we still cannot sort it out, which is hardly surprising because it is not suitable for Jersey's non-party system. I am afraid all these people fall into the same trap. You cannot transplant part of the U.K. into a small island and expect it to work. We have suffered too much in the past by listening in that area. I do not know why we entertain those views, which leads me directly to another point, and that of hypocrisy. The wish to change our centuries old tradition is basically predicated on a perceived conflict between politics and the Judiciary. That is what it is. It is perceived and by a relatively small minority. The Presiding Officer does not make or influence the making of laws. So, suggesting there is a conflict, demonstrates, to my mind, a lack of understanding. I get particularly irritated by those who bring human rights into the equation. A threat to achieve change

is, in my view, lame when such an issue is raised because human rights must be the most abused piece of legislation on the statute book. All it does is protect terrorists, murderers, paedophiles and the like, while ensuring the victims get no justice. In fact, the sooner it is removed from the statute book, the better. I believe the Conservative Party has been making noises in that direction for some time. I hope they hurry up and get on with it. Another thing: if there was interference caused by the Bailiff having a dual role, it certainly would not happen by the Bailiff sitting in that chair. It would be rather more covert than that. So, as far as conflict goes, whether the Bailiff presides in that chair or not would make no difference. Deputy Mézec gave the example that a U.K. Speaker felt he was able to exert influence by putting a note on a Minister's desk. I have to ask: is that not an abuse of power? I spoke of hypocrisy, and I aim that at those from the U.K. who suggest we have a conflict because the head of Royal Court chairs this Assembly. I have to ask: what about the post of Attorney General in the United Kingdom and in the United States, come to that? In the U.K. the position is filled by the Prime Minister appointing one of his chums to the position, or, in the case of the United States, the President does that. Surely that is a conflict between politics and Legislature. What about the U.K.'s previous Prime Minister, busy making laws in Parliament from which his wife has made good living? Is that not a conflict? Yet they tell us we have a conflict. One Member suggested Sark was a good example. I do not happen to think so because the way I see that is that the people were basically frog-marched into a position they did not want in order to satisfy the wishes of some rich and influential neighbours. I do not call that democracy. I was also intrigued yesterday to hear some speakers talk about the importance of democracy but they were going to oppose referendum. I found that interesting and I would call that mutually exclusive. It seems to me, in putting this proposition, the proposer did not really have his thinking cap on and presumably did not have too much ink in his pen when writing the report either. If he is genuinely concerned about this conflict, and, listening to his opening speech I am not too sure about that, why has he picked on the Bailiff? Surely if anyone is conflicted, it is the Attorney General: Head of the Honorary Police, Chief Prosecutor, and yet he sits in this Assembly giving advice, which often influences the way we vote. If there is any conflict, surely it is in that area. Finally, there is a danger, as Senator Bailhache said, of confusion if we adopt this. Who would the public accept as, believe in and focus on as their civic head? Would it be the Speaker, would it be the Chief Minister, would it be the Bailiff? A lot more work needs to be done than just hoping it will evolve, as some speakers have suggested. I urge Members to consign this to the contre bin.

Senator P.F. Routier:

Sir, are you aware of many more speakers?

The Greffier of the States (in the Chair):

I have 2 more on the list at the moment.

LUNCHEON ADJOURNMENT PROPOSED

Senator P.F. Routier:

Well, I propose the adjournment, then, Sir.

Deputy J.M. Maçon:

Sir, I wonder if just before we do, the Chief Minister asked me last night to consider what might be a way forward, looking at the Order Paper. Thankfully, you have come to my aid.

The Greffier of the States (in the Chair):

Finishing this debate would help.

Deputy J.M. Maçon:

Yes. Given that it may not be reasonable, given the short notice and the bank holidays that are coming up, to suggest a continuation date for this particular sitting, I would put to Members that perhaps we may want to continue with the Order Paper on to tomorrow and get as much as we can possibly get done, possibly going into the evening to make sure that we are not in the middle of a debate, to finish an item of business. Anything left over is then deferred until the sitting on 13th May and therefore to pencil in for the week after as a continuation sitting on 20th, 21st and 22nd May as a way forward. Would that be agreeable to Members?

The Greffier of the States (in the Chair):

It seems like a sensible way forward.

Deputy J.M. Maçon:

Sir, if you say so yourself.

Senator I.J. Gorst:

It sounds reasonable, listening to it, though I wonder if the Chairman could send an email to all Members and we could just check our diaries over the lunch period.

The Greffier of the States (in the Chair):

Very well. The Assembly stands adjourned until 2.15 p.m.

[12:43]

LUNCHEON ADJOURNMENT

[14:15]

The Greffier of the States (in the Chair):

Very well. The debate resumes on the proposition of the Connétable as amended. I had seen the Constable of St. Martin.

1.2.20 Connétable M.P.S. Le Troquer of St. Martin:

I am not sure if there is anything to say, really, on this debate. I think much has been said and I will try to be as short as possible.

The Greffier of the States (in the Chair):

No obligation, Constable.

The Connétable of St. Martin:

I read the proposition and the amendments and the comments and made notes but I was not intending to speak in the debate. But a day and a half later much has been said. I think there is much in what the Chief Minister and what Senator Ozouf and the Constable of St. Helier have said on this debate, and very interesting, I have found quite enlightening, to the position of the Bailiff on the Island and especially in this Assembly. Much too, wisdom from Senator Bailhache and others, the Solicitor General and the words he gave us this morning. I have to say, I appreciate and agree with much that has been said by both sides in this debate, both views, opposing views, if you like, and there has been that. There have been some excellent speeches and points of view expressed by Members. I have got no doubt of what Senator Ozouf said. Senator Ozouf said that this will come back. I have no doubts this will come back to this Assembly. As to when it will come back, I do not know. But I have got no doubt, and any member of the public, any member of the electorate thinking this is not going to come back to the Assembly; it is going to come back. To the Constable of St. Lawrence, she mentioned about the media reports. There were a few media reports. I have some of them which I cut out from the newspaper. But obviously it is not enough

for a debate of this importance and I do not think the electorate were aware as they have been on what was going to happen. Not enough to feed the public. Maybe the Connétables ... maybe I am at fault; maybe I should have held a Parish Assembly and we could have all held Parish Assemblies, bringing this up. But then you are not bound by a Parish Assembly decision anyway, so that is quite a difficult one. I do not want to speak today about traditions. You will not find a prouder Jerseyman than me: born on this Island, as my parents and grandparents. You will not find anyone prouder than me addressing the Assembly Members this afternoon in this Assembly and it is an honour to do so and to represent the people of St. Martin and to the electorate as a whole on the Island. I would not have stood for the position of Constable had I not supported the tradition of honorary service and parochial life. I am not going to stand here this afternoon and talk about the mace or the role of the Dean or the Bailiff being a jolly nice chap. My concerns today, and surely for the rest of the Assembly ... and I suggest that we have more pressing issues to be dealing with at the moment, such as employment and job security, housing and immigration. Not to say this should not be debated. But we have to look at this Assembly. Here we are today. We spoke about it before. People are talking about the recession and their jobs and what is going to happen in the future, looking at their government for leadership. We have now been a day and a half in the Assembly. This is the remainder ... we are still on item one of this week's agenda. This is what we have still got to complete. We heard just before lunchtime today that we will have late sittings and maybe trying to arrange other sittings during the next month or 2. The electorate are looking for a stable and secure government, except, at the moment, what have we got? We have got 51 Members which we know will change to 49 soon and we have elections in October which will move, we know, to May 2018: just 2 facts, 2 certainties at the moment. Yes, we are getting there. However, we are not sure how this Assembly is going to look because we have been unable to sort ourselves out. We are not sure if there will be 49 Members in 2018. We could have super-constituencies, 6 super-constituencies or not. We are not sure of that. We could have Deputies and Connétables. We could have all Deputies without Connétables. We may, of course, have Senators. Our Chief Minister could be elected by the electorate and not by Members. Certain senior posts might be held by those with an Island-wide mandate; that, of course, if we still have an Island-wide mandate for some Members. We could have parts of Clothier implemented or not and more debates in this Assembly. We have spent a day and a half discussing this important issue. However, as I said, we are still on item one of the agenda. It is no wonder that the public look at us with disbelief. I must say, on public record, this debate has been thought provoking for me. The position of the Bailiff in this Assembly has been worth every minute of the one and a half days that we have spent debating this subject. The presentation I attended from Lord Carswell was indeed enlightening, and, for those listening on the radio, he took no questions at that presentation. He just presented the facts as they were and it was enlightening. I think there were many Members and certainly new Members like myself who left that presentation with a slightly different view and a questioning view in our minds. It is a shame that probably the majority of the public have never heard of Lord Carswell or his work or listened to the full debate today. But they will read certain parts of it in the newspaper, I am quite sure. As I say, I, like many other Members but especially as a new Member, took much from that presentation. Concluding, I am not trying to delay or put off what might eventually be the inevitable. I am not sitting on the post because I was to oppose, for the reasons I have stated anyway. If we have not sorted ourselves, how can we sort out the position of the Bailiff? I believe the only point of stability at the moment in this Assembly is that of the position of Bailiff, during the time of great insecurity of the actual States Assembly. That being the case, it is my belief that now is not the time to make the change. But, as I said earlier, as Senator Ozouf said this morning, this will come back and we will have to debate it at some future time.

1.2.21 Deputy N.B. Le Cornu of St. Helier:

I hope you have all had a good lunch. I know if I had given this speech a little earlier, before lunch, you would have been irritated but I am going to give you an irritating speech anyway because I am going to act as your conscience and I am going to sum up and try and analyse what is happening here. It is curious I am going to start with a quote. It is from Thomas Macaulay, a Conservative. It is: "Reform, that you may preserve." It is an appeal to Conservatives to embrace reform. The Chief Minister spoke about 3 things: modernisation, evolution and change. I think if we add those all up they equal reform. We do not often have literary, cultural references, but we have had a few and we had one to Caravaggio, I think it was, in Malta and the execution of John the Baptist. I would like to refer to a novel, later a film, by Visconti called *The Leopard*. The author is Lampedusa. It is about the Prince of Salina. He is trying to come to terms with the post-Risorgimento reality of being a noble in a republican situation. How is he going to preserve his status? He is particularly concerned about his wayward nephew, the Prince of Tancredi Falconieri. He has joined the Republicans and he is wearing Garibaldi's uniform and the red shirts and so on. Of course, the Prince wants to speak to his nephew and says: "What on earth are you doing with these Republicans, these Socialists who are going to do away with our status?" "Well", replies the Prince junior: "I have joined them because they are going to impose a republic on us anyway but I want to be part of the process that ensures that our privileges remain." He comes out with the immortal lines: "For things to remain the same, things must change." That is what the clever Conservative always understands. It is curious that I have to deliver that message to the traditionalists within this Assembly because ... when I was listening to Deputy Mézec's speech I could not come in because he was speaking and I would have been in front of him. But I was out in the corridor. A shadow passed over the window and I thought: "What on earth is that?" It was one of the builders, one of the workmen outside on the scaffolding. But to me it looked like ghost. I thought: "What on earth is that ghost?" It woke me up from this little Westminster bubble, our Chamber and reminded me that there are real people out there, and presumably there are quite a lot of real people listening to the States now, who have a different view about what we should be doing. I am sure there is an expectation that there should be reform, there should be modernisation, there should be change, there should be evolution, there should be all those things which the Chief Minister was talking about. It always struck me as strange that the Chief Minister is an Englishman. But, reflecting upon it, I can understand why. Because his speech today was that of the liberal conservative who sees the necessity for modernisation, for change within Jersey. It is not peculiar. There is a body of opinion. Jersey is now a lot more cosmopolitan than it once was. The great problem is the traditionalists who are in this Assembly. This Assembly is not representative. If there is one reason I am here, it is because I am a part of Reform Jersey and it is that curious title: why would we want a political party called Reform Jersey? Why is it not the Workers Party or the Socialist Party? It is because we see that we have got to undertake this job of reforming, modernising, democratising the Island. In respect of Senator Ferguson mentioned about being an English person who comes here and finds these institutions in Jersey somewhat peculiar but somehow the peculiarity trumps their irrationality. That was not always the way and I would like to speak about a chap called Abraham Jones Le Cras, who is another ghost, I am sure, who is here. He is probably smiling from his graveyard next to the Green Street Cemetery car park. He and the half pay officers and the various other Englishmen who lived in the Island fought a long battle in the 19th century for reforms and modernisation, just in the way I see myself in that same very tradition. Bailiffs were not always benign and some of them were dictators, which is precisely why on 28th September 1769 the Jersey Revolution occurred. But it was a peaceful revolution because then the people entered the Royal Court, demanding change. It frightened the establishment. But the British sent over their regiment of troops to bring about ... when they arrived they saw that there was right on the side of the rioters, but, of course, they were not rioting, and reforms were introduced, including the Code of Laws 1771. Those traditionalists are the obstacle to reform and modernisation. Sark has been cited and we have been told it is not relevant;

it is very marginal. In fact, I would see that, as I mentioned yesterday, as the model which has been suggested by the British for reform of the Channel Islands. They are not going to push too hard because they have got too much money here. But they would like to see some reforms because ultimately, and this is what the Chief Minister is trying to do, is establish a kind of functioning bourgeois democracy with all the respectability that it had around it and its structures and symbols because you are not going to invest money in a place where everything is a little peculiar, where these sort of questions are raised about. So, it is necessary to reform, to modernise, partly because it is a finance centre and needs to look respectable and squeaky clean. I am going to conclude there. Yes, one little final thing. It is about the brick in the wall. The constitution is this brick wall and it is this idea: if you remove one brick from it the whole constitution, the edifice is going to collapse. In fact, you can knock very large holes into brick walls because the load redistributes. So it is really a wrong sort of analogy. The only walls that collapse when you take a brick out are ones that are already rotten. Now, our democracy is not that rotten but it does need to be reformed and modernised. So, I am not sure what is going to happen today, the outcome, how people are going to vote. But the issue of reform and modernisation is going to come back. Reform Jersey will be putting it on the agenda and I think the Chief Minister and Senator Ozouf will be debating it in the elections forthcoming. Let us hope that we can enlighten the public and that they get to grips with the issues and see why it is necessary to reform, democratise, and, in particular, in addition to not only changing who our Speaker or our Chairman is, but we also get round to changing the electoral system.

[14:30]

1.2.22 Deputy J.A.N. Le Fondré:

Slightly ironic coming straight after the previous speaker because my first words were going to be it has already been said that for those of us who strongly favour our traditions will find it very difficult to support this proposition, and if this labels me as a traditionalist so be it. I hope my record also does show that I do support sensible reform. For me though it is even easier because in my election documentation from day one, some 8 and a half years ago now when I first stood, I have said I supported the role of Bailiff, the Dean and the Governor in this Assembly. I could not therefore in any conscience support this proposition which would go completely against my previous and continued commitment to the electorate on that matter. Having said all that as someone who does favour, as I said, sensible reform, and I have to say much of my focus these days is much more on our internal levels, the checks and balances and all that type of stuff and that misused expression of accountability, but reform on an evolutionary basis not revolutionary. This type of reform is about the lowest level of my priorities. I think, as the Chief Minister said, if it is going to happen we should do it now. In the long term we are all dead but I do not know how it is going to happen, I do not know when it is going to happen. People might be wishing in about 5 minutes it has happened already but I do not want to hasten it. Really I find a lot of the arguments that have been going on have been very theoretical. I do not think there is an issue in practice now, and on that basis I do not think that it really is something that we should be supporting now which the general message is it is not going to happen today. It was important that the principle of the referendum to me was agreed yesterday because hopefully it lays down a marker for any future debate that the matter would probably be of such importance to the public that it should go back to the public if we ever do make a decision on that at some point in the future. There is this interconnection between the various roles and I will come to that slightly more in a minute. It was during the exchange between Senator Le Gresley and yourself, Sir, over whether the amendment should have been allowed or not that really brought home to me yesterday as to why any future elected Speaker cannot come from this Assembly, and also clearly demonstrated for me the legal experience of the Bailiff is extremely invaluable under the system we have. We will all get political views on whether something should not have been allowed but the legal training that is

embedded in the position and in the individuals in that post is extremely valuable under the system we presently have in order to consider those types of arguments objectively. I do have to say that it was Senator Ozouf who I rather felt was trying to confuse matters over this issue between the civic head and the President of the Assembly. Yesterday he said we are the ones to make hard decisions and talked about looking through rose tinted glasses. He said that removing the Bailiff will improve the view of the public of this Assembly. I have to say, in my opinion, that is complete rubbish. He claimed that it would improve the democracy of the Island. I have to say that I think he is rather overplaying the issue surrounding the perception of the matter and I base that comment on the remark of the Law Officers and obviously Mr. Singh Q.C., I think it is. I do find it somewhat ironic that in trying to improve the democracy of the Island he was not supporting at the time taking the matter to the public. One of the reasons I also wanted to speak was because he also made a comment. He alluded to some issue he had raised over the appointment process within the Crown Officers and that may well be absolutely valid but I was reminded of another appointment process where an individual had been interviewed or a number of individuals had been interviewed for a post. They had all failed the interview test and about a year later a further interview process was held which was not advertised. There was only one applicant and the process did not follow the normal process recommended by the Jersey Appointments Commission but that person was appointed to the post and is now Chief Executive, and indeed is now in receipt of a pension pot of somewhere in the order of £1.9 million. The significance there, I am picking up what I was going to say, is I hope given the validity of the Senator's comments in relation to the appointment of Crown Officers, I hope he was equally as strong on checking appointment processes of something in the Executive side of the States and equally raised the issues over that process. One has to have a consistency if there are arguments over the appointment process of one side; one has to make sure that the appointments process as laid down is followed in other matters. The argument that this is just a nice internal matter is pure sophistry. We have also talked about the 3 roles of the Bailiff. The only analogy I can come up with is that of a 3-legged stool. Various speakers were trying to argue: "Do not worry, we only want to saw off one leg and do not worry about the other bits because the stool will still be the same." Again rubbish, by removing the Speaker role the rest of the position of Bailiff will start to crumble and that stool will start to topple. I do find that some of the arguments that have been raised have been overly simplistic that were only removing the President of the States or changing the nature of the President of the States, and that would be of no interest to the public. Some of us who do look back at our history and our traditions have been compared to dinosaurs and anti-democratic and all sorts of things but to me history is what makes us. Every time Members come into this building we touch history. Reference was made to Sir Walter Raleigh of 1600 to 1603 but there is so much more. Every time I come into this building I am reminded of nearly 800 years of history. I think it is Philippe Levesque, pardon the pronunciation if I am wrong there, is noted on the board that we pass every time as the first Bailiff of the Island back in 1277. In the 1660s we obviously had various members of the de Carteret family which ties into the English Civil War, the granting of New Jersey and the granting of the Royal Mace. People have touched on the Royal Mace but I think it is worthwhile just reminding people what is written on it. It says: "Not all doth he deem worthy of such reward, Charles II, King of Great Britain [et cetera] has approved that his Royal affection towards the Island of Jersey has ruled that this Royal Mace should be consecrated for posterity, and has ordered hereafter it shall be carried before the Bailiffs [it is the Bailiff's mace] in perpetual remembrance of their fidelity [and keep going, and then] during the fury of the Civil Wars when the Island was maintained by the illustrious Phillipe and George Carteret, Knights, Bailiffs and Governors of the said Island." In our own website it notes: "It is a symbol of Jersey's ancient links with the Crown. The special status of the Island is something which bridges the gap between one of the most turbulent and significant eras of British history and the present day." Not only was the significance of the Bailiff in that century important to Jersey let us skip forward to Lord Coutanche and the Occupation, and the

Bailiff was the stable point of Island Government during that very perilous time. As I said our history is what has made us. It is why as an Island of a 9 by 5, we are generally in charge of our own destiny, and it is very useful in explaining where we come from when meeting with politicians from overseas. By way of an example especially for those who have been up on C.P.A. (Commonwealth Parliamentary Association) conferences up to Edinburgh, the Scottish Mace is dated 1998. Ours is over 350 years as we know. Let us move away from history and just come back to more present days and some reference has been made so far I will just again draw people's attention to some quotes that have been made in other independent reports. Obviously we know about the *McGonnell* case and it has been said that the judgment has affirmed: "There is no legal basis for contending there should be a separation of the Judicial and parliamentary roles of the Bailiff." That same report I was just quoting from had the following comments in it: "Arguments in favour of the retention of the status quo with the Bailiff continuing to act as Presiding Officer of the meetings of the States, the Bailiff will have a detailed knowledge of the Island's machinery of government, the constitutional relationships with the United Kingdom and with other islands in the Bailiwicks. As an unelected [and these next 3 points are quite important] appointment the Bailiff is seen to be independent of local political bias and is able to act as a neutral umpire in a non-party political Assembly." That is pretty relevant to us I would suggest: "The available pool of States Members of adequate experience of proceedings of the States is likely to be comparatively small and there may be a lack of willingness among the able States Members to accept such office as an alternative act of political involvement in the machinery of Government [equally valid I would suggest] and the Bailiff's tenure of office will invariably span more than one term of the States and will therefore provide continuity." Again all valid, and that obviously, if people have not twigged, is from the Guernsey report, the Howard report that included the review of their Bailiff. We have had advice from our own Law Officers that the role of Bailiff is currently human rights compliant. Again the legal arguments do seem to be invalid, and to reiterate, and I apologise, I am sure the Attorney General said this earlier today, that English counsel did not mention that the European Court has consistently held that constitutional theories, which is what a lot of people are going on about, are not relevant to determining judicial independence. What I just wanted to quote before I start wrapping up are some comments made by the Bailiff in relation to Carswell, and I think they are again equally valid just to underline: "The constitutional relationship between Jersey and the United Kingdom is unwritten and to some extent uncertain. It is based upon custom and practice over many centuries. It is therefore essential from the point of view of reserving Jersey's constitutional autonomy that day-to-day practice is consistent with that autonomy. It is therefore of vital importance that the Chief Minister of the day is alerted to any possible implications of the constitutional relationship when a particular matter arises. He cannot rely on his civil servants for this, as nowadays they tend to be appointed from the United Kingdom and are therefore unfamiliar with the subtleties of the constitutional relationship, and in any event as non-lawyers have not been in a position to advise on the complexities of that constitutional relationship." The Bailiff does obviously point out for any Speaker looking to preside over the Assembly, the States consists of strong-minded individuals and presiding over it is not straightforward, and that is where the skill of a judge does come in rather useful. It also talks about what happens in terms of who might be a future Speaker. Carswell, you will be delighted to know, does not recommend that the Greffier of the States should be consistently a new Speaker. I am sure that would be a great relief to the person sitting in the Chair right now. The interesting comment that is made as well as that could it be, for example, a past politician that might have sat in the Assembly, and the observation there is if he or she has a considerable political history then the problem there is the consequence that any decision that he or she might make against a Member who had previously opposed him or her might not be well received. In other words if we do bring in someone who is unfamiliar with what we do who might be a past senior politician that is again going to have an issue about objectivity and independence. It is just a different argument to what we have now. Really, to conclude, the way

this is all being reported at the moment as well is that if we support the proposition today we are voting to remove the Bailiff. That is what the proposition is. It is subject to but we are basically putting our stamp of approval on the removal. I voted for the referendum because I feel that something that important, if it is to be considered, you do need to go to the public but I do not support the removal of the Bailiff, and so for all of those reasons not least my commitments to those who voted for me, I am obviously not supporting the proposition. To do so in my view will align myself with those who wish to remove the Bailiff and that is against my earlier commitments.

1.2.23 Deputy S. Power of St. Brelade:

I was one of those that got up at 5.00 a.m. to finish a speech and you will be pleased to know that most of what I was going to say on Carswell I am not going to say anything. Most of what I was going to quote, having checked what Rabinder Singh said in his report I am not going to use. Most of what was in the comments by the Attorney General I am not going to use but I will refer to 2 other sections. I will be brief. Senator Le Gresley reminded us yesterday about P.5/2009 which was the role of unelected Members in the States, the review P.5/2009. It is interesting looking back on that vote there were 37 votes to review the role of unelected Members of the States and there were 12 against. The 12 that were against a review in 2009, Senator Routier, Senator Ferguson, the present Constable of Trinity, the previous Constable of Grouville, the previous Constable of St. Brelade, the previous Constable of St. Martin, the present Constable of St. Clement, the present Deputy of St. Ouen, the previous Deputy of St. Peter, Deputy Hilton and myself.

[14:45]

We were the 12 that were against the review. If nothing else can be produced out of that is that it is consistent with those of us that are going to go the same way again today. I went back through the written submissions to the Crown Officer's review in 2009 and 2010 and I want to pick from 3 quotes, and there were 70 written submissions that were submitted between February and April 2010 and I am going to anonymise the quotes. The first one is this ...

The Greffier of the States (in the Chair):

They are publicly available. You may wish to say who. Members may find it quite useful to know the names.

Deputy S. Power:

All right. I wanted to anonymise it but I will ...

The Greffier of the States (in the Chair):

You do not have to give the names but ...

Deputy M. Tadier:

Sir, to make it more interesting can we guess? **[Laughter]**

Deputy S. Power:

I do not think the Deputy will guess, but I am going to carry on because I want to do it this way and because I think it is fairer. They represent a divergence of views and I am quoting selectively but not out of context: "My chief concern is with the Bailiff's role as head of the Island community. Though this has attracted less comment it is of great importance. The Bailiff speaks either to or for the people of Jersey on many occasions, ranging from community events to solemn commemorations such as Liberation and Remembrance." All of this has already been said: "He is also sometimes called upon to represent Jersey on a wider front" and indeed in my own experience of dealing with our *voisins Français* I detect, and I am sure those of us that liaise with our French neighbours, appreciate the depth of value that the French attribute to the role of *Le Bailli de Jersey*

and I find it extraordinary that the French have such respect for this venerable office that is highly respected by the public of Jersey that every time I meet a part of the French community they hold the role of Bailiff to be very high. This submission goes on to say: "If the separation of functions is forced through and the Bailiff's role is reduced to that of a judge only I believe it would be necessary for Jersey to have an elected President" and this is where we are: "to take the Bailiff's place as civic head. That would be nothing impossible in that 400 years ago in the reign of Elizabeth I we find Jersey described as a 'République' under the Crown but it would be far better to have the present arrangement as it stands and leave the present arrangement as it stands." There then is a second submission, which I thought was a bit of a gem, and it refers to the Bailiff, Deputy Bailiff and the Attorney General as: "These 3 gentlemen" and: "These 3 gentlemen have earned their positions in life after years of training in their respective careers, not to mention the effect it might have had on their families with all of the studying they must have done. I say Jersey would be a shambles if we were wholly governed by our so-called States Members, all of whom in my opinion are in for it for what they can get out of it, for being a Member, and have not got a brain between them. **[Laughter]** That is just how angry and sad I feel about the entire States Members. I cannot truly think of anyone in Jersey who would even think of employing any one of them, so that is my thinking about the 3 said gentlemen." Then there is another quote that takes a different line: "The position of Bailiff has been a huge value to Jersey for many years, in part due to the high quality of those who have been appointed to that position and today that standard is maintained by the holders of that office being people of stature who are well-versed in all respects and traditions of our Island life." So those were just some selected quotes from the 70-odd written submissions that were made on the role and the review of Crown Officers. My own speech has had to be seriously truncated, but from what I gauge of reaction, I do not believe that the civil role of the Bailiff can survive in the medium term or even the short term if there were an elected President of the States. It has already been said in the last day and a half ... a number of things have been said, but what I am acutely conscious of is that the evolving role of ministerial government, the evolving role of the Chief Minister and the evolving role of the Minister for External Relations are eroding the role of Bailiff as we progress through changing the machinery of government in Jersey. If we try to set a job description for the Bailiff today it has changed dramatically in the last 8 years and I do not think we are being fair to the role of Bailiff in the way that we are evolving that great institution of State. My problem is that we have not seriously set out the role of any change to the Bailiff in the future and this is not a good way of doing it, the way we have tackled it on P.160. I remind Members that the perception of Jersey from within, and I am not so much concerned with the perception of Jersey from without, but from within, and that is Jersey is unique, it has its own identity and it has a unique parliamentary system that should be preserved. The democracy of this Island is not deficient, as has been said this morning. I do not believe that democracy in this Island is deficient. A number of suggestions were said yesterday, Senator Ozouf being the principal suggestor, that Senator Bailhache's amendment was a wrecking exercise. I would say that Senator Ozouf himself has some experience of parliamentary politics and game playing in here and I would suggest that what Senator Ozouf did in the Budget debate of 2014, the Constable of St. Helier's amendment, he wrecked that amendment by lodging his own amendment to what the Constable of St. Helier was trying to do on the impôts debate last year, so I do not believe we have 2 examples. I think Senator Bailhache's amendment was not a wrecking amendment and I do believe Senator Ozouf's was. We heard Senator Ozouf talking eloquently and then pulling at heart strings about Black Rod, about the mace, about the Lieutenant Governor, about the Dean and so on, but the choreography that was introduced into Senator Ozouf's speech was full of his own way of delivering his own speech. I think his speech and Senator Bailhache's speeches were both good speeches but we have a unique way of dealing with reports, propositions and whatever in this Assembly and we all do it differently. I respect the way Senator Bailhache did it and I respect the way Senator Ozouf did it, but they did it differently. Deputy Mézec talked about a potted history of

certain Bailiffs in the past and that they did not lead perfect lives. Right throughout the history of royal families, right throughout the history of churches, right throughout the history of Popes, we have got good examples, bad examples and very bad examples. I am sure that the history of the line of Bailiffs in Jersey is no different. We have had some excellent Bailiffs, we have had some not so good Bailiffs and we have had indifferent Bailiffs. Indeed, I am sure there are one or two Bailiffs in the past who were probably pirates and privateers, but that is ancient history. My concern about the evolving role of the Bailiff is perception. I find myself in a position today that the Assembly has been held with a degree of disdain and disappointment by many of the public because of the way we have tackled specifically certain problems and I refer to the Electoral Commission debacle last year. There is a perception out there that we cannot be relied upon to reform ourselves, and then we take it upon ourselves to reform what is a great institution of the Island of Jersey. Indeed a colleague in the coffee room said to me this morning that there was an inference also that we cannot reform ourselves and that there are traditionalists who would oppose changing the role of Bailiff and there are others that say we should be able to find a Speaker and we should be able to have a Speaker from within that can perform the job satisfactorily. The jury is out on that, as to whether we can do that. We have not passed any credibility tests recently in reforming ourselves and I think we are going to have to be very careful in how we move on towards the reform of the Crown Officers. I listened very carefully to what the Solicitor General said this morning and he clarified for us the situation in Sark, that Sark is not relevant and that the case law in Sark does not assist, and one particular phrase that he picked out that I picked on, that I listened to and wrote down, is this slavish notion of adherence to separation of powers, and he made some powerful arguments about that. He also said that the European Court of Human Rights may not fully understand the principles that are here in Jersey. To summarise I will be voting against this proposition today. I think that we have to be very careful when we take it upon ourselves to reform, dispose or modify what is regarded as one of the great institutions of this Island, the office of Bailiff. It is one of the great offices in Jersey history and it is highly regarded by most of our electorate out there. I think that given the time that this has taken to get to this today, the time is justified. It is an important debate, there have been some excellent speeches and while the proposition looks like it is going to be defeated I think that we will be sending out a clear message this afternoon to both the Crown Officers and to the public as to where this Assembly stands today, on 30th April 2014, that it is inappropriate at this time in this Assembly to tackle modifying the role of Bailiff as Speaker of this Assembly.

1.2.24 Senator A.J.H. Maclean:

I have so far resisted the temptation to make a comment but I just wanted to add a few points, if I may. It does occur to me, looking at the clock, that it was about 5 hours or so ago that Senator Bailhache argued that we should proceed with this debate. I recall him saying at the time: “Even if it means another hour or so of our time.” [Laughter]

Senator S.C. Ferguson:

Optimist.

Senator A.J.H. Maclean:

He is clearly an optimist. In fact, this debate is so much like an old saying that goes: “After all that is said and done there is more said than often ever gets done.” That, I think, is something that we can all regret. Having said that, though, it is indeed important that we have spent time on a matter that is so important to the Island. It has been curious for me listening, as I have done, to the comments of Members. We have seen some unusual alliances develop, which has been curious. Who would, for example, imagine that Senators Ozouf and Gorst would have been bedfellows to Deputies Southern, Tadier and Mézec? In all seriousness, I think that is a good example of

democracy working well. The issue, of course, is of far greater importance than the individual personalities or indeed the general political leanings of any particular individual. The fact is that this is a critically important issue for the Island, and yet not enough people understand the significance or, indeed, I should say the detail about what it is that we are debating today. That has been made clear to me listening to the media reporting, to public comment and indeed in some circumstances to some of the speeches that have been made already today, that crucially the role of the Bailiff is not fully understood or appreciated necessarily. The fact that the post and the post holder are held in the highest regard is however indisputable. The low esteem in which the public appear to hold this Assembly, according to Senator Ozouf, is surely due to the manner of some of the debates, the decisions, or perhaps the indecision that occurs here, not I might add anything to do with the Bailiff. Therefore removing him from the role certainly would not solve that particular problem. There have been strong suggestions that the referendum amendment was nothing but a blocking or a wrecking ploy. I disagree with that. In fact I think it is disingenuous and unfair to the proposer of that particular proposition to make such suggestions. What the referendum proposal was, was recognising that we were seeking or are seeking to change 500 years of history, a tradition that has, and I might add, continues to work well for the Island. Nevertheless it is a significant change and should not be done lightly and Islanders, therefore, should be properly informed about the current position, what is being proposed, why and importantly have some form of channel in which to have their say. It is about surely good communication and good government.

[15:00]

A referendum is one such method, but of course there are indeed many others. We are not, after all, that good at referendums and consequently I can understand the proposer bringing the prospect of a binding referendum, although there were one or 2 Members I noted did not seem to like the idea of a referendum being binding, I assume for very good reasons. Nevertheless what is clear to me from the various reports and reviews on the subject that we are debating today, the Carswell, Clothier, as well as good practice that we can witness elsewhere, is that change is necessary. A modern democracy needs to evolve and to move with the times. Reform, something of which I feel very passionately about, I have responsibility as Members will know for public sector reform. I made the point only yesterday that public sector reform, machinery of government and indeed electoral reform, all forms of reform, are important. They need to be co-ordinated but more importantly than anything else they need to take people with them. You have to have a proper approach. It is not just the fundamental principle of good governance, important that that is, but the external perception that we have a Bailiff who is not just the Chief Justice but also a lawmaker as a member of the Legislature. That is the perception our detractors can and no doubt will use against us. Change will and must come but the process that leads to that change is the most crucial aspect. Although I thank the Constable of St. Helier for bringing this proposition, it is really the Council of Ministers that should be leading on such an important issue for the Island. That process must include Islanders, perhaps through a referendum, but in whatever form Islanders must be fully informed of why the change is being proposed and given the opportunity to express their views. I cannot therefore support this proposition, as many other Members have also pointed out, but change, evolution, modernisation, reform, however you want to describe it, and this issue in particular, will come back, must come back, must in my view be led by the Council of Ministers but informed by the views of Islanders and debated early in the next States by the new Assembly.

1.2.25 The Connétable of St. Mary:

I thought you might have seen me earlier. I wondered why I was not being called. Mercifully most of what I wanted to say has already been said, but this morning when I spoke in favour of this debate I said that there were things that needed to be said that my constituents had asked me, and I want to air them briefly because I want them to be taken forward in any work that comes out of this

debate in future. I am speaking as someone for whom the seemingly innocent phrase: “New and improved” usually strikes terror into my heart, but also someone who embraces innovation. Members will know I am a great lover of technology, I am almost 85 per cent paperless, but I never upgrade to the next operating system until all of the other fools have had a go first and I have had a look at what has gone wrong with their systems. I think change is important and evolution is important, but change at the right time for the right reason, not change without direction and not change for its own sake. I said this morning that sooner or later we were going to have to grasp this nettle, and I stand by that, but what is important is that we deal with it in the right way, and what we have to do is understand the implications. Senator Maclean when he spoke said something like the public did not understand the detail of what we are debating, but it is not just the public. It has become patently obvious through some of the speeches that people have made that Members of this Assembly do not understand what is being debated and how should they, because the proposition does not go into detail. As the Constable of St. John is fond of saying, there is no meat on the bones, and we cannot go forward in that situation. We need to look ahead, as Lord Carswell has said, and if he is correct in thinking that it might just be the quality of our post holders up until now and hopefully into the future that has permitted the status quo to persist for so long, then we have to I think be prudent and always have in mind that that situation might not always hold true. Senator Bailhache has said I think in the past, and I hope I am not doing him an injustice in this, that while we are not seeking independence it is certainly prudent to prepare for it. I think probably the situation is very much the same here. I am not a fan of referendums, even less so lately, and I am not in any way certain that a referendum is the best way forward in this case, but I am certain absolutely 100 per cent that in one way or another we must carry the public with us on this particular journey, and it is a journey. Going back to what Senator Le Marquand said, if you do not know to which port you are sailing no wind is favourable. I say if you do not know where you are going it is impossible to know, surely, when you have arrived. Perhaps it is even more important to know why you set out in the first place. We have to understand the exact route that we are proposing to take. Some of the key questions that my constituents want to know is who will we be appointing? Will it be from within or without? One Member this morning said there was absolutely no reason why it could not be a Member and that it should be a Member. A lot of people I have spoken to disagree. They do not think it should be a current Member or anybody with a recent political past. We need to explain the way we are going, we need to make that decision. We need to know how we are going to appoint them. We need to know how we are going to deal with their deputies. What happens if that Speaker is ill? There must be a reserve. They have holidays, whatever. We have not thought it through. Then, of course, there is the whole other issue of what is left of the role of Bailiff. Is it viable and how is that affected? These are the things that the people on the street want to know. If it comes to a legal or procedural reason why we need to effect change, and perhaps effect change speedily, in that case I cannot see how a referendum would be the answer, if it becomes a case of necessity. Whatever way forward we take we need to make sure that the consequences will be fully explored and that they will be explained in a public forum, and here I am saying more than a report or comments of 13, 130, even 13,000 lines but a real engagement, something that this Assembly has been sadly poor at arranging in the past, and that cannot continue. Once we know where we are going in detail we can begin that vital process, but we need to know first. If that process takes a little time then in my opinion it is time well spent. Sometimes in order to make the best time into port, even if the wind is favourable, you need to drift in the breeze before you set your sails.

1.2.26 Deputy J.H. Young:

I will be very brief. It is a very important subject about constitutional change and I want to put on the record that I am not opposed to change. In fact, generally speaking, my tendency is pro-change, but this is not the time in my view for this particular reform. It is certainly not the right vehicle for

it. It is neither the right time nor the right vehicle to abandon the safeguards that the traditional Bailiff's role gives us and for which the community rely on and to abandon it at a time of change, or even think about changing it at a time when we have not yet completed even the decisions on the post-Clothier reforms. We still have not arrived at the elective structure for the elected Assembly. We still do not have resolved our ministerial government structure. We have not got it right, and my view is that only then, when we have got that right and only then should we consider as a process of natural evolution of reform the change to the President or the leadership of the Assembly. At that time we will be able to work out the alternative method and not leave it loose and undefined, not even knowing whether or not it will be a Member of this Chamber. I hope never that it will be somebody outside, because that completely seems to undermine the whole purpose of doing what the opponents are advocating, but to be clear about how we are going to do that, how we are going to protect the constituents of that Member, whether in fact there will be answers to the question if a Member is willing to do that role and spend many hours, days, in the unenviable but very valuable task. When we have done that we will then be able to seek public views on a referendum, because I agree with Members that making that change without the public view would not be right, and we will be able to do it then with a well-prepared single referendum, only one referendum with a single question and having got the law right so that it is binding. When those circumstances arise then if I were in the Assembly at the time I would support that journey, but it is absolutely not the right time or the right vehicle to make that change now, so I will not be supporting the proposition.

The Greffier of the States (in the Chair):

If no other Member wishes to speak, I will call upon the Constable to reply.

1.2.27 The Connétable of St. Helier:

Thank you. I accept with hindsight that I was wrong to seek to curtail this debate, as we have had some very fine speeches on the subject of the role of the Bailiff as President of the States, well argued, useful, which will repay further study on Hansard, as will of course the reports that have been put to us today, particularly from P.P.C. and the Council of Ministers. I will spare the blushes of those whose particular speeches I admired by resisting the temptation loved by some Members to go through each contribution in turn. I must say that since the lunch break I have not heard much that is new and I would have been quite happy to have summed up then, but we are where we are. I should say however that Senator Maclean gave us a very useful pledge in his speech that the next Council of Ministers will deal with this matter, and I was very pleased that he spoke. **[Laughter]** I think that is what he said, but perhaps I am wrong. Hindsight is a wonderful thing, and probably with hindsight I should not have brought the projet in the first place. I might add, nor should Senator Bailhache have brought his amendment, but perhaps it was, to use a term I used before when I was trying to address the States on a difficult issue, that I became the midwife of this matter. I slipped nostalgically into the role of P.P.C. Chairman. I have not fully abandoned it, obviously, and I was concerned, having said at the start of this 3-year term that I wanted this matter to be brought forward by P.P.C. and I was concerned that perhaps P.P.C. were not going to get it done in time, so that is perhaps why it happened. I have been criticised for the brevity of my report by several speakers, in spite of the comments I made at the beginning. It was ever thus, if you bring an "in principle" debate you will be criticised for the lack of detail. With hindsight again I can see that Carswell's paragraph in respect of the effect of such a change on the role of the Bailiff as civic head, while not being bland as one speaker said, I believe it could be expanded upon, particularly as this appears to have been the sticking point for many Members. Senator Bailhache's amendment was not, I am sure, intended as a wrecking amendment, not the way Senator Ozouf's was when I attempted to hold down his increase in impôts duties, and I thank Deputy Power for referring to that, but of course it has had the effect of wrecking what was an "in principle" debate based on

Carswell. If you look at the helpful, I suppose, restatement or recasting of the proposition, to use a word that Senator Ozouf has brought into parliamentary discourse, what a Horlicks it is. I certainly cannot bring myself to support it. As I said earlier I want the general election to be able to work as best it can, saddled as it already is with a referendum and we know that the public do not trust us when it comes to referendums. I clearly cannot support my own proposition, which does put me in a difficult position. As I said it has been a really useful debate and I did say I would not refer to any speakers in particular but I cannot help but say that one of the finest speeches I have ever heard in the States was given today by its youngest Member and I really take my hat off to Deputy Mézec for that and if he is here in 40 years' time he will of course have lost his hair by then but I am sure he will bring a lot to the table. The debate has been much more useful, let us face it, than our last attempt to deal with Carswell which was an in Committee debate that went round and round in circles, got no one very interested and left the subject in the very long grass, so I am very heartened, as I say by many fine speeches which we have heard. It has been referred to already, but it is impossible to finish without mentioning the fact that it will not be immediately obvious perhaps to listeners on BBC, which is that this debate has been capably chaired not by the Bailiff nor by the Deputy Bailiff but by the Greffier of the States and how much has that detracted from the role of Bailiff as civic head, how much has that detracted from his next appearance on Liberation Day? I would suggest not a jot. I cannot maintain the proposition as amended but I thank Members for their contributions and suggest they vote as they wish.

[15:15]

The Connétable of St. John:

Can I ask for the appel, please?

The Greffier of the States (in the Chair):

The appel has been called for. The appel is called for on the proposition of the Connétable as amended by the amendments and the amendment to the amendment. The Members are in their seats and the Greffier will open the voting.

POUR: 5		CONTRE: 41		ABSTAIN: 4
Connétable of St. Clement		Senator P.F. Routier		Senator F. du H. Le Gresley
Deputy R.C. Duhamel (S)		Senator P.F.C. Ozouf		Connétable of St. Helier
Deputy R.G. Le Hérisssier (S)		Senator A. Breckon		Deputy T.A. Vallois (S)
Deputy J.A. Martin (H)		Senator S.C. Ferguson		Deputy M.R. Higgins (H)
Deputy N.B. Le Cornu (H)		Senator A.J.H. Maclean		
		Senator B.I. Le Marquand		
		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. John		
		Connétable of St. Ouen		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. Saviour		
		Connétable of Grouville		
		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 K.C. Lewis (S)		
	Deputy M. Tadier (B)		
	Deputy E.J. Noel (L)		
	Deputy A.K.F. Green (H)		
	Deputy J.M. Maçon (S)		
	Deputy G.C.L. Baudains (C)		
	Deputy of St. John		
	Deputy J.P.G. Baker (H)		
	Deputy J.H. Young (B)		
	Deputy S.J. Pinel (C)		
	Deputy of St. Mary		
	Deputy of St. Martin		
	Deputy R.G. Bryans (H)		
	Deputy R.J. Rondel (H)		
	Deputy S.Y. Mézec (H)		

2. Interim Population Policy: 2014 - 2015 (P.10/2014)

The Greffier of the States (in the Chair):

We come now to the proposition of the Council of Ministers Interim Population Policy: 2014 - 2015, and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of the opinion to request the Chief Minister to apply the Control of Housing and Work (Jersey) Law 2012 to support a planning assumption for net migration of +150 households per year which equates to +325 people per year on average for the period 2014 to 2015 as outlined in the accompanying report of the Council of Ministers dated 30th January 2014.

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

I gave a commitment that I would ask the States to consider and approve a population policy. That is why the Council of Ministers has brought forward this Interim Population Policy while at the same time launching *Preparing for Our Future*. This policy gives clear direction for 2 years while we produce a fully informed vision for Jersey for the long term. We all know how contentious this issue is and yet at the same time how important it is for the people of our Island. It affects all of us in one way or the other. I believe therefore that it was necessary for us to respond to the people of the Island who rate this issue as their highest priority and the issue that they are most concerned about. Of course having said that we also know that it is not a simple matter. Some Members have already suggested that we should not have this debate, that we need more information, more public consultation, more time. To that I cannot agree. I do not believe that we should delay. Other Members will argue that we need better and tighter controls. Again, I understand but surely that should only be the case where they are appropriate and where they have been properly researched in the context of the long-term plan. Some will argue that we should be tougher on migration. Others will argue that we must support businesses as they recruit and expand and should not too firmly limit migration. These are all valid topics for debate. As I said yesterday I think the Interim

Population Policy is a sensible, stable, balanced, interim position that strikes the right middle ground. Let us be clear, our Island needs economic recovery. It needs unemployed people getting back into work, it needs earnings that are rising and it needs increased job security and we should not, and this Council of Ministers will not, endanger those objectives. We have to be loud and clear that Jersey is open for business. I would argue that whatever others might say in this Assembly we are and this policy will allow us to continue to be so. We cannot simply believe that economic growth is about migration, full-stop. It is about being skilled, being productive, having an environment that supports work and endeavour and focusing on value. Indeed, much of what makes Jersey unique, our environment, our way of life, complements our economy. People move to Jersey not only because it is the best place to advance their career, but also because it is a fantastic place to live. We need to be clear to Islanders that we mean it when we say that migration will be controlled. We are, after all, a small geographical Island. However, that must be balanced by the fact that we cannot be short-sighted and believe that we can close the door and not be open for migration, for inward investment and for economic growth either. Therefore we need this Interim Policy. We cannot leave the public or the business community and the Ministers, as we said yesterday, and the officers who administer this law, and not least the applicants themselves, in an uncertain position. We simply need more clarity and certainty, not less, and I am grateful for the advice that the Solicitor General provided the Assembly yesterday. I have purposely been short in introducing this policy. We have already had a 40-minute debate yesterday. Perhaps rather optimistically I thought that debate encapsulated most points that could be made today in rather lengthier form, but we shall wait and see. Contrary to what some might say, we have provided a very wide range of statistics in the report accompanying the proposition. However, of course, some will say that they always want more and they want a further review and they want the latest statistics, but no policy should be formed simply on the basis of one year's statistics. Therefore I believe that the information is available to make the decision and accept this Interim Policy this afternoon or tomorrow, hopefully not the day after that. It also I believe shows that this Council of Ministers are aligned and understand that migration control is not just about a number. It is about a package of policies and it is about balance. Therefore, I commend this policy to the Assembly.

The Greffier of the States (in the Chair):

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

2.2 Interim Population Policy: 2014 – 2015 (P.10/2014) - amendment (P.10/2014 Amd.)

The Greffier of the States (in the Chair):

There are 2 amendments to the proposition, the first in the name of Deputy Southern and I will ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Page 2, for the words “+150 households per year, which equates to +325 people per year” substitute the words “+100 households per year, which equates to +215 people per year” and delete the words “as outlined in the accompanying report of the Council of Ministers dated 30th January 2014”.

2.2.1 Deputy G.P. Southern:

It has been about 24 hours waiting to deliver this speech. I hope I can still get through it in a straightforward manner. What I want to look at here and amend, and I hope the Assembly will amend, is to look at several issues. One is the overall numbers we are playing with, (2) is the impact of still an economic growth and its effect on migration. The resource used, which is not touched on in the report at all, resource demand by whatever migration policy we adopt and, in particular, for resources use the example of housing because it is the most obvious one and the one that we probably have the most information about. But also one of the prime reasons for the

migration policy, being such as it is, as proposed by the Council of Ministers, the dependency ratio; much is made of that. While the Chief Minister said he has got lots of data here, lots of information, there is no need for any fresh information, the fact is that that information is fairly randomly organised. It does not form a coherent whole. It is bits of information thrown together. I want to explore what some of those bits of information add up to. Above all, as I read through this, it is based, I believe, largely on an economic growth basis. The starting point, I believe, is economic growth and what we have done is trying to make the migration policy fit that. Indeed, we have got here something called an interim policy which only lasts for a couple of years. To my mind that is worse than useless. An interim policy when you are talking about population and migration, which is long-term policy, really has little place. The fact is that the Council of Ministers have missed one of their prime objectives because this should have been before the Assembly a year ago or 2 years ago and we should be looking at a proper full rather than an interim Migration and Population Policy. In examining the policy before us what I can use and what I intend to make great use of is a Scrutiny Report from back when. When this policy first appeared in 2005 I was instrumental in reviewing it and in going to S.R.5 Migration: monitoring and regulation of June 2005 one meets identical statements, identical aims to what is before us today. This is way back 9 years ago when this first saw the light of day. The issues are identical. The research may be 9 years old but it is still relevant. I intend to examine in some depth the questions that were dealt with by my panel back then when men were men and Scrutiny was tougher. The panel consisted at that time of myself, Senator Le Claire, Deputy Martin and Deputy Bernstein. I am going to quote extensively from Deputy Martin who was at her best I think on this particular review.

[15:30]

The starting point is the development of this particular policy. If Members will bear with me I will just go through the developments and how we arrived here today by looking at page 8 of my amendment where the development of population policies is outlined. In 1995 in a policy called: "2000 and beyond, a permanent resident population the same or less than the current level" which was then estimated as 85,000, that is where we started all that time ago. **[Approbation]**

The Bailiff:

You clearly said something very appropriate there, Deputy. **[Laughter]**

Deputy G.P. Southern:

For the radio listeners that was not approbation of me at all in the least, but the Bailiff has now returned to Chamber.

The Bailiff:

Thank you very much.

Deputy G.P. Southern:

And a very welcome sight he is. "2002 Population Policy (Based on Jersey into the Millennium)" and that was the first serious debate I took part in because that was when I had just arrived in the Chamber as a Member: "2002, with immediate effect, there should be an assumption for policy planning purposes of annual net inward migration of up to 200 persons, this assumption to be reviewed 5 years hence." 2004, this issue never goes away, the 2005-2010 Strategic Plan stated: "The working population should not be allowed to grow by more than 1 per cent per annum and workforce changes should be redirected from low-wage jobs into other sectors. Initiatives to enable people to remain economically active for longer and constraint on public sector workforce will also create further opportunities." Is this sounding familiar because it is the same thing? It is the same old things: "Allowed to grow by more than 1 per cent." At the time that was approximately

translated as 500, so 500 a year. I think I tried to amend it to 0.5 per cent and 250 and I am doing something similar again. 2009 in the: “2009-2014 Strategic Plan (based on Imagine Jersey and Keeping Jersey Special)” 6 bullet points, it says: “Maintain the level of the working age population in the Island. Ensure the total population does not exceed 100,000. Ensure population levels do not increase continuously in the longer term.” What has that got to do with the interim policy? “Protect the countryside and greenfields. Maintain inward migration within a range between 150 and 200 heads of household per annum in the long term. In the short term allow maximum inward migration at a rolling 5-year average of no more than 150 heads of household per annum (an overall increase of around 325 people per annum). This would be reviewed and reset every 3 years.” Here we are having a review of that particular strategy. But notice the themes, up to 200, 150 to 200 heads of household, 150 heads of household, 325 and that is what we are debating today, 325. Is there any logic behind that 325? I believe there is not a very great deal of logic about what these numbers are. The context must be seen, I believe, in the statement recently coming from the head of Jersey Finance. It said that what the finance sector could be doing in the next 5 years is growing an extra 900 jobs, at least 900 jobs in the context of an extra 150 heads of household. One has to look at that and say, where does that come from and how can that be achieved because that appears immediately to swallow up a great chunk of what is described as a planning assumption of 325? But when we examine that, as we did yesterday, we were told that of those 900, of course, only 20 per cent of those would be new to the Island, would be not 5-year qualified people. I want to examine that in some depth because that sort of statement cannot be allowed to pass, as they say: “Of course, we can do that and the majority of these jobs will be 5-year qualified”. Is that possible? I think not and I hope to prove it to you. The context, as I have said, must be not this business first approach, which it appears in the Council of Minister’s but the wishes often expressed by the population already on the Island, one has to examine the consultation responses on population migration. On page 38 of this particular report, the Minister’s report, the Council of Ministers quote findings from Imagine Jersey and that said: “The least acceptable solution to the problem of an ageing society was allowing more people to live and work in Jersey.” I do not believe anybody in this Chamber today would deny that that sentence is probably even stronger today than it was back in the time of Imagine Jersey: “The least acceptable solution to the problem of an ageing society was allowing more people to live and work in Jersey.” That is what the people say, that is what they worry about. I will turn to the Scrutiny Report of 2009 and the proposal of that day. P.25/2005, stated: “These proposals provide, for the first time, a means by which the States can effectively implement their policies on migration in the future. They will considerably increase the States ability to govern migration, either to reduce the overall level or to allow it to increase within set limits. However, they do not themselves prescribe a set level of net inward or outward migration or determine the total population number.” Nonetheless, some time later, here we are with a commitment to keep the population below 100,000 with a policy of 325. The President of Policy and Resources at the time, Frank Walker, made the following statements and as you listen to them perhaps you will notice an echo of exactly the same sentiments in what is being said today: “Now, if thinking is exactly as outlined in the Strategic Plan, interlinked, as you rightly say, with the economic development strategy and the migration policy, it is very clearly outlined. It is all based on economic growth because without economic growth we will not provide enough jobs for local people and who else wants to face the spectre of much greater unemployment among local people?” All based on economic growth, as today’s plan is: “It is absolutely clear to us what we want, to minimise inward migration. Of course, what we ideally would like to do is to funnel those people coming into Jersey into the most productive jobs so that they are of the maximum benefit to the Island.” Here we have got the start of the change, clamp down on low-value low-skilled work, make sure that our immigrants are in high-value high-skilled jobs. In talking about the 1 per cent growth or 500 workers he says: “This is an absolute ceiling, one might even say it is the worst case scenario.” So, 500 is the top limit. Is there any change today? How successful have we been over

the intervening period at limiting population to that 500? Members will look at page 7 of my amendment and they will see the answers. Over the period from 2005 we are talking about 2006 1,100 inward migrants, net migration, 1,400 the year after, 1,100 in 2008, 500 in 2009, 2010 700, 2011 600, 2012 500. What happened? Quite simply in the competition between containing migration and population and economic growth, what wins? Economic growth wins every time. When push comes to shove economic growth wins every time. We have had massive numbers up in the 1,000 plus over this period. Yet, we are told: "Trust us, now we have got the new law we can apply it and we will apply it much more firmly" so we are asked to believe. The most recent statements on page 33 of our Interim Population Policy: "This planning assumption of 325 builds upon the outcomes of Imagine Jersey and the 2009 Strategic Plan process and expressed public opinions, which appear to have remained consistent for a number of years." A planning assumption, not a target, not a limit but a planning assumption that we can go over and it clearly says we could from time to time go over that planning assumption, not a limit. Also it says there: "It should be clear that our objective is that a greater proportion of our migration relates to higher economic and social value activities such as the new inward investment businesses or existing high-value businesses in line with the Economic Growth and Diversification Strategy, while equally recognising that other industries need time and support in moving towards a more local labour force." There we have it, moving to high value in our high-value industries. What does that mean? By and large, in the most part, it means in the finance sector. Let us examine the statements recently made about these 900 extra jobs in the finance sector over the next 5 years. At the time, back in 2005, we had some similar statements. The Chief Executive of Jersey Finance in a presentation to States Members on the current challenges facing the industry said: "Currently there are several hundred vacancies in the industry, particularly in the high-level categories of trust administrators, chartered accountants and I.T. (information technology) specialists that the local resident population is not able to fill, despite high levels of local unemployment." The high-skilled jobs they cannot get and he went on further, the then head of Jersey Finance: "The simple reason why the jobs are not filled is that there are not the people on the Island with the requisite skills and experience." Is that any different today? I do not believe it is. He says: "Further, the sort of people you might be looking for here would be experienced relationship managers, corporate relationship managers, private banking relationship managers and front office people. The industry have moved much more sort of front office and upmarket and these are the sort of skills we are looking for at the moment."

[15:45]

In terms of numbers at the time he said: "So our industry is probably around 11,500 to 12,000 people." At the moment, it is 12,400 by the latest figures. I would not expect that to go much above 13,000. 12,400 plus 900 new jobs ... 13,300. The scenario is the same. Deputy Martin, at the time, the little terrier that she is, pinned down the then Chief Executive and Deputy Martin said: "You have said the 7 per cent economic growth is going to come from mainly your industry, but how many of these people do you think, given the skills mix we do not have, even in the first 4 or 5 years to get you up and running, do you think will be used? Between one and 500. Do you have any idea?" To which the then Chief Executive said: "Are you saying how many people will we need to bring in from outside?" "Yes, how many? Do you have any idea?" "Well, I mean", said the Chief Executive: "I mean ... I am totally guessing ... I have done no research on this at all but I would guess if you said to me you have to achieve 7 per cent growth, go for it now ..." "We are asking you to do that. Go for it." "Let me be clear with the question. You are saying we have got 500 people unemployed here but you can bring in 500 people if you want. How many do you think you need to bring in?" To which the Chief Executive says: "I would have thought a couple of hundred. A couple of hundred a year." How close is that to 900 over 5 years? It is pretty much the same. There is the ballpark estimate. If you ask me, a couple of hundred. And now we have got

the answer. We are about to start growing says the new Chief Executive of Jersey Finance and look, I am estimating we want at least 900 jobs over the next 5 years for 200 a year exactly. So this estimate bears out much later. However, what we have then is the President of Policy and Resources at the time stating that there is, listen: "A considerable pool of local people, already resident in Jersey, who would be able to drive a very considerable part, if not all, of the staff requirements to fuel economic growth." Is that the case? We asked then the President of the Economic Development Committee whether he had done any research on this. His answer was ... my question, Deputy Southern: "Have you done any research to indicate what sort of numbers these sectors can supply to go towards the 500 job vacancies? The new jobs that you are attempting to create and thereby, what is the balance that you see between the number of high skilled immigrants and local job opportunities?" Deputy (at the time) President of Economic Development said: "We have not done any research." "Despite the reservations that I expressed over a year ago concerning the numbers, you have not done any further research?" "No, we have not done any further research." I asked that question today of the current Minister for Economic Development, what research has he got to say that local jobs can be filled by local people? That the amount of the finance sector, for example, will be met by locals? I await his answer. The President of Policy and Resources at the time went through the following list of resources that could be mobilised. He said we could use increased numbers of school leavers, increased numbers of returning graduates, increase the number of economically active women, retrain and redirect the unemployed, increase numbers of those with disabilities in the workforce, redirect those shaken out of the public sector (remember that?), increasing numbers of the elderly in the workforce. Now, some of those are happening. Do they meet the demand for staffing in the finance sector in order that we grow the economy? Well, let us have a look at this number of 900. We are told that most of those will come from those who are 5-years qualified, but that is only part of the shift in and out of, for example, the finance industry. Back in 2005, we looked at staff recruitment and where it was coming from and in 2003, for example, and again note, this was towards the end of a recession. The finance sector had laid off a certain amount of workers. It was just before a period of growth, identical with today. Where were staff recruited in the finance sector? Outside the Island, 265. From other financial firms in Jersey, 930. Other non-financial firms in Jersey, 255. School or university, 75. Elsewhere, 60. Total, 1,580. So the shift of where you get your talent from, where do you get your high skilled workers from? By and large, the vast majority, you attract them from other financial firms and other non-financial firms. A tiny minority are from school and university graduates, i.e. that pool. But think about it; 900 extra jobs, most of which are sourced from other finance businesses, which have the expertise and the skills but who replaces those? The possibility that most of these jobs will be 5-years qualified is not a reality. It cannot be because sooner or later you have to start saying: "We cannot fill these posts." That is the reality. We have to go back to the people who are licensing us and say that we tried to fill the post but we cannot fill the post because we do not have the skill base in Jersey. We have to have something of the order of 260 to 300 people coming into the Island to provide that expertise. So we are sourcing 250 people, 300 people off-Island. That is the reality and that is no different today. The Chief Executive of Jersey Finance then said, and I believe we would get a similar statement today: "There was now relatively little recruitment at age 16 and while the industry was keen to recruit local young people, both at 18 with good A levels or university graduates, attempts to attract this level of entrant on fast track training schemes met with little success." Despite the fact that the Island sent more than the average number of students to universities in the United Kingdom, studies show that there are between 10 and 15 per cent fewer graduates in the Island's workforce. There was likely to be a continuing requirement to import graduates unless locally qualified graduates could be persuaded to return to the Island more quickly. Where are these people going to come from? Where do our students ... what did they graduate in? Let us have a look. The list contains 10 categories. Top of the list, 27 graduates in art; not necessarily the finance sector, 24 graduates in education, 22 in psychology, 22

in the sciences, 18 in media, 17 lawyers - okay, that is handy - architecture, sports studies, history ... bottom of the list, 12 graduates in business. I am sure they will be very attractive and might well come back but that is 12. That is similar today. Looking at those who stay on the Island rather than go away, look at Highlands, for example. What do we have there? Subject area, people get qualifications in business... they do indeed. Some 70 to 80 people at Highlands on business courses. We then get the normal list, art, health and childcare, hair and beauty, construction engineering, sport and leisure, hospitality, I.C.T. (Information and Communication Technology) usefully, general education, social science. Again, a minority of those students with directly relevant experience in business or I.T. The comment here was that of the group of 210 school leavers, Highlands College sends about 10 students going into the finance sector. So unless things have changed, and I do not believe they have, and I await some evidence from the Minister for Education, Sport and Culture, that things are vastly different, the reality is that the research done some time ago is still relevant. The fact is that as an Island, we are hard pressed to meet even the demands of one sector of our industry and the demand for people with the right set of skills, we simply cannot meet. This statement that only 20 per cent of these 900 posts are going to be new immigrants does not hold up whatsoever. The reality is that what target we set we are going to likely fail to meet. The evidence from the past says because the political will is not there, if it comes to balancing economic growth with migration and population, migration and population always loses out. An ambition to maintain the population below 100,000. Is that met by a presumption of 325 net migrants? In the short term, plus 325 migrants produces 100,900 as a population. So nearly 1,100. We have gone through the barrier in 2015. Next year we would have broken that 100,000, even under this interim policy. In the medium term, were we to apply it, we would end up with 111,000 people in 2035. Looking to the longer term, and again, we really do not want to go there, but we are talking about 119,000 in 2065 if we kept this target. So in the interim, it may be but in terms of keeping the population, which is also the target, below 100,000, it does not work and it will not work. Is it necessary to import these workers in order to cater for our increasing elderly population? What difference does that make on the dependency ratio? Well, why else have we got lots of graphs and figures in the Council of Minister's material? They do not examine what the dependency ratio would be. The dependency ratio, inevitably over the next 30 or 40 or 50 years will go up. We know that. Does it make a significant difference if we let in 325 inward migrants? Well, the answer is no. If you look at the dependency rate in ... it is 50 per cent now, but if you look at the dependency rate in 2035, with plus 200, it is 70 per cent. Significant extra costs in looking after our elderly people.

[16:00]

If we let in 325, it becomes 68 per cent. So a marginal difference in the cost of looking after our dependents, the elderly. Taking it through to 2065, even longer term, we let in 325, we get a dependency ratio of 74 per cent compared to my figure plus 200 of 77 per cent. Again, yes, marginally worse but only marginally. It does not solve the problem of the ageing of our population and looking after those costs by letting in migrants. It simply does not work. That is no reason to be going for 325, the higher figure rather than the lower. In terms of the resource demand, and I use household projections to illustrate that, compared, for example, with nil net migration, if we were to try and establish that, 350 migration has an extra 550 houses required by 8 years in the future? No. An extra 550 houses by 2016. That is what inward migration, if we start now at 325, produces. By 2035, the additional number of houses required is, well ... we will not even go there, 4,000 and something. I cannot do the sum but 4,000 plus. That is what the future holds. Now, I am suggesting, as I did back then, on a count of the actual figures. That what we should be doing is attempting proper migration control and population control and that we should halve, or thereabouts, the figures that we are talking about. 325 down to 215. I think that is a more sensible approach. If we can do it, it gives us sustainable futures. Without it, I think, next year and

the year after, we go through the 100,000 barrier and we keep going up. I will deal with skills for success, which is an interesting idea, when it gets presented to me. I maintain the amendment.

The Bailiff:

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

2.2.2 Senator P.F. Routier:

I am not going to spend some time speaking about reports that have been made many years ago because I believe that what we are debating today is something which is in changed circumstances. We have a lot higher local unemployment now than we had when those reports were developed and we also have ... you may not agree with this, but we also have a change of culture within our community, within the business community, and also a recognition that employees, when they are looking for jobs, they are more prepared to do other jobs than they were in the past. The Deputy reiterates what was the basis of a question yesterday and calls into question the finance industry's comments that of the 900 or so jobs that they expect to become available within the industry over the next 5 years, that the 20 per cent, which they are saying will be for people coming from outside the Island and 80 per cent are from our local workforce and questioning that and does not think that is achievable. It will need to be achievable because that is the licence that they are anticipating they are asking for. They are going to ask for a licence that they feel will meet their needs. So that is the licence they will ask for and that is the licence they will get. So I cannot see ... that is the basis that we have spoken to them about and that is what they are prepared to work to. I am sorry that the Deputy does not feel that that is going to be an achievable thing. Also, he talks about the numbers of people who have come into the Island in recent history and we all know that the old law was deficient. We were not able to control population in the way that we would have wanted to and the new legislation does enable us to have more control over licences. We all know that we need to limit migration but we also know that we must support economic growth. The challenge we have is to have a credible and balanced policy to secure this and effective mechanisms to implement that policy. This is what the Interim Population Policy and the Control of Housing and Work Law are. The report accompanying the Council of Minister's proposition explains why we have proposed a planning assumption of net migration of plus 325 and the majority of Members appear, the ones I have spoken to, to appreciate the need to have some net migration. Also, the Deputy recognises that as well and it is pleasing that he does recognise that. He mentions in his report that having net migration is too extreme and I think the majority of us agree with that, especially when we are entering into the early phases of an economic recovery. We also face what is, I have to say, something we all recognise as a dramatic demographic challenge. This is a debate on an amendment to the interim policy so I am not going to speak at length on the long term, because the Chief Minister has outlined what is proposed for the long term, but if we continued with a plus 215 net migration assumption, our workforce would reduce by over 3,000 over the next 20 years, which is hundreds of millions of pounds worth of economic value. We must remember that the number of over 65s will double in the next 20 years and the number of over 85s will triple. We could be seen as, I have to say, irresponsible if we ignore this challenge to our community. However, at least a plus 325 planning assumption would maintain the size of our workforce and tax base so that the challenge is not even greater or even indeed, insurmountable, a few years down the line. A planning assumption of plus 325 is challenging, but an assumption of plus 215, as our economy recovers would be, I have to say, damaging and is a step too far. When we look back, our net migration between 2009 and 2012 averaged plus 575. So do we think that 215 is achievable? I have to say, as Chair of the Housing and Work Advisory Group, which makes the decisions, I do not think it is achievable as it would stifle the economy and we cannot afford to do that at this time when we need to encourage high economic and social value enterprise, which helps with getting

more existing unemployed people into work. It takes time to improve skills and get more local people into industries that have traditionally relied on migrant labour but we are doing this. Industry is recognising this. The hospitality industry is really getting behind this. We can see the construction industry is also aiming to have another 200 people from our local workforce moving into the construction industry. In saying that, we need to support them and they are getting support. The Department for Social Security with the Back to Work team are doing tremendous work and why should we put that at risk? We want to get our local people into employment but, I have to say, the industries need to have time to adjust. It would seriously undermine many sectors of the economy and confidence across the economy if we approve this amendment. This amendment says that Jersey is closed for business. I know this from my conversations with many businesses that are keenly following this issue. We want to be able to say that Jersey is very clearly open for business. The Interim Population Policy focuses us on higher economic and social value activities and provides a good explanation of what that means. The Interim Population Policy provides a mandate to focus on businesses that employ more migrants than their competitors, while recognising that each business is different and that each application should be considered on its own merits. The Interim Population Policy supports the back to work programme, which gets existing unemployed people into work. A real priority, I hope, for all of us. It is consistent with our economic strategies around growth and diversification. I urge Members to not make such a radical change and to support this proposition. I urge them to reject this amendment, as I do not believe that it is achievable and will be detrimental to our community.

Deputy R.G. Le Hérisier:

Sir, just if I may on a point of clarification. The Minister, I think, did allude to the ageing population. Could he tell me, under his 325 or indeed Deputy Southern's 215 net migrant intake, how this will change the dependency ratio?

Senator P.F. Routier:

It is in the reports but I will point it out to the Deputy. I will find the page and point it to him.

2.2.3 Deputy J.A. Martin:

The Minister has a little bit of time there to find out that information. Well, here we are again and like Deputy Southern says, unfortunately it is not the first time that some people have tried to sort of put a sensible number on here, but it is not the first time but I thought that hopefully I would never hear it again. If we attempt to make a lower figure, the word around the world is that Jersey is closed for business. The Minister, who is in charge of this, just said that if we do it for 20 years, we will lose, I think he said, 3,000 people. Now, is this just not interim? Is not the Deputy just trying to amend an interim policy, which basically we are hanging today. No, sorry. This is what we heard yesterday clearly from the Solicitor General, is needed for someone to hang a law on and that is the Work and Name and Address Register and right to work. There is big business out there that might challenge and we are just going along. So the penny dropped yesterday. Why are we doing this? Why are we having an interim massive, massive debate needed ... massive, massive research and figures needed to be done. Scrutiny could not find them but 6 months before a new government, we are going into an Interim Population Policy. We all know why. But why is this figure worse than their 325? The speech with Senator Routier, we have to support local employment but we cannot reduce inward migration. It does not add up. We have been planning for 325 people for the last X amount of years and that is why we have a hospital that needed to be enlarged years ago, roads are already blocked, housing lists longer than you have ever seen and still we are going to have another argument in a few weeks' time about where we are not going to put them. "We are not putting them there and we are not putting them in that Parish or that Parish or that Parish." So that is where we are not putting them.

[16:15]

So there is another argument. Planning, planning and brilliant planning at Education because we now, suddenly out of the blue, need 14 new primary schools. Because we have been planning. We have been planning on the 325, plodding along, it is interim; let us keep it where it is. Under that word, it says, we cannot enforce. We cannot stop anyone coming in. We cannot stop anybody coming back. So let us be real. If you are aiming to get the ... I think the figure was 1,700? Lowest unemployed in the last 3 years? Last night it was reported from the Statistics Unit. Well, it was the lowest in the last 4 years and the highest since 1760 or something. Or 1670. Oh, 1970. There are a lot of people out there and I do not really hold with some of these local employers who really go on the radio and in the media and say: "Oh, I cannot get locals to do it." No, they do not want to get locals to do it. They want to bring in somebody who they know is hungry for work and knows that they have to pay their rent at the end of the week who, absolutely, is living in unqualified accommodation. I know local youngsters, and I have said it before and I will say it again, who are turned away just because their name is ... whatever, or like me ... Le Martin, or something. **[Laughter]** Not like me. As soon as I open my mouth, I could have the job doing the glass washing or tomorrow I will be in the K.P. (kitchen patrol). It does not matter. When I came here years ago, the pubs were worked by the Irish, the Scottish, the English, whatever, and Jersey people. Now we have all these people unemployed, it does not make sense that this lower figure for an interim target cannot be achieved. I get scared when I hear the actual Minister in charge calculating it 20 years in advance, because why are we debating it today? It is one of them, really. Do I go with Deputy Southern because I am going to vote against the whole policy? You know, I think if it is good enough for Senator Bailhache, it is good enough for me because, you know, he even brought the amendment and voted with it and then voted against the whole proposition in the last debate. This debate is never easy. This is definitely the wrong time for it. I am sorry we allowed this to go through but, as I did say, there are amendments and this is a very, very good amendment always been brought by Deputy Southern because it is always a little bit lower because if you are going to go a little bit lower than 325, you might achieve 325 because even on the average as printed in here, nobody has even met 325. We have averaged around 500 people but we are planning for 325. So something is wrong somewhere. The arithmetic, the methodology, the policy ... it is not adding up and people are suffering. I want to get people in work. I want to get local kids in work and I do think Social Security is doing a really, really good job. They do not absolutely allow the argument that we can have people ... I am not talking about skilled work and that is not in the policy. Even finance, you do not see very many highly paid jobs advertised lately. Locally, non-5 years on the Jersey job site, averages around 83 and 95. So where are all the people working that are coming on the Island? Where are they working? I do not know. So I think Deputy Southern's amendment to this interim policy is palatable. As I say, I really do not like the way the policy has been brought. I really do not like the way the Scrutiny Report has been brought, I really do not like the way the debate went yesterday on whether we should be having this debate because Senator Ferguson, the Corporate Services Chair, made the case that they had not had the evidence and we, as a House, have got to decide something now. I am told, and I quote the Minister: "for the next 20 years." Deputy Green shakes his head and says it is not 20 years. I am going by what the Minister with responsibility had done the calculations on the 215. At 20 years, said we would lose 3,000 jobs. Yes. So why did the Minister not make the calculation on a very short term? Maybe 2 years? Why did he not do that? Because these things do seem to roll on and nobody wants to make a decision. I think if we have to have him with migration with where we do not know where we are today, we are around the 100,000. We know we have pressure on everything. Real pressure at the hospital or the housing or, as I said, the roads. Do we go ... and we do have bodies out there who can work and want to work and they want to be given the chance. Do we bring in more people? So, no. We go with the lower figure and if this is not right, what gives the steer more to the Government than to say: "You really got that one wrong, we are bringing it

back.” We will bring it back at 350 or we will bring it back at 400 people because we cannot manage. If you agree with what they want today, I do not know who will be in the House, probably a balding Deputy Mézec will be the only one left [laughter] when we do get around to a debate on the next immigration policy.

Senator F. du H. Le Gresley:

Can I just clarify something the Deputy said? I think she was understandably struggling to remember the unemployment figures and in case it crops up again, would I be permitted to give the figures? This is at the end of March, 1,730 people are registered as actively seeking work. It is the lowest number since October 2012 and the seasonally adjusted figure of 1,650 is the lowest since January of 2012.

The Deputy of St. John:

Could I also just clarify something that the Deputy said because it might be a little bit alarming, shall we say for people listening. It is not 14 primary schools, which is what ... it is 14 classes of entry.

Deputy J.A. Martin:

That is all we know about now. We are waiting for the other surprises to come down the line. [Laughter] Sometimes less is more.

The Deputy of St. John:

For the benefit of the public, it is 2 primary schools in the town area in order to keep the sizes of classes as low as they ought to be.

2.2.4 Senator P.F.C. Ozouf:

Until yesterday, I thought it was only tax spending and immigration that sparked political touch papers, but after the debate that we have had in the last 24 hours, I think I would add the Bailiffs to that position. Your arrival in the Assembly, I think, was one of those true moments in politics. Politics, means that you make mistakes ... not you, Sir, but we down here, and indeed this Assembly has had many debates, and you and your predecessors have presided over many debates on immigration. Often Members stand in this Assembly wanting to make the right and well-intentioned decisions. We must look to the past to learn from our previous decisions and the consequences of previous decisions and we must learn from them and we must take account of them in this debate today and they are difficult. Deputy Martin said she did not want to have the debate, well, we will come to the substantive issue, but she said that this was about the Name and Address Register. We need a policy that is going to be able to be applicable to operate the Work and Housing requirements of the Assistant Chief Minister and the group that is known as H.A.W.A.G. (Housing and Work Advisory Group). We heard very clearly from the Solicitor General, with the absence of a policy, it is not possible for that group to make a decision. Now, Ministers are criticised for taking too much power but when we bring it to the Assembly to share that decision making, we are also criticised and perhaps it is difficult to win. It is, however, a very difficult issue. I say that in the context of Deputy Southern’s amendment because it has to be said, and Deputy Martin spoke of this, she said: “Oh, it is said that the zero job growth message was an issue.” This Assembly, and the Island, if I may, took years to recover and I say years to recover from the message that went out that we were going to have zero job increases. That Jersey was closed for business. I know because from the moment I went into this Assembly, I was on the Industries Committee, Finance and Economic, and the seriousness of which the message that went out that we were closed for business must be a factor that Members take into consideration in their support or otherwise of this amendment and this overall debate. It is said by Manx politicians that the Manx economy took off at the point that we said we were closed for business. Many

institutions, if I may very respectfully say to Guernsey politicians, moved to Guernsey because of that zero job growth and so these are very finely balanced issues. We would all like to live in an Island that did not require any more housing, that did not require any more people. We would all love not to pay taxes, but there are massively important consequences to our decisions. Deputy Southern has not explained, if I may say, in his justification for supporting this amendment, how we are going to get the economic growth, how we are going to get the inward investment that is going to pay the taxes, in order to spend on the services that he ... and I respect his passionate view of the importance of a welfare system and a strong government in all sorts of areas. How are we going to pay for that? I am afraid that the reality is ... I am not afraid to say it; I am not going to say that. The reality is that you have to deliver economic growth and productivity economic growth in order to achieve that. Has Deputy Southern explained how his number ... I heard Deputy Martin say upper or lower. It sounded like, and I do not mean any disrespect, but it almost sounded as though we were having a debate on upper or lower on some sort of T.V. (television) programme. This is not a bidding war or a bidding game. I am not suggesting that she is saying that but it is not guess work. We have to base our decisions on very good evidence about what the actual economy needs. Deputy Vallois is looking at me and smiling. Let us look at the evidence of what businesses are going to need in terms of the extent to which we need to give businesses licences to bring people to Jersey to work in both the service areas of the economy, the areas of health care, education but also the areas that are going to be taxed and the people that are going to pay tax. What are we going to do and what numbers do we really need in terms of attracting inward investment in achieving a diversified economy? The challenge that this Assembly has is that we probably could work with Deputy Southern's lower number if we were to crowd out some of the lower value parts of our economy. This is one of the really difficult issues of this debate is that we want economic growth but we want our cake and to eat it. We want to keep low value industries and we want high value industries and we want to keep taxes low. So I would suggest that Deputy Southern in his summing up needs to explain how we are going to reconcile this issue. We could deliver the lower number but I am afraid to deliver the economic growth to deliver the tax receipts that we need. We are going to have to be even harder on the lower value industries. I am not being in any way pejorative about the lower value industries. The lower value industries are tourism - much needed - agriculture, retail ... we are going to have to be even harder on those low value industries if we are going to get economic growth.

[16:30]

If we are going to deliver economic growth, we are going to have to be effectively using the more scarce licences that we need for effectively the higher value issues. The higher value growth areas. That is the uncomfortable truth. There are going to be some Members that are going to stand in this Assembly and say that 325 is not enough. We are going to say that 325 is not enough even to keep the valued tourism sector, the valued agriculture sector and achieving growth in tech businesses and in financial services. They are going to say that is not enough. We are going to hear arguments about the fact that even more strenuous efforts need to be given in order to favour those people who are on unemployment and the unemployment numbers have just been given. The reality is that Deputy Southern needs to square this circle. He needs to explain why it is that we are going to be able to survive in terms of achieving all our objectives on this lower number. He has not explained that. He has not explained what his rationale is. The 325 number and previously the number has been higher and I know that number was higher, it was over 500. Criticism has been given and it is easy to criticise when the number has been higher. I have to say to Members that if the number would not have been higher, then we would probably have had other inflationary pressures and all sorts of other areas. There is always a consequence of a decision. Now, I think that the Council of Ministers has come to a balanced consideration of this. It is going to be too low for some people but it is the figure that is judged to be appropriate to give all the industries, the people that are

needed the amount of job licences that they are going to reasonably need. It is going to give the right incentive to get businesses to ensure that they do prefer, where they can, to take people who are unemployed. So I think that we need to have the real debate on what is effectively the real number. I do not believe that Deputy Southern, and I would be interested to hear any Member explain based upon their track record, how we are going to deal with Deputy Southern's lower number but achieve the economic growth requirements. I say that because effectively we are now working on the next Medium-Term Financial Plan. We are looking at the income and we are looking at all departments' spending requirements. There is a huge gap. Some Members are worried that we are not going to meet our income targets for the next few years. One sure way of doing that is to support this lower number. There is already a gap and I have spoken about this publicly, there is already a gap of £100 million, which is now being reduced by hard work achieving savings from departments and achieving some more limited increase in some departments spending aspirations. We are squaring that circle but I say to Members that they cannot have everything and we need to achieve that growth. Deputy Southern needs to explain how we can achieve that growth with the number that he is doing and also he needs to explain what his message is going to be to the lower value industries, such as retail, tourism and agriculture are going to be if his amendment is adopted.

2.2.5 The Connétable of St. John:

At the end of the 1980s, beginning of the 1990s, I can recall that Jersey was closed for business and what happened? We went into a recession, a very bad recession, a year ahead of the United Kingdom or Europe at that time and we were in trouble then. When I came into the House in 1994, we were still in trouble because we were still in that recession. Nothing as bad as this one but it was still bad and the previous speaker is absolutely right when he mentioned that because, closed for business, I was in London doing some business about 18 months ago and I suggested that the company concerned maybe open an office in Jersey. They said: "But you are closed for business." Years after ... 14 years after that was said in this Chamber that we are closed for business. People around the world still believed that we were closed for business. That is of concern. When something comes out of this Chamber as serious as that, that stays in people's minds. 325, I know my good lady is not going to appreciate my comments because she said there are too many people in Jersey but we need to grow. We need to grow. Whether it is by 325, a bit more, a bit less, but if that is the numbers we need, I need money to finish the last 12 per cent of main drains in this Island. We can all laugh but I know the Deputy of St. Mary ... oh, he is not here at the moment, that is one of his problems in some areas, as in many outlying areas, we are not necessarily outlying. You just have to go up to Mont Cochon, they still do not have main drains in that area. Other parts of the Island do not have a portable water supply, including myself. It is absolutely ludicrous, there are areas of this Island, which, in some parts could be called Third World. It is ludicrous. We have parts of the Island that have all these facilities and I was going to mention the bus service but that has improved somewhat since we got this new company although we see a bus several times a day instead of a week. It is important that Members realise that we have to move forward and put things in place for the next generation. We have a hospital that needs to be rebuilt. In fact, we know roughly what the numbers are but the hospital is going to take us forward for the next 40 years. If you look back over the last 40 years how the Island has increased in population, even if it goes up only by 10 per cent in the next 40 years, you are going to need a much larger hospital. We are now working on our sewerage works, likewise. We are 4 or 5 years now into the current incinerator. That has only got roughly another 20 years life in it because there is a 25-year life expectancy on that piece of kit. So where is all the money going to come from if we stagnate. Because if you stagnate, you have very little income coming in, we have got problems ... we are now down, I think in real terms, to 2 companies that grow potatoes on the Island. There are one or 2 smaller producers but in general the agriculture industry is to be of concern because one of those

companies is a company from off-Island so they probably do not even pay tax on the Island, I do not know. Their employees, because they are employed within that industry probably pay very little tax at all but would pay their G.S.T. (Goods and Services Tax) on the food but more than that, they are paying very little tax. They are not the high earning end of the market like the finance end is. We are told that, historically, we were taking the top 500 banks from around the world in Jersey and I understand that we are reviewing that to go a notch or 2 below to get the business in so we have to look sensibly at if the department have done all their homework, it would have been very useful if we could have had all those figures passed through Scrutiny. Very useful. But, we are where we are, as the saying goes. We have to make sure that we have sufficient of the right calibre of people coming in to be able to do these jobs because we are not going to train the people we need overnight on this Island and the next several years, now that we are coming out of the recession, we are going to have to make sure that we bring a sufficient number of people in. This will obviously have to be amended every X number of years as it has in the past but I cannot see, with all the goodwill in the world, by going down what Deputy Southern wants to hold the numbers to, it is going to be viable. I say again, we should have really allowed Scrutiny to do their work because I would have liked a lot more information but I am speaking from the experience of life, I suppose. I hope it is not me. I do not think so.

The Bailiff:

It is someone near your microphone, I think.

The Connétable of St. John:

Possibly, yes. The computer is off alongside me so I do not know what it is. So, really, I will not be able to support the lower numbers proposed in this amendment because I think we have to move forward and the only way to move forward is to give the Island sufficient numbers to be able to operate.

2.2.6 Senator S.C. Ferguson:

I was interested in the Minister for Treasury and Resources' £100 million comment. I look forward to our next quarterly hearing when he will tell us all about it. With the greatest respect to Deputy Southern, his target, or should it be a planning assumption, of 210, I think it is, sadly, a pipe dream. The problem is, we do not know how the controls are working. The Assistant Minister says we are going to lose 3,000 jobs. Hang on a minute, where? How? Where is the evidence? We have a situation where T.T.S. (Transport and Technical Services) and Education are using a figure of plus 500 as their planning assumption and the rest of the departments are using plus 325. I must say, I am intrigued as to how T.T.S. and Education are going to keep their numbers down to 325 as a planning assumption if this comes in as a policy. So the whole thing does not tie together or we have not got the information underlying it. We have a lot of numbers being bandied around but frankly, they are pie in the sky and if we do not have the information, we do not know where we are going. I think I am joining Senator Le Marquand on his trip where he does not know where he is going until he gets there. They have immigration controls in many countries. They do not need to be closed for business. I have never heard anyone say the United States are closed for business when they have immigration controls and we know how strict those immigration controls are. Senator Ozouf has said ... well, I get the impression that he thinks that all we need for economic growth are warm bodies, skilled people perhaps. We need lighter regulation, particularly as this reduces productivity and we need a simplified tax system and we need it delivered soon. Our taxes are getting too high and the system is getting too complicated. If you start adding up all the little bits of tax we pay, we are not running on a 20 per cent rate, we are running considerably more. So if we have lighter regulation, we will then need a smaller government, which in itself will improve our economic position. The thing that could kill our economy is the high cost of doing business in

Jersey. That is our problem. Until we have got the information, we have no idea as to what is happening and no proper basis on how we should base our plans. Sadly, this planning assumption of plus 200 is, on the basis of the situation at the moment, purely theoretical until we know how our systems are working. Thank you.

2.2.7 The Deputy of St. John:

You came in to the Chair, Sir, just halfway through Deputy Southern's opening remarks, I believe, and so you may not have heard some of the things that he said and I mention that because you may well ask me to get back to the subject of population. **[Laughter]**

The Bailiff:

You are getting your defence in early. **[Laughter]**

The Deputy of St. John:

I am, Sir. I am and I have not prepared a speech about the fairly narrow aspect of population and population control and the changes that the Deputy is proposing to the policy because what I want to speak about addresses some of the things that the Deputy said.

[16:45]

It is not prepared so I apologise to the Assembly and to listeners if it is a little disjointed. I have to congratulate the Deputy because in order to justify what is essentially a fairly short termist amendment he started to talk in some length about a much longer term problem around skills. That is why I quickly got out my *Skills for Success*, because this is all about addressing the longer term problem of taking some, as much as possible, of the pressure which leads to, when you have a recession, the populace kinds of pressures which understandably politicians have to react to, because in difficult and deep recessions you, of course, get unemployment. When you get unemployment it is not in the least bit surprising that you get pressure for reducing and stopping people, and I will just quote: "Coming to take our jobs." You do get that. That is a fact of life. So, I have to congratulate Deputy Southern for some of the content of his opening remarks, because they were much more long-termist in their thinking than in fact the narrow, short-term thing that he is trying to amend on the population policy. I am not going to go on too long about skills for the future. I will try to limit a couple of comments to address what Deputy Southern said in his opening remarks. He is absolutely right. In 2005, which is when he was referring to his, I think, Shadow Scrutiny. I do not think Scrutiny started until the beginning of 2006 officially, because I remember that I - without wishing to take any of the thunder from the Deputy's chairmanship of what was a Shadow Scrutiny Report - in 2006, when I was Chairman of the Corporate Services Scrutiny Panel, we re-instigated or started the official Scrutiny for the population policy. In fact, I did invite Deputy Southern on to that panel, as he will probably remember.

Deputy G.P. Southern:

It was indeed a Shadow Scrutiny Panel.

The Deputy of St. John:

At that time, I have to say I shared a lot of the concerns that Deputy Southern had about the accuracy of the numbers that we had. Also, perhaps, the lack of longer term planning for skills and all things that go around that, which then affect population or immigration or inward migration, the pressure for inward migration and all of the things that are around it. That was 2005. Times were different in 2005/2006. We certainly did not know until 2008/2009 what a real recession, what a real hard and deep depression, could look like in terms of a people actively seeking work in this Island. We just did not understand it. A few of us, I like to think of myself as one of them ... and there was something called a Stabilisation Fund that came about at that time, in order to possibly

try to address future recessions that we never knew would come. I seem to remember I did not remember when it would come, might never be in my time in politics. Little did I know that 3 years later from that statement we would have the worst recession we have ever seen in this Island. We are still lagging behind the U.K. that is coming out of that recession now and things are slowly getting better. All congratulations to Senator Le Gresley and his Back to Work Team. They are doing some fantastic work to create jobs for young people. **[Approbation]** I would commend him he is doing really, really well, I believe. Under the circumstances he is doing well. It is never going to be good enough, of course, but he is doing pretty well. I would like to just ask: in this Skills for Success Report, which has been published now as an R., so the Deputy does have access to it, he did make the comment that when he gets access to it. It has been published as an R., so he does have access to it. It has also been emailed to him. It is a very, very, very important document. I cannot emphasise how important this document is. Because, if we can deliver on this skills strategy it will take a lot of the pressure and steam out of the way that local people feel about population. But, it is a long-term strategy. It is not short-termism. I thought we did not have party politics in this Island and that one of the reasons and advantages for not having party politics was that we were able to think longer term than the kind of short-termism that you get in party political systems typically in the United Kingdom. When it comes up to election time you are going to get promises from political parties in order to get elected and you have this, what I believe to be, 5-year short-term politics. I believe that to be the case. There are advantages of the party political system. I can see the people shaking their heads who are party political proponents around the Assembly. One advantage is that you know what a particular government's policies are when you come to election time. I will come back to skills. I thought this amendment is essentially short-termist. Populist pressure can lead to protectionism. One of the biggest problems with protectionism is that it can lead to isolationism. The worst thing that you can have in an Island economy like this, if you want terminal decline then you allow isolationism to set in. That needs to be very carefully thought about.

The Bailiff:

Despite your earlier defence, Deputy, I think you are wandering a bit.

The Deputy of St. John:

I come back to the skills strategy. I would ask all Members, it needs to be read very carefully. I will just read one statement from it, Sir, if you will allow me: "Objective 2 out of 4 objectives. Employers often struggle to hire well-prepared and skilled employees. To ensure that individuals are equipped with the critical skills necessary for employability we will encourage life-long learning and help people develop the skills that make them an asset in the workplace. That is just a very, very small part of what is a huge amount of work. It is the subject of 3 departments, Social Security, Education and Economic Development. We have thought long and hard about this. I would say to people that if we can deliver this in the long term you could make the biggest single difference to the kind of mentality that drives protectionism, because that is what we need to change if we are going to have the most successful economy. We need to have the economy being as competitive as possible. Although I commend the Deputy for talking long term, his amendment is essentially short-termist. It is not going to help. It will not lead in the long run to increased creativity or competitiveness in our economy. That is where the future lies for our economy. I will leave it there. I may quote some more things when we come to the main proposition. I hope you will forgive me if I do quote the odd bit out of this at that point.

Senator L.J. Farnham:

Sir, could I ask a very quick point of clarification? What did the Deputy mean when he said: "Protectionism led to isolationism"?

The Deputy of St. John:

If protectionism ultimately goes to the nth degree the Island becomes isolated from the rest of the world. That is really what I meant.

Senator L.J. Farnham:

That is much clearer now, thank you.

2.2.8 Deputy A.K.F. Green:

I have to say, not for the first time in the last 24 hours, I am a little confused. Had I not heard the Deputy Greffier read out Deputy Southern's proposition, had I come in at the time you came in, Sir, I would have thought Deputy Southern was making a case for increasing the numbers, with all the figures that he was quoting. He seemed to make a very good case that we should have a higher number than the Interim Policy. I do not think that is what he meant, but that is what he said. We could agree the figure that Deputy Southern wants us to agree. We could do that. It would be a joke. It would be a disaster. It would send out messages that are not right to the industries out there. Just as importantly, it would be totally unachievable. I sit as a member of H.A.W.A.G. every fortnight, with some ad hoc meetings in between. On a Thursday morning we sit there and deliberate over applications. We need a formal framework to do that. We need a realistic figure to be working on in the interim. More and more - I suppose I am straying into my main speech a little bit - the people that appear to appeal in front of the H.A.W.A.G. team are legally represented. It is only a matter of time before we have a legal challenge on this. H.A.W.A.G. have not been sitting there doing nothing. Just to give you some figures - this is not all down to H.A.W.A.G., but just to give you an idea - in 2009 there were 9,000 registered permissions that employers had out there in the working place. Today they have 5,900. So, there has been a reduction. I think that reflects both the economic situation and the desire to get people back to work and the excellent work that the Social Security team have been doing. I might, as an aside say, if you have not visited the work that is going on in Eagle House with the Back to Work team, do so. It is not just young people. It is other people changing skills, reskilling, getting themselves back into work. It is really worth seeing. H.A.W.A.G. has also in the last 9 months made 831 refusals to people trying to bring unregistered workers into the Island. It is a very difficult balancing act saying: "We want to support you, employers, provide skills for the economy, but at the same time we do not wish to flood the Island with people." That act is very, very difficult. We know we are heading out of recession now. We know we are heading for a time of economic growth. We know that we are going to need people to support not only the current industries but to support a rising construction industry. I was delighted to hear that they are going to take 200 young people off the unemployment register and do work there. This amendment is unnecessary. It is just impossible and it is not achievable. Before I sit down I would just like to say one thing. I met recently with members of the finance industry. We had a very constructive, if somewhat tense at times, conversation about the jobs that they might want. It was a useful meeting, but at the end of it one of them said to me as we were leaving the room: "Why is it that the States dislike us so much?" That is the sort of message we send out sometimes. We have to send out the message: "We want to work with you. We want to provide employment opportunities for our young people. We want inward investment." We want to encourage that. That might mean bringing in skills. Are we really going to turn down the opportunity for someone who is going to provide 20, 30, 40, whatever it is, local employment opportunities because we are going to stick to that number that Deputy Southern wants us to stick to, which is not achievable and we are setting up a target for us to totally fail at the first censor.

[17:00]

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

All I can say is: "Oh dear." I have sat on a Population Policy review on Corporate Services Scrutiny Panel in 2009, had many representations from businesses and people from the Island, members of the public. Members of the States made recommendations. They were thrown back by the Council of Ministers. We are here now discussing an Interim Population Policy about numbers again and that we are going to set the figure. The reason why I was smiling at the Minister for Treasury and Resources before was not because I was agreeing with what he was saying, but because he was talking about an Economic Growth Strategy, not a Population Policy. If he has forgotten P.55 of 2012, this States Assembly approved an Economic Growth Strategy and Diversification Strategy as well; do not forget that important part. That was set before we discussed anything on the population policy. Oh no, hang on a minute, that was in the Strategic Plan. But there is not a clear framework in the Strategic Plan. So this is the clear framework. Well, is it? If I was a member of the H.A.W.A.G. group would I say that I could justify my reasoning for giving an application or not giving an application on the basis of this Interim Population Policy? Now, I am sorry, I do not believe I could. By just putting a number on and then turning around, no matter what number it is, whether it is Deputy Southern's number or the Council of Ministers' number, it is going to change anyway, depending on what the economy is doing at the time. The fundamentals of the population policy is not about economic growth, as we have been told time and time and time again. Population policy is to improve living standards, not the cost of living. Of course, Senator Ozouf, we would love not to pay taxes. We would love to put an amendment into the Tax Law saying that people can decide whether they want to pay taxes; might get some public sector reform) There was discussion about change of culture of business in the community. There is always a change of culture of business in the community, because businesses have to adapt to the way in which the jurisdiction which they are in is working. I am sure the Minister for Economic Development will talk readily about setting the grounds for businesses to be able to thrive and work within the jurisdiction and help the community and all those wonderful things that we hear time and time again. But, you go out there and speak to businesses or you go out there and speak to the ordinary member on the street. Is it happening? No, it is not. We have had this 325 figure before. I am sorry I am referring to the 325, but my main argument is about the problem with the numbers. I had a member of the business community contact me, really concerned that this time the Council of Ministers might be able to meet this plus 325 target; might be able to meet. So, I sat down and I discussed it with them. I was part of the review on the Migration Law, no hang on, it changed about 37 different drafts of law before it became the Housing and Work Law. Then finally we got Housing and Work Law. It has been in place for not even a year yet and we have not had a debriefing as to whether it is working appropriately, whether regulations need to be changed or anything within that remit to suggest that what we are doing at the moment is right. What this gentleman was arguing to me was about the constraints it will have on businesses, the messages it will send out to the outside world, et cetera, which we have heard from the likes of Senator Routier about "closed for business". This goes back to setting the number again. I am not suggesting that we would be closed for business, but what we need to be paying attention to is all the policy and all the legislation that underpins how this Island works. I would challenge any States Member to go to a department, pick up a piece of legislation that is under that department and ask where the policy and the clear framework is that supports that legal framework. Because, 8 times out of 10 you will probably find it is a grey area. I have been trying time and time again, going to departments, asking for that exact thing, since I came into the States. We are starting. We are getting there, slowly. I believe a population policy debate is really, really important. I believe it is based on the actual fundamentals of the policies and legislation that this Assembly and the Council of Ministers, as Jersey's Government, put in place. Yes, it does refer to skills. A massive part of this is education, is skills, is helping the people of the Island, whether you want to define local or non-local, it does not matter, as long as they are contributing to the success and the living standards of our Islanders and the improvement of the

Island, then they are all part of it. We are all part of working together as a team. But, we have had this plus 325. We have not met this plus 325 in the past. I cannot stand here and say for certain whether we can meet Deputy Southern's number or whether we can meet the Council of Ministers' number. I do not have the evidence to prove that we can. I obviously have a different dictionary to that of the Council of Ministers. I have a different definition to what clarity is. I have a different definition to what a policy is or even a clear framework. I am sorry, after sitting here discussing the last debate for goodness knows how long, listening to repetitive speeches, it shocks me. It really does. We put in the Strategic Plan that we want long-term planning and we come up with an Interim Population Policy. Our argument is that because according to the Solicitor General we need a policy that underpins our legislation. But hardly any of our legislation has a clear policy that underpins it. We are all over the place. Wake up. No wonder why the public are so fed up with us. The Economic Unit advice that was given on the Economic Growth and Diversification Strategy, I will just pick it up, on page 23 it talks about the Council of Ministers' strategy. This was the Economic Unit's advice on the Economic Growth and Diversification Strategy, which this States Assembly has adopted, which is a very important component of Population Policy. They talk about Council of Ministers' strategy to deal with ageing population, gives assumptions on inward migration. So, you go on to a gov.je website or States Assembly website and you pop in "ageing population policy". Cannot find one. So, you come up with population policy that was agreed by the Council of Ministers in 2009 that sets out lots of fancy, wonderful words that we all think look pretty good, but probably are not practical. Then you have a link to this particular proposition. An ageing population has been a consistent theme - I understand why and I think we all understand why - within most of our policies, in particular the health reform, the housing reforms and the future way that this Island is going to go, changing the pension age, our pension reviews that we have been having. All of those are very important, fundamental parts of population policy. But, we do not have an ageing population policy, but yet we refer to it in our Economic Unit's advice. On page 24 it basically states that there is no target and that: "A target should not be set for economic growth as there are reasons to believe the G.V.A. growth alone may not be a good measure of success. The nature and type of economic growth is as important as the rate. Under such circumstances a medium-term target could simply serve to confuse and distort the Economic Growth Policy. Neither is there a time limit set on the Growth Strategy as the overarching principles and strategies should remain relevant indefinitely and a successful strategy must be ongoing and self-reinforcing." That is the Economic Unit advice. That is on economic growth. I am not trying to confuse population policy, but it is a fundamental part of it. Then I will refer to a submission that was provided to Corporate Services in 2009 on the previous population policy review from a Mr. Boleat - it is public information anyway - which I believe is a significant figure already through the States. Sentence about the last population policy, which was the same, stated: "Broad policy objective of gradual increase in population is reasonable. There should be no expectation that government can deliver this." There we go. That says it really, does it not? We are trying to put a number on. We are stating that we are going to put this number on this very clear framework. So, I have to put myself in the position of saying: "Can I justify either?" Funnily enough if we look at the recent Interim Island Plan review on housing demand and supply, the planning assumptions for net inward migration on that housing demand and supply is 450. So, Senator Fergusson said we have numbers in T.T.S. and Education of 500, I believe it was. Apparently 325 is right. We have all these wonderful numbers all over the place, but they are meaningless, are they not? Let us be honest, they are absolutely meaningless. What underpins a population policy is what the public expect to see out there. Proper legislation, proper clear, understandable policies that can be exercised and endorsed by our Government, the Council of Ministers, not just debating a number and then us being told: "You cannot have another number because it will close the doors." You cannot have a higher number, because the people out there will go crazy because they already believe there are too many people in this Island, too many cars,

not enough schools, not enough to help them. Their taxes are going up and up and up continuously. Fiscal policy, another important part of population policy. I cannot support either of these, because I do not believe a number is a sufficient way to determine what our population policy is or should be.

2.2.10 Deputy M. Tadier:

Very much in the same vein; I will be supporting Deputy Southern, not simply out of party allegiance, but because I believe that it makes the proposition better, which is usually the way one should vote, unless one, of course, is trying to make the proposition worse, which is what we saw in the last set of debates. I will have to argue why the 325 figures is therefore either unfounded or not the right one and why 200 is also unfounded - very much in Deputy Vallois' vein - but better, because it is 200 rather than 325. There is an old spiritual song which goes: "Everybody wants to go to heaven, but nobody wants to die." I will not sing it, thankfully, but it goes like that in the lovely spiritual gospel type voice. There is a parallel to be made, because everybody loves economic growth but nobody wants to see a population increase. The 2 in our modern western economies tend to go hand in hand. We are hearing this today. We are saying: in order to strike a balance between the business interests and economic growth and in particular high net worth economic businesses rather than the low net worth businesses, we have to give businesses the flexibility.

[17:15]

Not just flexibility; that presupposes necessarily an increase year on year in population of 325 net inward, in this case, which we cannot even stick to. So, we have had the Minister for Housing tell us: "Oh, we could not possibly do Deputy Southern's 200 a year, because there is no way of controlling that." Knowing full well there is no way of controlling the 325, because the stats for the last decade have shown that anyway. Deputy Vallois is quite right. We have to understand what is going on here politically. The ruling elite, the Ministers, going into election, they know what the single biggest issue out there is in the role of the Bailiff. It is not the constitution of this Assembly, but it is population and everything related to population. It is the fact that the cost of living seems to go up while living standards seem to go down. It is the fact that indirect taxation and all sorts of taxation for the middle earners in particular is going up. It is going past the 20 per cent, as Senator Ferguson has quite rightly said. Meanwhile those at the top are protected and what did we see when we passed the long-term care? Who did that impact on? It impacted on those who are the middle earners, those who are very poor, and insulated those who are the most wealthy earners, £150K plus: "You are all right, Jack. You do not have to pay that because this is how Jersey works. We look after you if you look after us." That will not be tolerated for much longer. There is no way to control a figure, be it 200, 325 or 500, because we have very blunt tools at the moment, which are essentially housing restrictions and working restrictions that do not work. That is the issue. Now, it is obviously a very complex area and there is an element of alchemy going on here. The Council of Ministers knows, just as the Minister for Treasury and Resources also knows, when it comes to zero rating of foreign companies in Jersey, that they need that zero rate of tax in order for the businesses to stay here but they cannot also tax other businesses above that zero rate. They are not allowed. There is no solution to it unless you change the economic paradigm that you are in and the problem we have is that we are operating under a Ponzi scheme. We see the issue of an ageing population, which Deputy Vallois alluded to, which is problematic if we keep ... not the people themselves. They are not the problem, but the actual demographic shift will be problematic unless we have an overall solution and a long-term solution to it but, of course, we do not change the economic policy. We are determined to remain low tax/low spend even though we know that the very modest taxes that the wealthy currently pay could be increased and that could alleviate many of those problems in the short to medium and even longer term without the economic success

of the Island being endangered. Deputy Southern has also been criticised. We had a bizarre speech, I thought, from the Minister for Education, for my part. It even wandered off into party politics, saying that parties were less accountable, even though that is the only mechanism by which true policy can be delivered and one can be held accountable for it. That is what we have not seen from the Council of Ministers. Although they are a covert party, they have not been acting politically and policy-wise as a party and that is what we need to see starting to happen. We need coherent policy coming forward, preferably before an election so that they can be elected on that basis, otherwise that argument is going to come back and they will try and use it to haunt me for P.33. That is not what I mean. It is not an argument for collective responsibility but it is an argument for like-minded individuals to pull in the same direction. Deputy Southern's amendment is worth supporting because it is the most in line with what the public want and it is the most cautious approach, I think, without being something that is going to endanger the public. The Council of Ministers have once again been caught without their emperor's new clothes on or, rather, Deputy Vallois, I think, has exposed them again because they have been caught out. They think: "Oh, there is an election coming up. The public know that we need to be doing something about this. Quick, thrash around. Let us cobble something together. 325; that sounds like a good enough figure. Do you think the public will buy that? Do not know really. They are pretty daft, are they not? They were even going to allow us to have 5 different ballot slips on the same day. They might just swallow this 325 figure, which is absolutely meaningless." Now, what I think businesses want and what individuals in the Island want is a fair system and a meritocratic system whereby they can have the flexibility to employ people. I think what young people in the Island want ... remember many young people choose not to come back to Jersey, but many choose to stay in the Island. Once they have been to university and once they have worked in the U.K. or elsewhere they will meet partners in the U.K. They will come back to Jersey with them and I have seen people and experienced it where their partners are just sitting at home, could be male or female, doing absolutely nothing. They still live in this Island. So, in terms of a population policy, we are doing nothing for many of these individuals. I have seen other people who have been in the Island for 4 years who want to make a go of taking over small businesses. They have got the experience and they are probably better than some of the outgoing owners, but they are not allowed to take these businesses on despite the experience they have got, even though they would be able to employ other people, because they are seen as too small fry. We will not issue a licence for them, even though they are living here and even though it will not affect the population policy. It would not increase the population by one at all and, in fact, they would be also creating jobs for locals. They just happen to be people who have got less than 5 years' experience who want to set up businesses. I mean how does that help the population policy at all? It does not make any sense whatsoever. That individual will be refused, but somebody who wants to come in and start a new business, if the economic model and growth is perceived to be there, they will be allowed to do that. I am not saying they should not, but I am saying it is completely perverse in many ways when you have individuals at the lower end trying to better themselves. We would be better off not having any interim policy at the moment for the single reason that that would be honest. The mechanisms would still be in place. The housing regulation, 10 years, and the work regulation, 5 years, would still be there. We would be better off not having a population policy, but Deputy Southern's amendment is more manageable if we can stick to 200. The public want to see either a reduction in the population, I believe, or a maintenance of the population and we know that we already have a shortage of housing. We already have a shortage of infrastructure. We already have increasing unemployment and we are proposing a higher figure rather than a lower one. It simply does not make sense. If we are to be logically consistent we should opt for Deputy Southern's amendment, which is the more cautious approach. In the meantime we should all get our heads together, all Members of this Assembly on different sides who think and acknowledge that the population conundrum is much more complex than perhaps we have acknowledged up until now

and that we need to find fair, lasting solutions that are not going to be divisive but are going to benefit the community economically and also socially.

Senator F. du H. Le Gresley:

Sir, could I just seek clarification from the last speaker?

The Bailiff:

Yes.

Senator F. du H. Le Gresley:

I heard the Deputy say that the long-term care charge will not be paid by people earning more than £150,000. Could he clarify that is what he said?

Deputy M. Tadier:

I cannot remember what I said, but he knows what I mean is that the 1 per cent charge will only be applied up until earnings of £152,000 and then any earnings above that will not be applied. So while the individuals may pay that, it will not be paid on earnings over £150,000.

2.2.11 The Deputy of St. Ouen:

Just to deal with a couple of points. First of all, it is around Deputy Southern's figure that he is proposing and, indeed, the Council of Ministers' figure that they are proposing. It is interesting that the Council of Ministers feel that they do not support the amendment because it would mean a very significant and immediate decline in the ability of our industries to source workers and I think they are right. The only problem is that 325, this planning assumption, we have already heard, is not achievable and has not been achieved by those that are in authority and are responsible for managing migration. Even in the comments - and I would draw Members' attention to the comments that were issued by the Council of Ministers regarding Deputy Southern's amendment - it clearly shows that from 2009 to 2012 the average net migration figure was 575, which the Minister for Education quite rightly points out was a period of the deepest recession that the Island has seen in many, many years. Yet suddenly we are going to, out of a hat, magic 325 and say: "That is all right because it is only going to be an average figure over 2 years." Well, based on this, you are going to blow it all in the first year. So we are going to have no one coming in in year 2, but that is another debate. I would just also like to pick up a couple of other issues that were raised by Members. One is that economic growth is required to pay for services. I accept we need economic growth. The question is, with the changes in taxation that we have seen in recent times and the introduction of Zero/Ten and other measures, we do not generate the same income from non-local businesses that we used to. Yes, we benefit from the employees' contributions, but not necessarily from the businesses. I am not so sure that in the round the benefits that Senator Ozouf and others promote around economic growth are indeed as significant as they say. That brings me back to a comment that the Deputy of St. John made. He asks: "Who is going to pay for the essential infrastructure?" Well, part of the problem that we now face is need for larger hospitals, need for more schools, need for a larger waste treatment plant, and the list goes on, is because of the increases in population that fuelled the economic growth. So what are we doing? Are we just adding fuel to a fire that is going to grow bigger and where is the end? No information on that and, again, this is not the time. There are 2 other points. One is that the Minister for Education highlights the current skills strategy. I just want to put the record straight. I absolutely and fully, and have always done so, support the development skills on the Island. The truth of the matter is investment should have been made far earlier because I remember having to fight, when I was the Minister for Education, with the Council of Ministers and indeed the Minister for Treasury and Resources, to provide the additional funding to enable the skills strategy to be developed and it was a huge fight. We have those same Ministers today extolling the virtues and saying how wonderful

those programmes are. We could have done it much better and much earlier had we had that investment. So beware. We hear all sorts of comments coming out of Ministers' mouths, but those certain comments are slightly different to the ones I remember and I can have evidence to prove. Indeed, you only need to contact - and I hope the individuals are still involved - the Skills Executive, the non-States Members, that were appointed to help develop the skills. They will support the comments that I have just made. The Minister for Housing gave quite a good speech. **[Laughter]** He was quite good because he did say - and it is 2013 or 2014, I am not sure which - that there have been 831 refusals. Over what period I cannot remember him saying. Maybe he did and maybe he did not. What he did not tell us was how many had been approved, which is more to the point, because that is the figure that helps us to judge whether 325 is indeed deliverable, how they are performing in the delivery and working with the new law, but we do not get provided those figures. I wonder why? Bear in mind that, again, we come back to the table that the Council of Ministers has provided in response to Deputy Southern's amendment and it only goes up to 2012. The last time I looked at the calendar it is now the end of April 2014.

[17:30]

Where are the 2013 figures, let alone the first 3 months of 2014? We are supposed to be talking about and debating a population policy that can be relied upon. Please. I am sorry, but I cannot support and will not support Deputy Southern's amendment. I do not think it is achievable. I have serious concerns, which I will highlight further, regarding the Council of Ministers' proposition, but all I will say in conclusion is the Chamber of Commerce, at our public hearing, made this point. If the States seeks to deliver 325 it will be a 44 per cent reduction on the current licences that are being issued, almost half. Now, States Members obviously, tomorrow, will decide whether or not what has been put forward by the Council of Ministers is indeed realistic or has any chance of being delivered. **[Approbation]**

COMMUNICATIONS BY THE PRESIDING OFFICER

3.1 The Bailiff:

Well, it is now 5.30 p.m. So before the adjournment perhaps there are just 3 matters I can mention. The first is simply to inform Members of some lodgings: P.64, Draft Community Provisions (Goods Suspected of Infringing Intellectual Property Rights) (Jersey) Regulations lodged by the Minister for Home Affairs; a second amendment to the Island Plan revision lodged by Deputy Le Hérisier; and R.59, some land transactions presented by the Minister for Treasury and Resources.

3.2 The Bailiff:

The second matter is, Chairman of the P.P.C., do you wish to say anything to Members about tomorrow and what will happen at the end of tomorrow if we have not finished the business?

Deputy J.M. Maçon:

Members will have seen the email, hopefully, by now that I forwarded to them about a proposed way forward and, as I suggested to Members, perhaps the Assembly would like to agree to finish this amendment and this particular debate, even if they have to go into the evening of tomorrow in order to reach a conclusion, and that the rest of the work should be deferred to the sitting of 13th May and that that should have a continuation sitting on 20th, 21st and 22nd May. I would like to propose that.

The Bailiff:

Just to be clear, Chairman, there are, of course, other matters to be dealt with as well. Presumably you want them to be dealt with tomorrow, if possible. So we carry on until the end of tomorrow and do whatever business we can and then ...

Deputy J.M. Maçon:

Yes, absolutely. I just suspected that on such a big debate we might go on ...

The Bailiff:

You may be right, of course.

Senator I.J. Gorst:

I asked that the Chairman gave direction and I am grateful for that and I accept his suggestion that we continue until the end of tomorrow and then business falls through to the sitting of 13th May and, if necessary, we have an extended sitting on 20th, 21st and 22nd May. I have asked the Greffier to move P.33 anyway to that sitting because, as I indicated earlier, looking at the order of business between now and P.33, I do not even think we would get to it by the end of tomorrow. So I have asked for it to be moved as I am out of the Island from tomorrow evening. I do support what the Chairman is saying.

The Bailiff:

Just to be clear, you are deferring P.33 in any event?

Senator I.J. Gorst:

Yes.

The Connétable of St. John:

20th, 21st and 22nd May has been mentioned. I am out of the Island and it has been pre-arranged. I am sure other people have similar situations.

The Bailiff:

I am sure there will be some Members who have made arrangements, yes.

Deputy M. Tadier:

I did not catch when P.33 was. 13th May, was it?

The Bailiff:

Yes.

Deputy M. Tadier:

Can you remind me of the lodging period for amendments, please? Is it 2 weeks?

The Bailiff:

To make amendments to that? Two weeks.

Deputy M. Tadier:

Thank you, Sir.

Senator L.J. Farnham:

Just in the interests of trying to free up a bit of space, I thought I saw an email from Deputy Noel offering to withdraw P.43.

Deputy E.J. Noel:

I am afraid he is a bit disillusioned. I offered to postpone it, not withdraw it.

Senator S.C. Ferguson:

What a pity. It would have given him a chance to consult with all his fellow Members.

The Bailiff:

Do Members wish to proceed as the Chairman has suggested? In other words, we continue tomorrow to do as much business as possible. Anything that is not finished including, in particular P.33, will be dealt with, therefore, at the next sitting as the first item of business and the Assembly will set aside 20th, 21st and 22nd May to continue as necessary.

Deputy C.F. Labey of Grouville:

Sir, you are saying that P.33 should be the first item. Deputy Mézec and my propositions are ...

The Bailiff:

Yes, sorry. I mean the items deferred should be dealt with as the first item.

The Deputy of Grouville:

I see, yes. Thank you, Sir.

The Bailiff:

P.45 and P.44 will be dealt with before P.33. Yes. Chief Minister, is there anything else on this?

Senator I.J. Gorst:

I did just want to give warning of 2 absences that I will have from the Assembly. Unfortunately I have a speech to give tomorrow morning, so I will be arriving late. I recognise that I am the mover of the main Interim Population Policy, but I suspect from the speed that we are getting through business that we will not have completed it in time for my summing up when I arrive in the Assembly. I wish to apologise to Members but it is a long-held commitment that I am going to give that speech, so I will be absent first thing.

3.3 Retirement of the Deputy Greffier of the States

The Bailiff:

Thank you. That brings us to the final matter, which is, as Members will know, today is the last day upon which Mrs. Anne Harris, the Deputy Greffier, will be sitting in her seat in front of me and I know that she is absolutely devastated not to be here **[Laughter]** for a third day of debate. Now, as Members know, we are shortly to have a reception next door in her honour and I shall, at that reception, pay a more detailed and more informal tribute to her, but I do not think we can let this last sitting pass without saying something so that it is recorded officially in Hansard and that is to express in public the great debt of gratitude which we all owe to her for her very long service. **[Approbation]** I had not quite finished, so there is time for more. Just to say briefly she has been at the heart of the Greffe since her return to the Greffe in 1993 and she has really played a key role in so many important aspects of life at the Greffe. In particular, if one picks out just one for the moment, the transformation to ministerial government required great changes to be made in the Greffe to the services offered and that, in turn, imposed quite a lot of stresses and strains on the Greffe staff to accomplish this. I know that Mrs. Harris was at the heart of this both in terms of seeing through the reforms but also in making sure that those whose jobs were changed were suitably looked after in every way. I know she played an absolutely key role in all of that and, of course, Members will know she has always been a wise and steady source of advice to all Members. Her door has always been open and she has been there to help Members. Similarly, she

has been there to advise the Chair. So what I really want to say is, on behalf of all Members past and present, that I want to thank Mrs. Harris for her lengthy service, for her distinguished service. She has been a fine public servant and we are lucky to have had her as Deputy Greffier. I wish her well in retirement. **[Approbation]** The Assembly is adjourned until 9.15 a.m. tomorrow and the reception will begin shortly.

ADJOURNMENT

[17:40]