STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 2nd JULY 2014

[9:30]

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

PUBLIC BUSINESS – resumption

1. Sex Offenders (Amendment No. 2) (Jersey) Law 201- (P.89/2014)

The Deputy Bailiff:

The next item on the agenda is the Draft Sex Offenders (Amendment No. 2) (Jersey) Law - P.89 - lodged by the Minister for Home Affairs and I ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Sex Offenders (Amendment No. 2) (Jersey) Law. A Law to amend further the Sex Offenders (Jersey) Law 2010. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

This is a very small amendment to the Sex Offenders Law to deal with a procedural issue, which is that where an individual person is sentenced with a criminal sentence by the inferior number, the appeal lies to the superior number, but if they were dealt with in relation to an order of the Sex Offenders Law then those orders which have been categorised by court decision as civil orders, the appeal would lie to the Court of Appeal. So this merely corrects that by saying that if you were simultaneously to have a situation where the inferior number had sentenced somebody, and also made a relevant area, and a person were to appeal both against sentence and against the order, that both the appeals would lie to the superior number. It simply brings the appeals together in a more convenient way. There is also some slight tidying-up of drafting but that is essentially what this is about. I move this in principle.

The Deputy Bailiff:

The principles are proposed. Seconded? **[Seconded]** Does any Member wish to speak? Deputy Higgins.

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

A question for the Minister: in his report he states that when the original law was sent off to the Privy Council it was ... or from the Ministry of Justice, their legal advisers felt that it could be challenged under E.C.H.R. (European Convention on Human Rights) grounds. Considering all our laws are supposed to be checked to make sure they are E.C.H.R. compliant, how was it that it has taken a U.K. (United Kingdom) body to tell us that we have not followed the human rights law?

The Deputy Bailiff:

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

1.1.2 Senator B.I. Le Marquand:

Well, that is correct, matters are of course checked for human rights compliance and then they go off to ... in this case it went off to the U.K. and at that stage they raised certain concerns. I did make a previous attempt in a previous amendment to correct this and then discovered late in the day that there were some problems with that proposal. So this is in fact my second attempt to correct this. But it is possible for there to be different opinions in relation to what constitutes human rights compliance, and sometimes there may be an issue of doubt or a degree of doubt. But it does happen from time to time.

The Deputy Bailiff:

The principles are proposed. All Members in favour of adopting the principles, kindly show? Those against? The principles are adopted. Minister, how do you wish to take this? So sorry, before we get to that point, Connétable of St. Brelade, does your panel wish to scrutinise this?

Connétable S.W. Pallett of St. Brelade (Chairman, Education and Home Affairs Scrutiny Panel):

No, Sir.

The Deputy Bailiff:

Minister, how do you wish to take this?

1.2 Senator B.I. Le Marquand:

I think my Scrutiny Panel has in fact looked at this and indeed at all the other legislation. I am very grateful for their assistance in relation to this and all the other matters that I have put before them recently. So I think I have already explained the matter. Article 1 is just a tidying-up of drafting and ... sorry, 1(a) is a tidying-up of drafting and (b) deals with the procedural matter that I have referred to. That is simply what I want to say at this stage so I move the Articles *en bloc*.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on the Articles? All those in favour of adopting them, kindly show? Those against? The Articles are adopted. Do you move the Bill in Third Reading, Minister?

Senator B.I. Le Marquand:

Yes, I do indeed.

The Deputy Bailiff:

Does any Member wish to speak? Members in favour of adopting the projet in Third Reading kindly show. Those against. The Bill is adopted in Third Reading.

2. Draft Income Support (Special Payments) (Child Personal Care) (Jersey) Regulations 201- (P.90/2014)

The Deputy Bailiff:

We now come to the Draft Income Support (Special Payments) (Child Personal Care) (Jersey) Regulations - P.90 - lodged by the Minister for Social Security and I will ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Income Support (Special Payments) (Child Personal Care) (Jersey) Regulations. The States, in pursuance of Articles 8 and 18 of the Income Support (Jersey) Law 2007, have made the following Regulations.

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

Income support was introduced in February 2008 and replaced 14 separate benefits with a single payment available from the Social Security Department. This single tax-funded benefit is made up of a number of components including 3 levels of personal care component to cover the additional costs faced by people with a disability or chronic illness. Entitlement is then means tested against the income and assets of the household applying for it. This ensures that households who face the greatest costs received the highest amount of assistance and those with high incomes receive

proportionately less until entitlement to income support eventually falls away. An important part of the decision to bring in the Income Support Benefit was the principle that all of the previous benefits would come under the same system of means testing. It was decided by this Assembly that this rule would apply to all 14 previous benefits, including disability benefits for both adults and children. All children receiving the previous disability benefits, namely Attendance Allowance and Child Disablement Allowance, will automatically transfer to income support providing their families met the income criteria for the benefit. For families with incomes above the income support level the Minister of the day provided transitional provisions that allowed for the existing benefits to be gradually withdrawn over a period of time. Special transitional rules were put in place for the small group of households containing the most severely ill or disabled children. These children met the criteria that will qualify them for Personal Care level 3, which is the highest level of disability payments under income support, and is only available for children who have a long-term illness or disability that creates extremely high care needs. For these families the full value of the previous benefit was preserved until the child reached schooling age when they could make an income support claim in their own right. This was in keeping with the principle of Attendance Allowance, the previous benefit for the most severely ill or disabled children, which has now been replaced by P.C.3 (personal care level 3). It is important for Members to note that unlike all other tax funded disability benefits, Attendance Allowance was assessed only on the income of the child, meaning that it was more or less universally available. The decision to include these transitional provisions covered all children receiving Attendance Allowance prior to the start of income support. However, in 2008 a legitimate concern was expressed that severely ill or disabled children born too late to qualify for the transitional arrangements would effectively fall between the gaps until they reached the age at which they could qualify in their own right. This was so close to the launch of income support that it was decided not to delay the launch of the benefit in order to amend the legislation but to make special provisions for these children through the ability of the Minister to make exceptional payments via the income support system. So successive Ministers for Social Security - including myself - have routinely made payments to a household containing the most severely ill or disabled children under Ministerial exceptional payments, which comes under Article 8 of the Income Support Law. These payments have been equivalent to the value of personal care level 3 and have been made regardless of the income of the child's family. So we have been achieving the objectives of ensuring that the needs of these families are met but it is clearly preferable to formalise these payments in law. This will allow them to be administered in keeping with other areas of the income support benefit. It will ensure that the system is transparent and will give those families the right to appeal against any decision made by officers in my department. So these Regulations do not change the criteria to receive personal care level 3 or the cash value of a component.

[9:45]

They do not require me to ask for any additional funding, as the small increase in cost will be absorbed by savings that have already been identified in existing income support budget. So in short, these Regulations are designed to regularise an arrangement that has existed since the beginning of income support. They address a small group of families with very high care needs for a severely ill or disabled child. To ensure equity between households, the regulations are also designed to allow for households of all children qualifying for P.C.3 to receive this amount regardless of household income, including cases where the parents also qualify for income support. These changes are specifically aimed at the personal care level 3 component. The income support system also includes 2 lower levels of personal care components for children and adults who are less severely ill or disabled. In addition, mobility components and clinical cost components are available to assist with transport costs and the cost of G.P. (General Practitioner) consultations. All of these components will continue to be provided through the income support system to parents

whose household income qualifies them to receive income support. In addition, for those households who do not qualify for income support, the Minister retains the right to make Ministerial exceptional payments under Article 8 of the Income Support Law. In non-income support households where there is an exceptional and an unusual need to assist a child with some degree of disability or illness, which is assessed at P.C.2 level, payments have been made as Ministerial exceptional payments on a case-by-case basis and I fully expect this to continue. I propose the principles of the Regulation.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on the principles? All Members in favour of adopting the principles ...

2.1.1 Senator P.F. Routier:

Yes, very briefly. I welcome this move I think it is something which helps to regularise what is already happening and I support it wholeheartedly.

The Deputy Bailiff:

Do you wish to reply, Minister?

2.1.2 Senator F. du H. Le Gresley:

I have not got much to say on that. I think the main debate will come on the amendment. Thank you.

The Deputy Bailiff:

Indeed. All Members in favour of adopting the principles, kindly show? The principles are adopted. Minister, we now ... no, we do not, we come to Scrutiny. Deputy Hilton.

Deputy J.A. Hilton of St. Helier (Vice-Chairman, Health, Social Security and Housing Scrutiny Panel):

No, thank you.

The Deputy Bailiff:

Minister, do you wish to propose Regulations 1 and 2?

2.2 Senator F. du H. Le Gresley:

Regulation 1 refers to the Income Support Regulations and uses the same definition of a household as found in Article 5 of the Income Support (General Provisions) (Order) 2008. Regulation 2 allows a Minister to make a special payment at the same value of the personal care level 3 component. This payment can be made to a household where a member is a child who meets the criteria for the award of the personal care level 3 component. It retains other restrictions that are applied to all people who qualify for that component. The only other requirement for this payment is that another member of the household is an adult who meets the requirement under Article 2(1)(b) of the Income Support (Jersey) Law. This is the part of the law that specifies continuous residence in Jersey. It has been included here to ensure that this payment can only be made to children who are part of a household that has been in Jersey long enough to satisfy the residence conditions of income support. I propose Regulations 1 and 2.

The Deputy Bailiff:

Seconded? **[Seconded]**

2.3 Draft Income Support (Special Payments) (Child Personal Care) (Jersey) Regulations 201- (P.90/2014): amendment (P.90/2014 Amd.)

The Deputy Bailiff:

There is an amendment to Regulation 2 lodged by Deputy Martin and I ask the Greffier to read the amendment.

The Greffier of the States:

Page 9, Regulation 2 - for Regulation 2 substitute the following Regulation - "2 Special payment for child personal care (1) Subject to paragraph (2), the Minister may make a special payment to any household in which – (a) a member of the household is a child who – (i) meets the requirements for the impairment component under paragraph 5 of Schedule 1 to the 2007 Regulations, and (ii) but for being a child, meets the criteria for the rate payable in respect of the personal care element of the impairment component for an adult under paragraph 6(3) of Schedule 1 to the 2007 Regulations; and (b) another member of the household is an adult who meets the requirement under Article 2(1)(b) of the Income Support (Jersey) Law 2007, to defray general expenses in respect of the personal care of that child. (2) The amount of the special payment under paragraph (1) shall be the same as that payable to an adult who meets the criteria for the rate payable in respect of the personal care element of the impairment component under paragraph 6(3)(a), (b) or (c) of Schedule 1 to the 2007 Regulations, as the case may be.".

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

Firstly, I would really like to thank the Minister and his staff who were very helpful when I first approached him about this amendment. I did inform him of my intentions and had the discussion in the hope he would be supportive. Unfortunately, this was not the case. I have had to bring this amendment because, as you will see in my amendment report, I find that we are in a total mess. The Minister has said in his comments that we have had this debate many times on means testing; means testing of all benefits. But at our meeting, he did concede that there had never been a debate on this one subject of means testing children with a disability. So today this is this Assembly's chance to have the debate, open and fair. I would like to give Members a brief history. Before the introduction of income support, all children would be assessed on their disability, mainly by their consultant, and if they said they had a very severe or severe disability they were given Attendance Allowance. There was no points system, and hopefully you will be circulated the form that people have to fill in to get this for the children. They are for adults as well, there is no differential form, it is for anyone with a disability. So when reading it you might think that some of these would not apply to children but they interpret that and it is taken allowance of. As I say, and the Minister has just echoed this, many parents at the introduction of income support realised they would lose their payment for their children, and these were not rich, they were middle earners, many just above income support. In P.86, which is quoted again in the comments from the Minister, the committee then looking at it said there should be 4 levels: very severely disabled and severely disabled with 2 lower levels, one moderate and one maybe needing minor assistance with day-to-day living expenses. Somehow through the years we went down to 3 levels, again very little debate. In fact I do not remember the debate and myself, Deputy Southern, the last ... I think he was the last Constable of St. Martin, Silva Yates, were all on that Scrutiny Panel. That panel was asked to attend from the parents of Mont à l'Abbé School where feelings were running very high, and rightly so. The States Members who were informed knew that if they did not tackle this there would have been protests in the Royal Square. So, on 3rd June 2008 the Minister read out a statement in this Assembly, which I will quote from, but you should have a copy. On page 2, and unfortunately they are not ... and I hope you bear with me because it is very interesting to read, but you can read all of it at your leisure. I quote from about the third way down: "Due to the gradual build-up of income support claims during 2008 it is possible to transfer additional funds to the funding of protective payments to allow households previously receiving Attendance Allowance, Adult Disability Allowance or a Child Disability Allowance to continue to receive full protection. I

am announcing today that this protection will be for a further 2 years up until October 2010. Only then will the first partial reduction in the protective benefit occur. While I recognise that the States have on several occasions debated and approved the tightening-up of the availability of benefits to those on higher incomes, my Assistant Minister and I also listened to the views of those who represent the children with severe disabilities and their families. I believe a special case can be made to provide financial assistance to families that care for a child with severe disability." Further down, I quote: "I recognise that Members will want to be confident that people with disabilities are supported appropriately and I would like to reassure the public that this package of measures has enhanced for many the support that they receive and for others maintain the support they receive." Then I would like to take Members to, well I call it the last page of the report where the then Minister, and it is Senator Routier, is asked ... no, on 615 he is congratulated by the Constable of St. Martin who says: "In the light of my close interest in this matter I would like to thank the Minister for his statement today. I would like to ask him to explain or describe the new entitlement for households with children with severe disabilities to claim the higher level of personal care component without regard to parents' income. I would also like to say that, with my thanks for his statement, I will also tell him I shall still be taking a very personal interest in his future work in Social Security." The Senator replies: "I think I have explained that there will be the possibility for a child in their own right without regard to their parents' income to make an application for personal component level 3." That statement was probably misunderstood or the misunderstanding was that of the Minister because that was not the case. The Constable of Grouville also thanks the Minister because he was dealing with the Scrutiny Panel and asking the same questions. At 617, Deputy Gorst of St. Clement says: "I, too, would like to join the chorus of thanks to the Minister. He has shown that he has been prepared to listen to families who have members with a disability, and I thank him for that. However, he has extended the protective benefits until 2010. I would just like him to confirm - I know that he, as an individual, cannot, but perhaps he can on behalf of his department - that his department will continue to listen because I suspect this issue might just rear their heads again in 2010 and I ask that his department will continue to consider that they could be extended even further." Senator Routier replies: "I thank the Deputy for those kind comments. Certainly the issue I have done a 2-stage approach of protecting those existing people who were in the system until 2010 but if there was somebody new coming into the system they are going to benefit from the ability for any child who has a severe disability to make a claim in their own circumstances so they have a similar effect beyond 2010. I believe this to be the case." That was not the case. Every new claimant had to fill in the form. So we are not differing. The now Minister for Social Security has just explained how he saw it, the then Minister for Social Security quoted his understanding, and that would have been very good if that had been what had happened. As the Minister said, from that date, if a child reached personal care level 3 they could request an exceptional payment unless of course their parents were on income support.

[10:00]

The Minister does not even know if we are catering for all personal care level 3 who are not on income support because we are saying: "We need to get your child to score these points. We also need you to come in and ask for an exceptional payment." We always hear about the elderly who might be too proud and might not want to go in and ask for this and that but there are families ... or are there families? We do not know because we have taken this benefit away from the child and made it an exceptional payment for children with the most severe disabilities on this Island; the most vulnerable families. Make them jump through hoops. We do not give anybody a booklet. People - myself and Deputy Southern - have spoken to… one lady described her treatment ... a Jersey-born person who had the baby early when she was in a foreign country and sadly was born with a severe disability. She was given a booklet, she was told where to go for help, what she could expect from each department. It did not really cover her because she did not live in that country but

she was just explaining the difference of the system. So, to me, we do have a long way to go. So, you may well ask why I have asked for level 1 and 2 to be taken out of income support. Well, again, we have another tier of families, many who, under the old Attendance Allowance system, would have been classed severely disabled. Severely disabled but not very seriously disabled and put in personal care level 2. The people who have contacted me and have said they have been told to fill in the form, because on the face of it their child has a severe disability, but they fall short of a few points for level 3 which would then be an automatic request to the Minister for an exceptional payment. So we have these families trying to appeal, trying to confirm that their child is not just severely disabled but very severely disabled to get help. In one case where the diagnosis of the child born in Jersey was so rare the Medical Appeal Board who had put this child on level 2 had to look this diagnosis up on Wikipedia, and in their opinion the child should then stay on level 2. I could not make this up. The father of this child was absolutely distraught. He may be writing to you, he wants to and he has given me permission to quote his case. But I did say to him in an email last night that it is so rare I would not go into the case because of identifying the family and the child. But he was quite prepared that I could mention more than I have done. You also only have to look at the sums of money involved. If you know that we think level 2 child disability should be paid at £101 per week, that child surely must have a severe disability. But they will receive no help unless the parents are on income support. Personal care level 3 is £145 a week but over a month that is still a lot of money, £101 a week per child. I know the Minister, in his opening remarks and in his comments to my amendment, has said he would deal with level 2 as he has been dealing with level 3 children at the moment. So we will still have the problem of some families getting help and others not wanting to go down this route. The Minister saying yes to some and no to others, and please remember it will not always be this Minister. You might all think this Minister is very good, and I absolutely agree with you, but we do not know. We cannot design a system for our disabled children or children with severe disabilities and hope that the next Minister will pass an exceptional payment; an exceptional payment. As I also said in my report, Jersey is a small community and within that community most families with a child with a disability who also have to access other agencies or departments, do know each other. Speaking to them, this system of some in and some out leads to resentment, suspicion and some even said they do not like to make waves as their payment is the discretion of the Minister. I know this is totally unfounded but this is what I am told and this is how we are making people feel. Please remember the people, the children I am talking about; severely disabled or very severely disabled. So do States Members think that we may have got this one wrong when we moved child disability from the right of the child to the income of the parent? Last week, Jersey celebrated the extension of the United Nations Conventions on the Right of the Child and the Chief Minister said, and I will quote again from his press release: "Senator Ian Gorst said part of the commitment we have made is to ensure not only that government policy makes proper account of children's rights but Jersey children all understand their rights and their place in our community. A child-friendly document has been developed to use clear language and has been brought to the life by the Grouville Artwork." On the second page the points state: "The U.N.C.R.C. (United Nations Conventions on the Right of the Child) is an international agreement introduced by the United Nations in 1989, which sets out the list of rights that belong to every child under 18 years old. These rights include: the right to a childhood, including protection from harm, the right to be educated, the right to be treated fairly, including changing laws and practices that are unfair on children, the right to be heard and the right to be considered. I must repeat point 3: "The right to be treated fairly, including changing laws and practices that are unfair on children." Many children in these families are severely disabled physically but they can think for themselves. Do they listen or hear their parents discussing that they might have to go down to the Social Security Department and ask for an exceptional payment for themselves? How would you feel? How would you feel if that was your child? How would you feel if you were that child? Severe physical disability but understands everything that is going on around them. I have attached to my

amendment what happens in the U.K., it is in the right of the child. I just have to really hope that I have convinced Members that for all children to be treated fairly we must take all personal care levels out of our means tested - and I mean means tested - income support scheme. The introduction and the principle of the Minister's amendment went through basically on the nod, and what he has just done, and if it is accepted, he has taken level 3 out of income support. Every child will get it regardless of their parents' income; middle income, £100,000 a year, millionaire. When I went in to the Minister, he said to me: "So you think very rich people should get this?" I said: "I am not talking about very rich people, I am talking about the children and I am only doing what you are doing and you are doing this because over the last 7 years you have had to make so many exceptional payments you know the system is wrong." He also said in his opening remarks that he only has to increase his budget for personal care level 3 by a few thousand pounds. That is because he has been making these Ministerial discretion exceptional payments all the way along and including them in the income support budget. Now, please remember, if you ... this is the debate today on do you think children with a severe or very severe disability should have this money in their own right. The Minister thinks the very severe should now be taken out, regardless of any earnings, however high income the parents are on, and he unfortunately did not accept my amendment, which I think it makes very clear, we are in a mess because we still have some children that were on the old Attendance Allowance, they have not reached 16. We have some on P.C.3 who will now be taken out regardless of income support or means tested, and we have those who may be, as I have just explained, and there are letters coming around from different organisations to parents to explain what it means to them on a day-to-day basis. I have not quoted from individual cases that I have met over the years and we have worked with over the years. We knew this amendment was coming and I thought this would be the time for the States to have this debate. As I said earlier, and I think it was quoted many times yesterday in a different debate, sometimes politicians do get it wrong, and today is your chance to get it right. The child has a disability and the benefit should go to the child. What upset me more about the comments, not from the Minister for Social Security, were the comments which came before the comments of the Minister for Social Security, were the ones of the Minister for Treasury and Resources where he basically said there was no money to be found for this. No money to be found. It was found in 2008, it can be found now. It is up to us today to put something that we got right ... it was never, and I will emphasise this one more time before I finish my speech, it was never intended to go into income support. I think if States Members ... I know States Members would, if they had known in 2008 what they were doing, as I said at the beginning, there would have been uproar. So do not be fooled that this debate has been had many, many times and we have all agreed to means test every benefit. These, as I said again and I have to repeat, are children with disability, severe disability or very severe disability and we are not giving them their benefits. I did question, when we were going to sign-up to the United Nations Rights of the Child, how can we not treat all children the same? I was given an answer by one of the officers in the Chief Minister's Department: "Well really, if you look at it they are being all treated the same. Just as some get the money from income support and some get the money provided by the parent." Well, if you think that is all the same, I do not. It is today that we have the debate. I do hope we have a very good debate and I do hope that I have now, as I have, I think, explained very clearly, very plainly, what we have been doing since 2008 and how we have been treating these children. The States Members in this Assembly today will support my amendment, and from the tone of the Minister's opening remarks I think he would like to support my amendment because, as I say, I know he is a very fair and caring man.

[10:15]

That is what it is about, the principle. Do you put these families through hoops to get some little bit of money that may relieve and help towards their child growing up. I leave it there and maintain my amendment. I look forward to a good debate. Thank you.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Does any Member wish to speak? Deputy Higgins.

2.3.1 Deputy M.R. Higgins:

Yes, I will be very brief. Yesterday the Island decided to save the north coast of Jersey. I think it is time that we started again to help the disadvantaged in our society and these children and their parents who have been going through an awful lot of ... if I use the word "hell" it is probably not parliamentary but the point is that many of these families have a very, very difficult time and it is our duty to support them and I defy any Member not to. Thank you.

2.3.2 Deputy S. Power of St. Brelade:

I rise really to support Deputy Martin on this. I have read the various papers that are in front of us, and indeed this morning a paper has been circulated by Deputy Southern from the Special Needs Advisory Group, which is a group of parents that have been, for a long time, discussing the impact that this has, not just on the child with special needs but on the parents themselves. With your permission I want to read a section of that letter out without naming names, if that is okay. On the second page Members will see a paragraph that starts halfway down ... a third of the way down in bold italics: "Could the Minister for Social Security explain why it has taken 6 years to get this legislation to be put to the States? Does the Minister know how many families whose child would have qualified for personal care 3 have been told they earn too much by his department and have therefore been left struggling financially? With regard to the generous payments he mentions for families who are on transitional payments, why were they set, it was £141.26, amount set in 2008 and this payment would have no annual increments like other income support components until the child reaches school leaving age of 16? Is this still the case if the legislation is passed that there will be families on different levels or will all children qualify for personal care 3 at the same system? In 2013 the Special Needs Advisory Panel raised these issues on behalf of families who are today struggling with the income support system and Deputy Martin and Deputy Southern have been in touch with us, as they were on the original Scrutiny Panel and were under the impression that this had all been amended in 2008, and they were both shocked to learn that families were still being left with no financial support and believed other States Members would also not be aware of these situations. The Special Needs Advisory Group have been advised that some families are getting support but this is only at the discretion of the Minister for Social Security after they have appealed. It appears that Jersey has a system whereby he who shouts loudest gets most. We welcome the news that the Minister for Social Security is now proposing new legislation for personal care 3 component to be excluded from income support and we strongly agree that this will definitely help families who have a severely disabled child, however what about families whose child is either level 1 or level 2? If you could support the Minister to only exclude personal care 3 then Jersey will have a support system for disabled children that not only supports children with a severe disability, so what will happen to those families who have a disabled child and need financial support to help them provide the care their child deserves but they are middle earners? Could the Minister explain why families who have a disabled child are penalised if their family own their own house compared to those that rent? Why should the amount each household can earn depend if they rent or have a mortgage, it is still providing a stable roof over a child's head? The Minister needs to appreciate that many families who have a child with a disability often have only one parent working full-time due to that child's disability, and this is not through choice. So mortgages and/or rents still need to be paid. Children with special needs have higher costs for their care compared to their peers and any financial support is vital. We agree with the Minister that some families do get help from other States departments for basic essential equipment; that is gratefully received. However, we do have families who own their own property who have been left with high costs to adapt their own home to cater for their child's needs and also to cover the entire

costs of an adapted vehicle. The Minister also mentions that families who claim personal care 3 can claim the Home Carer's Allowance, but again, what about personal care 1 and 2? All our families [and this is a collective response] want is a fair system whereby they know they are entitled to financial support like the old disability allowances. Yes, the level of financial support should be determined by the 3 levels of personal care components but the criteria should be in the child's own right or at least these 2 levels should be capped to allow middle earners to claim. At the end of the day our families would rather not have to go to Social Security for financial support for their child but they are left with no choice. They have a stressful life as it is and need support from their Government, not obstacles in the way. The current system does not provide a fair and equitable approach for the funding of all children who have special needs across differing income levels. Back in 2008 families, for all levels of the personal care component to be available to anyone who has a disabled child but not those who qualify for personal care 3." The final paragraph is: "Deputy Martin's amendment to the States will ensure that all levels of child disability are excluded from income support and therefore available to all families with a disabled child. Surely, Jersey wants to support all of its vulnerable children and families, not penalise them with the confusion and divisions that are present in the current system." I think it is important that that was read out and that Members realise the passion and the difficulties and the emotional and mental stress that is caused by having a child with a disability. I do not think I need to add anything else to that. Thank you for allowing me to do that. **[Approbation]**

2.3.3 Senator I.J. Gorst:

This is a difficult debate, by its very nature, that we are discussing some of the most vulnerable members of our community and trying to ask ourselves where to set the standard, I suppose, or the bar to where there should be universal benefit and where the depth of vulnerability fits with that particular bar. It is difficult and it is something ... I think, from looking at the Hansard and the correspondence, it is something that past and present Ministers grappled with and there is no, I do not think, easy solution as might be suggested by the amendment. I just wanted to perhaps set some of the history in context, which I know that Deputy Martin tried to do in her opening comments as well. She indicated that she felt there was no discussion about whether disability benefits should be means tested. That is not the case. In as far back as 2005 it was quite clear in the debates in the States that the Attendance Allowance and the Invalid Disability Allowance as well would be rolled-up into a means tested benefit and the States supported that. I think that the then President ... I am just trying to go back to when the Ministerial government started now. The then Minister brought that decision back again because he was not surprised but he wanted to make sure that Members were aware of what they were doing; that they were rolling-up these benefits into a means tested system. So sometimes we can look back and we do not recall that that happened but when we look at the evidence we see that it did happen. That does not of course mean to say that an Assembly going forward cannot make a different decision, of course they can, but we must be ... not just base our decision on thinking this decision has never been made. It has been made and the Deputy, which is her right, is asking us to make the decision today again by amendment. The other thing I just want to say is that in the correspondence that we have received, at least one or 2 of them do welcome the proposal that the Minister is putting forward, and that is to provide statutory provision for P.C.3 to be non-means tested, which is currently what is happening but it is using a payment system within income support to cover those children that are severely disabled. Also, we, of course, in this Assembly, there are fewer and fewer people that remember the old benefits so the Attendance Allowance Benefit, which was for the severely disabled, and the mover of the amendment has moved between different terms, which also could be confusing for Members. So that Attendance Allowance mirrors across to P.C.3. So Senator Routier, when he was Minister, put in place this system whereby P.C.3 in effect would not be means tested and they are currently being covered by special payments, and the current Minister has taken the view,

correctly, that that was not satisfactory and he wanted to amend the law to make sure that going forward it was dealt with in the way that he is proposing so that it could be clear. One or 2 of the other comments have ... and Deputy Power just picked this up now. Should there be a differential between somebody renting and somebody in home ownership? Of course, that is not just peculiar to those with disabilities, that is right through the income support system. This Assembly has made... Deputy Southern is shaking his head but he knows that that is true. This Assembly has made decisions about how we administer income support and if the families are renting, if they meet the trine criteria and they do not have the sufficient income, then they can receive support, but not when it comes to the paying of a mortgage, and he knows that because we looked at that in response to the economic downturn when I was Minister and considered whether that should change and whether there could be schemes brought forward that would help in that regard. So I do not think it is helpful just to single-out one particular element because that is common across income support. The other thing just to mention - and I do not think the mover of the amendment did mention this - is that the old Disability Allowances did have income bars as well. They were a different means ... Deputy Southern is saying they were far broader and more generous and he is right. But we are not talking about broadening or making this more generous, we are talking about, today, taking away any means tested element whatsoever. So we just need to understand that we would not be going back to the system that previously was, we will be changing it in its entirety and taking away any sort of means testing or income barring in the system. As I started, this is a very difficult area and, as Deputy Martin read out, Ministers have grappled with it and found it difficult. I am going to say something now which perhaps will not endear me to perhaps very many people, and that is that I do not think that this Assembly and previous governments have necessarily supported disabled members of our community in an appropriate way. I do not mean by that simply financial support. We do not currently have a disability strategy.

[10:30]

We do not currently know how many and the types and depth of disabilities within our community and that is not something that we should be proud of. In fact, it is the reverse, and it is that very reason that I say that Ministers have struggled with it, that Senator Routier and I have pushed, and work will be starting, and we are recruiting somebody in our department to be responsible for this, to start the mapping work around how many disabled people there are in our community, what the depth is and what actual support they need. Then from that, we will be able to develop a disability strategy, because we are far behind the curve. Therefore Ministers have ... when they saw Deputy Martin's amendment we did challenge ourselves about whether this was the right thing to do at this time and I think, on balance, and it is a balance decision, Deputy Martin takes a different view to us. She takes the view that today we should make this decision and no doubt some of the Members might do, and I see Deputy Southern nodding his head and that is ... the Assembly does make its decisions and its will felt, and that is right. But I think on balance that Ministers felt that at this point the more important piece of work was to do the piece of work that we have instructed our officers to do, that we have found resource to do because that will deal with it in a more joined-up and strategic way and it will allow resource allocation to be, I think, used in a more helpful and supportive way. So I finish by acknowledging once again it is a difficult area. It is an important area. On balance Ministers feel that the approach we are taking is the right one. We welcome what the Minister is doing today. We do not think that today is the time to make the other steps that the amendment is proposing but to do the important piece of work that we have instructed to be done. I hope that Members, on balance, will see that that is the right approach and that does not detract from any of the concerns and issues that family members have spoken about, about the cost of caring for disabled in their family but it does mean that we can put it in its proper context. Thank you.

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

I am flabbergasted at hearing the Chief Minister's comments. Totally flabbergasted as the former Minister for Social Security and his predecessor are now, on the back of Deputy Martin's proposal, wanting to put in a review. Both of those former Ministers should have done it in their tenure in office, not wait until they are reminded because something like this that is brought up by Deputy Martin comes to the fore. The Chief Minister also made an early statement, which is recorded now on Hansard, to set the standards or the bar. What are we talking about? We are talking about our young children of this Island. I am appalled that a Chief Minister could be using that kind of language in a debate like this. I have been worried for some time about not only our vulnerable youngsters, but also our vulnerable people right ... further up the ladder and in the older age brackets. Everybody seems to be having to jump through the loop on to the new system that was put in place in 2007, 2008, in that period of time that I was out of the House, so much so that I am seeing very vulnerable people falling outside of the system. Falling outside of the system. I met a very vulnerable couple 12 months ago, 15 months ago, who I saw in the street and I said: "What is the problem?" Sorry, in the road near the Parish Hall: "What is the problem?" "Well, I have got no money, Mr Rondel. Got no money." I said: "But in your case" ... this is the other end of the spectrum; this is an old-age pensioner of 75. I said: "But you have got your old-age pension." "No, I have not had anything. I have not had anything since last August." This was the following February. So I said: "Well, please come into the Parish Hall and see me and we will discuss it" which he followed me in. So I said: "Have I got your permission, because of data protection, to contact Social Security?" Which I did, and I said: "Mr and Mrs So-and-So have had no pension since previous August. They are totally destitute. Can you give me a reason why it was stopped?" "Oh", the answer came from the other end of the telephone ... firstly, I cleared it with them that I had this person's permission, and the answerer replied: "Oh, we wrote to them and we did not have a reply so what we did, we stopped the pension." Now these people are very vulnerable. So they stopped the pension and these vulnerable people had not ... did not ... they thought that whatever they paid in over their lifetime had run out so there was no more money left for them to have a pension. So that was reinstated, backdated and they said: "Well, I will send you a form so that they can have whatever help we can give them." So they sent 2 forms out, one for the husband and one for the wife containing a minimum of 28 pages of tick boxes and questions and paper that was required to be filled in, and because they were very vulnerable and they have difficulty in reading and writing, it took the secretary of the Parish 3 hours to fill in each form. No help was given by Social Security. If they knew they were vulnerable people, whether it is elderly or our very young, these families who we are talking about today, the vulnerable people, they should be given the helping hand to fill in these forms and they should be given support from the Centre, i.e. from our Social Security Department where people call up and see for themselves and help the people fill in the paperwork, not expect a tick box on the other end of the phone or if you go into the department you fit into this box. Well, a lot of people do not fit into any specific box. I can talk from another angle, having had a daughter who was seriously ill and had ... was ill for many years ... I will not go there. I will not go there. Too upsetting. But what Deputy Martin is trying to do is right for the families. Thank you.

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

I do not often speak on social policy issues but I think Deputy Martin has brought sharply to our attention this very, very important group of people who have such special needs that the point for me that I think debate is starting to illustrate is our paucity of strategic thinking. Here we have got a Back-Bench Member, a very senior one, coming forward, reminding us and going back over the history of past decisions that seem to have brought us to the point where we have a vital group whose special needs ... often in those special needs those additional costs generated for those families do not just stop at the end of childhood; it goes right the way through the natural lives of their children. Now, we all have children for life and we have to help them and guide them and

advise them but thankfully, for the majority, they grow up and form independent lives and provide for themselves. But for many others they cannot and I am really quite surprised. I am astonished to find that we seem to be in a situation where we are relying entirely on a means tested system to look after this group because ... and it illustrates this issue about the choice of universal benefits or means tested benefits. I think reading the comments from the Minister, who appears to be saying: "Well, we are going to make the universal benefit now for the very most severely disabled children but the others who are just ordinary disabled, we are not going to. You have got to go in the queue." For many people that is not the sort of experience that they want to go through. Many choose not to. I have heard, I think, comments there about: "Well, do you want to help the rich?" I think the issue ... what it illustrates to me sharply, why are we not joining up our social security policy with our income tax policy because where are the universal tax allowances for personal needs? Surely there has to be some relationship between how we provide that support and we cannot just have a simple black and white situation; either you are this side of the line or you are that side of the line. There has to be some in between. For me, when one looks at other people's tax systems you find that there are special allowances for families who are bringing up youngsters with those special needs. Yes, they may have decent incomes. Incomes which are above the income support limits but my word look at the costs. Adaptations to their homes, many, many thousands of pounds, and what do we do? We say: "You only get an income tax allowance when you buy a property. You get an income tax allowance when you extend it but you do not get an income tax allowance when you adapt it." I feel this so strongly that that ... so those costs and then that means people have to raise loans and then, of course, the costs of adapted vehicles and then, of course, the cost of day care, the whole special arrangements for holidays and so on. One really feels passionately for those families, how they cope? And I think for those cases they deserve our... what we can do for them and clearly we have not got the research and perfect solution in front of us. What we have got is a dichotomy where the Minister for Social Security brings: "Well, this is the end result of what has been agreed over 6 years on the table" and Deputy Martin draws us sharply to attention, the holes in it. We have all seen the letters that highlight those holes and my sympathy is strongly with the group that Deputy Martin has identified with so unless I am hearing anything different from the Minister for Social Security I am inclined to support it because I think it is the right thing to do. It may not be perfect but in the absence of this review and I was delighted to hear the Chief Minister say: "Well we can have a review." I thought: "Excellent. We might get this strategy." Of course, I did not realise, I hear other Members say: "We agreed to do this 6 years ago" or something. So nonetheless we should do it. So nonetheless, my ... I think I am broadly sympathetic with Deputy Martin's proposal. What I think the Deputy is doing is trying to take an imperfect piece of legislation and try and make it work better and more fairly. Thank you.

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

I have to start by saying I was very disappointed with the speech, the contribution of the Chief Minister which effectively said: "This is an issue that has been going, we admit, for 6 years.

[10:45]

We have not found a solution to it yet. We have got a partial solution again and yet we should not accept this amendment and move too far too soon; do not do it now." So no argument, no real argument there: "Have we got this right? We are confident we have got it right." No. An implied admission that for 6 years we have been getting it a bit right. Actually, we have been getting it wrong. There is nothing wrong with the principle of rolling 14 benefits into one for administrative ease. But somewhere in there you have got to be on the lookout for things that do not fit that system and this is one. Absolutely clear as a bell to me when we initiated and rolled this into income support in 2008, we got it wrong. It was the exception which should have been noted and put in another box because it simply does not produce an equitable result. Now, I have circulated

letters today. The one to the Constable of St. Helier, as patron of Friends of Mont à l'Abbé School, from the chair, just to show that this issue was alive and kicking in 2008. That is when the letter is dated. There was a problem then. What we got was once it was brought to the attention of the Minister, Senator Routier, he did his first steps and patched it up, to that system which could be made to work. That was not absolutely right because, as we see in the letters, people were still applying and not getting the correct award because of the income support rules. I just want to start by pointing out what this level 1, 2 and 3 might mean; the difference between 3 and 2, severe disability and something that is less severe. If Members would turn to Appendix 2 where we look at the tests that decide on this level of impairment? It is on the back of ... it is the fourth page of the bundle that Deputy Martin released containing all the boxes and the tests. We are talking about a level of disability where you are examined under these tests of what can you do, and you score points; the higher your score, the higher your level. I think it is 56 points in this scale to score level 3. We are talking about inability to sit. Inability to stand without support. Cannot walk more than a few steps. In some cases, that is the case. Bending, reaching. Is there a problem with speech? Can you make yourself clearly understood? Do you have a visual impairment or a hearing loss? But then we look at the mental facilities, if you turn to item 13 tests. Management of personal finance, and in this area, the most common that I have come across is people on the autistic spectrum who, on the surface, does not appear to be very much wrong with them, but you try putting them in particular situations and you realise that they do have problems coping and they do make a very big demand on families in order to cater for them. So, for example, management of personal finance. Does not understand the value of money. Will go in and spend a fiver on the chocolates and the sweets because they are there and will think nothing of it even though he has been sent out for a pint of milk. Maintaining appearance and hygiene. The lad who literally will not wash unless supervised before he sets off to go to school. Seen that. Management of daily routine. Does not get ... rise from bed without prompting and 24-hour cycle constantly out of phase. Seen it. I have been there, as the third shout went up the stairs to get him out. That is the sort of behaviours there. But especially awareness of danger and consequences of behaviour. This is talking about a lad who climbed, when waiting for the bus, on the bus shelter roof and did a dance up there. That was okay. Getting around. The lad who, if he found himself in St Brelade, would not know how to get home. That sort of behaviour. That would not be level 3. That would be a level 2. But very demanding on the family and very difficult to cope with, needing a lot, a great deal, and as is pointed out in one or 2 of the letters, this makes the child ... the birth of a child with a disability makes an enormous impact upon the family. It often means that one of the parents has to stop work to look after that child because the demands are so great. It often ... it sometimes means that families break up because of the stresses and strains of dealing with a disabled youngster. It is not easy. I want to turn to the letter from the S.N.A.P. (Special Needs Advisory Panel) and I want Members to look at those four words, Special Needs Advisory Panel. Advisory. Advice is coming in and that advice says: "In 2008 you did one adjustment. You put a patch on the system and it seemed to work but still some people were not getting ... with level 3 were not getting the award." In 2011, and here Senator Gorst said: "This Chamber, this Assembly has not treated the disabled well." In the majority of cases it is about the Minister. Ministers do things. They carry out our will. The Minister in 2011, Senator Gorst, confirmed at the meeting that his department were going to conduct a full review of income support in 2012. Members may notice the questions on Monday when I asked the Minister why there has not been a full review of income support, in particular I am thinking about this particular issue, and there has not been. The Minister promised there would be a full review of income support in 2012 and they would look at the personal components for disabled children in this review. There has been a review but it came up with what? A second patch, which appears to work bureaucratically on the surface but does not deliver the equity to all those in need. So in 2012 a small number of families who were told they earn too much to qualify for income support received a letter from Social Security confirming they

would continue to receive the transitional payments until the child reached 16. This amount would not increase with annual increments and at 16 a child could then claim on their own right as an adult. There was no mention of the law being changed so that it would be the child's own right so again new families were left with no financial support. It asks the question: "We welcome the news that Minister for Social Security is now proposing a new legislation for personal level 3 component to be excluded from income support and we strongly agree that this will definitely help families who have a severely disabled child. However what about those families where the child is level 1 or level 2?" And that is what we are debating today. Putting 1, 2 and 3 because it is disability and an expensive and demanding business, out of the box because that system does not deliver properly. We must make something that does deliver. A final point I make where I notice in the Minister for Social Security's version of things, he says: "The Regulations therefore separate the value of a P.C.3 award in respect of a child from a calculation of household income providing an equal level of support to children with severe illness or disability regardless of household income. Payments are made by way of special payments which are provided on a weekly basis at the current value of the P.C.3 component paid to adults within the main income support scheme." He then goes on: "The Minister for Social Security will continue to be able to support families with children who do not meet the criteria for P.C.3 award through the provision of Ministerial exceptional payments under Article 8 of the Income Support Law. Financial assistance can be provided where the family faces wholly exceptional circumstances, which has led to the exceptional costs for the family cannot meet directly. So there, the repetition of ... we are using this system of special exceptional payments to patch a system which is not delivering equitably to all in need. I turn to the guidelines issued by the Social Security Department which cover the special payments. Here we have a serious flaw. One area of income support is the direct responsibility of the Minister for Social Security: "The Minister has the right to make exceptional payments which fall outside the main framework of income support. See section 8." Listen carefully. There is no appeal against the decisions of the Minister. So we are putting into place another patch against which you cannot appeal. Now, the Solicitor General is not here but I believe that any system which governs Government action must have a mechanism of appeal in it, a convenient mechanism of appeal in order that it can be seen to be just. The fact is that this patch does not have that. There is no appeal against the decisions of a Minister under Article 8. That cannot be right. That says there is another big hole here. We are doing it the wrong way. Please, please let us get it right this time. It has taken 6 years. Let us get it right now. Let us take these particular elements out of income support so that they can deliver fairly and properly to meet the needs that we know are out there and let us not wait, please, please, let us not wait for another review to say: "We do not even know how many disabled people are out there, what the level of disability is, what the need is. We need to investigate that." That is the route that Minister after Minister always proposes: "Let us research it first and it will go away. In 3 years, 2 years' time we might be able to do something about it." But will we? We have the opportunity today, Members, to vote in this particular amendment and to fix the system that delivers for disabled children properly, once and for all.

2.3.7 Senator S.C. Ferguson:

I hope that the postmen are going to be used by Social Security to check whether pensioners are alive or not in response to the Connétable of St John's comments. I am really quite concerned about this because we have just had a thundering good report from Scrutiny on C.A.M.H.S. (Child and Adolescent Mental Health Service) and the report says it is underfunded, it is in an awful state and so on and we have now got this situation in Social Security. You know, it has taken a hefty report by Scrutiny to get action on C.A.M.H.S. even though it started in 2006 and it seems to be a similar thing, 2008, for this. So is this just another facet of the sort of C.A.M.H.S. situation? Are there aspects of this investigation that is proposed which should be covered with the C.A.M.H.S.

investigation? I mean, should the departments be talking to each other? Have they been talking to each other? Is this a case of silo thinking?

[11:00]

I really feel that there seems to be more than just Deputy Martin's amendment is required, and I wonder if the underlying proposition should be withdrawn and brought back by the Minister with better provisions.

2.3.8 Deputy M. Tadier of St. Brelade:

Yesterday, when I came into the Assembly, probably like other Members I was met by a crowd of lobbyists and I was asked: "Deputy Tadier, please do the right thing" and I remembered those words and I said: "Thank you very much. I always try and do the right thing" and today will be no exception. I think yesterday was a great day for us even though it was a complex debate, it was a hard decision to make and though we may not have been pleased with the fine detail, I believe that ultimately we did make the right decision for Jersey. For some of us it was more emotional; it was heart rather than head, but I think in that case it was both ... as States Members we need to use both at the appropriate time. I rise with slight trepidation to talk here because this is not an area which I am an expert on. What I do know, though, is that nobody asks to have a child with complex needs but when somebody does have a child or children with complex needs, one tries to raise that child or children as normally and as lovingly as possible even though that child will grow up in a world that is not always sympathetic or even aware of the disability because sometimes those disabilities and needs are very complex and hidden. Also, we know that we live in an Island, as the Chief Minister referred to, that does not have a disability strategy; we do not even have discrimination legislation that deals with disability. I also feel that probably it is fair to say that disability in many ways in the Island has been the poor relation. When we look at the Discrimination Law it is not the first component that comes in, it is not the second or third, I believe it will be the last of all the components that is brought in, ahead are race, gender and age discrimination, all of which are very important, but it is the poor relation. When I look at the very fine words that were said yesterday, we heard speeches, very rousing speeches, very passionate speeches, we heard about courage and vision yet when I listened to the Chief Minister I heard something which was completely opposite to that. I heard a - I do not mean this offensively - half-hearted speech. I heard words like: "Today is not the right time to do this." I did not ask a clarification because I have got the speech, but when is the right time to do this? It is almost saying that Deputy Martin is right, yes, we should be doing this but today is not the right time to do it. When is the right time to this? We also heard words like: "On balance, we think that our way is correct." Not convincing at all, it just smacked of an issue that is the poor relation that has not been given the political priority that it deserves and the Chief Minister acknowledged that. But today is, in a small way, a small step to be able to do that. I am always encouraged that even sometimes when the Assembly or successive governments do not necessarily put in the priority that they need to in certain areas, there are very hardworking members of civil society, and I am reminded of this individual who circulated the letter in my district. I am very grateful for it and have admiration because in spite of the adversity, the difficulties she has with her child and, of course, being a mother anyway with other children, has done a remarkable job, not just personally with her family but to be relentlessly lobbying and pushing for greater equality and issues to be raised with disability in the Island. It could have been very easy for this person and other families just to give up and say: "I cannot do this any more. I am just going to sit back and possibly even going to put my child into care. I cannot cope with this and I am just going to do what I can to deal with the ordinary challenges of life rather than the extraordinary ones." But we do not. We have somebody like that. We know that when something needs urgent attention it can be done very quickly; the States can be mobilised. We know that when there is an issue, for example, which is also important, for example, Jersey needs to be

removed from the black list - here was a specific issue with the finance industry - that will get done like that. I am not criticising that, it is absolutely correct that we safeguard our economic security. But who are the champions for these individuals, those who are left more vulnerable? It is the likes of this lady, the lobby groups and also Deputy Martin, and for it to come to the point where at this stage Deputy Martin, as a Back-Bencher, who is, in her other capacity, an Assistant Minister for Health and Social Services, to be in a position to have worked with other States Members and members of civil society because there is a failing in our Government. She needs to be applauded for that; we all need to get behind her. I simply say to the Minister and to the Council of Ministers more generally, do the right thing today. Please show the courage and vision that you spoke about yesterday, do the right thing and please withdraw your opposition to this amendment. Give Deputy Martin your full support. Continue to work with her and, by all means, bring forward the disability strategy as we know Guernsey have, but certainly we can do the right thing today and that is to vote resoundingly for the amendment of Deputy Martin.

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

First of all, I do not believe that many would argue with much of what has been said by those who have spoken in this debate and I too want to provide appropriate support for all those with special needs. The only problem is I do not think that this particular proposal is the best way forward for the simple reason that over the last 3 years I have been privileged to serve on the Health Scrutiny Panel and met many of the individuals with children with special needs. One thing has become very, very clear, it is not about giving them money, it about providing the appropriate care and support that enables them to enjoy a full life with their children and the child himself and, indeed, this moves on to adults. It is disappointing that time and time again when we have had discussions with the Health Department we have heard mention of personal care packages, which is exactly the right thing and the right way to provide for these individuals because they are all individuals, all with different needs. The care package that is provided needs to be personal, needs to be special for that individual. That is where we need to focus our attention; that is where we need to put our resources to ensure that those packages meet the needs of the individual. It is too easy just to write out a cheque, give a family a lump of money, be it weekly or monthly, and forget about them. Too easy. I am really encouraged when I hear from the Chief Minister that attention needs to be paid to a disability strategy. I would say why has it not been done before? However, that does not dismiss the fact that it still needs to be done. We are looking at a Social Security payment to do with income support today. We need to look at the Children's Executive, the Children's Policy Group, the Minister for Health and Social Services, the Minister for Home Affairs, the Minister for Education, Sport and Culture, and say: "Why have you not delivered these matters?" This was in the Children's Policy framework. These are matters that we have known about, that the parents who have written and contributed to this debate today have raised time and time again and yet nothing happens, nothing, just silence. I say to those Ministers who still are to speak, what commitments are you going to make today regarding a proper and appropriate support for those most vulnerable in our society, including those with special needs? What are you going to do? What commitments and assurances are you going to give to the parents and those young people who do need that additional support and that come in all shapes and sizes? We undertook a review into respite services and identified that that was probably one of the most important areas for the parents that are coping with these youngsters. What are you doing? How can you make best use of the resources, first of all, that you have got and then what else do you need? We are talking about the potential decision today of agreeing to an extra £750,000. Is that the best use of the money? I do not believe so. If I did, I would be supporting this. I think that where the focus needs to be placed is on the development of these personal care packages, knowing who we want to help, recognising that these people do need help, regardless of what income the parents may or may not have. But it needs to be a combined effort. We cannot just point the finger and tell the Minister for

Social Security: "It is your problem, sort it out." I am sorry, but I am unable to support this amendment and it is a big, big problem. I want to hear some cast iron and concrete commitments being made by the Ministers, especially those within the Children's Policy Group, that they will deal with this matter. We have got a new Medium-Term Financial Plan that will be debated next year by the new Assembly. I would suggest that if you are looking for a timescale to follow, I want a commitment made that regardless of who is sitting in these seats that the departments involved will be working and bringing forward evidence-based proposals to deliver, properly deliver, these personal care packages that will meet the needs of these people by the time the new Medium-Term Financial Plan is debated next year. That would be a far better result today that we could possibly achieve for these parents and the youngsters involved.

2.3.10 Senator P.F. Routier:

Bringing up a child with a disability is very demanding, very emotional, can be costly, can put lots of strain on the family. I know that from personal experience. When the Income Support legislation was brought in I was responsible for bringing that to this Assembly and the Assembly supported what was being proposed. I at that time was very aware of the effects there would be on the benefits available for people with disabilities and I ensured at that stage that those with the most severe disabilities would be protected and everybody else as well, all those people who were currently receiving those benefits. The Social Security benefits are all about helping people with financial additional costs that they face to help care for their child. I am very pleased to follow the Deputy of St. Ouen. We still have a lot to do with regard to supporting people with disabilities in our Island and he is spot on with what he said. The personal care packages that are provided through Social Services ... the social workers and everybody involved in that child need to get together and put forward a package which is going to support that family because that is the most important thing. It is not about perhaps giving them extra money. The money can be important because there are some additional costs but, as I say, the Deputy, for my mind, has really got it right about his approach.

[11:15]

What is being proposed today by the Minister for Social Security is the right thing to be doing. The response to this amendment, which the Minister for Social Security is proposing, will still allow people on levels 1 and 2, especially 2 ... I do have a concern for people who are on level 2, perhaps who have 2 children who are at level 2 and are facing real problems; they really have a lot of demands on their family. I am comforted by the fact that the Minister for Social Security recognises that and is still prepared within his response to this amendment that he will be supporting those families. There has been some criticism levelled at the Chief Minister with regard to what has supposedly just come out of the blue, a reaction to this as being the development of a disability strategy. This is something we have been working on for not a long time but certainly before this came about. The people who you have received letters from today and all the rest of us, I know them all very, very well and I meet with them in our Service Users' Forum. We have not discussed this particular issue. This has not come to a Service Users' Forum other than to say there is an amendment coming forward, no more than that. But as an issue about how to deal with the needs of people with disabilities within that Service Users' Forum, it has not been talked about, which is a disappointment really. I would like to have that opportunity to have that discussion. The Chief Minister's Department is committed to having a disability strategy. We are working on that. I know and I accept that there is additional support required for families who have children and adults with disabilities within their family, and that is a commitment. I do not know if it is strong enough for the Deputy of St. Ouen but the commitment I and the Chief Minister's Department are giving for going forward is that there is a need to look at the complete package for people and what support they need. I cannot be sure that what this amendment is doing is going to

do the trick. As I stand here today, I do not have enough information to know that the additional money that we are going to give to those families is going to support them in what they need. I stand here and I honestly cannot say that. If Members are prepared to make a decision on that basis, well that is entirely their right and I respect that, but, for me, I am unable to support this particular amendment. I am fully behind what the Minister is doing with regard to personal level 3, I think that is the right thing to do, but we need to have more information about this. I know it sounds as if I am trying to put it off but the reality of it is that we need to do some more work to understand whether the support we are giving to people at all levels, personal level 3, 2 and 1, are correct and I do not think they are right at the present time. We need to do a lot more work with Social Services to ensure education as well and everybody involved in facing children with disabilities, we need to do a lot, lot more work.

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

It is with some trepidation that I stand. Yesterday I spoke about being a visionary and having courage and today I think we need to be frank with ourselves. What Deputy Martin has brought forward, she has brought forward as a second patch to a problem because while I have the utmost respect for the Minister for Social Security, and I think it will be a huge loss when he does not come back to this Assembly, what he is doing is heading in the right direction but it is going to leave some families vulnerable, some families in trouble. What Deputy Martin is trying to do is to put a patch in place while that strategy, while the rest of the work, while that review is taking place. I will try not to make this too personal, and I have to say I do not have to declare an interest because my son will receive nothing from this. In 1988 when he had his accident we went from being what I call an ordinary family, 2 children, a mortgage, both working, overnight to a disabled family. I always called it a brain-injured family, one income, £40,000-worth of adaptations to the house, no help, no support, not even a visit from a social worker. The bank were very helpful, they lent me the money and added 2 per cent on to the interest rate. These families need that cash now. It is not much; they need that support. Yes, they need a care package. They need a personal care package but it is not there. It is not now. I disengaged from the services. We have written so many action plans that I could paper the whole of my lounge with them but not one bit of it was delivered because they had not got the budget. I am sorry, I am breaking ranks but I have to support Deputy Martin. **[Approbation]** We were visionary yesterday, we had courage yesterday, let us be bold today.

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

I am going to try and keep it short and sweet. I think much of what needs to be said has been said but I think we are seeing a symptom of a very, very, very big problem in our government. At the beginning of this term you will remember our Chief Minister standing up and saying that we wanted a more joined-up government, we wanted departments to be working with each other and cross-working with each other, we saw P.82 - Reform of Health and Social Services. Deputy Martin has brought this amendment about disability and, as far as I am aware, during my 2 terms in this Assembly we have never had a discussion around disability policies, disability strategies, how it works across departments. I am thankful I am a parent, that my child is healthy and able live every other day, as I see it, as a normal way. We are here to enable support for people and that does not mean just giving them more money. The problem is that because over numerous years what we do as a States Assembly or as a Government instead of dealing with the situation, in terms of talking about the policies, talking about the difficult situations and suggesting a proper care package or a proper support network that works across the board and is joined-up, we talk about how much it is going to cost and all the reasons why we cannot afford it. As Chair of P.A.C. (Public Accounts Committee) the things that I have seen in a couple of years, it just absolutely shocks me to the core when we hear things like in the comments ... I mean, I have got all the

respect for the Minister for Social Security and I am grateful for him bringing this legislation today but our management information in the States, the ability for us to understand and make these decisions at a very high level is unbelievably poor, it is horrendous. I am shocked and I am appalled that we are able to stand here and say: "Well, you know, I am not sure this is the right route. I do not think it is going to do what we want it to do." Well, what is it we want it to do? What is it? Where is the policy? Where is the joined-up thinking? I mean, let us look at the cold weather bonus. We have got a cold weather bonus to help people who need help with electricity bills, *et cetera*, in the winter and then we have got the energy efficiency scheme at Planning. How do the 2 fit? How do the 2 work? Where is this high level policy? The Chief Minister is in charge of social policy; he is supposed to join all these bits and pieces up and it has not happened, yet we were told at the beginning of this term we were going to have a more joined-up government. Disability benefits debate in 2003, 11 years ago ... 11 years ago. Since then we have got a new income support system, we have had 2 fiscal strategy reviews, we have had 2 savings reviews and we are spending more and more and more. You ask yourself the question: "Are we spending it on the right things and in the right places?" When you ask about the outcomes and how it fits with the overall government policy, I do not even think the Ministers know themselves. When I read the 2003 comments it talks about an income bar at that time, 11 years ago, of £47,306. I believe, as I understand it - I asked Deputy Martin before - the income bar at the moment is between £45,000 to £50,000. The Minister may want to say otherwise, but that is how I understand it. Now, that is 11 years on. Look what the cost of living has done in 11 years. I am sorry, I mean, it just absolutely flabbergasts me. I sat here and listened to the Plémont debate and I absolutely respect the decision that the States Assembly made yesterday but where are those speeches today? It is absolutely unbelievable. All due respect to the Deputy of St. Ouen, I have had enough of cast-iron commitments. I have had enough of people saying that they are going to promise to do things because, to be quite honest, the only way I find that you get things done now is that if I support Deputy Martin today they know they are going to have to spend more money so they are going to have to do something. I am going to be supporting Deputy Martin, because of my experience in the Assembly, because of our inability to work across departments, because of our inability to put proper policies in place before we are putting in big pieces of primary legislation, which apparently we are supposed to understand and be fully informed about. I am sorry, but I think the Council of Ministers should just stand up now and say: "Yes, Deputy Martin, we agree with your policy and, guess what, because we are going to do that here is our cast-iron commitment, we are going to put in our legacy report to the next Ministers, 'Guess what, you need to deal with this and you need to deal with it sharply'."

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

Yesterday the Minister for Treasury and Resources was able to magic-up £3.5 million for Plémont. Money well spent on something some would say is just nice to have. Today we are being asked to fund a "must have" which I believe will cost £750,000 per year, less than a quarter of what we agreed to spend yesterday. I am sure that our Minister for Treasury and Resources could allow his magic to continue in order to provide an essential lifeline to the people who have no alternative in their life but to rely on our benefit system. This is what our social security was devised for back in 1952, to help people in unfortunate circumstances. The founder of that system, the late Senator Philip Le Feuvre, I am sure would be appalled that his project does not still treat people fairly 60 years after it was devised; the system devised for the very people who are being denied its purpose. We should not be fighting at this stage for the rights of these people, our conscience and that of previous Members should have this in place. The support needs to be more than money, as suggested by the Deputy of St. Ouen, but money will help now until other support can be put in place. I will support Deputy Martin's amendment.

[11:30]

2.3.14 Senator F. du H. Le Gresley:

I have deliberately held back from speaking because I really wanted to gauge the response of members to this amendment from Deputy Martin. It is important to remember that Deputy Martin is an Assistant Minister for Health and Social Services with special responsibility for children and, therefore, what she says in this Assembly when it comes to talking about children we should listen to. It is very important that we listen to what she says and I did listen carefully to what she said in making the proposal. To my mind, we have to spend more money in this area. The question is is what the Deputy is proposing the right way to spend the money or could we spend it in a way that delivers services, care packages, benefits across a wider range of people with families looking after children with disabilities? That for me is the issue. I have to be perfectly honest and this Assembly is about being honest. When I came into office I did ask my officers questions as to how disability benefits managed to end up being means tested because to me, and I think those who made the point earlier - sorry, I made loads of notes but I am not going to look at them particularly - somebody said: "What about buying a disabled vehicle, or all the other things that you have to accommodate when you have a child with a disability? Where is the help for that?" Well, unfortunately - and I was not in the Assembly at the time so I cannot take responsibility for it - when it was decided to put these things within income support they became means tested. Now, absolutely, Child Disablement Allowance was means tested and I think this is where Deputy Martin is coming from. The Attendance Allowance, which was for the highest degree of disability, was not means tested because it was tested on the income of the child and, of course, 99 times out of 100, if not 100 per cent, the child had no income. What we have is P.C.3 - formerly Attendance Allowance - means tested on the child, automatically awarded and we have continued to do that. We have continued to award it to families, irrespective of the family income, through Exceptional Payments. I know, and that is why I brought this proposition, we cannot carry on doing that. We have to have a better system than leaving it to the Minister to make Exceptional Payments. There are currently 13 households who receive Exceptional Payments at P.C.3 level. Now, of course, there could be a lot more but we do not know; we do not have this evidence. We need the strategy and we need the research to tell us where these pockets of disabilities in families are so we can decide the best way to spend our money. I could say to Members that the Child Disability Allowance when it stopped in 2007 was £243 - I forget the pence - a month and the income bar was £55,498 per annum and it stopped completely at that figure. There was no tapering-off, as we have with income support, it stopped. If you were a pound over you did not get it. I asked the officers recently to tell me if we applied A.E.I. (Average Earnings Index) for the last 5 years to this benefit, where would those limits be now, and I think it is relevant because the amount of the Child Disability Allowance, which is equivalent really to our P.C.2 children, would be now £294 a month and that is equivalent, in round figures, to £3,500 a year and the income bar would now be set at £67,102. I have to tell you that very few families would receive income support if they had an income of £67,000. They would not. They certainly would not if they were homeowners and they would not - I doubt it - if they were renting unless they had a number of children in the household, and adults perhaps, with disabilities. The income bar now, if we had carried on with Child Disability Allowance, would be at £67,000. We have a conundrum here. I have brought a proposition to put the P.C.3 children into what we call now Special Payments. Now Special Payments is different from Exceptional Payments. Special Payments can be authorised by officers and, therefore, they would go through the process of doing a determination of the claim. If the person is not happy or the family is not happy it can be re-determined and there is an appeal process. As Deputy Southern absolutely rightly says, there is no appeal against the Minister's Exceptional Payments, that is written in the law. Obviously you get to a stage where there has to be a final decision, but that is the way the law was written. We are in a little bit of a mess. We need to deal with this in a more effective way. My proposal was to put the P.C.3 children, who we already look after, into Special Payments. Deputy Martin would like P.C.2 and P.C.1 children ... let

me give you an idea of the sort of numbers we are talking about. We currently, within income support, have 19 P.C.2 children and at P.C. level 1, 34. Of course, those are people within income support. We do not know the prevalence of people with higher income households so we do not know what the numbers will be. We have had to do some sums; we have worked out probably the worst case scenario. We accept in the amendment we would be looking to find up to £750,000 extra every year, going forward. I have not got that budget and we have been told that if we want to do this we have to make compensatory savings and that is why I delayed the debate on the bonus law, which is coming up later, which would be the cold weather payments for the pensioners. I do not want to delay that. People know that I brought that proposition as a Back-Bencher, so it is the last thing I want to see stopped, but those are the sort of difficult decisions. I absolutely agree when Members say: "Well, let us find the money." I agree with you but we are already well into the Medium-Term Financial Plan, no new money will be found, but I agree again with the Deputy of St. Ouen who said: "We have to do this. We have to plan now and include this in the next Medium-Term Financial Plan; we have got the time to plan. Having said all that, where I stand now is that I cannot support my original proposition. If we are to include all these families, Special Payments is not the right vehicle. We need a new Child Disablement Allowance which is not ... it may need a cap **[Approbation]** and we now know that a cap would probably be set somewhere around £67,000, maybe it needs to be higher, I do not know, but we cannot have Special Payments. I mean, the word that links this is Income Support Special Payment. We are saying that we want to sort of means test it but then have a rule that we can just pay them. It is not the right way forward. If Members want Child Disablement Allowance returned as a benefit, a universal benefit but with a cap, and the S.N.A.P. letter does say that they support a cap for P.C.2, P.C.1, and that is where we need to go, we need to reinstate a new Child Disablement Allowance benefit. Whether it comes out of the Social Security Fund or is tax funded, that is a decision for you today. We need to work on the strategy that is being organised by the Chief Minister's office in conjunction with other departments but we have to get this right. We cannot have a fudge and what is happening here today is with my original proposition… and I can see the mood of the Assembly, they are moving towards supporting Deputy Martin, and I can understand why, we will have a bit of a mess. If we are in a mess now we will have a bigger mess. What I am saying is I am going to withdraw this proposition because I do not think it is the right solution and we need to come back, probably in the autumn, with a better system of helping children with disabilities. I will be able to continue to provide Exceptional Payments because I have been doing that for the last 3 years, so my original proposition does not stop those families being helped, but we have to get it right. We cannot just rush to do this and find we have got the wrong vehicle. I ask leave to withdraw my proposition.

The Greffier of the States (in the Chair):

Technically, Senator, we are still debating the amendment of Deputy Martin. I think we need to ensure that she would be happy to ask the Assembly to withdraw her amendment. Deputy, we are at the stage where you can seek leave to withdraw your proposition because we are not currently on that aspect.

Deputy J.A. Martin:

I did really wonder after the comments and how this was going. I thought we were working towards, in this House, a patch, as it may be called, to help the children. We have had the speeches about the care packages so now what the Minister for Social Security is willing to do and he is sure that he needed to let care level 3 out of income support but he cannot accept 2 and 1. The only way out ... he wants to withdraw his proposition. I do not know where I stand. I do not know whether he needs the leave of the House.

The Greffier of the States (in the Chair):

He does need the leave of the House.

Deputy J.A. Martin:

Then I ...

The Greffier of the States (in the Chair):

At the moment we need to know if you are seeking leave to withdraw your amendment ...

Deputy J.A. Martin:

I am certainly not seeking leave to withdraw my amendment, Sir.

The Greffier of the States (in the Chair):

Well, in that case I think the Assembly needs to continue to vote on your amendment and then the Minister will seek leave to withdraw his. That is a matter for the Assembly at that stage. Does any other Member wish to speak on the amendment? Deputy Bryans, you were down to speak. Do you wish to continue?

2.3.15 Deputy R.G. Bryans of St. Helier:

Yes, I think I will continue, Sir. Yes, I think we have. We have walked ourselves into a maze at this point in time so I ... may I continue?

The Greffier of the States (in the Chair):

Yes, of course.

Deputy R.G. Bryans:

Thank you. It is very difficult when you stand up here to strip the emotion out of this and really give an unbiased opinion. I came in today feeling that what I was going to do was support what is being proposed but, in listening to what has been said, and I think the Senator has wisely picked up on the mood of the Assembly, that Deputy Martin has, as Deputy Young said, sharply drawn our attention to the need - and I think Deputy Green has highlighted this with his emotional speech - to do this as quickly as possible and to look at these particular children because a government is measured by the way it looks after its vulnerable ... the sort of children we are talking about. As an ex-Chair of Governors of Haute Vallée, who is closely aligned with Mont à l'Abbé, I am really aware of what this represents and sitting here in the Assembly, as I listen to what has been said, I firmly have fixed in my mind some of those children that I met and some of the appeals that I have sat on as Assistant Minister for Education. What I was drawn to and I was quite pleased to hear Deputy Power read out his piece from the S.N.A.P. document that was presented to us and I intend to read out something that we are aligned with, the U.N. Convention on Rights of the Child and I know Deputy Martin brought this up. The version that I have is written in what is called "child friendly language." I find it makes it more profound. So at the beginning of the document, it says: "All the rights are connected to each other and all are equally important. Sometimes we have to think about rights in terms of what is the best for the children in a situation and what is critical to life and protection from harm. As you grow, you have more responsibility to make choices and exercise your rights." So that part is written to the child itself. I am just going to read out 4 of the articles. They are not very long: "All children have these rights, no matter who they are, where they live, what their parents do, what language they speak, what their religion is, whether they are a boy or a girl, what their culture is, whether they have a disability, whether they are rich or poor, no child should be treated unfairly on any basis." That is Article 2. Article 3: "All adults should do what is best for you. When adults make decisions, they should think about how their decisions will affect children." That is my point, I think. Article 4: "The Government has a responsibility to make sure your rights are protected. They must help your family to protect your rights and create

an environment where you can grow and reach your potential." Then Article 26 simply says: "You have the right to help from the Government if you are poor or in need." I think that is precisely what Deputy Martin has brought here today, sharply drawn our attention to this that needs to be done as quickly as possible and Deputy Vallois is absolutely right, we have to get this on the table. We have to do it now. We cannot be shilly-shallying around and I will support this.

2.3.16 Deputy P.J.D. Ryan of St. John:

I rise specifically in response to the Deputy of St. Ouen's speech, which was a very good one, I have to say, and I agree with his sentiments in many ways. But I think the Assembly would perhaps just like to know that the Education Department spends just short of £12 million in 2014 on children with special needs and with disabilities.

[11:45]

£8 million of that goes into the inclusion service, which deals with children of special needs within schools and I think we all would agree that, wherever possible, children with disabilities should be in mainstream education. That is where they should be. But of course, we also run Mont à l'Abbé School and I should say that there is the rest of the budget other than the £8 million but is nothing to do with income support. I want to make that very clear; this is just in education. I can say, and I think the Assembly would want me to say, that as Minister for Education, Sport and Culture, I have absolutely no plans to apply any kind of reduction to those budgets. In fact, as part of any reviews to do with all of the services we provide for disabled children and to help their families, I am sure that the education side would be taken into account in that. It is difficult for the Education Department to start trying to make any kinds of allowances outside purely in education. That is our remit; we have to do that, it is our core function. So I do not see that budget being reduced, I only see it going up with inflation in future years, certainly if I was Minister for Education, Sport and Culture anytime in the future, that would be my view. I just think I would like to make that very, very clear in response to the Deputy of St. Ouen's speech.

2.3.17 Senator L.J. Farnham:

Notwithstanding what the Minister for Social Security said, just very quickly, I cannot sit here after having enthusiastically given away £3.5 million for the purchase of Plémont Headland and leave parents of disabled children with uncertainty and concern and anxiety. We just cannot do that. I picked up on what Senator Le Gresley said, he said: "We are in a mess now and if we accept this amendment, we will be in a bigger mess." Well, maybe we have to be in a bigger mess to get to the bottom of this once and for all. I shall be supporting the amendment, reluctantly but we have to do it.

2.3.18 Deputy A.E. Pryke of Trinity:

As you would expect, when I spoke yesterday very passionately and I ended my speech yesterday to say: "People matter." Obviously in that, I very much included children and they do matter and Deputy Green has said about the personal care package and that is so important. That is what we have been doing in Social Services all the way along, especially the last 2 or 3 years. I challenged Deputy Green. I have just done it but many times ... is to say he disengaged, which is unfortunate and I am sorry about that but with commissioning or whatever, it has changed and I challenge Deputy Green, please, please re-engage with us back in Social Services because the service has changed and it will continue to change because the service users, the voice of the child, the voice of the parent is vital. There has been extra funding in respite services, as well this Assembly knows because I have answered many questions, not only from residential but also in the child's own home for a variety of different ways and please, the panel includes the ... I think she is one of the members of S.N.A.P. - Deputy Tadier will know who I mean - and is part of the panel interviewing providers, so it was very much service users. But going back to this proposition, more work does

need to be done, undoubtedly. Modern technology is moving forward, children are living longer with their disabilities and that can be nothing but a good thing. It needs to be properly financed, whether that is from Social Security or within Health and Social Services. That is why we have put the investment into Oakwell that we have done and it is going to be reopening in the next 2 to 3 weeks. It is not just one, it is a lot of pieces all fitting in together. I am not too sure because I do support you, Deputy Martin, but this is not the right way forward because we need a wider strategy. If we support Deputy Martin, can I ask a question? Is the Minister able to then withdraw the proposition if we voted on the amendment?

The Greffier of the States (in the Chair):

Yes, the Assembly will vote on the amendment, if Deputy Martin does not seek leave to withdraw it, which she has indicated she does not wish to do and after that the Minister may seek the leave of the Assembly to withdraw the proposition. That will be a matter for the Assembly to decide on. Does any other Member wish to speak on the amendment?

Deputy A.K.F. Green:

May I seek a point of clarification from the previous speaker? I would like her to explain to me, if I re-engage with Social Services, how will that help these vulnerable families that we are talking about today?

The Deputy of Trinity:

I am not getting in for chat but Deputy Green brought his own personal circumstances up and I am just saying please do re-engage. It is important that all families, whatever, are engaged with Social Services and a vast proportion do because service users are the voice of that child and the parents are vital.

2.3.19 Senator P.F.C. Ozouf:

Yesterday, I quoted from a faith leader that asked politicians to remember 2 things: human dignity and the common good, and I think that is exactly what Members are wrestling with here, the dignity of children and parents. There must be no Member of this Assembly that is not absolutely sympathetic with the difficulties that parents are faced with, circumstances such as we have heard examples this afternoon. Nobody could be unaffected, including the most hardnosed Minister for Treasury and Resources, by the debate and what has been heard. What concerns me and I am unclear, is that I am being asked to vote for an amendment on something that is in isolation a solution, effectively a quick fix over a problem. The mover of this amendment has a broader responsibility for children and I am told that we need to sort something but there is a requirement to deal with an integrated approach, which is why the Chief Minister, before this amendment was lodged, to his credit, with Senator Routier, put forward an overarching need to put a co-ordinated response. There are issues of services in Health and Social Services, which the Assistant Minister is responsible for. Treasury stands ready to help all departments and Health on dealing with this, but the consequences of accepting this amendment, I understand from the Minister for Social Security, is that he cannot do what the Assembly is asking him to do. That is what I understood his observations are. So I am in a dilemma. I simply am not going to be part of a vote that is symbolic vote in favour, a massively important symbolic vote, in favour of an amendment that simply cannot be implemented. Now, that is an unacceptable position for us, and this Assembly, to put the Minister in. I am just clarifying because I simply do not know what to do because I am being asked to vote in favour of an amendment, which I understand. I am more than happy to give way to understand the implications. I want to help, I want to be supportive, I want to be sympathetic but I am not going to be synthetically sympathetic. I want to do something real and implementable and I need to understand the reality of what I am being asked to do. Am I able to ask the Minister for

Social Security the consequences because I need to have it clear? I have been listening to the debate outside but I am coughing so I am not sitting here and coughing.

The Greffier of the States (in the Chair):

If you are willing to give way and the Minister is willing to intervene, it is possible but ...

Senator P.F.C. Ozouf:

I am happy to give way to Senator Farnham first, Sir.

Senator L.J. Farnham:

The Minister for Treasury and Resources said that if the amendment was accepted, it could not possibly be implemented. Perhaps he or the Minister for Social Security could explain exactly why it could not.

The Greffier of the States (in the Chair):

I think that might be the question that Senator Ozouf asked. Are you able to respond to the ...

Senator F. du H. Le Gresley:

The 2 issues are money. I would have to find up to £750,000 from other tax-funded benefits at very short notice. The second main problem is we still have to debate Regulation 3 and this says that the new payments will come into force 7 days after they are made. So in other words, in 7 days' time, if we approve the whole proposition, I would have to be paying these new benefits and we would have to set up a whole system of assessing these families. We would have to decide how we are going to find the money to pay them and we cannot do that in 7 days. It is absolutely impossible. So that is why I would be asking leave to withdraw this proposal, it may come back in a similar form but within a time span that we can deliver and with a budget that we can find to make these payments.

Senator P.F.C. Ozouf:

I know this is not question time but I am trying to find a solution to a dilemma, which I clearly understand the mood of the Assembly, I think, in wanting to find a solution but again, a solution that works. Is it correct to say that the Minister can take away from the debate the fact that a change would be required and if funding is an issue that we could engage in intense discussion with finding a solution for funding for a one-year option and the Assembly then to consider a solution to the overall package of messes that he is dealing with in the term of office of this Assembly, very quickly or indeed in September? May I ask the Minister if that is possible as a way forward because I just simply will not be part of **[Interruption]** ... I am speaking, Sir. I simply will not be part of a ... we have been here many times in this Assembly where we have made a decision that cannot be implemented for different reasons. If the issue is funding, then I am happy to take the message of the Assembly and sort it but that cannot be dealt with in 7 days. If it is an issue of implementation, then fine. Would the Minister be able to reconsider and come forward with an alternative that understands and takes the views that have been so heavily made. May I just ...

Deputy G.P. Southern:

Sir, is this the correct procedure? Because we are discussing Deputy Martin's amendment and yet we appear to have Question Time with the Minister.

The Greffier of the States (in the Chair):

I think the Minister is attempting to know which way he would wish to vote in the amendment. If I could just say from the Chair, you raised 2 issues, Minister. One was the funding, which is clearly not a matter that the Assembly can deal with on the floor. It would need to be discussed with the

Minister for Treasury and Resources. The second issue of timing, it would be open to, I think, seek permission today not to debate the final Regulation, to come back perhaps in 2 weeks with an amendment. I am sure Members will understand the practical reality of the 7-day commencement. Now, is there anything you wish ... we cannot have a question time ...

Senator P.F.C. Ozouf:

No, I know. I am about done with my final attempt to understand. Is the Minister able to find a way forward in implementing the challenge in which the acceptance of the amendment would be?

Deputy M. Tadier:

Sir, may I ask a point of ... I think it is germane but it seems to me that it has always been known by the Minister ... it is a procedural point. It has always been known that this amendment theoretically might succeed and there should have been provisions made before that in the eventuality that this amendment would succeed. It cannot be the case that simply because now the Ministers know that this is likely to win that they are completely changing the procedural ...

The Greffier of the States (in the Chair):

What is the point of order you wish to raise?

Deputy M. Tadier:

It is simply that there is a procedure to be followed. We are debating an amendment, it seems like it is going to win and therefore we cannot simply ...

The Greffier of the States (in the Chair):

All I can say from the Chair is that nothing was put in place so it is a matter for the Minister to defend that. You are quite right. The Minister was clearly aware the amendment might win and he was aware the consequences. Now, have you finished your speech, Senator Ozouf?

Senator P.F.C. Ozouf:

It seems to me, and maybe there will be other interventions before summing up, but it seems to me that I simply am sympathetic with what has been said, like many Members, but I will not be part of and cannot be part of a decision today on supporting something that cannot be implemented, (a) it is, I am afraid, not possible to require a Minister to engage in a consequential decision today without knowing how the Minister is going to deal with that fundamental financial request. He cannot go overspent, there are consequences and there is going to have to be a process to do it. So I understand that there is going to need to be a decision made on this. I understand the fact that some additional funding is going to have to be found, but we are not in a position to say now and other Members may want to inflict an impossible situation on another Minister, but I will not be part of it. So I am sympathetic, I understand the issues, but if it cannot be implemented, I am not going to vote against it. In fact, I will probably abstain because I am not going to be part of something that cannot be implemented, but I will work with the Minister and the Assistant Minister and the service providers to find solutions to the issues that have most clearly been raised. Other Members want to make points of order but that is my position as it is. I am not voting for something that cannot be implemented but that does not mean to say that it does not need to be sorted very quickly.

[12.00]

Deputy G.P. Southern:

A point of clarification, Sir? The Minister for Treasury and Resources has just offered to find some funding in general terms. He could find £3.5 million yesterday at short notice, is he going to use contingencies, which he preserved for just such an opportunity?

Senator P.F.C. Ozouf:

The difficulty with that is that yesterday's debate was about a one-off spend. The difficulty with this debate is that it is a recurring expenditure and so one would need to make arrangements for the immediate effect of that in the current year, whenever that needs to be made in place, and next year. There is an opportunity of yes, looking at Contingencies in those matters, but one would need to make that in full knowledge of the consequential following year issues and that is why there is a big difference between one-off and recurring expenditure.

Deputy G.P. Southern:

Again, a clarification, I believe, Sir. While we are waiting for the new wider strategy, which the Minister mentioned, could this be seen as a temporary payment to bide us over until that time comes?

Senator P.F.C. Ozouf:

The Minister for Social Security has been very clear that there is an implementation issue. There is means testing, there are all sorts of issues that need to be carried out. I want to know what the financial consequences of that, what the resource requirements are and I am not going to make decisions on the hoof. That is the wrong way. The right thing is to be understanding and sympathetic and deal with problems, the wrong way is to inflict upon a Minister a requirement something of which he cannot do.

The Greffier of the States (in the Chair):

Well, I think you have been asked to clarify on Contingencies.

Deputy M. Tadier:

Sir, it is a clarification. If the Minister is saying that the Treasury Department does not think that when this is adopted, or if it is adopted, it is implementable, where were the comments before saying that because clearly this department should have known that.

Senator P.F.C. Ozouf:

That is not a question for me. That is a question for the Minister for Social Security but I fully understand the Minister for Social Security has addressed the Assembly of the reality of that.

Deputy M. Tadier:

No, Sir. That was a question for Treasury. The Minister for Treasury and Resources has told us that his department will not be able to provide the funding. He should have known that before when the amendment was lodged.

The Greffier of the States (in the Chair):

He did present comments on the amendment. Now, Deputy Pinel?

2.3.20 Deputy S. Pinel of St. Clement:

A vast change from what I was going to say originally. The Deputy of St. Ouen is absolutely correct. We do need whole care packages and I, for one, will wholeheartedly pursue a disability strategy. As I am well aware from my experience with Brig-y-Don and vulnerable children in Jersey, it is imperative that the departments of Health and Social Services, Education, Social Security and Treasury and the Chief Minister's Department should work very hard, and without delay, to produce a disability strategy, which we acknowledge is long overdue. Like all Members, I firmly believe that it is right to support the needs of families with disabled or very sick children. P.90 seeks to normalise a system of payment that has existed since the beginning of income support but the effect of this amendment is to create an entirely new benefit. I understand why the Deputy

has brought this amendment, but we do need to identify the problems clearly, as I mentioned earlier, with a disability strategy before the implementation of a costly solution. The amendment changes the proposition P.90 completely and I would ask Members' support for the Minister to withdraw the proposition and return to the Assembly with an alternative that could be worked on with Deputy Martin and all the other interested parties.

2.3.21 Senator P.M. Bailhache:

Like many Members, I have some sympathy with the remarks of Deputy Tadier in the very difficult position in which the Assembly finds itself. Many Members, I think, might have been persuaded by the arguments of Deputy Martin and Deputy Green that the underlying principles of the amendment were something that deserve support. My problem with it is very similar to the problems of the Minister for Treasury and Resources. I cannot understand, and perhaps the Deputy will deal with this when she replies, how she can have brought forward an amendment in the knowledge that if it were successful, the Minister for Social Security would be placed under an obligation to deliver a new benefit within 7 days and unless I misunderstood the position, that is what I understand from the Minister for Social Security to be the position. The Deputy has had discussions with the Ministry of Social Security and I would like to understand how the amendment could have been brought forward in the knowledge that the Assembly was going to be placed in this impossible position. I wonder, Sir, if I may raise a point of order with you because I thought I understood you to say earlier on that the Minister for Social Security would require the leave of the Assembly to withdraw the proposition that he has brought forward, is that correct?

The Greffier of the States (in the Chair):

Well, because of the debate on it because he has already proposed ...

Senator P.M. Bailhache:

Because he has proposed the debate but you went on to say that he would be able to procure some kind of a delay and I am wondering whether he is obliged to move the Regulations in Third Reading or whether he can defer that until a time which is convenient. It makes a difference to those Members who might be tempted to support the amendment but who are unwilling to place the Minister for Social Security in an impossible situation of having to deliver a benefit when there is no money to deliver it.

The Greffier of the States (in the Chair):

You are correct. That is why he cannot be forced to propose the Regulations in Third Reading. The alternative, which I understand was discussed at officer level before the debate, was that he simply seeks to defer the debate on Regulation 3 until such time as he can amend it, perhaps in 2 weeks' time.

Deputy M.R. Higgins:

Sir, a point of clarification. The previous speaker criticised Deputy Martin for not taking into account the financial implications of her amendment. Is it not correct that the Deputy in his debate yesterday on Plémont did not put in any financial and manpower implications whatsoever in the proposition and therefore is expecting others to sort it out?

The Greffier of the States (in the Chair):

What is the clarification you are seeking? It sounded like another speech, to me. I do not think it is a point of clarification. I think it was an attempt to make a second speech. Does any other Member wish to speak on the amendment? If not, I will call on Deputy Martin to reply.

2.3.21 Deputy J.A. Martin:

What a mess we have talked ourselves into. I absolutely refute that this is not achievable. This is not a new benefit; it is clear in my amendment and the Minister's proposition. We already have personal care level 1, 2 and 3 and the amounts. Suddenly, after some excellent speeches from Deputy Vallois and ...

The Greffier of the States (in the Chair):

There is a phone somewhere near you ... Deputy Le Cornu, I think. Something in your ... keep your phone away from the microphone, thank you.

Deputy J.A. Martin:

I will leave the majority of the comments that the Minister for Social Security and the Minister for Treasury and Resources made until the end because we did have some excellent speeches and contributions and I will not go through them all but it is quite clear that there has been a promise since 2008 from Senator (then Minister) Routier to review. Now this was just the personal care levels and, as I said, this debate never took place then because people who were already on these levels were told they could keep them until their child was 16 and then they would get them in their own right. So Deputy Southern made an absolutely excellent contribution and I absolutely thank him because he has worked with me and he has met many times with me with representatives of S.N.A.P. who have met with us many times after they have been to the Chief Minister's Department along the lines of: "Well, we never got around to discussing this" or: "We tried to talk about this and felt that maybe we were hearing or understanding it more." I will leave that up to the Assembly to decide because you have read their contribution and this goes back, as you will see, from 2008 to letters to Constables and people out there then sitting as States Members. Now, the Deputy of St. Ouen has been very critical and again, I do stand here with a Back-Bencher's hat on and the Assistant Minister for Health with the responsibility of children. Now that is very narrow "children", because it is also looked after, which only does fall ... well, it does not really only just fall under my remit. There is a wide, wide issue, as Deputy of St. Ouen said: "Do we need to work together more?" Yes, we do. "Do we need care packages?" Yes, we do. Health does provide them. They work with Education, so children stay in school. But a lot of these extra packages are determined on the care level. So they are then disbarred from some extra support. So I am being asked to tackle one element. Senator Routier said he was comforted by the Minister for Social Security carrying on exceptional payments. So if he is comforted he should think that the budget should be there, that this Minister for Social Security or the next Minister for Social Security will now, if you take care level 3 out, they are all on P.C. (personal care) care level 2, will need that budget of £101 a week, disregarding income but also taking into account the disability of the child. Deputy Green, I was very grateful for his speech, likewise the Constable of St. John, who have personal experience through family members or the others. I have already mentioned Deputy Vallois and she said so much that we do not do, we have not done, we have promised this, we have promised that review, we have not got lots of oversights. The same as Deputy Young. That we are not good at doing things at the higher level and then when somebody, a Back-Bencher, or somebody can absolutely see the anomalies that are out there, bring something, we suddenly grasp on to something that we cannot do this. I started this amendment this morning very simply and said: "Should the benefit be in the right of the child?" You see all the levels, they are there. Or should they be means-tested? Now for some reason the Minister for Social Security has then decided, after listening to the Deputy of St. Ouen's speech, some other speeches, that he has got it wrong. His officers have got it wrong. This is not the way to go and it is not ... he cannot even do it. That is absolutely misleading this House. I went to the Minister for Social Security. He cannot accuse me ... about 8 emails asking him for information, sitting down with him, not once did he say it cannot be implemented. He did say, worse-case scenario, and he does not know - and we do need to do that piece of work - but worse-case scenario he said to me: "Put in a budget of £750,000

because you must." Now it might not be that much but he knew that. The Minister for Treasury and Resources knew that. And at the eleventh and a half hour, when I have never ever been in this position before, when the amendment looks like it is being won and being told it cannot be implemented.

[12:15]

Sir, you have given direction that if he cannot implement it in 7 days, which is very unlikely, he does not have to propose Regulation 3. But the people who will automatically, are already in the system, will get the money within 7 days. If anybody, like myself, Deputy Southern, probably Deputy Hilton, probably a couple of the Constables, have ever been through this form, the appeal system, the wait for what level your child is on and then going back. They will be lucky if they get their first payment in 6 months' time if you pass my amendment today. So do not be told tactically this is not achievable. It is just a tactic. It is again, as I say, we have never had this debate. I have been told we have. You heard the Minister for Social Security say even when he was appointed as Minister for Social Security he wondered how half of these disability benefits ended up in income support but basically they were where they were. So I am giving you a chance today to help the Minister for Social Security to give a steer, to take these children out of a means-tested system where they are helped, their families do not have to go down and ask ... if you can call it an exceptional payment, a special payment. It is the set amount for the benefit. Everywhere else it is for the child. It was universal before because it was done on the income of the child and, as the Minister states, very few children had an income. It is simple. I do hope my amendment is accepted but I do hope if it is accepted that the Minister please finds a way to not withdraw this but to maybe use the technique the Chair has pointed at him, that he might need a little bit more time to implement it. There is money. Treasury said on the radio last night, if he does not use one fund he might be able to find money for Plémont out of another fund, if pushed. Just on one last thing about this budget, who we do not know, all the children in 2008, let us give the average age of 6 or 7. We are 6 or 7 years on. What we do not know is how many have been knocking on Social Security's door, unless they are an income support family, and wanted this money tomorrow in their own right. Absolutely, rightly entitled to. So we are 6 years behind and I did not get any sort of real commitment from the Chief Minister that he could not support this. Senator Routier is a very good speaker normally but he was err, maybes, and I am sorry, I do not know why the whip has been whipped in this debate because every Minister, every Assistant Minister should have their own view, and because it is a matter of very simple principle, the right of the child for the right of the money on their own right. I leave it there. I maintain the amendment and I ask for the appel.

The Greffier of the States (in the Chair):

The appel is called for in the amendment of Deputy Martin. I invite Members to return to their seats. If Members are in their seats the Greffier will open the voting.

POUR: 37		**CONTRE: 3**		**ABSTAIN: 8**
Senator A. Breckon		Senator S.C. Ferguson		Senator P.F. Routier
Senator L.J. Farnham		Senator P.M. Bailhache		Senator P.F.C. Ozouf
Connétable of St. Helier		Deputy S.J. Pinel (C)		Senator A.J.H. Maclean
Connétable of Trinity				Senator B.I. Le Marquand
Connétable of St. Peter				Senator F.du H. Le Gresley
Connétable of St. Lawrence				Senator I.J. Gorst
Connétable of St. Mary				Connétable of St. Ouen
Connétable of St. John				Deputy of Trinity
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				

Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mézec (H)				

2.4 Draft Income Support (Special Payments) (Child Personal Care) (Jersey) Regulations 201- (P.90/2014) - as amended

The Greffier of the States (in the Chair):

So the debate would normally resume on Regulation 1 and 2 as amended. Did you wish to pursue a request to seek leave to withdraw it? If not the vote will continue.

2.4.1 Senator F. du H. Le Gresley:

Sir, I cannot propose Regulation 3 today because ...

The Greffier of the States (in the Chair):

Are you seeking to withdraw or not?

Senator F. du H. Le Gresley:

No, I am not going to seek to withdraw the whole thing.

The Greffier of the States (in the Chair):

Very well, the debate continues on Regulation 1 and 2 and you will sum up. Does anyone wish to speak on Regulation 1 or 2 as amended? If not, all those in favour of adopting Regulations 1 and 2 as amended. The appel is called for on Regulations 1 and 2 as amended.

Deputy M. Tadier:

What is the consequence of adopting this without Regulation ...

The Greffier of the States (in the Chair):

I think the Minister will defer the debate on Regulation 3 to enable him to bring an amendment to it. He is entitled not to propose it. He has not yet proposed it. He is entitled not to propose it and the matter will remain in limbo unadopted until he comes back with that amendment. He may seek to give some undertaking about timing, I am sure. Members are in their seats. The Greffier will open the voting for Regulations 1 and 2. If all Members have voted the Greffier will close the voting.

POUR: 44		**CONTRE: 0**		**ABSTAIN: 4**
Senator A. Breckon				Senator P.F. Routier
Senator S.C. Ferguson				Senator P.F.C. Ozouf
Senator A.J.H. Maclean				Senator I.J. Gorst
Senator B.I. Le Marquand				Senator P.M. Bailhache
Senator F.du H. Le Gresley				
Senator L.J. Farnham				
Connétable of St. Helier				
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 R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mézec (H)				

POUR: 44	**CONTRE: 0**	**ABSTAIN: 4**
Senator A. Breckon		Senator P.F. Routier
Senator S.C. Ferguson		Senator P.F.C. Ozouf
Senator A.J.H. Maclean		Senator I.J. Gorst
Senator B.I. Le Marquand		Senator P.M. Bailhache
Senator F.du H. Le Gresley		
Senator L.J. Farnham		
Connétable of St. Helier		
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 R.C. Duhamel (S)		
Deputy R.G. Le Hérissier (S)		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy J.A. Hilton (H)		

Deputy of Trinity

Deputy S.S.P.A. Power (B)

Deputy K.C. Lewis (S)

Deputy M. Tadier (B)

Deputy E.J. Noel (L)

Deputy T.A. Vallois (S)

Deputy M.R. Higgins (H)

Deputy A.K.F. Green (H)

Deputy J.M. Maçon (S)

Deputy G.C.L. Baudains (C)

Deputy of St. John

Deputy J.P.G. Baker (H)

Deputy J.H. Young (B)

Deputy S.J. Pinel (C)

Deputy of St. Mary

Deputy of St. Martin

Deputy R.G. Bryans (H)

Deputy R.J. Rondel (H)

Deputy N.B. Le Cornu (H)

Deputy S.Y. Mézec (H)

The Greffier of the States (in the Chair):

Minister, you do not seek to propose Regulation 3. Do you wish to give some indication of when you ... will you be back in 2 weeks' time with an amendment?

Senator F. du H. Le Gresley:

Clearly there will have to be an amendment to Regulation 3 to make this practical to put this new benefit ... it is a new benefit, whichever way we look at it, into operation. So I will come back with an amendment to Regulation 3 and we can complete the debate when we do that.

The Greffier of the States (in the Chair):

And you are hoping to do that in 2 weeks' time?

Senator F. du H. Le Gresley:

We will endeavour to do so, Sir.

The Greffier of the States (in the Chair):

I understand you will not therefore be proposing P.91, which needs the same amendment. Does P.92 fall in the same category?

Senator F. du H. Le Gresley:

Yes, Sir. Also P.82, I will also have to defer for the moment.

The Greffier of the States (in the Chair):

Very well, you do not wish to propose those items. Do you wish to list them all for 2 weeks' time?

Senator F. du H. Le Gresley:

Not P.82.

The Greffier of the States (in the Chair):

Very well, that will be deferred. It is your prerogative.

3. Draft Criminal Justice (Young Offenders) (Jersey) Law 201- (P.93/2014)

The Greffier of the States (in the Chair):

So we therefore come to the Draft Criminal Justice (Young Offenders) (Jersey) Law, in the name of the Minister for Home Affairs. I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Criminal Justice (Young Offenders) (Jersey) Law 201-. A Law to replace the Criminal Justice (Young Offenders) (Jersey) Law 1994 and to make provision for the establishment of a Young Persons Placement Panel in relation to the detention of persons under 18 years and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

I have been working on this project for more than 10 years. It is therefore a particular pleasure to bring this to the Assembly today. I want to particularly thank all the officers from a variety of different departments and the law draftsmen who have made this possible. The main problem which this seeks to address is the mixing together ...

Deputy R.G. Le Hérissier:

Could the Minister speak up a little up?

The Greffier of the States (in the Chair):

Raise your voice, Minister.

Senator B.I. Le Marquand:

I am sorry if I am croaky. The main problem which this seeks to address is the mixing together of 15 to 17 year-old males with 18 to 20 year-olds in the Young Offenders Institution, and the placement of 15 to 17 year-old girls in the women's prison. Every outside body which has looked at the current set up in recent years has criticised it but it has not been that easy to come up with a

solution. The solution is allowing most of them, most of the time, to serve their sentence or period of remand in Greenfields, which is a modern purpose-built facility, which is currently very much under used. It was built with 8 beds when youth crime was a major problem. In order to take firstly those under school leaving age, that is 15 years 10 months to 16 years 10 months, who were remanded in custody and, secondly, those vulnerable under-18s who needed to be placed in secure accommodation for their own protection by the Royal Court and a civil order. We are all aware of the massive reduction in recent years in youth crime and that means that there are regularly 6 to 8 beds available. However, this law seeks to cater for circumstances in which youth crime might increase again or a particularly difficult under-18 might be sentenced who was unsuitable to be detained in Greenfields at that time. That might be so because of a particularly vulnerable young person being there at the same time. The mechanism for deciding where the sentence or remand is spent is the setting up of a young person's placement panel, which is part 4 of the law. The States at a later date will need to make Regulations under Article 22 in relation to who will be panel members and procedural matters in relation to the panel including appeals. At the moment it is intended, but I am open to hearing from Members on this, as to whether it will be staffed by existing professionals. Because of the fact that a young person might be placed in custody prior to the panel being able to meet there is a default position, and that default position is Greenfields unless the court or the Jurat involved decides otherwise. The law deals with 3 different age groups, and I mention this in advance because if we are going to look in detail later it is important that Members understand what these groups mean. A child is a person aged 10 to 14 inclusive; a young person is aged 15 to 17 inclusive; and young adult is aged 18 to 20 inclusive. In addition to the primary issues I have mentioned the law under Article 10 also gives a variety of different powers of the Governor to make transfers between units, subject to a variety of safeguards. In particular Article 10(1) gives the Governor a wider power to move a young adult from the Young Offenders Institution into the male prison, a young adult being 18 to 20. The test for that is in 10(1) and he first has to consult the Young Person's Placement Panel. There is also a power under Article 10(3) for the Governor to transfer a young person who is currently at Greenfields into the prison but that has to be with the agreement of the Youth Panel, so the Youth Panel effectively would be involved in making that decision. These are the main changes, although there are other minor ones, which I will come to later. Although this is a new law, a lot of the previous law is simply re-enacted, and again I will try to explain that later. If Members would care to turn to page 9 of the proposition they will see that there are more than 3 pages of human rights notes, and notes on the international covenant on civil and political rights, together with comments on the United Nations Convention on the Rights of the Child. The conclusion of that advice is that the new law is human rights compliant. However, it is not fully compliant with the United Nations Convention on the Rights of the Child because sometimes under-18s will be with over-18s. But it is the best that we can practically achieve without having a massive number of different institutions. The problem with having a massive number of different institutions would be at various different times individuals might be on their own there or there would be a very small number, so it would not be practical to have a proper regime for them. Nevertheless this represents a major advance forward towards compliance with the United Nations Convention although it is not complete compliance. In addition, one of the reasons that delayed this was advice that we were getting that there might be difficulties in relation to getting Royal Assent to this because of the mixing together of different groups in one institution in Greenfields. What the Children's Policy Group did in relation to this was we arranged via the Law Officers for a pre-vetting process through the U.K. to see whether or not they would be likely to be happy with this proposal. The answer that came back was that, yes, they would be for practical reasons and the difficulties associated with small jurisdictions in having multiple different institutions. So we are confident that if passed by this Assembly that this will receive Royal Assent. I move the principles of the law.

The Greffier of the States (in the Chair):

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

3.1.1 Deputy S.G. Luce of St. Martin:

Could I thank the Minister for bringing this to the Assembly today? Can I also thank him for the presentation that he and his officers gave to States Members recently? I attended, a large number of questions were asked. I think all the queries were answered and I congratulate the Minister on this good work.

[12:30]

3.1.2 Senator A. Breckon:

When I received a copy of this some things struck a note and I looked back because the Health, Social Security and Housing Scrutiny Panel did a review on the co-ordination of services for vulnerable children. It was a sub-panel with myself, Deputy Le Hérissier, Deputy Southern and former Deputy Trevor Pitman. Some of the things that we found are now surfacing because we visited La Moye Prison and the Young Offenders' Institution there and had discussions with the Governor, members of the senior management team and I was involved in stand-alone open talks with 3 young residents there at the time. I was convinced that what I heard and saw there from visits to Greenfields at the time which then was full. When Andrew Williamson visited it it was empty but when we visited it twice it was full, and we found that more flexibility was needed around secure welfare and other remand and custodial options for young people. The situations we witnessed - and we spoke to the young people themselves - there appeared to be some very real issues at that time around secure placement sentencing options and remanding of young people; greater flexibility did appear to be required to reflect what happens. Because what we found is you could have some very mature 14 year-olds and some very immature 17 year-olds and drawing the line at a certain age seemed inappropriate and did not take into account those individual circumstances. The other thing that was important is where these young people were living, let us call it that, and who they mixed with could have a profound effect on their future life. As well as short-term issues about attitude and behaviour, these things seem to need consideration and to have more flexibility about the care options. As a result of that Scrutiny Report there were some recommendations in there and one of those, as well as the things that were in there, was about young people leaving custody and perhaps giving them more support. I know that is something that Deputy Higgins, I think, has put on the radar with a proposition that is to come, and the need for that was identified as being to stop them re-offending. We suggested, recommendation 38, that an urgent review is undertaken on the suitability of accommodation and policies relating to those under 21 years of age who are on a care remand sentence, held on remand or awaiting sentence. Therefore, in the preamble to the Minister's report the fact that Greenfields is mentioned, the young offenders' situation at La Moye, 15 to 21 year-olds, and the fact that there will be a panel that will be able - I believe, or my understanding is - to take into consideration the actual circumstances of the young person, including perhaps maturity, and decide best where they should be. I think this is a forward step because the Minister mentioned he has been looking at it for 10 years; I think some of that probably stems from a former life. I think it is to be welcomed and there will be benefits. There is some administration but I think the benefits will be substantial and are well worth doing. I congratulate the Minister for getting this off his desk before he seeks to do other things. With that, I am fully supportive of this.

3.1.3 The Deputy of Trinity:

As you would expect, I fully support this. This has come to the Children's Policy Group and is really being progressed by all multi-agency groups. When I first became the Minister for Health and Social Services, Greenfields was invariably full most weeks, or especially full at weekends, and

I am really pleased to say that during last year especially it has been used on very, very, few occasions. I would like to take this opportunity ... because it takes 8 there, and when you think it was full and now hardly ever, and you ask the question why, it goes down to ... and I would like to praise all the staff, the multi-agency staff, Education, Home Affairs, the voluntary group, the Y.E.S. (Youth Enquiry Service) project, the youth workers as well as Children's Services who came in for quite a bashing but they have worked hard to try and work with these young people and be on early intervention. It shows you early intervention does pay. Just to pick up on one thing, the placement panel will be important because it will be dependent, once they have been sentenced by the court, on the individual's vulnerability and needs assessed by the senior officers from Health, Probation plus they are also looking at an independent, whether that is an officer from the N.S.P.C.C. (National Society for the Prevention of Cruelty). That is vital because it depends whether that child or young person knows somebody else who already is in there and they may have, shall we say, a disagreement with that other person, therefore all that needs to be taken into account, so that placement panel is vital. This is a really positive development and I welcome it and also by using it, they will have access to the alternative curriculum which is part of the Greenfields campus. I will leave it at that.

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

It is getting a trifle boring, but just to add congratulations. What was interesting about the Minister's presentation and that of his staff, was this whole phenomena of declining youth crime. Now it may manifest itself in other ways but that was very interesting because I was, as he knows, quite sceptical and of course I did start my life in the Borstal Service where it was a much more active ... **[Interruption]** run like community service at Government House. I will not specify on which side of the fence I was on. But what I would like to say, I sense a slight nervousness in the way the Minister has phrased the issue of women and the women's unit. He said there had been a challenge which had fallen on technical grounds and I wonder if the Solicitor General could comment on that ruling and say whether essentially we are going to get a more robust challenge. We may, so to speak, have not fallen on this occasion but is a more robust challenge on the way and can we indeed meet it? Thank you.

The Greffier of the States (in the Chair):

Solicitor General, can you comment?

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

Yes, I will summarise the case for you and then I will deal secondly with where we will be if this new law is infused. The case was *LL* v *United Kingdom*. It was a young female, I think aged 18 at the time, who had served in the adult female wing of the prison. Had she been a male prisoner of that age, she would have been in the Specialist Young Offenders' Institution. So she sued Jersey in effect on the basis that she had been discriminated against and rather than being put in with young offenders of her own age, she had been required to serve her time with adult prisoners. Deputy Le Hérissier is right in that the European Court did not reach any findings on the substance of the arguments because they ruled at an early stage that this female had not taken legal action in the Jersey courts and therefore had not exhausted her domestic remedies; therefore, the European Court declined to hear the full argument. Had we gone on to the substantive argument, there would have been a legal debate as to how you manage particularly young female offenders in Jersey because on the one hand there is the mixing with adult prisoners and all that might entail, and on the other hand if you do not mix this female with adult prisoners she would have been on her own for very long stretches of time. Keeping a young female in isolation in itself might give rise to human rights breaches. If I can just come on to the second part, where you get to in terms of looking at this from a human rights position is that you need a proportionate response that balances what happens if you

mix someone who is young with adult offenders against what happens if you keep someone in isolation. It is a balancing of those factors that will provide you with a human rights-compliant system. Where this new law is so important is that it gives a panel the flexibility and the opportunity to look at each case and decide on the facts of each case where it is best to place a particular person, acknowledging that there may not be a perfect answer and you are simply going for the best answer that is available. Because of course the perfect answer, you may say: "Well you should move them off-Island" but then you are breaching their Article 8 rights because you are taking them away from the family. So you will find in a lot of those cases there will not be a perfect answer but that does not mean you are not respecting the person's human rights. What was interesting about the facts of LL if we had got on to them was that LL's behaviour, as it happened, was more constructive when she was being assisted by adult prisoners and she was most disruptive when mixing with other prisoners of her own age as and when they came in and out of the prison. I am not saying that decides the case one way or the other but it was simply an interesting feature of the case. So, in summary, the introduction of this panel system gives you a much more robust position in terms of human rights and makes you human rights compliant because you are now looking at each individually-detained person on their own merits and deciding where is best for them to go, having regard to different factors which may point in different directions.

The Greffier of the States (in the Chair):

You concluded your remarks, Deputy? Yes, Deputy of St. John.

3.1.5 The Deputy of St. John:

Anything which means that the education of a child, whether that child be in the criminal justice or detention, or on remand or whatever, or whether they are in school, is something that I would support. I would just like to assure the Assembly that I believe certainly that continuing a child's education, or a young person's education, while they are on remand is better carried out at Greenfields than it is at La Moye. But I would just also like to really correct any misunderstanding there might be. The alternative curriculum, although at the Greenfields campus is not part of the secure unit and it is entirely separate, it is only by coincidence that the alternative curriculum is carried out, or the work that is carried on with children who are better suited to what is known as the "alternative curriculum", just happens by coincidence to be at Greenfields and for no other reason. Thank you.

3.1.6 The Connétable of St. Brelade:

Just very briefly to say that, unlike States Members, the Education and Home Affairs Scrutiny Panel did get a full briefing from the Minister in regards to this legislation. They were content with the law as it is being brought forward. The exact question that Deputy Le Hérissier asked was explained to the panel by the Minister at the time. I know the Minister has had a close interest in this for some considerable time, in his time as the Magistrate. On behalf of the panel, can I congratulate him on finally getting this to the Assembly today?

The Greffier of the States (in the Chair):

Does any Member wish to speak on the principles? If not, if Members are content, we could ask the Minister to sum-up and vote before the adjournment.

3.1.7 Senator B.I. Le Marquand:

Well I must thank everybody for their great, positive comments. I think this is a good piece of work. I do not think all the credit should come to this particular Minister because I have worked with my colleague Ministers and indeed the considerable amount of input has come from people from Children's Service, Probation, Education and all the agencies, so it is very much a multi-agency product. I do not think I need to say any more than that, so I maintain the principles.

The Greffier of the States (in the Chair):

All those in favour of adopting the principles, kindly show? Any against? The principles are adopted.

LUNCHEON ADJOURNMENT PROPOSED

Senator P.F. Routier:

Can I propose the adjournment?

The Greffier of the States (in the Chair):

Yes, the adjournment is proposed. The Assembly will reconvene at 2.15 p.m.

[12:44]

LUNCHEON ADJOURNMENT

[14:15]

The Greffier of the States (in the Chair):

I think we might summon Members from the ante-room, Usher; we are 3 Members short.

Male Speaker:

Could we have the appel please, Sir?

The Greffier of the States (in the Chair):

Well we have asked for Members ...

Senator B.I. Le Marquand:

I think it is quorate, Sir. I counted 26 with those 2.

The Greffier of the States (in the Chair):

I think it is 25. Well we will have to ask the Greffier to call the roll which is done by the voting system, so Members can push any button on the voting system. Members can push any button. All Members present, please push any button available. If all Members could push any available button for the roll call. **[Laughter]** I will ask the Greffier to close the roll call.

Senator P.F. Routier
Senator A. Breckon
Senator S.C. Ferguson
Senator B.I. Le Marquand
Senator I.J. Gorst
Senator L.J. Farnham
Connétable of St. Clement
Connétable of St. Lawrence
Connétable of St. Mary
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. Saviour
Connétable of Grouville
Deputy R.C. Duhamel (S)
Deputy R.G. Le Hérissier (S)
Deputy J.A. Martin (H)

Deputy of St. Ouen
Deputy J.A. Hilton (H)
Deputy of Trinity
Deputy K.C. Lewis (S)
Deputy T.A. Vallois (S)
Deputy J.M. Maçon (S)
Deputy G.C.L. Baudains (C)
Deputy J.H. Young (B)
Deputy of St. Mary
Deputy of St. Martin
Deputy R.G. Bryans (H)

The Greffier of the States (in the Chair):

At the conclusion of the roll call, 27 Members are present and we are therefore quorate. I would just remind Members, yet again, that the consequence of being inquorate, the Assembly would have adjourned. With the very busy agenda, we would have wasted yet more time. Minister, how do you wish to propose the Articles?

Connétable S.W. Pallett of St. Brelade:

Just a point of order, I do know a number of Members are at a funeral.

The Greffier of the States (in the Chair):

I think that some Members may have given notice they are not here but I am sure that does not apply to all the Members, thank you, Connétable. How do you wish to propose the Articles, Minister? In parts or together or ...?

Senator B.I. Le Marquand:

I think I was going to take Parts 1 to 3 first and then 4 to 6. That seemed to me to be logical.

The Greffier of the States (in the Chair):

Very well. Yes, so you wish to propose Parts 1 to 3, that is Articles 1 to 16.

3.2 Senator B.I. Le Marquand:

Yes. I am going to gallop through them, so it is one of these situations I have either got to say something or just answer the questions. I think I should say something. Article 1 deals with interpretation of definitions. Article 2 is not changed from the previous law; it retains the age of criminal responsibility. Article 3 provides that 10 to 20 year-olds cannot be sentenced for imprisonment. They can be sentenced to other custodial sentences but not imprisonment. Again, there is no change there. Article 4 is essentially the same as before; it is in relation to youth detention. There is minor re-drafting but no substantial changes. Article 5 provides for 10 to 20 year-olds who commit a serious offence and, again, this is essentially the same as before with minor re-drafting. Article 6 deals with sentences for failure to pay a fine or for contempt of court. Again, this is essentially the same but it has been adjusted because of changes which are required as a result of the other changes in the law to reflect the new setup. Article 7 is essentially new. Article 7 deals with the place of custody for young persons and young adults sentenced to youth detention. This deals with what happens with 15 to 17 year-olds or 18 to 20 year-olds who are sentenced to some form of custody. In relation to 18 to 20 year-olds, the sentence is to youth detention which is served by males in the Young Offenders' Institution or females in the prison. In the case of 15 to 17 year-olds it is served in an appropriate place of custody and that then brings in

the new system because a place of custody essentially gives the option between either Greenfields or the Young Offenders' Institution. I mentioned before there is a default position, that is in Article 7(3) where the panel has not yet met. There is a default to secure accommodation which means Greenfields, unless the sentencing court decides otherwise and Article 4 basically says that the panel must decide as soon as possible where a sentence will be served. I would just comment on this to say that in almost all cases in which a young person would be sentenced to a custodial sentence, there will, in any eventuality, have been a background report prepared. That almost invariably happens and I would therefore anticipate that the decision as to where it is appropriate to serve the sentence would have already been made. Article 8 is the same as before; it is not changed from the previous law. Article 9 deals with supervision after serving of a sentence. Again, this is essentially the same as before but I must point out that there was one Article in the previous law which has now disappeared and that was the Article which enabled the court to sentence people to an attendance centre. The attendance centre was effectively a number of Saturday mornings at which they attended somewhere and did some work. That had not existed for a very long time and therefore it has been omitted. There simply had not been enough people to warrant its use and therefore, even when I was Magistrate, it did not exist, so the Article has now been omitted. Article 10 there is a slightly more detailed study. I did give a breakdown of it in my introductory remarks. In 10(1) it allows the Governor to require a person who is a male young adult who is either remanded in custody or serving a sentence, an 18 to 20 year-old, to be moved to the prison either for a fixed term or for the remaining part of the person's sentence. So it sets out the criteria as to when the Governor does that. One of the difficulties that we have been experiencing in recent times of course has been not just we have had a massive reduction in youth crime, we also had a massive reduction in the 18 to 20s. You get a problem if the numbers in a particular age group drop below a certain level; you just cannot properly run a regime there. Therefore, there are occasions particularly where there would be people towards the upper end of that age group where it is in the interests of the offenders themselves for them not to be detained separately as a small number but to be detained as part of the adult population and basically 10(1) provides for that. But the Governor has to consult with the panel before making any such decision in relation to a particular individual. 10(3) is also referred to before. This is basically a situation with a female young person - so that would be a 15 to 18 year-old female - where it is really not desirable for them to be in Greenfields for some particular reason. The power here for the Governor, with the agreement of the panel - so the panel will still be involved - is to transfer them across to the women's prison effectively. Obviously we hope that that will not happen that often but it is a power that is needed there just in case. There is a power in case of urgency to do that immediately before consulting the panel but with the panel obviously to look at it as quickly as possible. 10(5) is the same as before. This is an ability to transfer a young adult, or a young person who is a prisoner for medical treatment. I have gone into more detail in relation to that Article because I think it was different from the other things. Article 11 deals with attendance and court appearance of a child, a young person. This is essentially the same as before but just slight consequential changes. Article 12 deals with the power to order a parent or guardian to pay a fine or costs. This again is essentially the same but with just slight changes to reflect changes in definition. Article 13 is a protection in relation to offences committed by a child, so that is by a 10 to 14 year-old, and basically it provides an additional protection to them in addition to that which exists in the Rehabilitation of Offenders (Jersey) Law 2001 but again there is essentially no change from the previous law; the same with Article 14, determination of age; no change there. Article 15 again is as before. When we come to Article 16 into the section in relation to remand, this is really going over the same grounds I have already gone over in relation to sentenced young people but it is this case where they are on remand. There are 2 forms of remand. We have had to widen, as it were, the definition of remand to make this absolutely clear. Normally one talks of a person being remanded in custody when it is a court that has made the decision but there is one particular situation in which a Jurat or the Bailiff

can make the decision and that is if a person who has been arrested and has been charged but cannot yet be presented to a court, shall we say, for instance, if they were arrested on a Saturday morning and it has not been desirable to hold them in the cells at police headquarters for that period, then it is possible to get a Jurat's warrant in order to transfer them to the prison or, in the case of a young person, to transfer them to Greenfields, so there is that provision also. I will not go into as much detail in relation to Article 16 as before because it really parallels the provisions I have dealt with before. So that is a very speedy outline; I invite any questions.

The Greffier of the States (in the Chair):

Articles 1 to 16 are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak on any of those Articles? Deputy Vallois.

3.2.1 Deputy T.A. Vallois:

Can I just ask a quick question of the Minister for Home Affairs with regards to the ages that have been defined under Article 1 and whether it is applicable across other legislation that appears in the States and what particular pieces of legislation it also refers to please?

The Greffier of the States (in the Chair):

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

3.2.2 Senator B.I. Le Marquand:

The answer, I think, is probably yes and no in a sense but it is really no. The reason why we have adopted these is because 10 to 14 year-olds can be remanded in custody but they cannot be sentenced to any form of custody; 15 to 17s can be remanded and sentenced to a form of custody but are under 18, and we wanted to distinguish, and 18 to 20s is the remaining age group of those who are eligible for the Young Offenders' Institution. So those definitions are particularly pragmatic and practical for the purposes of this law. I maintain the Articles.

The Greffier of the States (in the Chair):

All those in favour of adopting Articles 1 to 16, kindly show? Any against? They are adopted. Do you wish to propose the remainder of these Articles?

3.2.3 Senator B.I. Le Marquand:

Yes, I was wondering if I am boring my colleagues or whether I should just say: "Well there they are and fire your questions." **[Approbation]** But I feel some sort of duty to explain things but perhaps that is a misplaced duty.

The Greffier of the States (in the Chair):

It is up to you, Minister.

Senator B.I. Le Marquand:

I will just place them before ... that is all the remaining Articles plus the Schedule.

The Greffier of the States (in the Chair):

Very well, Articles 17 to 33 and the Schedule are proposed. Are they seconded? **[Seconded]** Are there any questions for the Minister on any of these Articles? If not, all those in favour of adopting the Articles, kindly show? Any against? They are adopted. Do you propose the draft law in Third Reading, Minister?

Senator B.I. Le Marquand:

Yes. I am very disappointed not to have had a chance to give a detailed explanation but there it is.

The Greffier of the States (in the Chair):

The appel is called for on the Third Reading of the Criminal Justice (Young Offenders) (Jersey) Law 201-. If Members are in their seats, the Greffier will open the voting.

POUR: 34		**CONTRE: 0**		**ABSTAIN: 0**
Senator P.F. Routier				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mézec (H)				

4. Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014)

The Greffier of the States (in the Chair):

We come now to the Planning and Building (Amendment No. 6) (Jersey) Law 201- which will be hopefully equally as uncontroversial **[Laughter]** and I will ask the Greffier to read the citation.

[14:30]

The Deputy Greffier of the States:

Draft Planning and Building (Amendment No. 6) (Jersey) Law 201-. A Law to amend further the Planning and Building (Jersey) (Law) 2002. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

The Greffier of the States (in the Chair):

Minister, I invite you to propose the principles of the draft.

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

Mr. Shepley, the former Chief Planning Inspector for England and Wales, in a review of Jersey's planning system in 2005 said: "The existence of an open, fair, impartial and accessible appeal system is in my view essential to the operation of the planning system. Its value is not just in resolving disputes objectively and efficiently, although of course this is crucial, but its existence also pervades the whole of the system, even when it is not used. The knowledge that it may be used is taken into account by the decision-maker." I want to introduce such a process that considers issues on their merits, a process that has clear, unbiased independence, a process that is accessible and much cheaper than at present and a process that is transparent and will resolve appeals quickly and simply. This proposition introduces the legislation to establish the new appeals process against decisions and actions taken under the Planning and Building (Jersey) (Law) 2002. The legislation reflects the model for appeals agreed by Members in September last year. It will allow not only appeals against planning decisions but also appeals against Building By-laws decisions, conditions attached to permissions, enforcement notices and the listing of buildings, places or trees. The legislation also includes the ability of the Planning Applications Panel to review applications refused, as suggested by Deputy Le Hérissier. The process will involve the assessment of each appeal by an independent, suitably-qualified and experienced inspector considering the merits of each case. The sometimes complex, technical, aesthetic policy and legal arguments that are raised with appeals should be weighed by someone with relevant qualifications, experience and skills. The inspector would then make a recommendation to the Minister who would make a decision in the context of that recommendation. The inspector's report to the Minister would be a publicly-available document and if the Minister wished to differ from the inspector's findings, then the Minister would have to be very clear as to why that was the case. All interested parties will be invited to be involved in this arrangement and anyone who was involved with the original decision can reiterate their position. Comments received in connection with the original decision will automatically form part of the consideration by the inspector. This arrangement provides the correct mix of expertise and independence with democratic accountability. The Judicial Greffe has agreed to administer the process so that it will be taken away from the Department of the Environment and ensure all parties are treated equally. With the Minister deciding appeals, there will be a knock-on effect to the way the Minister functions. In order to make impartial decisions, the Minister will have to withdraw from the first tier of decision-making. This will mean not only on decisions themselves, but any discussion or involvement prior to the first decision. The Minister will still present the Island Plan, however, and authorise all other policy and guidance, but will be removed from the decisions that can be appealed. This change will alter the role of the Planning Applications Panel who will make decisions independently of the Minister. The panel will have to justify their decisions in the context of the policies and guidance if their decisions are challenged at appeal. Being involved at this stage would prejudice the Minister's position. Instead, the Minister will concentrate on involvement in policy and strategy-making, including masterplans and development briefs and these documents will inform the first-tier decisions. Now the legislation I propose allows for the panel to be constituted under Standing Orders as a body of the States. This, I think, is wholly appropriate, as it will be a body made up of States Members and constituted by those States Members. This further removes the Minister from the functioning of the panel. Decision-making powers themselves will be established by

Regulations. For many years there have been calls for a process that allows appeals against decisions that is accessible, affordable and looks at the merits of the case, and that is what I am setting out in my proposals today. It will allow people being able to challenge, without significant ado, regulatory decisions that affect or curtail their rights to enjoy their property or their business. It will allow the independent scrutiny of decisions and at the same time recognise the fundamental issues of sovereignty and accountability that a mature and democratically-accountable planning process requires. With that I propose the principles of the law.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak on the principles? Deputy Young.

4.1.1 Deputy J.H. Young:

I think the importance of this law change is reflected in the fact that this is now, I believe, the third gestation of appeal arrangements since this law was approved in 2002 and, of course, so much of our economy and our building industry depend on achieving what the Minister said. For me personally it was also a manifesto commitment and I did bring the proposition that there should be a change, the 2 principal changes: that the Royal Court would no longer have that prime role in dealing with appeals against applications but would deal with points of law in the system; and that there would be this test, as the Minister for Planning and Environment said, based on the planning merits of the case rather than the rather arcane arrangement at the moment of unreasonability. When the Minister came back with the proposals which lie behind the law change we have today, I personally had quite strong reservations at the time about the change to the role of the Minister for Planning and Environment, the fact that the Minister for Planning and Environment would become completely removed from the processes and really become remote dealing with policy. I voted against that change in the final analysis and I was also concerned about the question of having a system over-reliant on U.K. planning inspectors only being brought in the system to decide appeals. Having given it a great deal of thought, I believe that the Minister was right to separate his role, to separate the role of policy-maker, policy-setter and to have the matter of applications dealt with by a separate body. As long as there is proper communication with them, between them at the right strategic policy level and not at the level of dealing with applications, I think that was the right decision and, yet again, our Minister for Planning and Environment demonstrated his intellect is superior to mine and I acknowledge that, although sometimes maybe he is not always right but on that point he was. So I approached it and I thought ... as Members will of course know I am Chair of the Environment Scrutiny Panel and as a principle I believe that all these important laws should be subject to proper scrutiny. But of course I personally was caught in a conflict here because I want to see this change introduced this term. It is not something that we should be waiting for. It has been long overdue and I think it is right that the House have the chance today to put this into law. So the other practicality of course is that the panel did not have time to do a Scrutiny review and so a decision was taken with my colleagues; we discussed that and decided that we would not. So the Deputy of St. Martin, my Vice-Chairman, will deal with any questions of formal reference to this Scrutiny Panel. So I decided the best thing I could do was to try and do, with my own personal background, a review; a review of what I thought, whether or not the arrangements were absolutely spot-on to achieve what is wanted here, a robust, reliable, practical and effective appeal system, greater accessibility and, above all, improve public acceptance and increase confidence in the planning system which is key because if that confidence is weak, that is a very, very bad situation for our economy and so on. I went to a lot of effort, and I thank very much the planning officers who gave me a great deal of effort, support and advice in helping me to draft what I thought to be a set of amendments which were quite narrow on 3 particular points that were complementary to what the Minister had proposed, do not undermine it, respect the States decisions on the previous time and I had hoped that we would have a fairly brief debate today. But of course when I saw

the... Members will know I was out of the Island, I did not get back until late Monday night and did not have a chance to read the Minister's comments. Frankly, having spent a week at Glastonbury Festival, I was absolutely brain-dead and I could not get my head around it until this morning, so in the early hours is the first chance I have had to go through the Minister's comments. I am still hopeful the Minister will do more than cherry-pick some of those amendments, so it is open to him of course to accept what I have said, that I believe when we get to the amendments they will complement. But I want to make it clear to Members that I really believe this is a fundamental change that should go ahead but I am going to reserve my position potentially at Third Reading on the question of what happens to the amendments. Because I really feel, based on my years of experience, which I will be talking through when we come to the amendments, that there is real merit there for Members to consider but the principle, I think, is wholeheartedly to be recommended and that is what I would say for now.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on the Minister for Planning and Environment to reply.

4.1.2 Deputy R.C. Duhamel:

I thank the Deputy for his kind words of support and propose the principles of the law.

The Deputy Bailiff:

All Members in favour of adopting the principles, kindly show? Those against? The principles are adopted. Scrutiny ...?

The Deputy of St. Martin (Vice Chairman, Environment Scrutiny Panel):

I think the answer is no, thank you, Sir.

The Deputy Bailiff:

You are relying on your Chairman? Very well, you would like to propose Article 1, Minister?

4.2 Deputy R.C. Duhamel:

Article 1, as Members will read, is very, very short; it is about interpretation. In this law the principal law means the Planning and Building (Jersey) Law 2002 and I propose Article 1.

The Deputy Bailiff:

Is this seconded? **[Seconded]** Does any Member wish to speak on Article 1? All Members in favour of adopting Article 1, kindly show? The Article is adopted. We will now take Article 3 next because it makes more sense to debate the amendment to Article 3 before we debate the amendment to Article 2 and I ask the Minister to propose Article 3.

4.3 Deputy R.C. Duhamel:

Article 3 is a substituted Article for 9A and it deals with the role of the Planning Applications Panel in terms of defining what they are able to do and sets out the meeting schedules and the advertising within the local media, so I make the proposition.

The Deputy Bailiff:

Seconded? **[Seconded]**

4.4 Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014): third amendment (P.94/2014 (Amd.(3)) - Article 3

The Deputy Bailiff:

Now there is an amendment in the name of Deputy Young. I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

In Article 3, in the substituted Article 9A: (a) for the words "Planning Applications Panel", in each place that they appear, substitute the words "Planning Applications Committee"; (b) in paragraph (3)(b) for the words "3 days" substitute the words "5 days"; (c) for paragraph (4) substitute the following paragraphs: "(4) Subject to paragraph (3), the Minister may by Order prescribe procedures to be followed by the Planning Applications Committee under this law. (5) Except as otherwise provided by or under this Article, the Planning Applications Committee shall determine its own procedure. (6) The Planning Applications Committee shall, within the period of 3 months following the end of a year, report to the States: (a) the number of decisions made by the Committee under this law during that year; (b) the number of appeals made during that year against decisions made by the Committee under this law; (c) the Committee's assessment of planning policy and any recommendations it has for its revision. (7) Where, under paragraph (6)(c), the Planning Applications Committee makes recommendations about planning policy, the Minister shall present to the States his or her response to the recommendations."

4.4.1 Deputy J.H. Young:

I will direct Members to the second part of my amendment in the proposition which deals with the changes to the law in one of the 3 areas that I have proposed amending.

[14:45]

This is the current role of the Planning Applications Panel and in this I would like to certainly pay tribute to the members of that panel because I know it is an onerous task and I think that it really has to be recognised by all Members of its importance. It is desperately important that we have the best deal with members on that panel. The Planning Panel was introduced as part of Ministerial government because it was recognised where we finally got to, ironically, in 2014, that it was never sensible for a Minister to make planning decisions on their own and that really what was necessary was a body, which I believe was intended would function as a committee, so that decisions - really important decisions, which are not black and white decisions or clear-cut decisions - are shared and benefit from shared input. That is not a criticism of past Ministers. It is just that the job that they were assigned was mission impossible in my view and in a no-win situation. So what I have set out in my changes are a number of proposals for improvements which I think are best summarised on page 8 of the report accompanying the amendment which puts in plain English what is in the law change. It is important to provide a proper link between the panel and Minister because as the Minister's proposals currently … or the law change proposed I cannot see any mechanism whereby the panel reports back to this Minister on the effects of the planning policies that he sets. In other words, whether they work in practice, whether there are any problems, whether there needs to be revision and so on. So I have included in the law that I believe it should be a statutory requirement… because the Planning Law, I believe, is an excellent one and you can see how well-thumbed a copy mine is. It gets used virtually every day and has been certainly when I worked 5 years for a law firm. This will be in use every day. So I think it is right that the rules are in that law and an annual report to the Minister and that the Minister is required to respond to the States so they can see what changes we need in planning policy. The current proposal, and I can only assume this is a mistake in the Minister's draft, at the moment it excludes Assistant Ministers from being members of the panel and I think that is really unduly restrictive because we need the best field of members. Clearly if there is an Assistant Minister for Planning, they cannot be a member of that, I do not think, but nonetheless I think that change should be made. I personally am aware, not a criticism, but a need has been identified by agents and architects who have spoken to me and

written to me about a need to more codify the current practices of the Planning Panel because it will be the only decision-making body. We will not be having a Minister in reserve, as it were, to deal with applications that are undecided. It is a single process. That will set down the rules and some of the things that I think need to be covered about speaking times, opportunity for documents to be presented before so people can look at them and also some embracing of the role of officers in those meetings, that they are required, for example, to follow codes of conduct which do exist in the U.K. for the conduct of such planning public meetings. I think those things are important to ensure that there is always a fair hearing of what happens in those decision-making meetings. I know over the years there has … one is aiming at a moving target here. I remember in the days of the Planning Committee there was a need for improved procedures and previous procedures originally were revised, finally we got to public meetings and I think it is important that we have that power. I know that the Minister does not agree with that. He sees that as prejudicing his role as a Minister. I do not believe it is right. I think it is right that the Minister sets the process rules. I am not suggesting that he should deal with the content but I am proposing that. Finally, on that section there I believe that recognising the fact that it is a committee; I believe it is right to rename it. I think it is no longer a panel because a panel suggests to me you have a group of people and you pick from them for particular decisions where I think really it is a committee and it needs to have that. I believe that the chairman should be separately elected by the States and that the panel members should also be elected by the States in that way. I would have hoped that is a fairly uncontroversial set of changes as far as that part of my amendment.

The Deputy Bailiff:

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

4.4.2 Deputy R.C. Duhamel:

I broadly welcome the amendments that the Deputy has come forward with but I would just like to kind of flesh out a few comments before I finally decide. I think it is absolutely right that 3 days should move to 5 days in terms of allowing a greater dissemination of information to the public and members in their decision making processes. I also think it is absolutely right that Deputy Young has made the excellent suggestion for an annual report back to the States on the work of the panel or the committee, whatever we decide to call it, and this will definitely bring to the fore discussions about planning polices for all States Members. It is not just good enough and he makes the point for decision-makers to operate within a decision-making framework and not to discuss the items under consideration that perhaps would give rise to changes to that framework. So I do welcome the suggestion made under 6. I had thought, probably not deeply enough, that the better way forward was not to make it statutory, but I am prepared to concede the point and I think in some ways that probably raises the importance of the discussions that will be enabled to take place within this Assembly or elsewhere. Planning should be and is and must be an all-inclusive process in order to stimulate and to encourage the buy-in, if you like, on behalf of all those who use those services. If, indeed, we find ourselves out of step with the policy framework then it is only right that the changes should bubble-up from the decisions that are being taken and changes be reflected in the decision-making framework which is the Island Plan. On the name, just a couple of words. Panel, I think, does conjure up maybe some poor comments about the membership, particularly if the panel is seen to be wooden. Equally, there is the infallibility of the P.A.P. (Planning Applications Panel), and I think P.A.P. probably is a poor name but that said, I think equally Planning Applications Committee will be shortened to the P.A.C. Committee and so that all members, men and women, will become Pacman or Pacwomen and I think on the basis of that we do have the P.A.C. (Public Accounts Committee). I think perhaps Planning Committee would have been literally more P.C. It is a shame. **[Interruption]** I am glad you are keeping up, Deputy Le Hérissier. It is after lunch as well, that is good. It is shame that we cannot perhaps have

amendments on the hoof because I think perhaps Planning Committee might well have been the better name but on taking soundings from other States Members, it is possibly suggested that if we do run with Planning Applications Committee time and practice will probably shorten it to Planning Committee in any regard and a further amendment might well be up for grabs in short order. So I think with those comments I am pretty well happy to accept all of the amendments put forward by Deputy Young in this context and wait and see whether or not there are any further comments.

4.4.3 Senator S.C. Ferguson:

Just a small postscript to this. Planning approval and revision consideration is highly subjective but there are some basic principles. Yes, they are hidden in the Island Plan but there are some very basic principles that should be held in mind and it seems to me, having spoken to members of the panel, sorry committee, sorry, whatever we are going to call them, there is not the same introductory course on the basics. We have quite a formalised introduction to Scrutiny for Members who join the States, who are elected, and we should, perhaps, have an equivalent thing for those going into the Planning Committee so that they have an idea of the basics before they weigh-in to looking at large developments, small developments; this sort of thing. I would ask the Minister and the proposer to bear this in mind when they are carrying these amendments and so on forward.

4.4.4 Senator P.F.C. Ozouf:

Just for the record, I am sure I am not the only States Member, but I have a current planning application that is in my name, I am not handling it directly, but just for the avoidance of doubt, I have a current planning application but I do not believe this would come into force by that point. I just want to make that as a matter of record. I speak just because the Minister cannot respond to say that Senator Ferguson is wrong about training members of the Planning Panel. Certainly since the Environment and Public Services Committee and then the subsequent 2 Ministers, Planning Application Panel members do receive extensive training. They are given lots of information and they are extremely well served by the department as far as I am concerned and so I think it would not, just as a matter of correction, would be the place but I support the concept of a committee although I think "applications" is wrong, a further amendment is probably going to need to be required but the 3 to 5 days is completely correct. It seems absolutely sensible.

The Deputy Bailiff:

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

4.4.5 Deputy J.H. Young:

I will be brief. I am grateful, obviously, for the Minister's support and his acceptance. I know that the Minister for Planning and Environment met with the panel last week, I think, something that we had urged him to do and the question of the committee name was discussed. At the time I wondered about whether it should be the Planning Committee. I have no feelings on it but I do think it is right that it is a committee so I would ask Members to go along with it and it can be changed at a later date, and I think accepting the fact that it is a committee, it will be the decision-making body, it is important. I think I will leave it at that on that point. I ask for the … can I ask for an appel?

The Deputy Bailiff:

You were not sure about that, you would like the appel or not? All Members …

Connétable J. Gallichan of St. Mary:

Just a point of order. Is there not a mechanism in Standing Orders if it is an administrative correction we could deal with it now? I am just conscious of the fact we are asking a whole load of consequential changes through laws to be done. Could we not agree to call it the Planning Panel at this stage?

The Deputy Bailiff:

I am sorry what, exactly, are you asking me to do?

The Connétable of St. Mary:

I may be asking a bit too far. I was under the impression there was a mechanism to correct something if it was a minor change.

The Deputy Bailiff:

Are you thinking about the revised edition of laws or the slip rule and changes? This is a substantive change.

The Connétable of St. Mary:

Just the change of the name from Planning Applications Committee to Planning Committee. That is fine. I will let it go.

Deputy J.H. Young:

If it helps, I would be entirely content to if there is a possible procedure to do that because I think there is a willingness to do that now.

The Deputy Bailiff:

I think we will stay with the proposition as it stands. I understand the points being made but I think it will require another amendment. So those Members in favour of adopting ... the appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the amendments to Article 3 proposed by Deputy Young and I ask the Greffier to open the voting.

POUR: 34		**CONTRE: 2**		**ABSTAIN: 1**
Senator P.F. Routier		Senator I.J. Gorst		Deputy R.G. Bryans (H)
Senator P.F.C. Ozouf		Deputy J.P.G. Baker (H)		
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator P.M. Bailhache				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				

Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy N.B. Le Cornu (H)				

[15.00]

4.5 Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014) - resumption - as amended

The Deputy Bailiff:

Very well, we now come to Article 2. Minister, would you like to …

Deputy R.C. Duhamel:

Now that the name has been set **[Interruption]**

The Deputy Bailiff:

I am so sorry. The Greffier is correcting me, we have not yet adopted Article 3 so we return to Article 3 as amended. Does any other Member wish to speak on that? Then all Members in favour of adopting Article 3 as amended kindly show. Those against. The Article, as amended, is adopted. So we now return to Article 2. Minister, you would like to propose that?

4.5.1 Deputy R.C. Duhamel:

Now that we have settled on the name, Article 1 can be amended and that is to allow the Planning Applications Committee to be the body to exercise the functions under Article 9A which was Article 3.

The Deputy Bailiff:

Very well, a proposition by you would be an amended Article including the Deputy Young amendment to Article 2?

Deputy R.C. Duhamel:

Correct.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak? Members in favour of adopting that Article kindly show. Those against. The Article is adopted. You wish to propose Articles 4 and 5, Minister?

4.6 Deputy R.C. Duhamel:

I do. Articles 4 and 5 start to get into the meat of the law. Now, Article 4 is to allow the decision taken by the Planning Applications Committee not to kick in for 28 days in order to allow appeals to be made, should there be any. Article 5, again, is against a non-determination inside a set period, which is yet to be determined, but at the moment it is 13 weeks for major applications and 8 for

minor after which a different procedure kicks in to ensure that a decision is taken one way or the other and the items are generally refused if we run out of time thereby again opening up an appeal process for fairness or whatever on non-decision taking. I make the proposition.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on these Articles?

4.6.1 Deputy J.H. Young:

Very briefly. I am content with these 2 Articles. They are long overdue, particularly Article 5, because I can remember cases where planning applications were held back for many months, sometimes years even and there was nothing applicants could do. Here we have got a process that gives people, who are held up in an unsatisfactory way, options to bring appeals on that basis. I support this.

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

Very briefly. As a member of the Planning Applications Panel and sometimes having to deal with these issues I would like to put on record that sometimes the department struggles with making applications because applicants fail to necessarily give the correct or needed information on a timely basis as well. So sometimes that can work against an application if they do insist on a determination, if all the relevant information has not been provided to the Planning Department, so just to make Members aware that it can work both ways.

The Deputy Bailiff:

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

4.6.3 Deputy R.C. Duhamel:

I am happy for the support that Members have shown and hope they will vote in the correct fashion.

The Deputy Bailiff:

All Members in favour of adopting Articles 4 and 5 kindly show. Those against. The Articles are adopted. Minister, you wish to propose Article 6?

4.7 Deputy R.C. Duhamel:

I do. Deputy Le Hérissier was successful in the last debate in sorting out what type of appeal system that …

The Deputy Bailiff:

Minister, I am sorry, just before you do that. I am assuming that the Assembly will have no objection to your proposing Article 6 as amended by you. Very well, there are no opposing voices, so you are proposing it as amended by you?

Deputy R.C. Duhamel:

I am and I would have got round to that but you beat me on the draw. Thank you. Deputy Le Hérissier was successful the last time round in securing an amendment to the proposals to bring forward this appeal system in that he considered, as did other Members of the House, that it was only right that requests for a reconsideration of refusals, a process that was being run previously through the Application Panel and the Minister, continued in a slightly amended form into the future. This Article 22A, which is an insertion Article, as Article 6, seeks to update the process and to continue to allow refusals of applications that have been made by planning officers to be further considered by the Application Panel as was desired by this House last year.

4.8 Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014): third amendment (P.94/2014 (Amd.(3)) - Article 6

The Deputy Bailiff:

Is it seconded? **[Seconded]** Now, there is an amendment to Article 6 proposed by Deputy Young and I ask the Greffier to read the amendment.

The Greffier of the States:

Amendment 3, page 19, Article 6. In Article 6 insert a 22A, (a) for the words "Planning Applications Panel" in each place they appear substitute the words "Planning Applications Committee", (b) in paragraph (1) for sub-paragraphs (a) and (b) substitute the following sub-paragraphs; (a) to grant planning permission without conditions other than by virtue of a Development Order, (b) to refuse to grant planning permission, or (c) to grant planning permission subject to conditions other than by virtue by a Development Order; (c) for paragraph (2) substitute the following paragraph, (2) where this Article applies the following persons may request to review the decision in question, the initial decision, by the Planning Applications Committee, (a) in the case of a decision described in paragraph (1)(a) a third party, (b) in the case of a decision described in paragraph (1)(b) the applicant, (c) in the case of a decision described in paragraph (1)(c) the applicant or a third party; (d) in paragraph (3) (i) for sub-paragraph (a) substitute the following sub-paragraph, (a) the name and address for correspondence of the person requesting the review, (ii) in sub-paragraph (c) for the words "the applicant" substitute the words "the person requesting the review", (e) after paragraph (5) add the following paragraphs, (6) in this Article third party, in relation to an initial decision to grant planning permission, shall be construed in accordance with Article 108(4). (7) A request made by a third party under this Article must include a declaration, signed by the third party, as to the facts by virtue of which he or she satisfies the condition in Article 108(4)(a).

4.8.1 Deputy J.H. Young:

This amendment, 3, of mine - I explained it in page 8 of my report - concerns the new provision, which is an entirely new one that the Minister is inserting into the Planning Law, Article 22A. That provision is not currently there at all. I ought to explain 2 things that have led to this change proposed by the Minister. First, for many years third parties had no status in planning application matters and decisions of either the committee or the courts or anything. They were outside the system except the only factor was, historically, people wrote letters of objections which did influence the decisions that were made but they had no right to do anything about them, to have that right recognised. After a long and controversial set of debates, and I think it was an amendment of this House, it was decided that the time was right to give equality of treatment between first party applicants and third parties who will be affected by those developments if consent were allowed. That is a restricted right because that right only exists for those that live within 50 metres of where they live, either have an interest in land, that means they either own or occupy land within 50 metres of the application boundary, and there is a requirement that they must submit a written representation before the decision is made. If that is done then those people qualify as third parties. Now, it was never, I do not think, intended in any of the reviews, not by the Shepley Review or anything that there was in place an informal procedure to minimise the number of appeals where a decision was taken to reject an application, that there was a chance for people to request an informal review by the Planning Committee. That is a long historic practice. That role has obviously had to be picked up by the Planning Applications Panel and having attended many Planning Panels, and watching and advised many appellants, the panel has done a good job of that. People are very satisfied with that. The panel have exercised their own independent judgments quite often overturning decisions of officers and the processes are efficient, simple and do not cost

any money and they certainly have reduced the impact on the Royal Court. But of course when Deputy Le Hérissier successfully brought his amendment, which is embodied now in the Minister's draft, that only dealt with first parties because that was the current practice. My amendment is designed to achieve to equality of treatment for the third parties to ensure that they are not left out by giving subordinate or insufficient legal rights. I can remember one particular case where I had an appellant - it was a very simple, a domestic application which had caused this person severe potential damage to their property - and this was a case that had been refused by the Planning Applications Panel and then had that decision overridden by the officers and that was approved. There was no opportunity for that person to go into the Planning Panel to have that decision reviewed. They had to go through the Royal Court and went through the trauma of some 18 months, I think it was, of process and this was very damaging for ordinary people to endure. At the end of it I think there was an intervention of some description which resulted in that development not going ahead. That would have been easily resolved, easily resolved, if my amendment had been in place. I think it is important to have it because the majority of planning decisions are made by planning officers who are under delegated powers. Members might well say: "Well, how could that situation [that matter that I have described] have happened?" Well, it happened because the department without consultation - and this makes the point about why we need to have Ministerial powers of Order - a decision was made that where there were less than 4 third party letters of objections there would be no right for that decision to go to the panel. Of course I know this has got nothing to do with the numbers, it is to do with the weight of planning objections. The weight is not the volume of them; it is their quality and whether they address the right planning policies. So to have what I think was an unacceptable practice like that … and the Minister does not like my proposal because he argues that it is going to lead to vexatious mischievous appeals and delays. But of course what I think he has completely overlooked is that the only third parties that would have that right are those that would meet the qualifications that exist under the Royal Court; those pre-qualifications that I have mentioned which are designed to restrict it. I think it is right and proper that the mechanism is there for that to happen. The Minister's comments suggest that we might go back to the previous practice, perhaps a bit in it was maybe a mistake to have this 4 objections rule and say: "Well, if there is an objection it should go to the panel." But I think it is the same thing, the end result is the same. I think if we are enshrining the law it is right and proper that we give that equality and I think because the debate was over many years and those rights were given and there is no going back on this. So my amendment is designed to correct that position and the various details of it are really to make it workable in practice which I have spent a lot of time with the planning officers trying to make sure that it is. So I make that proposal. I ask for the appel.

The Deputy Bailiff:

Well, we usually debate it first. I know things are going well but …

Deputy J.H. Young:

Sorry, I am getting a bit carried away. I apologise.

The Deputy Bailiff:

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

[15:15]

4.8.2 Deputy R.C. Duhamel:

I cannot agree with this unfortunately and with officer advice basically what appears to be happening is we have got some … perhaps Deputy Young and his exposure to Civil Service rules wanting to do things in triplicate. Inevitably this will lead to more than one body reconsidering

items and not just the items that were agreed upon when we took our first decision, which was refusals for permission from the officers but opening the way to all decisions being taken by officers to be reconsidered by the Planning Applications Panel. If indeed this did happen then we have to bear in mind that we have already agreed that there be an initial 28-day period on top of the 13 weeks or the 8 weeks under which the officers do their reports and make their recommendations in which an appeal can be brought. If indeed there was a request based on the proposals from Deputy Young being supported for these applications to be reconsidered by the applicant or third parties to the panel then that inevitably would open up another 4 or 5 week kind of period of time, depending on the cycle of the next available meetings, to fit in with the Applications Committee's sitting. Thereafter, a further 28-day period for cooling off, to go ahead with an appeal should the decision that the Applications Committee make not be the one that was desired by the applicant or the objector. The whole essence of the appeal system, when we discussed it originally in this House, was to come forward with a simple system that cut down on bureaucracy was transparent, open and capable of being implemented in a faster timescale without having to delay the decision makers unduly. I really do think that this will open up a Pandora's box of, should we have the first decisions undertaken by planning officers if they are deemed not to be as worthy as the individual members on the Planning Applications Committee, then we will have further requests to have more work undertaken by the Committee. I think that misses the point by which we have set up the Applications Committee. The whole essence is able to be judged and manipulated, if you like, by the original protocol decision, which is to determine how many objectors there are to any particular scheme. One simple way of bypassing Deputy Young's kind of objections and tailoring, if you like, the system that we are proposing would simply be to say that instead of using our rule of thumb that we do at the moment, that 4 objectors or more automatically require consideration by the Applications Committee, that number could be pushed down to 3 or 2 or even one. I think under that system it is a moveable feast and could be a moveable feast. I think everybody's objections would be able to be overcome. People must realise that in essence what we are trying to do is to say that if people do not agree on whatever grounds to the decision that is being taken by the first decision makers, whether they be officers from the department or members of the Applications Committee, it does not really matter. There is an appeal system to deal with that and you get your day, not in court, but in front of an inspector to argue your points in a streamlined process. I will not go on, I think I have made the point. This is more than dotting the i's and crossing the t's. It is moving towards repeating work that will already be done by the first decision taker and providing a system that I think will inevitably lead to people wanting to choose how their decision is decided upon in the first instance, which I think would be unnecessarily divisive. I would urge all Members to take those words into account and to reject this proposition.

4.8.3 Deputy M.R. Higgins:

Unlike the Minister I am going to ask Members to support the amendment. The reason is I have been dealing with quite a number of people who have been dealing with the Planning Department and I have to say this is not a reflection on the Minister because he does not have total control over his department but it is probably not fit for purpose. The example that Deputy Young was giving of a case went before the Planning Applications Panel is a case in point. The Planning Applications Panel reviewed the evidence that they heard at the particular meeting and ruled, I think it was, on 4 grounds why it should be turned down. The following day one of the officers, changing one thing, approved it. I have mentioned this before in this House, it makes you wonder why we bother having a panel making decisions when the officers can reverse it and do what they do. It can be appealed now but the point is that there are also many other issues involved with this department. In fact we have, I think, an architect - if I am not mistaken and I think I know which one it is - up in the gallery, and he has been involved with cases where officers are saying one thing and doing another and you cannot rely on the independent so-called planning officers, so much so - and I will

say it here - that I believe that officers in this department are guilty of perjury in the past. I do intend bringing a proposition to this House setting out the evidence for this. Just for those Members who are doubting it, this particular person who brought the complaint was advised by the police to go to the Comptroller and Auditor General, they did not even investigate that complaint. Even the Bailiff, in hearing the case, where he was seeking disclosure said he was puzzled by their comments. There needs to be a proper investigation of this department. I happen to think that this particular amendment is long overdue. I have seen the results of the actions of these people in the department on individuals, not only on their health but also on their finances. I think this is just the start to, I would hope, some changes to what is going on in the Planning Department.

4.8.4 Deputy J.M. Maçon:

As someone who sits on the Planning Applications Panel and understands the workload of what has to be done, I would like to remind Members with this amendment that some of the work that the Minister currently decides on will be removed and that will be added to the Planning Applications Panel's workload anyway. Already we are having to do more work, especially on bigger and on more complex developments. I am not saying I am workshy, Members know that is not the case but I have to say that when you sit on Planning often, with objectors, you are not necessarily considering the planning merits of a matter, you are considering at times a neighbour dispute where, unfortunately, sometimes members of our community feel very upset with one another and do not want to compromise or negotiate with their neighbours. I am very concerned with this particular amendment that those situations, when someone does something minor to a property because someone was not allowed it 10 years ago on another different Island Plan row, that means our neighbour cannot have it and we wish to object to it and so it then goes to panel. I am deeply concerned about the workload that this is going to create for the panel when there are alternative appeal routes if people are unhappy with the decision that an officer makes. I understand that this only applies to approvals at officer level, whereas refusals on officer level that comes to the Planning Applications anyway and now I wait to be corrected by anyone if I am incorrect. We are talking about people who have already gone through a very complex planning application process and some Members might get on their soap box and say: "With all the expenses and all the things that are demanded of them" and so on. He goes through all that process and he finally managed to get an approval. The officers would have already considered the objections made, provided they were given in time and everything, by neighbours or other interested parties. Then what Deputy Young is asking for is once they finally get their approval yet again there is that mechanism to refer it to the panel, which the Minister is quite right in saying: "Why do we not just cut that out and refer things to the panel anyway?" which I do understand. I think Deputy Young, to convince me, as a potential worker under this system who knows what will happen, has to argue more robustly why this should be the case and why it is acceptable when there are other mechanisms. The only thing I would say is despite the bashing that the Planning Department does often feel, I would like to say that the officers that I work with, I view them the same, that they work very hard, they are deeply concerned about the Island, they care about the community and what is put up in the Island. I do not think it is necessarily fair some of the criticisms of them that we have heard today. I think they work very hard, it is a pleasure to work with them but I will wait for Deputy Young to sum up to make my decision.

4.8.5 Deputy R.G. Le Hérissier:

As another member of the panel I do not share the excessive concern of my dearly beloved colleague, Deputy Maçon, No. 2 St. Saviour ... No. 1 - he has not moved yet.

Deputy J.M. Maçon:

And I do not intend to.

Deputy R.G. Le Hérissier:

My view is we are bound to get extra work, this is the nature of this change. It is going to happen and I would not be prepared to remove the cap about numbers of objections, as the Minister is proposing as a compromise because it seems to work as a fairly rough and ready compromise as it is. The other point I would make is a lot depends on the robustness of the process lower down. In other words, if objectors feel they have been listened to, even if their point has not been conceded, they will be less reluctant to appeal. While there are a few people who do monitor the Planning Department and its decisions very, very carefully they often raise good points but they are not people who are in a third-party capacity, as the Deputy will know. My view is that it will not flood the system because ... there will be maybe a flush initially of new applicants testing out the system but we, as a panel, often overturn decisions of the officers as we know. These decisions then go to inform the officers on future decisions and the matter tends to settle down. It does not, in other words, raise the workload of the Committee, in my view, unnecessarily. From that point of view I am a bit more relaxed. But the main point of the Minister I think is right, there will be more work but there will have to be because he is abdicating his role in regard to larger or more complex or significant decisions.

4.8.6 Senator S.C. Ferguson:

As I think most of the Members know, I have been engaged in third-party appeals and, frankly, if you can bring the appeal in at a lower level it is less work for the department, it is certainly less work for the applicant, it will be very much more satisfactory.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call upon the proposer to respond.

4.8.7 Deputy J.H. Young:

Certainly it will increase work but it has been said if we force applicants to go to the Planning Inspector Independent Appeal and external then the costs are going to run on that, no question. It must be better and quicker because if one has to convene a planning inspector to come in you are not going to be able to deal with those at the drop of a hat, there are going to be delays there. To have a system where a body that is meeting anyway routinely to have additional items on its agenda routinely should be able to do that quite efficiently. I think it is open to the Minister. If the Minister wants to revise the 28 days on this that is up to him, he can bring back another amendment. I would not be protesting about that. But I think the point here is that I think it is lower cost, it is efficient and I agree with what is being said, that members of the public will accept a decision that goes against them when they sit in front of a political body of elected members and have a chance to have their say.

[15:30]

They will accept that much better than they think a decision being made behind closed doors by planning officers without knowing whose influencing it or what because that is the whole point of the Planning Panel, the Planning Committee. It is open. It is done transparently in public. For many years decisions were not made in public, that was bad. We have that now. What I am saying here is there needs to be an extra check. I respect Deputy Higgins greatly, his diligence and pursuance of cases is legendary. On the role of planning officers, some of them my ex-colleagues, I have the highest regard for them. I think one of the qualities of a planning officer is you have to have a thick skin but you are in a risk area, no question. It is a high risk area and subject to complaint. I think what the Minister has told us about the planning officers' worries, this is an over-defensive reaction. It is better to have a check and balance on this, which is a safeguard for the planning officers because I cannot see that it is right that a person that has a decision refused by

a planning officer can then go to the Planning Panel or Committee, as it now is, and then if they refuse it then go to the Royal Court. So they get 2 bites of the appeal cherry - that is what would happen if you do not accept my amendment - whereas a third party has to go straight to the external appeal. I do not think that is right in principle. To try and deal with Deputy Maçon's point, I am not advocating a circular decision. I am not advocating that if a decision is made by a planning officer to refuse, it is then appealed to the panel and the panel give approval that then a third party can take it back, *en route* back into the panel again. I am not advocating that. No, I am talking about a one-time appeal arrangement. Please do not forget, we are only talking about those applicants ... the rules are absolutely right about 50 metres and all that, that discipline there does prevent, in my opinion, spurious and vexatious third party objections. I really do not see there is any evidence whatsoever that third party appellants are vexatious. It is right and proper so I maintain the proposition. I will just have a look and make sure I have not missed any points. I think that is what I want to say. Just to clear up one thing, on this question of accountability I think it helps the accountability of planning officers, which is a safeguard also for them. I ask for the appel.

The Deputy Bailiff:

Deputy, as I read it, paragraphs (c), (d) and (e) hang together and I would be minded to suggest we take those as one vote to make sure there cannot be any inconsistency.

Deputy J.H. Young:

Yes, thank you for alerting me to that.

The Deputy Bailiff:

As I understand it, paragraph (b) is not in the same category?

Deputy J.H. Young:

My understanding of paragraph (b), Sir, was to set out the conditions for which 22A would apply. I did not see it myself as any different. I saw it as part and parcel of the whole, but I can see you maybe think it is. If you do, I am happy to have it separate.

The Deputy Bailiff:

I think first of all we will take a vote on paragraph (a) which is replacing "Planning Applications Panel" with "Planning Applications Committee". Can we do that on standing vote? All those in favour, kindly show? Those against? That is adopted. We now come to paragraph (b) only. Do you call for the appel or not? The appel is called for on paragraph (b). I invite Members to return to their seats and ask the Greffier to open the voting. That is the amendment of paragraphs 22A(1)(a) and (b) of the Minister's proposition so that there will be substituted "to grant planning permission without conditions other than by virtue of a development order, to refuse to grant planning permission or to grant planning permission subject to conditions." In other words, what has been broken is the application of this Article so as to ensure it catches the grant of a planning permission without conditions. The appel is called for and I invite Members to continue voting.

POUR: 17		**CONTRE: 19**		**ABSTAIN: 0**
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Lawrence		Senator A.J.H. Maclean		
Connétable of St. Brelade		Senator B.I. Le Marquand		
Connétable of Grouville		Senator F.du H. Le Gresley		
Deputy R.G. Le Hérissier (S)		Senator I.J. Gorst		
Deputy J.A. Martin (H)		Senator P.M. Bailhache		
Deputy J.A. Hilton (H)		Connétable of St. Clement		

Deputy M.R. Higgins (H)		Connétable of St. Mary		
Deputy A.K.F. Green (H)		Connétable of St. Martin		
Deputy J.M. Maçon (S)		Connétable of St. Saviour		
Deputy G.C.L. Baudains (C)		Deputy R.C. Duhamel (S)		
Deputy J.H. Young (B)		Deputy of St. Ouen		
Deputy of St. Mary		Deputy K.C. Lewis (S)		
Deputy of St. Martin		Deputy E.J. Noel (L)		
Deputy N.B. Le Cornu (H)		Deputy T.A. Vallois (S)		
Deputy S.Y. Mézec (H)		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		

The Deputy Bailiff:

We now come to paragraphs (c), (d) and (e) and I ask the Greffier to open the voting.

POUR: 13		**CONTRE: 20**		**ABSTAIN: 0**
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Lawrence		Senator A.J.H. Maclean		
Connétable of St. Brelade		Senator B.I. Le Marquand		
Connétable of Grouville		Senator F.du H. Le Gresley		
Deputy R.G. Le Hérissier (S)		Senator I.J. Gorst		
Deputy J.A. Hilton (H)		Senator P.M. Bailhache		
Deputy T.A. Vallois (S)		Connétable of Trinity		
Deputy G.C.L. Baudains (C)		Connétable of St. Clement		
Deputy J.H. Young (B)		Connétable of St. Mary		
Deputy of St. Mary		Connétable of St. Martin		
Deputy of St. Martin		Connétable of St. Saviour		
Deputy S.Y. Mézec (H)		Deputy R.C. Duhamel (S)		
		Deputy of St. Ouen		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		

4.9 Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014) - resumption

The Deputy Bailiff:

So we return to Article 6 seeking the introduction of Article 22A as amended simply by the Planning Applications Committee instead of Planning Applications Panel. Does any Member wish to speak? All Members in favour of adopting the Article as amended, kindly show? Those against? It is adopted. We now come to the second amendment of Deputy Young. It falls away, Deputy, I think because paragraph (b) has not been adopted. So we come to Article 7. Minister, do you wish to propose that? Again, this is proposed with your own amendment to it.

4.9.1 Deputy R.C. Duhamel:

Absolutely. Article 7 represents the gubbins of making sure that the appeals system works by referencing the decision-making bodies in the administration offices through the Judicial Greffe

and outlines the appointment of inspectors, who does what and when. I make the proposition. Obviously without this we cannot do very much.

The Deputy Bailiff:

Seconded? **[Seconded]**

4.10 Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014): third amendment (P.94/2014 (Amd.(3)) - Article 7

The Deputy Bailiff:

We now have an amendment by Deputy Young which starts at page 3 of the third amendment to this legislation. The Greffier suggests that he would prefer not to read it and we might take it as read. That seems to have approval. Deputy, would you like to propose the amendment, please.

4.10.1 Deputy J.H. Young:

I was going to suggest you take it as read. I suppose this is the most significant change. I thought that the other one was minor but this I accept is more significant. This is the part of the law change which will now substitute or now create the new appeals-making body, that is appeals proper. I have always had concern about entirely relying on a single planning inspector brought in from the U.K. planning regime, because they will, under that arrangement as drafted, make the effective decisions and I believe that situation is very vulnerable to a situation where our Minister effectively adopts a protocol in practice of simply substituting the inspector's decision for his own ... in an unquestioning way. I think that is not right. I think it undermines what the Minister said he wanted to achieve. He wanted a democratic person to make the full decision. I think it is right that he gets a report by a body of people that on the most significant applications ... not on every application because less significant appeals I made provision in there would always be dealt with by a single planning inspector. So it is certainly not the lot, it is the minority of appeals. But there will be challenging appeals which will require, I believe, more than one person. So my proposal is that there will be 2 other persons, which I happen to have just called assistant inspectors, who would work with the planning inspector and hear the case. That is an arrangement that happens all over the tribunal world where you have 3 people sitting together. The Minister obviously wanted to have a stronger reliance on the planning inspector. The law change that I have brought here, the amendment, requires that the Minister for Planning and Environment would give greater weight to the individual recommendations in the report that he would get from the appeal of the recommendation and rationale of the inspector. The impression seems to have got about that I am just talking about people who are not properly qualified. I think the Minister said that in his preamble. No, I have gone to great lengths here. The draft here is based on both the assistant inspectors and the inspectors would be drawn from the same groups of professional qualified people. The one difference would be is that the U.K. planning inspectors would effectively be parachuted-in from the English planning regime. There are major differences. I, myself, have had some experience, have done a planning inquiry myself in Alderney, and also I have spent some 2 years working in Guernsey and setting up their system. I had training from planning inspectors and judicial boards and so on. There is no question that the U.K. planning regime is highly structured because they work within a framework of centrally defined government policy wherever they go. That is not the same as working in a local jurisdiction. We are a government that has to both set its own policies and also make those decisions. It is a much closer situation. We have got a higher rate of contention with planning applications in Jersey. It is a very intensely developed place; there is severe competition for land. There is no such thing as surplus land. Every piece of land you have got is contended and argued over. You have all this contention going on and also we have a set of planning policies which are not clearly and objectively drafted, they are very loose in many respects. If one reads the reports, our planning inspectors even tell us that, that these planning

policies are almost not fit for purpose in some cases. So it is a mystique and it is an illusion to think that somehow you can parachute a professional with a tick box approach, have a single person sitting there and make objective judgments in a kind of ruthless way. It is a mystique that does not exist. I say that having, in a former life, spent enough time working with planning officers and professional planners. What they need is analytical skills, they need common sense and practicality, and they need a kind of a calm way. But they do not have to come from any particular professional background. I believe the one difference with the assistant inspectors that I proposed here is that they would have to be ... and I asked around: "How would one have a criteria that makes them different? If they are no different from the inspectors in the qualification how would you make them different?" On advice I have come up with the idea that they would ordinarily be resident in the Channel Islands. It has been said to me: "That means you might get Guernsey people sitting on such a body." Well, look, we have Jersey people sitting on that now. What is wrong with that? We are doing it in financial ombudsman, we are doing it in other areas, we are supposed to be co-operating and, frankly, the notion that there is something wrong with that seems to be ... I just do not understand that.

[15:45]

So to have people that are normally resident in the Channel Islands as the difference, they have professional qualifications but they had that additional quality, means that they are used to an Island-based culture. They are much more likely to be in tune with the sort of context in which major applications come forward. They are there to help the inspector. I propose that on the major applications they would be normally considered by a panel of those 3 persons. I have made provision in there for how they would report, that provides that if there are minority reports among them, they can do so as long as they explain their reasons. So it is not just a question of saying: "This is approved, this is not." It is to say: "Look, policy X, Y, Z applies, these are the arguments, this is how we judged it, this is why we think it is this side of the line." I think that means that the Minister, when he is required to make that decision, is going to have a much better chance of having a robust decision. It means, I think, there will be less cases to go to judicial review because somehow or another something has gone wrong with the process on the way. As I say, the Minister can, and the law requires him if you go with my amendment, to give greater weight to the inspector. How many inspectors? I have left that to the Minister. There is nothing prescriptive in this. What term? The Jersey Appointments Commission would select them. So I am trying to leave as much flexibility for the rules to be set by the Minister in terms of implementing this provision. I think it is important for the most significant types of appeals only that would be the case. For the majority of other types of appeal, I am entirely content that a single inspector is the right way. It has been said to me: "Well, you might get alleged conflicts of interest." Well, in a small Island we get conflicts of interest in all sorts of things. It happens in our courts, it happens in all our tribunals and so on. I think it is possible that conflicts of interest can be managed without having to enshrine that in the law. So it is quite normal for that sort of thing. One has to respect, if you appoint professional people, they understand the rules about confidentiality.

The Deputy Bailiff:

Deputy, I am sorry to interrupt you but you could be taken to be suggesting that the courts operated where there was a conflict of interest. I am sure you must be aware that there are established rules for dealing with conflicts of interest in the court and if there is a conflict of interest, the court as then constituted does not sit. So I am sure you did not intend to say that, did you?

Deputy J.H. Young:

Thank you, Sir. No, I did not. I often have difficulty in communicating my meaning. No, I think what I was trying to say was that the courts have a well-established process to make sure that

conflicts of interests, if they do potentially brew-up in the courts ... they are used to those rules and they are nipped in the bud, as it were. The people involved with them sort it out *en route*. I took advice as to whether or not this amendment should include a statutory requirement or some statutory provision to deal with that within these rules, but unlike the Royal Court we do not ... this has to stand alone. So my proposal is it would be expected that there would be rules drafted outside the law in order to deal with the issue if conflicts of interest arose. For example, if an appellant considered that there was a conflict of interest by a member appointed to either the inspector or the assistant inspector, there would be a procedure for it. I believe that would be possible under the rules. I think just to add a couple of points of why I am a bit unsettled by relying on U.K. planning inspectors alone. The experience I have had with them in Jersey is that it is very difficult to see the accountability there. For example, it took me over 12 months to get a transcript of a planning inquiry, which was the Plémont inquiry, and I did raise significant questions about that inquiry which did deal with issues that I thought were problematic. The response was: "Well, there is no route of complaint. This is it. We have been given a job by the Minister, you have no recourse to us and that is it." In the U.K. though, of course they have an arrangement with the planning inspector where such issues can be dealt with. Not here. There is nothing in the law to provide for it. So I think that when you have got a group of 3 people, those things get sorted out in the wash, if you like, because, you know, if those people are not happy with what is done, then those issues can be resolved at the earliest date. So I think the proposal that I have made, that it is not fair to call them non-experts, absolutely not fair. I think that we have in this Island, and in our sister Islands, plenty of professional people, a whole range of professional qualifications, who, with the right training and support would be able to work with the inspectors to do this work. So I think with that in mind, I think I am going to ask Members to support me on this because this is really important that we end up with a process on the most significant appeals where planning decisions are no longer made by one person alone. I think that is the number one thing. We have learnt that in Ministerial government, planning decisions done by one person is, I believe, an unsound practice and the most important decision should be shared.

4.10.2 Deputy R.G. Le Hérissier:

On a point of clarification, could I ask the proposer if there is conflict or there are heavy disagreements within the inspector's group, will they be resolved by voting?

The Deputy Bailiff:

Was that your speech, Deputy? Normally that comes in the course of the speech. Would you like to continue speaking or shall we treat that as your speech?

Deputy R.G. Le Hérissier:

May I continue speaking? **[Laughter]**

The Deputy Bailiff:

Please. Let me invite you to speak.

Deputy R.G. Le Hérissier:

I agree generally with what Deputy Young is proposing but I am a bit worried because we do have problems on the Planning Panel, particularly when people excuse themselves for reasons of conflict and we tie. That invariably means, of course, that the matter has to go to the Minister and that is not the result we really want because our feeling is, we should sort it out ourselves and it looks much better to the public if we have had a proper debate and we have come to a clear conclusion. I think a similar process should apply. The worrying thing would be, of course, if it would be, I think, quite hard to defend. If you, with a panel of 3, for example, 2 lay people were to outvote the inspector, I think it would be a rather odd result. It would be a bit hard to justify because you had

deliberately designed that panel to have balance and yet you had out voted the so-called expert part of that balance.

4.10.3 Deputy R.C. Duhamel:

Deputy Young, the last time this came to the Assembly when we discussed the proposals, lost quite heavily his proposal to come forward with an appeals tribunal made up of local worthies, so to speak. He lost by quite a large margin and was most upset after the debate. I find it strange that a substantial number of months down the line, we have Members of this House still coming forward, having made a democratic decision in this House to do things that they did not persuade the House to do previously. But that said, what really concerns me is the argument about objectivity and independence versus subjectivity and impartiality or lack of. I think in a small Island, it is not easy, and it never will be easy, to find those Members who are completely unassociated with many of the decisions that will need to be reviewed. For me, that is my biggest worry in the suggestion that the Deputy is making, that somehow there is a pool of unaffected individuals who are capable of, through their past life performances, of being in a position where they do not know anybody, they do not know anything about the Jersey situation and yet these are the things that the Deputy is calling for to be taken into account for objective decisions to be taken on the merits of the applications that are being put to them. Some persons might say that indeed the same thing might apply should the number of inspectors that are available for the process, if that number was not very high and we ended up over-relying on one person to make all the decisions for a very long period of time. I am told that there is a pool of inspectors and the administrative personnel will be able to call upon as many persons as they think fit in order to ensure that it is not the same person getting too stuck in the mud, so to speak. Deputy Le Hérissier did make the point in part that the Minister, who is the ultimate decision-taker in this regard, would find himself or herself in a difficult position should those 3 persons who are sitting on an appeal panel come forward with 3 independent reports or 2 reports, rather than the one that the Minister would expect, nonetheless containing all of the arguments that those 3 individuals would wish to put into the final document. I think it would pose greater difficulties and again, make it more difficult for the Minister, who will have to take regard in the specific fashion as been outlined, to justify his position for supporting or not supporting the recommendations that will be put forward by the inspector in arriving at his decision. I am not really sure that I can add much more. I think this is the vital point of difference between myself and Deputy Young in the process. I feel that it would be unfortunate should this Assembly decide, having decided previously that this was not the course to go down, to reverse their decision, but we are a democracy and I respect people's opinions for what they are, which is why we are here debating the legislation in the open fashion that we are doing. I nonetheless urge Members to reject, as gently as possible, so not as to upset the good Deputy a second time. But I really do feel that if this goes ahead, it sets us back a number of steps on what I think has so far been a fairly successful way forward in bringing a breath of fresh air into the appeals process and the planning process in general. So I urge Members to reject this amendment. Thank you.

4.10.4 Senator F. du H. Le Gresley:

I just wanted to rise to support the Minister for Planning and Environment on this particular proposal from Deputy Young because we did have that debate on 11th September last year and we rejected what Deputy Young was proposing and we went with the Minister's proposal of the single planning inspector. All the arguments were put on the day and it seems unfortunate that we are back, really, with this amendment looking at it all over again. I am not convinced that Deputy Young has told us anything new from what he told us back in September and therefore, I do not think Members should be supporting this. What I would say though, in his paper on page 10, I find this incredibly confusing because he is suggesting that the Members of the panel, in making their recommendations to the Minister, will be required to state their reasons individually, whether they

are unanimous or otherwise. So the poor Minister for Planning and Environment of the day will have all these inspectors and assistant inspectors giving him their own view and he is going to have to then go away and make up his own mind and surely that is even more confusing than the current Planning Applications Committee, to call them their new name, who at least reached a unanimous or majority decision, which is clear cut for the Minister to take account of.

[16.00]

So I think we are just adding more confusion. The other point I wanted to make was relating to the use of the Jersey Appointments Commission. Later, I do not think it is this session but the next session, we will be debating some changes to the role of the Appointments Commission and I suspect that they would probably not be involved in the appointment of assistant inspectors, if we were to go with Deputy Young's amendment. So there would probably be no scrutiny of these people. We are told that they would have "knowledge and experience of professional practice in a local, Channel Island context" and that worries me greatly because you have architectural practices or surveyors, who have cross-Island representation and I really think we have a Planning Committee, which does a very good job, takes all the views into consideration. We are elected by the public and I think this is just a step too far and I am sorry that Deputy Young has chosen to bring this back to the Assembly.

4.10.5 Senator P.M. Bailhache:

I am going to support the amendment of Deputy Young. Although with a slightly wry sense of *déjà vu* because when I listened to the Deputy speaking, I thought that at one stage he might very well have been arguing for a continuation of the existing system of planning appeals, where appeals go to be heard before a professional judge and to lay Jurats. We are legislating to introduce an English system of planning appeals, which I believe to be fundamentally mistaken but that decision has been made and I am not challenging that this afternoon. Deputy Young said that he was unsettled about relying upon a United Kingdom inspector alone and I entirely agree with him because planning appeals are not merely a technical matter of applying technical rules. That, I think, is the great advantage of the current system where a judge examines the legal structure, the regulatory structure and the Jurats, who are lay people, will apply their experience, common sense and judgment to issues of fact. I was reminded when the Deputy was speaking, of a particular appeal, which if I may say so is in the public domain, over which I presided some years ago where a third party appellant was contending that the Minister of the day had not taken properly into account the effect of a very large development by a developer upon the flat which he occupied in a neighbouring building. The decision as to whether the new building was going to be oppressive, too close, and too big for the adjoining flat owner was a quintessential question of fact. Not a technical matter, it was a question of common sense, to be decided by the Jurats. I remember going to the window of the Jurats' room in adjoining Hill Street and looking out of the window with them at the large building on the other side of the road and applying that in a practical sense to the position of the objecting flat owner to this development. I think that it is sensible on most appeals to have a lay local involvement so that the appeal body has the benefit of a local involvement. Deputy Le Hérissier said: "Well, what is going to happen if the lay people disagree with the professional inspector?" Well, these issues arise in the court every day of the week. It is different perhaps in the sense that the judge has the right to decide issues of law and the Jurats have the right to decide issues of fact. But in the context of Deputy Young's amendment, the assistant inspectors, if they were applying their common sense and their local knowledge to a factual matter, would, I think, have to be respected by the professional inspector. In the example that I have given as to whether the building is too oppressively close. That is not a technical matter. That is a matter of common sense. I do not think that the objection raised by Deputy Le Hérissier is a sound one. I am going to support Deputy Young's amendment.

4.10.6 Deputy S. Power:

I have just walked into the Chamber and I have been trying to catch up but can I give the Assembly a little bit of experience from a planning perspective point of view? Does the Chief Minister want me to give way already? Sorry, Sir. I have missed part of the debate but I think I know where we are and that is Deputy Young's amendment on assistant inspectors. In the almost 6 years that I have served on the Planning Panel I have at times ...

Senator I.J. Gorst:

Sir, I wonder if I could ask the Deputy to give way? I might have misheard him and I do not know if you heard. I think he was under the impression that we were on the amendment where an Assistant Minister could sit on the panel. No? Okay, sorry.

The Deputy Bailiff:

I did not hear what you said but as long as you know that we are debating the amendment to Article 7.

Deputy S. Power:

This is Deputy Young's amendment on assistant inspectors. That is what I said. Perhaps my pronunciation was not as correct as it should be, because I have just raced up the stairs. In the 5 to 6 years that I have served the 2 Ministers I have made one critical observation about planning officers. From time to time the department hires planning officers from the U.K. to serve the Jersey planning system. Now, these officers come from different parts of the U.K. They are qualified as members of the Royal Town Planning Institute. They serve an initial period of time at the Planning Department and then they come out as planning officers or *ad hoc* officers and they begin to immerse themselves, pretty quickly I must say, with the planning system in Jersey. They obviously immerse themselves in the planning law and they become fairly effective planning officers. We recently had one just leave who has now gone to East Dorset Council and who had served in Jersey for, I think, 3 years. The point I am trying to make is that if we stick to the suggestion that has been made, it is most practical to have independent inspectors come in from the U.K. and work on the appeal system, and their effectiveness has been shown to both myself and the Minister when we went to the Isle of Man last year and studied their system and sat in on some of their appeals. My point is that a panel of local assistant inspectors, in my opinion, is not needed and the effectiveness of an independent inspector who has had use of the Manx planning system or the Jersey planning system or a panel of inspectors who can be called on to listen to an appeal in Jersey will be just as effective, if not more effective, and probably more independent than a local panel of assistant inspectors. That is all I wanted to say.

4.10.7 Senator I.J. Gorst:

Senator Bailhache and I were just arguing about which of us should speak first. I think I follow Senator Bailhache because he was quite clear in his comments that he did not support the move to this type of appeal system anyway for the reasons he has given. I think they are legitimate reasons, that he felt the process we have currently got where third party appeals are heard before the Royal Court is superior. I am not sure that Deputy Young feels that, but I do think that he is trying to replicate a similar type of process in the panel that he is proposing. I think that if Members do now, in hindsight, wonder whether we are delivering a process that is better they certainly should not be supporting a hybrid system where we are trying to replicate the Royal Court process and yet, at the same time, want to have an independent system of the Royal Court process. We need to have, for this stage, either one or the other. Therefore, I ask Deputy Young whether really he is supportive of the system that the Minister and this Assembly has approved or we should just say: "No, we do not want this system," and we stay with the one that we have got, which makes use of the Royal Court.

With the greatest respect to the court system, we will be applying a methodology of reasonableness to decision-making rather than what an independent planning inspector might apply to planning decisions. I think that is what we want to get to and that is what this Assembly has voted for in the past. Therefore, yet again, the Assembly, I think, is being asked to choose between those 2 models. Deputy Young will argue that you can have both rolled into one. I do not think that is a credible position. You have to have one or the other and I think that, because the Assembly has previously voted for the process that the Minister is putting forward, then he is bringing that forward and Members need to decide whether they still wish to have that process. One thing I would say is I do not accept that, by having independent planning inspectors from another jurisdiction, you are going to get that jurisdiction's law and process. Of course, you are not. You have got the Jersey Law and you have got the Jersey Island Plan and it is within that framework that they, as individuals, will have to hear appeals. They will, of course, need the appropriate understanding and training of the law that they are hearing appeals against and the plan on which decisions are being made. It might be that that will cause them difficulty in the early days and the department will need to make sure that they are appropriately cognisant of the law and the plan upon which they are being asked to hear appeals. That is fundamental to how this process is going to work. Without that it will not work. I think Members have, yet again, got that choice. Do they want to stick with the system that we have currently got which uses the Royal Court - and there are legitimate arguments for doing that - or do they want to move to this independent process of the Court to hear these appeals in the first instance? It is quite a straightforward decision. I do not think we can have it both ways as is suggested by Deputy Young.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on Deputy Young to reply.

4.10.8 Deputy J.H. Young:

I thank all Members who have spoken. I will start with the Chief Minister's comments. I am supportive of the change from a system of a body of people having to make a judgment on a planning appeal based on an arcane and ethereal concept of unreasonability as it is now to one where the planning merits of the case will decide. That is the thing that has been missing in the Royal Court and I believe the Royal Court has struggled, personally from reading their judgments, with how they deal with appellants that came in and put forward important points of planning policy. Is this too big? What is the impact of this development and so on? The Royal Court struggled with that and we had all sorts of situations like the Royal Court saying: "Well, we think this is too big. We would not have agreed it. We do not like it but, nonetheless, it is not unreasonable. So, therefore, it is okay." That sort of thing was what the court system produced. So, yes, I support that move because it is not the Court's fault. It would have been possible, I think, to change the planning law and have the Court deciding on planning merits, but that was not the route the States wanted to go. It was unreasonability and we are changing that. Now, in order to do that I think we do need to have people who are making the decisions having that professional background and that is what I am suggesting. I am embracing the Minister's proposal, the proposal that was agreed by the States to have a qualified inspector.

[16:15]

I am also saying have 2 qualified assistant inspectors with the same qualifications. I do not accept the Chief Minister's point that what I propose is half-and-half, a hybrid. It is not. It embraces those 2 principles: move to full merits planning appeal and judgments against those by the professionally-qualified people. Of course, I think it is right that the Chief Minister also says that we are not going to get planning inspectors basing their judgments on U.K. planning law. I am going to be told off on this, but we did on Plémont, absolutely right: enabling development brought

in; U.K. planning policy not applied; Island Plan ignored. We had that. I watched it. I challenged it.

Senator I.J. Gorst:

With respect, it was the Minister's decision about Plémont, not the Planning Inspector's. The Planning Inspector produced the report. The Minister decided.

Deputy J.H. Young:

I accept that that matter was the Minister's decision but, of course, the Minister, I believe, relied upon a planning inspector's report that I believe was flawed. It dealt with enabling development. It took it out of context. I could give you a long lecture on that. I believe that was fundamentally flawed, because why? U.K. planning policy was applied by an inspector; unchallenged, unchecked by the planning officers, unchecked by the Minister. Now, if that is the spectrum of how we go in the future then vote mine down, but if you want to have some checks and balances come with me. Now, Deputy Le Hérissier, I apologise that I did not make it clear about what happens. The law draftsman has drafted for me much clearer phrases than I used about what happens when 3 people are not unanimous and, those provisions there, I direct him to the provision in the law: page 5, through to 32 on page 7. Sorry, bottom of page 5, halfway through ... I suspect Members will not want me to go into that but it sets out very, very carefully the rules and the whole point is that if they are not unanimous then they need to set out their reasons. It is not a voting situation. It is not a vote. It is the rationale of why they held those views. Having a panel of 3 enables that raw material of decision-making to happen. I think Senator Le Gresley said the same thing, that the words written in my report were confusing. Well, all I can say is that I have written something that is less than perfect and I rely on what the law draftsman has drafted to deal with that properly. Deputy Power: well, okay, you support the Minister and I admire your loyalty with that view. **[Laughter]** If that is your view, okay. Members take the money and make their choice. But, clearly, Deputy Power has his views and it is his right to have them. Thank you, Senator Bailhache. I must admit that same sort of idea had occurred to me and I believe that part of the Royal Court arrangement, having more than one person making those judgments on the combination of the law and the facts is a very good one. I think the problem is that we ask them to do an impossible job about unreasonability of planning when we particular had a question of some very, I think, poorly drafted planning policies and it required an enormous crystal ball to even try and interpret what was meant in some of those policies. I hope we get greater clarity and I still feel that it is asking too much ... not I still feel, I am absolutely certain that it is asking too much for the single planning inspector to make those judgments alone and all the people that I have spoken to who have carried out planning inspections have said similarly. When I sat and did a planning inquiry myself, I certainly would felt the value of having other members with me to have checkpoints. It would be interesting to know whether Deputy Power feels, for example, that ...does the Planning Panel operate by not being able to check opinions with each other? I would be very surprised if it does not. The Planning Panel benefits by having more than one person. I hope you give this decent support. It is not what was proposed before. I am not just bringing back what I lost before. I thought I had made significant changes. Previously it was a panel. I set out the structure. That is all gone now. There is no panel there. It is just Assistant Ministers and all of those things, which I defined before, that I lost in the proposal are left for the Minister to work out the arrangements. It is a simple principle of having 3 people to hear appeals on the most significant matters and not just rely on one. I make that, and ask for the appel.

The Deputy Bailiff:

Deputy, do you agree that we might take paragraph (a) separately on a standing vote? I am sure that Members would wish us to do that. It seems to me that paragraphs (b) to (g) are one composite amendment. Yes?

Deputy J.H. Young:

Yes, Sir. I am very happy with that.

The Deputy Bailiff:

Very well. All those Members in favour of adopting the amendment to Article 7 in paragraph (a), which is to replace Planning Applications Panel with Planning Applications Committee, kindly show. Those against. That is adopted. We now come to a vote on paragraphs (b) to (g) inclusive and I ask Members to return to their seats and the Greffier to open the voting.

POUR: 17		**CONTRE: 25**		**ABSTAIN: 0**
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Senator P.M. Bailhache		Senator B.I. Le Marquand		
Connétable of St. Brelade		Senator F.du H. Le Gresley		
Connétable of Grouville		Senator I.J. Gorst		
Deputy R.G. Le Hérissier (S)		Connétable of St. Helier		
Deputy G.P. Southern (H)		Connétable of Trinity		
Deputy J.A. Hilton (H)		Connétable of St. Clement		
Deputy J.A.N. Le Fondré (L)		Connétable of St. Lawrence		
Deputy M. Tadier (B)		Connétable of St. Mary		
Deputy M.R. Higgins (H)		Connétable of St. Martin		
Deputy G.C.L. Baudains (C)		Connétable of St. Saviour		
Deputy J.H. Young (B)		Deputy R.C. Duhamel (S)		
Deputy of St. Mary		Deputy J.A. Martin (H)		
Deputy of St. Martin		Deputy of St. Ouen		
Deputy N.B. Le Cornu (H)		Deputy of Trinity		
Deputy S.Y. Mézec (H)		Deputy S.S.P.A. Power (B)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		
		Deputy R.J. Rondel (H)		

4.11 Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014) - resumption

The Deputy Bailiff:

We now return to the substantive debate on Article 7. Does any Member wish to speak?

4.11.1 Senator P.M. Bailhache:

One of the advantages of an appeal to the Royal Court is the total transparency of the process. The Court sits in public. The media can be present. Arguments are presented in public and the Court rends a judgment in which the reasons are given, which can be scrutinised and criticised. Furthermore, the process under which an appeal is heard is prescribed and laid down in the Rules of Court so that everyone knows what they are permitted to do and say. Of course, the judge retains

certain discretions to control the proceedings, but it is a discretion governed by clear procedural rules that are in the public domain. An appeal to an inspector sitting on his own, as the Assembly has just decided, is very different and I think that we should all be clear as to the extent to which the appeal process is in future going to be different. Article 115, under the revised amendment, and Article 116 set out the procedure. In Article 115(3) the law will provide that the inspector may determine all matters of procedure, including but not limited to the use of cross-examination, the use of inadmissibility of expert evidence and so on. If the Minister's official has put documents before the inspector with which the appellant profoundly disagrees or wishes to challenge, he may not be able to do so if the inspector determines that there should be no cross-examination because it is the inspector who decides how the appeal is to be conducted. But my substantive point upon which I would like the Minister to respond is that in paragraph (5) of that Article the inspector makes a report to the Minister with a recommendation and, on that basis, under Article 116 the Minister makes his decision. Article 116(3) and (4) provide for the persons to whom the Minister shall give notice in writing of his determination and they are the appellant, the Greffier, the decision-maker and any other interested party. The general public does not have access, so far as I can see - and I hope the Minister will correct me if I am wrong - to the inspector's report. Now, that gives rise to 2 concerns on my part. The first is that the process and the rationale of the appeal will not be transparent. No member of the public will be able to examine, to scrutinise and to comment upon the way in which the appeal before the inspector has been conducted. The second concern leads on from that because, unlike the current process where judgments of the Royal Court are published and a body of law and practice is built up whereby members of the public can see the way in which the workings of the planning authority have been challenged and have been judged, there will be no public record any longer of how that is done. If a member of the public is dissatisfied with the decision of the Planning Committee and goes to see his lawyer to seek advice, the lawyer will no longer have access to a body of decision-making which will inform the advice that he gives his client. That seems to me to be a pity and I cannot understand why the same transparency that attaches to the appeal to the Royal Court cannot be available in the context of appeals to an inspector. I hope that the Minister might deal with that point.

4.11.2 Deputy M.R. Higgins:

Obviously Senator Bailhache has told about the court process and obviously of its many advantages. However, there are also many disadvantages associated with the Royal Court process. Some of the people that I have been trying to help have gone through absolute agony going to the Royal Court including a lady who has a heart condition, has had to go to the Radcliffe Hospital for treatment and has been put under immense pressure by Crown Advocates representing the States and the Planning Department who were insisting on her filing all the reports on time when those same Crown Advocates were 2 or 3 weeks late.

[16:30]

Now, I find the process for many people, especially litigants in person, is exceptionally difficult. The amount of paperwork that has to be produced and how it is produced and so on is beyond, I would think, most people and the stress is phenomenal. When that is compounded with health conditions ... and I am amazed at how many people have really been put through the mill. It is not only mentally damaging to them but it is also damaging their physical health and I do think we have got to come up with a much better system than the present one, which I think is wholly stacked, when it comes to the Planning Department, in its favour. I would welcome a new system that would perhaps make it more user-friendly and change the balance of power, because it is overwhelming on the part of the State in many cases which has unlimited resources and qualified lawyers against the ordinary person who has got limited money and has to do it themselves because they cannot afford a lawyer and, as I say, all the stresses and burdens they are put under. So I

would strongly recommend we work to the system that is being recommended as opposed to the Royal Court.

4.11.3 Senator S.C. Ferguson:

As both Deputy Higgins and Deputy Young know, I have been through the mill on this one and they have helped me because the disadvantages of Royal Court proceedings ... I hate to contradict Senator Bailhache, but the disadvantages of the Royal Court to a litigant in person are it is the most convoluted system I have ever come across in my life. It is not written in clear English. Well, it is probably clear English, but it is clear legal English. It is not clear "the man on the Clapham omnibus" English, which makes it very difficult. The volumes of paperwork: sadly, most of the Ministers have never done Scrutiny but those of us who do Scrutiny know how many files we have. We resort to stratagems like if you have got a lot of files for doing a Scrutiny meeting you will come the night before, you will park in the Bailiff's parking space and carry the stuff just that short distance. Some of us have resorted to little overnight trolleys to put papers in to bring them from the car park, but that is Scrutiny. The Royal Court hearings are worse. They really are. You have been an advocate, Sir, in your time and I am sure that in your youth ... I am not saying that you are old now, Sir. **[Laughter]** But in the days when you were just starting out as a very young advocate I am sure you found that there were a lot of papers to be lugged around and so on. The other problem with a Royal Court hearing is this test of: "Was the Minister reasonable?" Now, that is not a planning epithet. That is a legal epithet. Now, the Minister might have been incredibly reasonable, but is it reasonable to the neighbours? It might be an iconic construction, but is it reasonable for the neighbours? Town planning principles are not the same. There is an aesthetic dimension which the Court does not consider. It is neither hatch nor law and the other comment by Sir Philip about: "Who can see the appeal? Is the appeal secret?" Article 116(3)(d), does not "any other interested party" include the public? Perhaps the Minister can explain. We must do away with the Royal Court, with the greatest respect. It is very overpowering for Joe Public and if you employ a lawyer I understand that it costs something in the order of £75,000 to £100,000, which rules it out for most people.

The Deputy Bailiff:

Does any other Member wish to speak? You will be speaking later on, Minister. Deputy Power.

4.11.4 Deputy S. Power:

I would like to respond briefly to what Sir Philip said and that ...

The Deputy Bailiff:

Senator Bailhache, thank you.

Deputy S. Power:

Sorry, Sir. Yes, I apologise. I would like to pick up on what Senator Bailhache said on Article 7, 115 and the fifth paragraph, which is the appeal system by the inspector. I find that this new system is a marked change from a legal-based system to a merits-based system and the importance of this now is that we can be taking legal judgments, legal appeals and planning decisions on a merits-based system rather than the original Royal Court legal points system as we were used to. The points made about transparency in Article 116(3)(b), about issuing information to the public or access to the public, is not valid because: "As soon as practicable after the Minister has determined the appeal, the Minister shall give notice in writing of the determination to (a) the appellant; (b) the Greffier; (c) the decision-maker; and (d) any other interested party." When the Minister has determined the appeal the Greffier is notified and, in the process of notifying the Greffier, that then comes into the public arena by an official notice from the Greffier. Therefore, the system will be as transparent as is the present decision-making system by both the Planning Panel and the Minister. I

want to make it clear that I do not think there is any attempt whatsoever under this Draft Planning and Building (Amendment No. 6) (Jersey) Law to hide or to cover up or, in some way, to restrict information from the public. It is in the Planning Department's interest and it is in the interest of all of those who determine planning decisions to make the process as transparent and as public as it can be and as simple a system as is being advocated in this P.94. I do not think colleagues, I do not think the public are listening and I do not think the whole planning process has anything to fear from how the Minister's decision on appeal can be reported to the public. I think the sooner, as Senator Ferguson said, we get out of heavy legal-based planning appeal systems to a more merits-based system the better it will be for everyone.

4.11.5 Senator P.F.C. Ozouf:

I plead guilty for having brought the original revised procedures to the Royal Court. I know that we cannot turn the clock back but it is relevant to what Senator Bailhache has said and, just for the avoidance of doubt, there are a number of observations that Members have made that are incorrect about the Royal Court arrangements that are currently in place, namely that the Rules of Court were changed to allow other professionals to address the Court in relation to planning appeals. It did not need to be advocates and I represented somebody through an appeal to the Royal Court and, in fact, they were nothing more than complimentary of the way the Court dealt with it. In fact, I do not think it is right. It is a while ago, but I do not recognise the concerns that Members have made, but we are where we are and we have moved, for better or for worse, to the inspector system. If I may ask Solicitor General if he can assist me, I will vote in favour of the Articles but it may well be that they require some further amendment. The Minister is shaking his head. I respectfully say the Minister needs votes to support what he is trying to do and if Members have other views about transparency that have been raised then they must be taken on board. I do not think it is correct, but I stand to be corrected if I may just ask the Solicitor General to confirm, I do not think the reasons under Article 116 on page 28 ... I think that is the reason for the determination. I do not think it says for the reasons to be made, unless I have misread that in which case I will be quiet on this. Is it appropriate to ask the Solicitor General to assist?

The Solicitor General:

Can I just check if I am being asked whether the Minister has to give a decision or a decision with reasons?

Senator P.F.C. Ozouf:

Yes. Whether or not it is the decision with reasons.

The Solicitor General:

If the Minister takes a decision he has to give reasons.

The Deputy Bailiff:

I thought the subordinate question was whether the notice in writing of the determination which has to be given under Article 116(3) needs to include the reasons or can it just be the determination.

Deputy M.R. Higgins:

While the Solicitor General is looking at that can I just ask a further question and that is that, for any public body - and this obviously would be a public body - to be E.C.H.R. compliant, then any decisions must be justified and must be explained. Surely, there would be sufficient information for people to lodge an appeal. Is that not correct?

The Solicitor General:

I would expect the Minister to give reasons and it seems to me most convenient to give reasons in the notice of his decision, but I suppose if he attached his reasons to the notice that would also comply with the law.

Deputy M.R. Higgins:

Could we ask the Solicitor General just to follow up on that? Does this body, as a public body, have to give decisions that would comply with the European Convention on Human Rights so that people know exactly why a decision has been made?

The Solicitor General:

I think that is just another way of asking me the same question, which is: "Does the Minister need to give reasons?" The answer is yes, he does.

Senator P.F.C. Ozouf:

Okay, so I think I have understood that the law is silent as to the reasons, but it is the decision and the appropriate course of action would be to apply the reasons for the decision. I am not clear because it is silent on that, but I will not cause any further difficulty. Could the Minister in his summing up confirm that, if the amendment is defective in any way or does not require it, that the Minister will undertake, when giving his decision, there will be full reasons given? In addition, will he also give the practice of making his decision as if it were a decision that he currently makes in public for receiving ... I know that this is slightly different because he is receiving a report, but he receives reports on planning applications with advice and that it will be done in the most open and transparent way possible. Would he also answer the issue of the inspector's report and does he see any difficulty with the inspector's report being made available prior to his decision? I must admit I have not studied the detail of it but the issues that Senator Bailhache raises ... while there were arguments but they were lost in favour of the retention of the Royal Court system, it was transparent at every stage and open. This might have the appearance of not being so transparent and simply waiting for almost the smoke to come out of the Minister for Planning and Environment's chimney when a decision is made and that is not simply right. It should be open, transparent and clear.

The Solicitor General:

Could I just add to the advice I have just given the Assembly? If one looks at page 29, so we are looking at the proposed new Article 116(4), we can see if we go 3 lines down it states that: "The notice given by the Minister under that paragraph shall include" and then there are 2 alternatives. So the first alternative (a) is where the Minister agrees with the inspector's report. So the effect of (a) is that the parties are provided with access to the inspector's report so they can see the reasons for the decision.

[16:45]

Insofar as the Minister does not agree with the inspector's report one then looks at (4)(b) where the Minister has to give "full reasons for the Minister's decision." Either when the notice is served the parties shall see the inspector's report and, therefore, understand from that that the Minister agrees with the inspector's report or the Minister has to give full reasons as to why he has departed from the inspector's decision. I hope that helps.

Senator P.M. Bailhache:

May I ask the Solicitor General whether, under Article 116(3) where the Minister has to give notice *inter alia* to the Greffier, that has the effect of putting the decision into the public domain? In other words, by being required to give notice in writing to the Greffier, does that mean that any member of the public will have access, firstly, to the decision of the Minister and, secondly, to the

inspector's report? If that is the case then my concerns fall away, but I am not entirely clear that that is the position.

The Solicitor General:

I would like to think about that, please, Sir.

4.11.6 Deputy J.H. Young:

I have listened carefully to the last exchanges and I certainly had not picked up this issue of transparency and I regret that. I think it is important that the Minister in his reply does deal with this fully because if we end up with a less transparent process than we have now it really fails. I cannot believe it is intention, but certainly when I heard what the Solicitor General read there I asked myself the question: "Are the public able to see these inspector's reports in all circumstances?" because it seems to me that is the whole point. Referring to the case I was referring to earlier in Plémont, I think it is equally important that people see that report earlier on because in that situation, of course, we had a situation where nobody saw the report before the decision was given. There was no opportunity for anybody to raise any challenge to it where there were factual errors. I really think that this has to be absolutely spot on. If the Minister cannot answer those questions properly or fully then he maybe ought to give consideration to coming back with those details at a later time on this.

The Deputy Bailiff:

Does any other Member wish to speak? Solicitor General, are you able to help us?

The Solicitor General:

The difficulty is that, although Article 113(1)(c), the Greffier ensures that the appeal is publicised and provision is made for representation to be provided by members of the public, the problem is that when one then goes forward to 116, the Minister is only required to give notification to certain individuals and provide reasonable access to the inspector's report to certain individuals, which tends to suggest that he is not obliged to make it public. Whether he has the power to is something I would like to consider a bit further, but he is certainly not obliged to do it by law. He is simply required to give notification and access to particular parties. I would like to think about it some more, please.

The Deputy Bailiff:

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

4.11.7 Deputy R.C. Duhamel:

Rabbits out of a hat maybe. We have heard from the Solicitor General that he has a question to be further considered as to whether or not there is a sufficiency in what is being promoted at the moment under the legislation that any documents that will be made available by the Minister after he has made his determination on an appeal will be available through the Judicial Greffe under the usual processes. It is certainly my intention to operate in that fashion if indeed that is the way that the system works at the moment and there is no intention on behalf of this Minister or the department to pull wool over any Member's eyes as to presenting a process that is not as open and as transparent as it can be. Under 116(3)(a), (b), (c) and (d), it does say - and I think this is a sufficient let-out clause, in particular (3)(d) - that: "The Minister shall give notice in writing of the determination to ... any other interested party." So, of course, although there may well be instances that all members of the public who were not interested should be made available of that information, it certainly strikes me in the way it has been worded that all that is needed in order to have access to the documentation is to express the wish that you are interested. I would have

thought, in legal terms, in asking for it you are expressing an interest in seeing the documentation, although having read it you may have different opinions.

The Deputy Bailiff:

That is a question to put to the Solicitor General if you wish.

Deputy R.C. Duhamel:

It certainly is, Sir, but if he can maybe add that to ...

The Deputy Bailiff:

The question, Solicitor General, is the meaning of "any other interested party" under Article 116(3), does it include any member of the public?

Deputy R.C. Duhamel:

But I am saying that perhaps it does not specifically have to say "any other disinterested member or interested member of the public". It says that all those who express an interest in seeing the information will be able to have access to it. I think that is ...

The Deputy Bailiff:

That seems to be defined in Article 106(1), does it not? It is a matter for the Solicitor General.

Deputy R.C. Duhamel:

The other thing that I think is material is the reference that Senator Ferguson and others have made to 116(4) and, in particular, part (b) where it does indicate that if the Minister is wanting to move outside of the advice given by the inspector under the appeal system then he has to expand and present to all parties the full reasons for that decision as fully as possible. It strikes me that it should not be read in terms that there will be situations where the publication of the full reasons for the Minister to go against any advice would be able to be made. I think there are comments to that order elsewhere. Picking up on other Members' comments, if indeed, on further advice from Law Officers, it does become apparent that perhaps we need to further dot i's and further cross t's then those amendments will be brought forward as law changes to do the job, but from my understanding, from the information that I have been given so far, I think we are sufficiently robust in moving forward on the basis that should a Minister make a different decision to what has been recommended by an appeal inspector then the reasons for that decision will be robustly and firmly expanded and expounded. I do not think there are any other points that I would wish to raise and I make the proposition.

The Deputy Bailiff:

Solicitor General, are you able to complete your advice?

The Solicitor General:

Yes, can I just make 2 points? Having taken some further time to look at it, I consider that the purpose of Article 116(3) and (4), the purpose of the Minister giving notice and access to the Greffier, is so that the Greffier can indeed either publicise the judgment or at least make it accessible to members of the public who can come and view it. So I think that is okay. I think the second point I was asked about was "interested party". That is, as you have helpfully pointed out, is defined in Article 106, which is on page 20 of the proposition.

The Deputy Bailiff:

Very well, all Members in favour of adopting ...

Deputy R.C. Duhamel:

Can we have the appel, Sir?

The Deputy Bailiff:

The appel is called for. The vote is on Article 7 of the Planning and Building (Amendment No. 6) Law and I ask Members to return to their seats and invite the Greffier to open the voting.

POUR: 37		**CONTRE: 2**		**ABSTAIN: 1**
Senator P.F. Routier		Deputy S.J. Pinel (C)		Senator P.M. Bailhache
Senator P.F.C. Ozouf		Deputy of St. Mary		
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				

The Deputy Bailiff:

We now come to Article 8. Do you wish to propose Article 8 subject to your own amendment, Minister?

4.12 Deputy R.C. Duhamel:

I do, just one or 2 words. I think the item is fairly straight forward. There may well be further regulations that have to be brought forward in order to ensure that transfer of functions from the

Minister under the principal law is transferred to other persons as described within the law. So this is in effect to give rise to that and there is a general provision for consequential changes that may well require further regulation. I make the proposition.

The Deputy Bailiff:

Is that seconded? **[Seconded]**

4.13 Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014): third amendment (P.94/2014 (Amd.(3)) - Article 8

The Deputy Bailiff:

There is an amendment by Deputy Young and I ask the Greffier to read the amendment.

The Greffier of the States:

Page 30, Article 8. In Article 8(2) – (a) in the inserted paragraph (3A)(a) for the words "Planning Applications Panel" substitute the words "Planning Applications Committee"; (b) in the inserted paragraph (3A)(b) for the words "who is neither a Minister nor an Assistant Minister" substitute the words "who is not a Minister"; (c) in the inserted paragraph (3A)(c) delete the words "or Assistant Ministers".

4.13.1 Deputy J.H. Young:

This is a simple amendment just to reflect the name change of the Applications Panel to the Committee and also modify the provision in the Minister's amendments for membership so that an Assistant Minister can be considered or appointed by the States as chairman or a member of the panel. So that is a simple change, the amendment, so I propose it.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak?

4.13.2 Deputy R.C. Duhamel:

I did have some reservations, as were expressed by other persons as well, in that perhaps there were certain classes of Assistant Minister who perhaps should automatically be excluded from this helpful amendment, but I think, on reflection, I am happy to go along with the wording as worded and support Deputy Young in his proposals.

4.13.3 Deputy J.M. Maçon:

I support the amendment but there will be a question around any potential Assistant Ministers who might be in the Environment Department because I understand, for example, at the moment Members of the Environment Scrutiny Panel cannot sit on the Planning Applications Panel. I do not know whether that is officially done through Standing Orders or whether that is just done by an understanding between Scrutiny, in which case perhaps a similar protocol could be written up through the Council of Ministers. Other than that, I am happy to support.

Senator P.F.C. Ozouf:

Can I just clarify? I hope my memory is not failing me but members of the Planning Panel are proposed and voted on by this Assembly, are they not? Any issues of conflict of interest, of Assistant Ministers who clearly should not be ... I have got nothing against my esteemed Assistant Minister, but it might not be wise, for example, to have an Assistant Minister responsible for Property Holdings or an Assistant Minister for Housing.

[17:00]

That might not be right. That seems to me sensible, but there is flexibility if the wrong type of Assistant Minister is proposed or the wrong individual that is going to be made, then a wider class of talent that can be recruited on to the committee seems like a good idea to me.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on Deputy Young to reply.

4.13.4 Deputy J.H. Young:

This part of the law that we are amending, of course, we are dealing with a provision that refers to Standing Orders. I am sure that the Standing Orders that will be made will deal with those questions of which positions would be not allowed. I see I am being pointed at by the Chairman of the P.P.C. (Privileges and Procedures Committee). I had no idea that as the Chairman of the Environment Scrutiny Panel you could not sit on the panel. One learns things every day. Where is this secret understanding? I have never seen it. I make the proposition and ask for the appel.

The Deputy Bailiff:

The appel is called for on the amendment proposed by Deputy Young. I ask Members to return to their seats and invite the Greffier to open the voting.

POUR: 34		**CONTRE: 2**		**ABSTAIN: 0**
Senator P.F. Routier		Connétable of St. Peter		
Senator P.F.C. Ozouf		Deputy M.R. Higgins (H)		
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
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 T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

Deputy S.Y. Mézec (H)				

4.14 Draft Planning and Building (Amendment No. 6) (Jersey) Law 201- (P.94/2014) - resumption - as amended

The Deputy Bailiff:

We now return to Article 8 as amended. Does any Member wish to speak on that? All Members in favour of adopting Article 8 as amended kindly show. Those against. The Article is adopted. Would you like now to propose, Minister, Articles 9 and 10, presumably Article 10 as amended?

4.14.1 Deputy R.C. Duhamel:

Yes, I would like to do that. Article 9 is transitional and savings provisions as per normal… and Article 10, there is a suggestion that, rather than moving to bring in these provisions inside the 7 days, perhaps we do it by an Appointed Day because there is an element of work that needs to be undertaken, not least of which is the work that will be undertaken by officers to draw up a short list of inspectors and others in order to carry out these important functions. I make the proposition. I think it is the best way to proceed.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Members wish to speak on Articles 9 and 10? All those in favour of adopting Articles 9 and 10 kindly show. Those against. The Articles are adopted. Do you propose the law in Third Reading, Minister?

4.15 Deputy R.C. Duhamel:

I do, Sir. I have got nothing much to add other than to thank those who have spoken so far and to thank them all for it being such a pleasant debate. I hope we might continue and maybe achieve a unanimous vote in the Third Reading, but we will see what happens.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak?

4.15.1 Senator P.F.C. Ozouf:

I wonder if the Minister in his final remarks may advise the Assembly, now that the principle of this law has been accepted and that effectively the Minister, when the law is in force, is no longer going to be determining planning applications and that effectively he is going to be restricted to the issue of appeals, whether or not he would now as a matter of practice relinquish himself from all planning applications, as is the view expressed on many occasions by a number of Members. He is smiling. The effect of this law is to ensure that there are multiple eyes on planning applications in future rather than a single person. Would he agree perhaps, now that he has got this amendment through, to delegate all planning decisions so that he may concentrate on the policy issues, which Ministers should, and that he will agree, as of immediate effect, to have all planning applications sorted and decided upon by the panel?

4.15.2 Deputy J.H. Young:

I wonder if the Minister will give a commitment (obviously he may not necessarily be in a position to fulfil it) that with this major change, because it is a very significant change, he will keep these arrangements under review - or at least your successor will keep it under review - to ensure that the decision we have made to have single inspectors and so on, which I obviously accept the Assembly's decision, works and practice and provides the objectivity? Will he give that commitment and perhaps, maybe during the first year of the introduction, produce a report for the States or ensure that one is produced or ask his officers to produce it. That is one point. The

second one is rather on the same theme as Senator Ozouf. Obviously the Minister's role now hugely changes and we have always had this issue of conflict between Planning and Environment. Some people argue that that conflict is impossible and that we should have separate Ministers. I personally do not agree with that but I think that in order to make this work it is very important in a future Assembly whoever finishes up with the job of Minister for Planning and Environment setting policy that they do have an Assistant Minister full-time available for the Environment. The current situation where the Minister for Planning and Environment has to work with half an Assistant Minister is totally unacceptable and I want that to be absolutely spelt out. That has been an absolute unacceptable situation which should never happen again that we now have a new role for the Minister for Planning and Environment and there needs to be in place somebody to look after environmental policies because there are conflicts. That is the only way I think of managing that situation. I make those comments but I will be supporting it although I did think about how the Deputy said he did not want me to be upset. We have ended up with a better appeal system, a much better appeal system than we have had, maybe not as good as we could have had with my amendments but at least some minor part has gone through but I will go with this.

4.15.3 The Connétable of St. John:

Coming up to 9 years of Ministerial government and we are going back to the committee system. **[Laughter]** I sincerely hope other Ministers instead of setting up quangos think along the same lines as the current Minister for Planning and Environment in bringing this forward. Congratulations, Minister. Jersey moved forward in the right direction, thank you.

The Deputy Bailiff:

Does any other Member wish to speak? I then call upon the Minister to reply.

4.16 Deputy R.C. Duhamel:

I thank the Constable of St. John for his comments. Sometimes he is right, the best way forward is back. **[Laughter]** I hope I will be back. Deputy Young suggested that there were perhaps conflicts of interest between Planning and Environment and this process will go some way to resolving, and expressed some reservations about only having half of a Minister. As Deputy Labey will know I have a better half. It is an issue though that needs to be resolved and personally I am not of a mind to think at this point in time that the Planning and the Environment roles should be necessarily split. Planning generally might in moving a department's name to the Department of the Environment it was always accepted that the environmental aspects of Planning would be resolved and interpreted through the environmental role. Maybe we have not gone as far perhaps as we could go in that direction but the general point is that the environmental considerations are paramount and that Planning should fit into that regime, not the other way round necessarily or otherwise the general framework for working where we try to balance out Environment, the social agenda and the economic and financial agenda would not have a political champion or Minister fighting in the Environment's corner. Senator Ozouf makes an interesting point. I will give it some thought as to whether or not having moved as far as we have moved today hopefully towards bringing forward a new appeal system ultimately means that before we have achieved the Appointed Day Act in order to get the new law on to the statute book that this Minister must be bound or should encourage himself to be bound by laws that have properly been enacted. There is possibly a legal issue there but it is not one that I wish to go into in any great detail at the moment other than to say that I will give it some consideration while at the same time reminding Members of the limited "interference" that the Minister has made over last number of years in planning issues. It must be stated that I have had the difficult decisions that have been passed on to me and they did not come to me as a matter of automatic choice but I will see what I can do. I do have

some reservations. Those were the 3 comments. I think I have replied to them all so I put forward the law in its Third Reading and hope that everyone will support it.

Senator P.F.C. Ozouf:

May I just ask the Minister for Planning and Environment if he could clarify? He said there were legal issues of him devolving his responsibilities for Planning to the Planning Panel as immediately. I could not understand whether or not we needed legal advice on that. I did not know whether there were any legal issues of him devolving immediately his Planning decision-making powers to the panel.

Deputy R.C. Duhamel:

It is a matter of degree, as Senator Ozouf was suggesting that I devolve everything, 100 per cent devolution, and all I am stating at this point in time is that under the law as we have it at the moment the Minister does retain an option to devolve and delegate as much as he wishes to. There may well be instances where I could further delegate items in the spirit of what we are about to agree but I think I must reserve my ability to so choose should I so wish until the law has been properly enacted through the acceptance of this Appointed Day Act.

The Deputy Bailiff:

All Members in favour of adopting the Bill in Third Reading kindly show. The appel is called for. I ask Members to return to their seats. The vote is on whether to adopt the Draft Planning and Building (Amendment No. 6) (Jersey) Law in Third Reading and I ask the Greffier to open the voting.

POUR: 40		**CONTRE: 0**		**ABSTAIN: 1**
Senator P.F. Routier				Senator P.M. Bailhache
Senator P.F.C. Ozouf				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
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 T.A. Vallois (S)				
Deputy M.R. Higgins (H)				

Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mézec (H)				

5. Draft Regulation of Care (Jersey) Law 201- (P.95/2014)

The Deputy Bailiff:

We now come to P.25/2014 - Draft Regulation of Care (Jersey) Law - lodged by the Minister for Health and Social Services.

The Deputy of Trinity:

Before the Greffier reads it out I am aware of the time. I might take 10 minutes, quarter of an hour. Rather than divide the debate, I am in Members' hands, I am quite happy to carry on.

The Deputy Bailiff:

There seems to be no suggestion for an adjournment.

Deputy J.A. Martin:

No, it was not an adjournment. I was going to ask the Ministers ... but is there anything, can I dare put anything forward that may be not too controversial that could be done in the next 15 minutes because this will be a start of a debate and then halfway through a speech, or possibly prepare to stay here until 5.45 p.m., to be fair on the Minister to open this large piece of legislation, I do not know. Possibly P.50/2014?

The Deputy Bailiff:

I have scanned the agenda and I could not find anything that I thought was immediately not contentious.

The Deputy of Trinity:

I am happy to carry on.

Senator I.J. Gorst:

I am looking across to the Chairman of P.A.C. if they would happily try P.98/2014 but obviously it is a ...

Deputy T.A. Vallois:

It does state that we cannot debate that before 3rd July and that is why I was trying to explain to the Chief Minister in not so easy lip language. **[Laughter]**

The Deputy Bailiff:

If we carry on talking we will be at 5.30 p.m. anyway. We have come to P.95/2014 Draft Regulation of Care (Jersey) Law 201 and ask the Greffier to read the proposition.

[17:15]

The Greffier of the States:

The Draft Regulation of Care (Jersey) Law 201-. A Law to establish a Health and Social Care Commission; to provide for the regulation of activities involving or connected with the provision of health or social care; and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

Today I am asking for Members to approve enabling legislation that will reform the regulation of all health and social care in Jersey. First and foremost this law is about securing the safety and wellbeing of vulnerable people in Jersey. By the very nature of their circumstances or condition these are people who need the help and support of services whether that is provided in their own home, in a care home, in hospital or the community. For many quality of life means good health and being able to lead an independent and full active life. As Jersey faces an ageing population increasing numbers of people are almost inevitably going to need some degree of support either at home or in a supported care environment in order to maintain their quality of life. At times many will also need acute hospital care. This law is a first step in replacing the outdated and fragmented legislative framework that currently exists for regulation of all health and social care in Jersey. It sets out a single enabling law that in time will be supported by detailed regulations and standards of care. As highlighted in the Health and Social Services *Caring for Each Other Caring for Ourselves* report, care services in the future are likely to be not only increasingly in demand but delivered by a wider range of providers. Islanders want services to be holistic. They expect high quality person-centred care delivered in the community and not just in hospitals and institutions. We have known for some time that current legislation regulating health and social care is inadequate and no longer fit for purpose and outdated. There are significant gaps in regulation that allow high risk services to operate without anyone monitoring the safety standards and quality of care provided to vulnerable people. In particular I am thinking of the large number of care agencies that have sprung up in Jersey over the last few years. These provide care staff to work in an individual's own home behind closed doors, often at night when no one else is around and frequently to assist very vulnerable people with intimate care. Predominantly these agencies are completely unregulated so we have no way of knowing whether the staff have any qualifications, training or competence to carry out this work. That is not to say that they do not but worryingly we just do not know how the staff are recruited, whether any of them may have a criminal record or may even have been dismissed by their previous employer for poor practice. We simply do not know whether these people working in this environment who may be completely unsuitable for doing so but this is not just a hypothetical risk. My department is aware of a number of concerns that have been raised including unsafe handling practices, lack of confidentiality with client information, carers taking their children to work in a client's home and care workers not turning up for shifts. Consequently vulnerable people are being put in a position where they may not be receiving the care they need, where standards of care they are getting are unacceptable and where personal care needs are being neglected. There are examples where agencies have knowingly recruited inappropriate care staff with serious or relevant criminal convictions, others where carers have been sent to look after a vulnerable person having no induction or training in providing the medical and personal care that was needed. There have been allegations of staff not being paid by the agency or vulnerable people being overcharged or charged for services not provided. Two of the most serious cases have recently been dealt with through courts where carers employed by unregulated agencies stole from their very vulnerable clients and perhaps the most tragic of all where a vulnerable person with

dementia died following serious neglect by a carer. These are real cases and just some of those that we have been aware of. The likelihood is that this is just the tip of the iceberg but without effective regulatory process there is little we can do to address and prevent them. I am sure we are all too aware of recent cases in the U.K. where inadequate or ineffective regulation has contributed to appalling standards of care and suffering where vulnerable people have suffered terrible abuse at the hands of the staff. The findings from the Francis Inquiry into poor care standards and high death rates in mid-Staffordshire highlight that no acute hospital service is beyond criticism. There is no room for complacency over poor standards in clinical practice. Independent scrutiny is an essential safeguard to protect patient safety. My department has long been criticised particularly by independent providers both in the private and voluntary sector that the services and care provided by Health and Social Services is excluded under the current laws. This has led to accusations of unfairness and concerns that we are all not playing by the same set of rules. I agree wholeheartedly with this. In fact when I chaired the Scrutiny Panel looking into the closure of the McKinstry Ward in Overdale back in 2006 one of the main recommendations then was that the Health and Social Services Department should be required to meet the same standards as the private and voluntary sector. It is even more important that I stand up today with one of those recommendations which the panel which I was the chair of made. Let me make it clear now, I believe these regulations work. Regulation if done properly will protect and safeguard vulnerable people, drive-up standards and keep providers and managers focused on their responsibilities. On the whole and compared to other jurisdictions I believe that services and care homes that are already regulated in Jersey are generally of a very good standard. However without a robust and responsive regulatory system no matter how good a service there is always the potential for standards to slip. The saying: "The most strictly we are watched the better we behave" has particular resonance in this area. Ensuring there is appropriate regulation in place and fairly used to investigate and address concerns is crucially important. It is disappointing that the Scrutiny Panel have recommended in its new report that we suspend signing-off the regulation of care pending the outcome of the U.K.'s consultation of its Care Act 2014. While I support many of the recommendations following the review and thank Scrutiny for their comprehensive report I cannot support that recommendation to delay this primary legislation on the basis of waiting to see what happens next in the U.K. Jersey has been down that route with other legislative projects in the past and the consequences of its decision to do that with this law will be serious and significant. The Scrutiny Panel's adviser has accepted in her report that this law is fit for purpose and makes no suggestion of any amendments to the primary law. Let me reassure Members this draft law is not just a cut and paste from U.K. legislation. It was carefully formulated taking into consideration local experience of regulating care services as well as the deficiencies of the U.K. regulatory framework. It is designed to ensure that Jersey does not replicate the defects in the U.K. system the consequences of which have been tragic. I and my department concur with most of what the panel were suggesting. Indeed there is very little that we have not already considered and incorporated either in the last draft law or in the legislation policy. However we do agree with the recommendation to suspend the law until the U.K. brings in legislation. The reason they have given is misguided and that much of the proposed U.K. law is irrelevant in Jersey and the section about C.Q.C.'s (Care Quality Commission) role in requiring providers to give the regulator financial information is already provided for in the draft Jersey law. If we take the view that we should wait, perhaps the U.K. is considering changes, the reality is that Jersey legislation may never get completed and it is an unacceptable risk for the States to take. Current legislation covering the provision of health and social care in Jersey is over 30 years old. The 1994 Nursing Residential Homes law which is based on equivalent legislation introduced 10 years earlier in the U.K. regulates independent care homes and private hospitals while the 1978 Nursing Agencies Law regulates the licensing of businesses supplying nurses, midwives and auxiliary nurses who essentially act as employment agencies. Over the intervening years health and social care has changed significantly and quite rightly the expectations of people using those

services have greatly increased too. In today's climate and culture these laws are found wanting. They are deficient in a number of areas including they lack clear, modern definitions of what type of care should be regulated. They do not provide a basis for adequately tailored or robust standards to ensure the quality and standard of care provided. They do not have sufficient powers to require safe recruitment procedures or have in place appropriate governance arrangements to keep patients safe and protect patients from abuse nor do they provide a sufficiently independent transparent system of inspections and regulatory action. As with Western European countries Jersey's population is ageing and as it does these deficiencies will be of increasing concern to an ever-greater number of Islanders. If we are satisfied that these services provided in Jersey command public confidence and provide value for money it is essential that we have an effective, comprehensive, robust regulation of all care provision across the Island. Indeed it often comes as a great surprise to people when they learn that much of the care provided in Jersey is not regulated and there is a public expectation - no, demand - that we must do something about that. I turn to the draft law and in doing so reinforce that this is primary enabling legislation, simply a foundation on which a new regulatory framework for health and social care can be built. The regulatory or enforcement powers contained in the draft law will only take effect once the relevant regulations are in place. It is in the subsequent regulations that the precise requirements will be set out providing instruction and guidance for providers on standards of services and care that are demanded. States Members will of course have future opportunities to examine and debate the finer details at that time. The proposed law is based on fundamental principles of good regulatory practice. It includes independence in particular from political considerations and conflicting stakeholder influence, technical and regulatory competencies and accountability both of government and to the public. It has been well researched and precisely tuned in to fit into the Jersey context. It is very much informed and influenced by the outcome of the Green Paper consultation published in 2010 in which providers of health and social care and other interested stakeholders gave their views on Jersey's requirements for health and social regulation. The responses overwhelmingly confirmed the need for new legislation and they provided considerable support for any new legislation on regulation to include domiciliary care provided in people's homes, services provided by Health and Social Services, and transferring regulatory oversight to an independent regulator. I am proposing therefore that a non-departmental independent statutory body in the form of a Health and Social Care Commission is established transferring the current responsibility of regulating health and social care from the Minister for Health and Social Services. The commission will be responsible for fulfilling the functions of a regulatory authority under the law. I am recommending some key definitions of health and social care and activities that reflect the potential application of a draft law.

[17:30]

In due course regulations will set out the different types of health and social care provision that will be regulated. I propose that the first set of regulated activities to come into force under regulations for care homes will include those currently regulated under existing law, those operated by the Health and Social Services Department and domiciliary care provided to people in their own homes. The finer detail of what will be included within domiciliary care is yet to be determined. However I would emphasise that I do not intend this to include neighbourly help with shopping or providing meals nor care by a relative unless it is on a commercial arrangement. There will be exemptions in the regulations for relatives in receipt of home carer's allowance which is an existing social security benefit. I also understand that restrictions are already in place preventing direct payment from the long term care benefit to informal carers. Clearly inspection plays a fundamental part in monitoring standards and quality of care and regular inspection of services will be a key part of regulation. Inspection will be used to check that those providing care are meeting the required standards. Importantly it will also be an opportunity to contribute to the continuous improvement

of services. I am therefore recommending clear and comprehensive powers for inspections to be conducted. These inspections will not be limited to monitoring compliance but also include supporting and encouraging ongoing service improvement. Following an inspection a report of the findings will be sent to the care provider which will include evidence of any non-compliance with the law, highlight the action that they should take to comply and where appropriate include recommendations for improvements. A copy of the report will be available for the public to access though will eventually and rightly exclude any confidential personal details that might identify an individual. To bring the funding of regulation into line with the British Isles I am proposing a new fee structure. This will enable the commission with the permission of the Chief Minister to introduce a fee structure comparable to other jurisdictions. It will allow for setting of the initial registration fee at an appropriate level that reflects the responsibility and accountability of providing the service plus an annual fee based on the size of service. To gauge what providers, managers and stakeholders think of the proposed law a further consultation was held in March/April this year. With the exception of some technical issues being raised and subsequently addressed in the final draft the responses to the consultation was supportive and very encouraging for the proposed framework. I am aware that introducing a new Regulation of Care Law which has some broad scope has the potential to be overwhelming. Having learned from the experiences of the U.K. we are very conscious that any regulatory changes needs to be introduced in a planned and measured way. I therefore propose that regulations from the various regulated activities should be phased-in over a realistic and manageable time frame. There are some key drivers setting that implementation timetable. Primarily those are linked to introduction of the Long-Term Care Funding Law which came into force on 1st July and relies on effective regulation of particular health and social care activities. Consequently I propose that regulations affecting care homes, children's homes and personal and nursing and domiciliary care including those provided by Health and Social Services are brought to the States Assembly towards the end of next year. While Members may be aware that the no current legal powers under Children's Law to inspect children's homes run by Health and Social Services, I would reassure this Assembly that the department does monitor standards closely and independent reviews of our homes are undertaken by the Scottish Care Inspectorate. In due course regulation for cosmetic procedures, hospital services, social services and primary care will be included in the regulatory framework. It is then anticipated that the regulations for acute hospital services will be brought in by 2020 by which time, of course, I am very hopeful that we will have a new hospital fully compliant with required standards. That said I would like to reassure Members that the hospital is already safe in its practices. It has good governance arrangements and regularly brings in external agencies to independently review the services. States Members will, I am sure, be interested about the new funding. A business plan for implementation of the first phase has already been developed. The cost of a part-time commission and the local executive function will be funded through the application of a realistic fee structure. Comparable to current equivalent charges in the U.K. this will be supplemented by the transfer of existing Health and Social Services' funding for the current regulatory function. To give Members some idea of how this might look using comparative figures with the annual registration fee for care homes in England is £162 per bed. The average estimated cost for providing in Jersey will be around £3 per week per resident. This is based on the average weekly cost of a care home bed in Jersey which is around £900 per week. Using the U.K. figures as a benchmark the burden of regulation cost to the provider will be very small equating to 0.3 per cent. I know that in the currently regulated independent sector much progress has been made towards improving quality. Most providers are either already compliant or have a development programme in place to upgrade their services and facilities. Indeed I recently attended the opening of the refurbished St. Brelade's Parish home which sets an excellent standard and I congratulate the Parish and the trustees on their vision. **[Approbation]** In terms of the cost to providers in complying with any new legal requirements set out in subsequent regulations the majority of existing providers are likely to have

already met the expected standards. Compliance costs therefore would have little or no additional financial impact. Where there are significant failures to meet standards this is likely to be symptomatic of unacceptable low levels of care and detrimental to individuals using the service. This is a case to be made and it is these particular services for which this law is absolutely required. I should emphasise however that before any changes in standards are brought in by regulations there will be further engagement and consultation with providers, and States Members will have the opportunity to debate and vote on these. I end as I began, emphasising the important message that this law is about care and support of some of the most vulnerable people in Jersey who because of their circumstances may be at risk of exploitation or harm due to poor care. We have an absolute duty to protect them and I ask Members to support this new regulatory framework as set out in this proposition.

The Deputy Bailiff:

Seconded? **[Seconded]**

Senator P.F. Routier:

I propose the adjournment.

The Deputy Bailiff:

The adjournment is proposed. The States will now stand adjourned and reconvene at 9.30 a.m. tomorrow.

ADJOURNMENT

[17:38]