

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 14th JUNE 2016

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[9:30]

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

COMMUNICATIONS BY THE PRESIDING OFFICER

1.1 Expression of sympathy for atrocity in Orlando, Florida, U.S.A.

The Bailiff:

I would first like to express, on behalf of all Members and for this Assembly, sympathy for the families and friends of those who died in the atrocity in Orlando. It was, as the Lieutenant Governor has said earlier today, an appalling crime of hate and terror and our hearts go out to all those who have been affected by it. I would also like to take the opportunity of saying that the homophobic reaction of the killer is something this Assembly would condemn outright.

[Approbation] I know that the Chief Minister has said to me earlier today that the Government wants to make it plain that as far as the Government is concerned it wants to give confidence to all those who would feel threatened by what has taken place across the water and certainly I am sure this Assembly would want to join itself with the Government's expressed view.

[Approbation]

1.2 H.M. The Queen's 90th birthday celebrations

On a rather lighter note I would simply like to mention that the Queen's 90th birthday celebrations seem to have gone extremely well and I would like to congratulate all those who have been involved in the various celebrations, both the celebrations in St. Helier at the Town Church in the Royal Square and across the Parishes over the weekend. **[Approbation]**

1.3 Commemoration of the World War 1 Battle of the Somme

Finally, perhaps I can give notice to Members that there is to be a commemoration event of the Somme, World War 1's battle on 1st July on Friday evening, so you might like to make a note in your diaries, Friday, 1st July.

1.4 Report of the Investigatory Powers Commissioner

Finally, under A, Members will see that there is the report in the usual way, which has been presented in relation to the Regulations of Investigatory Powers.

QUESTIONS

2. Written Questions

2.1 THE DEPUTY OF GROUVILLE OF THE MINISTER FOR HOUSING REGARDING EMPTY HOUSES: [9463]

Question

Further to her comments on 10th May 2016 on estimating the number of empty houses on the Island, what priority is her department giving to work on this issue and what timetable has she set for completing the work necessary to make such an estimate?

Answer

The Housing Strategy identifies work on vacant properties to be completed by the first quarter of 2017, though this depends on the level of data on vacant properties we might need to capture and the practicalities of capturing such information.

I will be opening dialogue with the Parishes to see whether they might be able help with work to analyse the current level of long-term vacant properties and the reasons for their vacancy. The Parish Rates system is a potential mechanism through which information on the number of long-term vacant homes and the extent of any problem might be generated, and this will inform broader policy measures to bring long-term vacant homes back into the available housing stock.

I will inform the Assembly should there being any changes to this timetable and will ensure that members are kept up-to-date on this important area of work.

2.2 THE DEPUTY OF GROUVILLE OF THE CHIEF MINISTER REGARDING THE NUMBER OF PEOPLE EMPLOYED BY THE STATES OF JERSEY: [9464]

Question

Could the Chief Minister advise members of how many people were employed by the States of Jersey, including Visit Jersey, Andium Homes and Ports of Jersey, in October 2011 and June 2016?

Answer

The table below shows the headcount of the States of Jersey (Including Visit Jersey, Andium Homes and Ports of Jersey) as at the end of October 2011 and May 2016. In addition, the figures for December 2012, 2013, 2014, 2015, have been provided to provide a fuller picture.

Reporting Period	Oct-11	Dec-12	Dec-13	Dec-14	Dec-15	May-16
States of Jersey	6,747	6,778	6,942	7,059	6,940	6,845

Incorporated Areas	Oct-11	Dec-12	Dec-13	Dec-14	Dec-15	May-16
Andium Homes	41	40	45	49	50	49
Visit Jersey	23	22	23	21	13	13
Ports of Jersey	254	244	247	244	232	257

Total	7,065	7,084	7,257	7,373	7,235	7,164
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2.3 DEPUTY J.A. HILTON OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING THE STRUCTURAL RELATIONSHIP BETWEEN THE PRISON AND PROBATION SERVICES: [6465]

Question

Will the Minister, in consultation with the Chief Minister, examine the structural relationship between the prison and probation services and, having regard to the position elsewhere in the British Isles, bring forward proposals for fully integrated offender management and democratic oversight by the end of the year?

Answer

Jersey is fortunate in having well regarded prison and probation services, both of which are staffed by teams of committed and highly professional public servants. As with all public services, this does not preclude the possibility of being able to improve further, become more integrated and have strengthened democratic accountability. I would, therefore, be content to consider this matter and bring forward proposals, as requested.

2.4 DEPUTY J.A. HILTON OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE NUMBER OF PEOPLE RESIDING OUTSIDE

JERSEY WHO HAVE RECEIVED LONG TERM INCAPACITY ALLOWANCE: [9466]

Question

Could the Minister provide a breakdown of how many people residing outside Jersey received Long Term Incapacity Allowance in each year from 2010 to 2015; in which countries such people resided and what nationalities such people were; how long such people (a) contributed to the social security system in Jersey before receiving this benefit and (b) have been receiving this benefit; what percentage award such people receive and what the value of the benefit is to each recipient; and how often such people are assessed in Jersey in relation to receipt of this benefit?

Answer

Long Term Incapacity Allowance (LTIA) can be paid outside Jersey for up to 13 weeks following a successful claim in Jersey, or for longer if there is a reciprocal agreement in place with the other country. There is provision within the reciprocal agreement legislation for the country of residence to arrange a medical board when a review is due. The doctor will complete the medical report which is then returned to Jersey for assessment. There is no necessity for the person to return to Jersey for a medical review unless they prefer to be seen by a local medical board. In general the length of review will depend on the nature of the incapacity. These overseas claimants have an average contribution record of 12 years before claiming LTIA.

The table below indicates the number of open (LTIA) claims at the end of each year that were claimed by people who do not live in Jersey. It is broken down by year and country of residence – countries with less than 9 claims have been grouped together to avoid the possibility of identifying a specific individual.

Number of LTIA claims for people residing outside Jersey

Country of Residence	2010	2011	2012	2013	2014	2015
United Kingdom	157	166	168	166	166	175
Portugal	81	88	95	101	100	103
France	17	17	14	15	13	15
Irish Republic	11	10	10	10	9	10
Other countries with less than 9 claims	32	31	34	30	25	30

The number of LTIA claims being claimed by people residing outside Jersey is increasing at a slightly slower rate than the overall number of LTIA claims. This means that the proportion of claimants residing outside Jersey has shown a very slight decline.

Overall proportion of LTIA claimants residing outside Jersey

Country of Residence	2010	2011	2012	2013	2014	2015
Proportion of claimants residing outside Jersey	9%	9%	9%	8%	8%	8%

The average LTIA percentage award for these claims is broadly in line with the average for all LTIA claims.

Average LTIA Percentage Award

Country of Residence	2010	2011	2012	2013	2014	2015	2015 value
United Kingdom	33%	33%	34%	35%	36%	36%	£72.00
Portugal	38%	39%	38%	38%	38%	37%	£74.00
France	31%	29%	33%	31%	33%	34%	£68.00
Irish Republic	48%	52%	52%	52%	39%	47%	£94.00
Other countries with less than 9 claims	26%	27%	30%	28%	27%	31%	£62.00
Average for all LTIA claims	37%	37%	37%	37%	37%	36%	£72.00

The current standard rate of benefit (100%) is £199.99 per week.

These claimants have an average contribution record of 12 years before claiming LTIA.

Average years of contributions/credits received before claim started for those residing outside Jersey

Country of Residence	2010	2011	2012	2013	2014	2015
United Kingdom	12	12	12	12	12	12
Portugal	11	11	11	11	11	11
France	14	14	12	13	14	16
Irish Republic	15	15	15	15	14	13
Other countries with less than 9 claims	14	13	13	14	14	12

The table below shows the breakdown by nationality of those claims that are being claimed by people not residing in Jersey.

Breakdown by nationality

Nationality	2010	2011	2012	2013	2014	2015
British	166	174	173	172	171	187
Portuguese	85	92	98	104	102	105
Irish	14	13	12	12	11	12
Other/unknown nationalities	33	33	38	34	29	29

3.5 DEPUTY S.Y. MÉZEC OF ST. HELIER OF THE MINISTER FOR EDUCATION REGARDING THE RECRUITMENT OF NEWLY-QUALIFIED TEACHERS IN JERSEY: [9467]

Question

What steps is the Minister taking to increase recruitment of newly qualified teachers in Jersey? In the light of his Assistant Minister's responses to Question 9456 on 24th May 2016 and his answers at the Education and Home Affairs panel's quarterly public hearing on 19th May 2016 on teacher recruitment, what is the evidential base for the argument that the recent pay award will have little impact on teacher recruitment? Does the Minister plan to maintain the pay and terms and conditions for teachers, in particularly newly qualified teachers, at least at current standards?

Answer

There is currently no shortage of primary school teachers in Jersey. To attract additional secondary teachers, particularly in shortage subjects, the Education Department is working directly with UK Universities that train graduates in these areas. For instance, four new science teachers have recently been sourced from Newcastle University. Alternative advertising methods, including an enhanced online presence, are also being considered to raise the profile of Jersey as a destination for UK teachers seeking work.

The Department's prediction that the current pay offer will not significantly affect teacher recruitment is based on a comparison of the pay scale for Jersey teachers and their counterparts in the UK. These are both readily available online and have been circulated to States Members previously.

Jersey teachers' pay is significantly higher in most cases than for teachers in maintained schools in England, even when the cost of living is taken into account. Other benefits of working in Jersey include lower income tax than in the UK, particularly if staff progress to higher-paid positions. There are also fewer teaching days in the Jersey academic year and school days are slightly shorter on average. The absence of free schools, academies and the Ofsted regime will also be regarded by many as an advantage. With a few exceptions, our school buildings are in excellent condition and the facilities are good, with students who are generally well behaved, particularly when compared to schools in inner city areas.

The Education Minister is not directly involved with the pay and conditions of school staff. This responsibility rests with the States Employment Board. However, any changes to the terms of employment would be the subject of full and appropriate consultation with the teaching unions, with which the Department enjoys constructive, positive relationships.

2.6 DEPUTY S.Y. MÉZEC OF ST. HELIER OF THE MINISTER FOR EDUCATION REGARDING THE FORMULA FOR CALCULATING THE STATES GRANT TO THE FEE-PAYING SCHOOLS: [9468]

Question

Following his answer to Question 9396 on 26th April 2016, in which the Minister said "a small adjustment to the formula for calculating the States grant to the fee-paying schools is under consideration", how much of a saving is he planning to achieve from this adjustment and how does he plan to reallocate the money so saved?

Answer

The Education Department constantly reviews expenditure and priorities in order to address the additional demand for services from a growing population, to invest in improving standards and to ensure available funding is focussed on the young people who are most in need.

The Department is one of the priority areas identified by the Council of Ministers in the States Strategic Plan, and as such is receiving almost £11 million of additional annual funding by 2019. However we are all seeking savings through sustainable efficiencies, service redesign and cost

reductions in order to achieve a balanced budget by 2019. As the Department has statutory duties to meet and a budget largely taken up by paying front-line teachers and other staff, there is limited room for manoeuvre. All areas have been under consideration and, where possible, Lean techniques and technology have been used to streamline and improve services. The Department has also been exploring new partnerships with the voluntary, community and business sectors to secure the best possible outcomes for young people.

Finalised proposals for savings and investment contained in the Medium Term Financial Plan addition are due to be lodged with the States Assembly on Thursday 30 June when details of all savings will be available. In the meantime, the Education Department can confirm that its aim has been to affect the lowest numbers possible and any savings, while necessary, have been kept to a minimum.

2.7 THE DEPUTY OF ST. OUVEN OF THE MINISTER FOR EXTERNAL RELATIONS REGARDING THE POTENTIAL IMPLICATIONS FOR JERSEY OF THE U.K. GOVERNMENT'S PROPOSALS FOR A BRITISH BILL OF RIGHTS TO REPLACE THE HUMAN RIGHTS ACT: [9469]

Question

What are the potential implications for Jersey of the UK Government's proposals for a British Bill of Rights to replace the Human Rights Act 1998?

Answer

The Government of Jersey has noted and will monitor carefully the recent UK Government commitment contained in the 2016 Queen's Speech that "*proposals will be brought forward for a British Bill of Rights*"¹. Those proposals have yet to be published. The proposed document has been variously framed as a "British Bill of Rights" and as a "UK Bill of Rights" and I have asked that consideration be given to using the latter term. The former is a misnomer in that it gives the impression that the Bill of Rights would apply throughout the British Isles whereas its extent will be limited to the United Kingdom.

The European Convention on Human Rights has been extended to the Island and is incorporated into the law of Jersey by the Human Rights (Jersey) Law 2000. We consider that the right of citizens to appeal to the European Court of Human Rights, once all domestic remedies have been exhausted, is an important safeguard for the people of Jersey, and it is a safeguard that we wish to retain. We have engaged with UK government ministers and officials to ensure they are aware of our position.

It seems from statements by UK government ministers that there is no intention on the part of the UK Government to withdraw from the European Convention on Human Rights, but only to replace the Human Rights Act 1998 (which incorporates the Convention into UK law) with a Bill of Rights. In principle, this should not affect the ratification of the Convention on behalf of Jersey.

If, however, UK Government policy should change, and denunciation of the Convention is under consideration, then careful consideration would need to be given to the implications for Jersey. It would be possible for the UK to denounce the Convention for the metropolitan territory of the UK, but not for Jersey – there is precedent for such an action – but such a scenario is at present hypothetical. The situation is being carefully monitored.

¹ <https://www.gov.uk/government/speeches/queens-speech-2016>

2.8 DEPUTY S.Y. MÉZEC OF ST. HELIER OF THE MINISTER FOR EDUCATION REGARDING OPTIONS TO PROVIDE MORE HIGHER EDUCATION SERVICES IN THE ISLAND: [9470]

Question

Following part D of R.51/2016 ‘Higher Education Funding’, entitled Expansion of Campus Jersey, which concludes that the government will progress with exploring the options to provide more on-Island higher education services, could the Minister indicate what he is planning to do to pursue this aim, along with what funding he considers will be necessary to enable local students to afford to sign up to any new courses?

Answer

Meetings are already taking place with representatives of all the organisations in Jersey that provide higher education courses on-Island. There are currently 23 offerings across a range of subjects generally linked to the needs of the local economy. This includes 14 courses at the University Centre, Highlands, which is exploring options for additional courses where there is, or could be, demand from students or local businesses. The group is already looking at ways to improve collaboration, enhance the offering to students here and raise the profile of Jersey-based courses.

Students signing up to any new courses would be subject to the same funding arrangements as for other courses, including the means-tested student finance grant and a £1,500 a year Jersey student loan.

2.9 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR INFRASTRUCTURE REGARDING SPORTS FACILITIES OWNED BY THE STATES OF JERSEY: [9471]

Question

Breaking the information down to individual named clubs, would the Minister advise members what sports facilities are owned by the States of Jersey/Jersey Property Holdings and leased out to individual clubs, together with details of the annual rent paid by these clubs and the annual cost of maintaining their sports facilities? Would the Minister also state whether he is planning any increased rents or charges for maintaining these sports facilities.

Answer

The attached table lists sports facilities that are owned by the Public and leased or licensed to third parties, together with information on the nature of the agreement, its duration and passing rents.

Neither Jersey Property Holdings nor the Sports Division of the Economic Development, Tourism, Sport and Culture Department hold information on maintenance costs specific to each club. Many of the facilities are shared (e.g. within Fort Regent) and maintenance costs are collected at a site level.

The tenant clubs will also undertake maintenance in accordance with their liabilities under the respective tenancy agreements. These liabilities and the resulting costs will vary depending on the terms of the individual agreements and the attributes of the respective properties. The passing rents reflect these differing tenant liabilities. No record of these costs are held by either Department.

The rental charges set out in the respective agreements are liable to increases in line with the terms of the agreements, as noted in the attached table. In most cases this is an annual increase in line with the Jersey Retail Price Index (JRPI).

The department is working with the Sports Division of the Economic Development, Tourism, Sport and Culture Department to provide up to date tenancy arrangements with all tenant sports clubs. The attached table indicates the date when the most recent arrangement has been agreed. Those identified with an asterisk (*) are either in the course of review or have yet to be reviewed.

There are no proposals to increase rents or charges beyond those set out in existing agreement. Until those agreements subject to review have been concluded it is not possible to say whether there will be an impact on rents or any other charges.

Sports facilities owned by the Public and leased or licenced to third parties

Lettable Unit Name	Site Name	Parish	Description of Agreement	Start Date	Annual Rent	Review Type	Next Review Date	Review Frequency	Agreements Under Review (*)
Les Creux Bowls Facility	Les Creux Recreational Land	St Brelade	2015 9 Year Lease to Les Creux Bowls Club	01/01/2015	£3,103.13	JRPI	01/01/2017	Annually	
Beaumont Tower and Yard	Beaumont Tower and Pumping Station (12)	St Peter	2001 Rolling Licence to The Royal Channel Islands Yacht Club	01/01/2001	£552.83	JRPI	01/01/2017	Annually	
Former Bonapartes Nightclub N55	Fort Regent	St Helier	2000 Bare Licence to Jersey Karate Club	01/01/2000	£4,143.30	JRPI	01/01/2017	Annually	
Jersey Kenpo Karate Association N50-N54	Fort Regent	St Helier	2002 Rolling Licence to Jersey Kenpo Karate	01/07/2002	£7,787.08	JRPI	01/07/2017	Annually	
Jersey Freestyle Karate N68 & N69	Fort Regent	St Helier	2003 Rolling Licence to Jersey Freestyle Karate	01/01/2003	£7,027.05	JRPI	01/01/2017	Annually	
Phoenix Jersey (Mushin Wado) S35	Fort Regent	St Helier	2008 Bare Licence to Mushin Wado Shinpo Society	01/01/2008	£6,090.29	JRPI	01/01/2017	Annually	
Aiki-Budo Room N70	Fort Regent	St Helier	2003 Rolling Licence to Aiki-Budo	01/01/2003	£4,554.52	JRPI	01/01/2017	Annually	
Tigers Office N33	Fort Regent	St Helier	2008 Bare Licence to Tigers Swimming Club	01/01/2008	£1,215.13	JRPI	01/01/2017	Annually	
JSC Office N39	Fort Regent	St Helier	2004 Rolling Licence to Jersey Swimming Club	01/01/2004	£1,407.39	JRPI	01/01/2017	Annually	
Bowls Clubroom S24	Fort Regent	St Helier	2005 Rolling Licence to Regent Senior Bowls Club	01/01/2005	£854.72	JRPI	01/01/2017	3 Yearly	
Room S25	Fort Regent	St Helier	2013 Rolling Licence to Regent Gym Club	01/05/2013	£5,566.86	JRPI	01/05/2017	Annually	
Queens Hall Balcony (East)	Fort Regent	St Helier	2016 Rolling Licence to Boxin Business	01/01/2016	£14,887.75	JRPI	01/01/2017	Annually	
Queens Hall Balcony (North)	Fort Regent	St Helier	2016 Rolling Licence to Regent Gym Club	01/01/2016	£10,518.75	JRPI	01/01/2017	Annually	
Room N9	Fort Regent	St Helier	2012 Rolling Licence to Maximum Fitness	01/02/2012	£1,652.54	JRPI	01/02/2017	Annually	
Scrubland within Road Loop	C100 La Route du Nord & Road Loop	St John	2016 9 Year Lease to Jersey Kart and Motor Club (Guarantee) Limited	25/03/2016	£300.00	None		One Off Fee	
Les Landes Rifle Range	Les Landes Headland	St Ouen	2004 Rolling Licence to Jersey Rifle Association	08/04/2004	£0.00	None			
New Gilson Badminton Hall Groundsite	New Gilson Badminton Hall Groundsite	St Helier	1995 99 Year Contract Lease to Jersey Badminton Association	01/01/1995	£192.00	JRPI	01/01/2020	5 Yearly	
Les Landes Racecourse	Les Landes Racecourse	St Ouen	2006 99 Year Contract Lease to Jersey Race Club	08/12/2006	£3,137.20	JRPI	07/12/2018	3 Yearly	
FB Playing Fields Main Pavilion	FB Playing Fields	St Clement	2004 Rolling Licence to Jersey Aikido Club	01/09/2014	£2,595.48	JRPI	01/09/2016	Annually	

Geoff Reed Table Tennis Centre	FB Playing Fields	St Clement	1997 Bare Licence to Jersey Table Tennis Association	01/01/1997	£3,338.27	JRPI	01/01/2017	Annually	*
Jersey Spartan Athletic Clubhouse & Store	FB Playing Fields	St Clement	No Formal Agreement in Place		£0.00	None			*
Les Quennevais Bowls Club Green & Pavilion	Les Quennevais Sports Facility	St Brelade	2015 9 Year Lease to St Brelade's Bowls Club	01/01/2015	£12,313.86	JRPI	01/01/2017	Annually	
Les Quennevais Tennis Courts & Pavilion	Les Quennevais Sports Facility	St Brelade	1997 Proposed 25 Year Contract Lease to Les Mielles Tennis Club	01/05/1997	£6,693.69	JRPI	01/05/2017	Annually	*
Les Quennevais Croquet Green	Les Quennevais Sports Facility	St Brelade	1997 9 Year Lease to Jersey Croquet Club	01/04/1997	£656.00	No More			
Jersey Petanque Club Terrain	Les Quennevais Sports Facility	St Brelade	2015 9 Year Lease to Jersey Petanque Club	01/01/2015	£1,495.00	JRPI	01/01/2017	Annually	
St Saviours Bowls Club Green & Pavilion	Grainville Sports Facility	St Saviour	2015 9 Year Lease to St Saviour's Bowls Club	01/01/2015	£12,662.60	JRPI	01/01/2017	Annually	
Grainville Tennis Courts & Cabin	Grainville Sports Facility	St Saviour	2016 9 Year Lease to Grainville Tennis Club	01/01/2016	£2,500.00	JRPI	01/01/2017	Annually	
Parish of St Saviour Petanque Terrain	Grainville Sports Facility	St Saviour	2016 Rolling Licence to Parish of St Saviour	15/02/2016	£0.00	None			
South Hill Gymnasium	South Hill Gymnasium	St Helier	2012 Rolling Licence to Jersey Leonis Amateur Boxing Club	01/09/2012	£1,122.94	JRPI	01/09/2016	Annually	*
Grainville Indoor Bowling Club	Grainville Indoor Bowling Club	St Saviour	1991 99 Year Contract Lease to Jersey Indoor Bowling Association	01/04/1991	£4,623.88	JRPI	01/04/2021	5 Yearly	
Pistol Range Crabbe	Crabbe Ranges & Farmhouse	St Mary	2016 9 Year Lease to Jersey Pistol Club	01/01/2016	£400.00	JRPI	01/01/2017	Annually	
Clay Pigeon Range Crabbe	Crabbe Ranges & Farmhouse	St Mary	2016 9 Year Lease to Crabbe Clay Pigeon Shooting Club	01/01/2016	£1,500.00	JRPI	01/01/2017	Annually	
Muzzle Loaders Crabbe	Crabbe Ranges & Farmhouse	St Mary	1999 9 Year Lease to Muzzle Loaders Association	25/12/1999	£179.76	No More			*
Smallbore Rifle Range Crabbe	Crabbe Ranges & Farmhouse	St Mary	2016 9 Year Lease to Jersey Outdoor Smallbore Rifle Club	01/01/2016	£500.00	JRPI	01/01/2017	Annually	
Fullbore Rifle Range Crabbe	Crabbe Ranges & Farmhouse	St Mary	1991 17 Year Contract Lease to Jersey Rifle Association	25/12/1991	£297.94	No More		3 Yearly	*
Field My91 Crabbe (Archery)	Crabbe Ranges & Farmhouse	St Mary	1999 9 Year Lease to Jersey Archery Society	01/04/1999	£247.06	No More			*
Sun Bowls Club Green & Pavilion	Sun Bowls Club Green & Pavilion	St Helier	2015 9 Year Lease to Sun Bowls Club	01/01/2015	£1,945.92	JRPI	01/01/2017	Annually	
St Brelade's Playing Fields (Fields B89 & B90)	St Brelade's Playing Fields (Fields B89 and B90)	St Brelade	1996 25 Year Contract Lease to St Brelade's Social Club	01/07/1996	£3,500.00	MV	01/07/2017	3 Yearly	
St Aubin's Tunnels and Woods	St Brelade Smallbore Rifle Club	St Brelade	2015 9 Year Lease to St Brelade's Smallbore Rifle Club	01/01/2015	£700.00	Pre-agreed	01/01/2017	Annually	
St Aubin's Tunnels and Woods	Jersey Air Rifle Club Tunnel 3	St Brelade	2015 9 Year Lease to Jersey Air Rifle Club	01/01/2015	£598.00	Pre-agreed	01/01/2017	Annually	
St Aubin's Tunnels and Woods	Bobsleigh Run	St Brelade	2014 9 Year Lease to Jersey Bobsleigh Club	01/12/2014	£1,100.00	JRPI	01/12/2017	3 Yearly	

St Aubin's Tunnels and Woods	Jersey Air Rifle Club Tunnel 6	St Brelade	2016 9 Year Lease to Jersey Air Rifle Club	11/04/2016	£1,100.00	JRPI	11/04/2019	3 Yearly	
Fields J29 and J30 Sorel Point Motocross	Fields J29 and J30 Sorel Point Motocross	St John	2016 Rolling Licence (Option Agreement) to JMC&LCC	01/01/2016	£305.17	JRPI	01/01/2017	Annually	
Surf School Trailer Groundsite	Le Braye Public Toilets & Land	St Brelade	2015 Rolling Licence to Jersey Surf School	01/06/2015	£1,267.50	JRPI	01/06/2017	Annually	

2.10 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING THE INQUIRY BY THE POLICE SERVICE OF NORTHERN IRELAND INTO THE BOSCHAT CASE: [9472]

Question

Following Question 9415, did the complaint from Mr Roy Boschat come to the Minister directly or from another source and, if so, what was that source; what terms of reference has she set for the inquiry by the Police Service of Northern Ireland into the Boschat case; how long does she expect the inquiry to last and what is its estimated cost; from which budget will the investigation be funded; what was the cost of the two previous external police investigations into this matter; and why she considers it necessary to investigate this case again given that there have been two previous investigations by external police forces?

Answer

The official complaint from Mr Boschat was addressed to the Chief Officer of the States of Jersey Police and subsequently referred to the Minister for Home Affairs.

The terms of reference include personal data and it would therefore not be appropriate to publically disclose this information whilst the investigation is ongoing.

The timeframe for the investigation is subject to a number of variables. According to provisional indications given by the Police Service of Northern Ireland, the report on the investigation will be finalised after any proceedings, or otherwise may be available by the end of October 2016, further to which it will be given due consideration by the Minister for Home Affairs.

The provisional estimate of costs for the enquiry is £31,432. This is an indicative figure and dependent on the findings of the investigation. Decisions regarding the source of funds will be taken once the final cost is known.

There have been no previous external police investigations into the matters, which are the subject of the complaint made by Mr Roy Boschat, that are being investigated by the Police Service of Northern Ireland.

This independent investigation was commissioned following the receipt of a separate official complaint made against the States of Jersey Police by Mr Boschat and in accordance with advice from the Law Officers' Department.

2.11 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE NUMBER OF LEGAL ACTIONS THAT HAVE BEEN COMMENCED AGAINST THE STATES OF JERSEY: [9473]

Question

Would the Chief Minister advise members, using a table, of the number of legal actions that have been commenced against the States of Jersey for each year from 2008 to the present date, listing the type or nature of the litigation, the cost of defending the actions, and whether the actions were successful, unsuccessful or successfully mediated? Would he also state the amount of costs recovered each year from cases ruled in favour of the States?

Answer

It is not possible to provide the volume of information requested in the time available; in particular noting that it has been requested to cover 9 years, and that an answer would need to be considered cross-departmentally. It is also unclear as to whether the question also seeks to cover both civil and criminal matters, and there could be a level of information that is commercially sensitive and could

not be disclosed. If the Deputy were able to be more specific, that would more readily enable an answer to be provided.

2.12 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE CHIEF MINISTER REGARDING PROCEDURES ADOPTED BY STATES DEPARTMENTS FOR HEARING COMPLAINTS AGAINST MEMBERS OF STAFF: [9474]

Question

Will the Chief Minister set out for members the procedures adopted by States Departments for hearing complaints against members of staff and the role of the States Employment Board in this process, setting out the time schedules involved?

Answer

Complaints against members of staff are taken seriously, seeking to deal with those complaints in a timely and fair fashion, having considered available evidence, and ensuring that a proper investigatory process is in place. These principles apply across all departments, although it is a matter for each department to formulate its own procedures, having regard to the nature of the work undertaken by staff, which is often specialist and in a variety of settings. If appropriate, the Disciplinary Procedure is then applied which contains structured, timed steps to resolve the matter. When a referral is made to a professional body, then that organisation's procedures will also take effect.

The States Employment Board is not involved in this process, save for the exercise of the Delegated authority to the Chief Executive and Chief Officers via the Employment Codes of Practice, and the standard scheme of delegation. In the event of a proven case of a disciplinary complaint against a Chief Officer, then the States Employment Board may hear the appeal.

2.13 DEPUTY M.R. HIGGINS OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING THE SOURCE OF THE LEGAL POWERS AND RESPONSIBILITIES OF CENTENIERS: [9475]

Question

Will H.M. Attorney General summarise for members the source of the legal powers and responsibilities of Centeniers and how they may be held accountable for the manner of execution of their duties, whether as honorary officers or prosecutors.

Answer

The office of Centenier evolved at customary law along with the office of Connétable. Historically, Centeniers took the same oath as the Connétables and carried out the same functions in their absence in relation to the administration of justice and parish affairs.

The legal powers and responsibilities of Centeniers are now confirmed by statute, most significantly the Honorary Police (Jersey) Law 1974, the Honorary Police (Jersey) Regulations 2005, and the Criminal Procedure (Centeniers) (Jersey) Law 1996.

The Attorney General is the titular head of the Honorary Police and has a supervisory jurisdiction over Centeniers (Article 4(3) of the 1974 Law). As head of the prosecution service, the Attorney General is ultimately responsible for charging decisions and if a Centenier wrongly declines to charge any person the Attorney General has the power to overturn that decision.

Any complaints made against a Centenier in respect of his or her decisions as prosecutor are referred to and determined by the Attorney General, including a complaint about a Centenier's handling of a Parish Hall Enquiry.

The Connétables (Miscellaneous Provisions) (Jersey) Law 2012 acknowledges the responsibility of Connétables to supervise members of the Honorary Police in their parish.

Complaints and disciplinary procedures for complaints relating to the conduct of Centeniers in their policing role are set out in the Police (Complaints and Discipline) (Jersey) Law 1999 and the Police (Honorary Police Complaints and Discipline Procedure) (Jersey) Regulations 2000, which provide that a member of the Honorary Police commits an offence against discipline if the member's conduct does not meet the standard set out in the Discipline Code laid down in the Schedule to those Regulations.

Under the 1999 Law, the Connétable is bound to keep a register of all complaints submitted to him or her about members of the Honorary Police and to notify the Attorney General of all such complaints. The Attorney General can instruct an investigation into a complaint that is usually carried out by an inspector of the States of Jersey Police, and the Jersey Police Complaints Authority has the power to supervise any such investigation.

The office of Centenier remains an elected one; and, separately from the Code of Conduct in the Regulations of 2000 referred to above, a Centenier is ultimately answerable, every three years, to the electors of his or her Parish.

2.14 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE DEPARTMENT'S COMMUNITY AND SOCIAL SERVICES PROVISION FOR ADULT SOCIAL AND LONG-TERM CARE: [9477]

Question

Will the Minister inform members in detail of what plans he has under consideration to review and redesign his department's community and social services provision for adult social care and long term care? What estimates has he made of budget savings arising from these proposals in total and in each year over the period of the 2016-19 MTFP and as a proportion of the total budget for such care? Will he further state whether this review will involve any loss of FTE posts, and if so, how many and in what year? What proposals does he plan to bring forward for older adult nursing home in-patient services as part of the review and redesign process? Is consideration being given to cessation of such services and, if so, what will replace them, what loss of posts would his proposals entail, if any, and what estimates does he have for departmental budget savings, both in non-staff and staff costs in real terms and as a proportion of the older adult budget?

Answer

Health and Social Services is one of the priority areas identified by the Council of Ministers in the States Strategic Plan and as such is receiving almost £40 million of additional annual funding by 2019. This is in addition to £28 million additional annual investment that was agreed in the first Medium Term Financial Plan.

However, the department is always seeking to deliver services to Islanders in the most efficient and effective way possible, while prioritising the safety of patients. As one would expect, services are always under review to ensure value for money. The department is seeking to deliver savings through sustainable efficiencies, service redesign and cost reductions. Future plans are currently being finalised and will appear in the MTFP Addition. This would include changes, if any, to my department's community and social services provision for adult social care and long-term care.

The Medium Term Financial Plan Addition is due to be lodged with the States Assembly on Thursday June 30th and detailed proposals for savings and investment will be made public on that date. States Members will receive a detailed briefing on the plan before it goes into the public domain.

Ministers have been considering the potential impact of the package of measures contained in the MTFP Addition.

2.15 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING NEW OR INCREASED CHARGES FOR HOSPITAL SERVICES: [9478]

Question

Will the Minister detail for members what proposals, if any, he has under consideration for new or increased charges for hospital services in order to meet his budget targets under the next stage of the MTFP and state what sums he expects to raise through each such charge? Will he further state what principles and practical measures he will apply to ensure that the impact of such charges are mitigated for those on low incomes or with high medical needs?

Answer

The Health and Social Services Department is always seeking to deliver services to Islanders in the most efficient and effective way possible, while prioritising the safety of patients. As one would expect, services are always under review to ensure value for money. The department is one of the priority areas identified by the Council of Ministers in the States Strategic Plan, and as such is receiving almost £40 million of additional annual funding by 2019.

However we are seeking savings through sustainable efficiencies, service redesign and cost reductions. Future plans are currently being finalised and will appear in the MTFP Addition, which is due to be lodged with the States Assembly on Thursday June 30th. Detailed proposals for savings and investment will be made public on that date and States Members will receive a detailed briefing on the plan before it goes into the public domain.

Ministers have been considering the potential impact of the proposals contained in the package of measures.

2.16 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR INFRASTRUCTURE REGARDING THE RESTRUCTURING OF WASTE SERVICES: [9479]

Question

Will the Minister detail for members what changes in service will result from the restructuring of waste services following his department's transformation project? What estimate has he made of budget savings which may arise from these proposals in total and in each year over the period of the 2016-19 MTFP and as a proportion of the total waste budget? Will the project involve any loss of FTE posts, and if so, what estimates does he have of how many posts may be lost and in what years? What consultations, if any, with employee representatives have taken place?

Answer

The department is currently undertaking a programme of service reviews in Waste Management, which will be concluded by Q2 2017. The department will not be able to confirm whether or not there will be any reduction in posts until the completion of the reviews.

The financial savings for Liquid and Solid Waste are anticipated to be £2,770,000 for MTFP 2, representing approximately 14.2% of the gross budget over the period.

2016 - £822,000

2017 - £608,000

2018 - £690,000

2019 - £650,000

Formal and informal consultation continues with the Unions and once the reviews are completed employee consultation will begin in 2016. Employees are regularly updated through an internal newsletter and are advised of the service review timescales and process.

This project is part of the work to reform every aspect of the public service to meet the changing demands of islanders. We are assessing which services are essential and how best to provide them. Some services will change, others will be delivered differently as we prioritise our spending and increase efficiency.

The MTFP Addition follows the direction set by the States Strategic Plan - to prioritise investment in health, education, economic growth and infrastructure and to balance our books by 2019 through savings, restructuring, economic growth and some charges.

2.17 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING SCHEMES RUN BY THE DEPARTMENT UNDER BACK-TO-WORK FUNDING: [9480]

Question

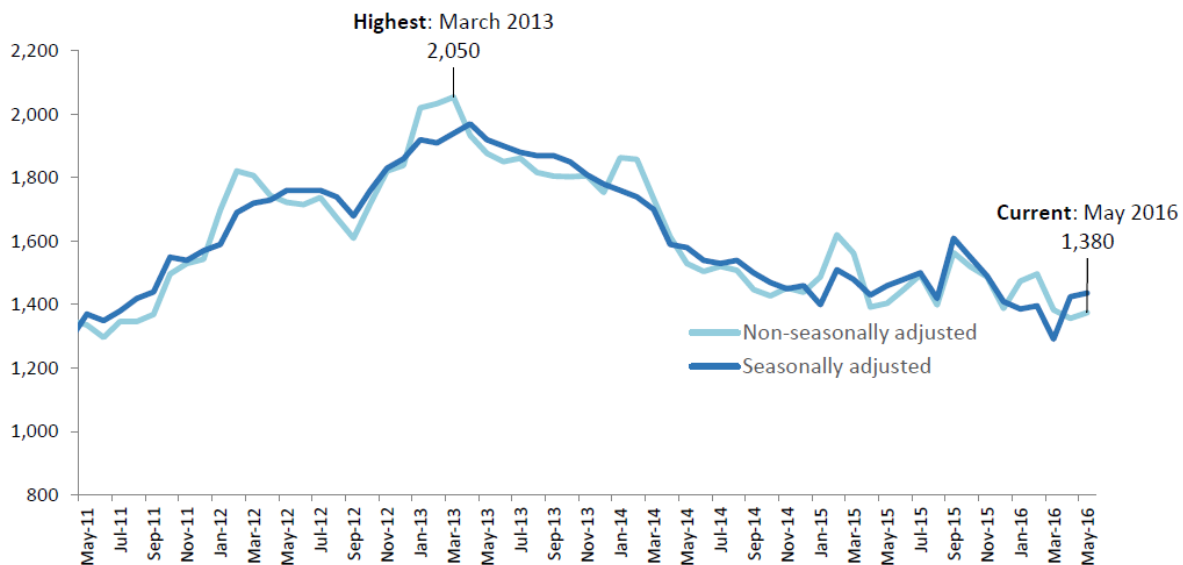
Will the Minister detail for members the schemes which have been run by her department under back-to-work funding since 2010, including the period for which each scheme operated, the sector targeted, the number of clients supported, the level of support provided to the employer and trainee, the total cost of the scheme, how success was measured in each case, and the numbers of clients of each scheme who went on to find permanent employment?

Answer

Unemployment rapidly increased in 2011 as a result of world recession which hit Jersey hard: the finance industry shrank, shops closed and the fulfilment industry virtually disappeared. In early 2012 the Council of Ministers stated, "Our most urgent priority is to get unemployed Islanders working."

Back to Work was formed at the beginning of 2012 and significant additional funding was allocated to strengthen existing employment support teams and develop new initiatives.

Unemployment reached historic highs of 2,050 by the end of March 2013. The graph below shows the success Back to Work has had in tackling registered unemployment levels, which could have risen significantly higher without the input of the Back to Work. Such is the success of the programme that in the last 18 months it has been able to extend its scope and enable more Income Support claimants to benefit from the support Back to Work offer and move into employment. Over 400 individuals including parents of nursery age children, self-employed individuals and some Long Term Incapacity Allowance claimants have been added to the actively seeking work register in addition to the existing jobseeker groups. This has kept registered unemployment higher than it would otherwise have been, but offered a route into employment for many who may not otherwise have looked for work.



Job starts

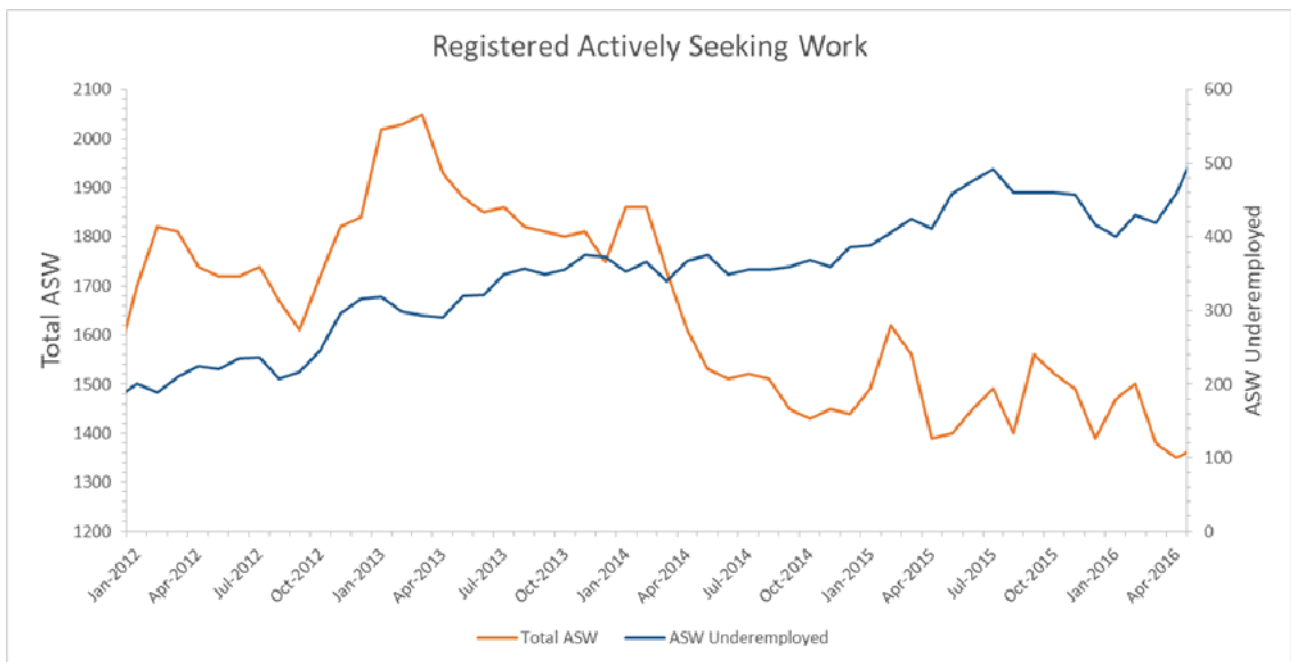
Each year there are typically around 5,000 individuals who are, at some point, registered with the department to find work. Back to Work focus their support on jobseekers who need help finding work and therefore the job start figures quoted below only represent supported job starts – they do not include those who found work quickly by themselves.

Between January 2012 and the end of May 2016, 7,980 job starts were supported by Back to Work, of which, 3,650 were for permanent positions.

Back to Work is committed to supporting jobseekers move into sustainable employment. This is often achieved through an initial temporary role which can give candidates an excellent ‘foot in the door’ to progress from as well as helping those with more barriers to employment to become more employable by giving them training, skills and professionalism they need, and by helping them to build confidence.

Back to Work also supports a number of people move from not working at all, to having part time work. This provides individuals with the opportunity to develop skills, experience and contacts. The part time worker continues to receive Back to Work support until a full time position is secured. The graph below shows the significant rise in ASW clients who are engaged in some form of paid employment and classified as ‘underemployed’.

As of May 2016, 520 people (38%) of the 1380 people registered as Actively Seeking Work are classed as ‘underemployed’ with part time work.



Schemes

Back to Work is made up of a number of core schemes who support customers in their jobseeking, through coaching and mentoring and providing suitable training. The core schemes are outlined below.

Advance to Work

Formed in 2009 by the Education department, ATW became part of Back to Work in September 2012. It helps young people looking for work make the transition between education and employment. It provides an individualised programme of general and vocational training, personal advisor support and work experience with local employers. The team's target age group is 16 to 24.

Advance Plus

Formed in 2010 by the Education department, Advance Plus became part of Back to Work in September 2012. Advance Plus runs 10-week industry-specific schemes for motivated jobseekers aged 20 and over. Schemes are focussed on areas such as Retail, Finance, Care, Construction, IT & Coding, Business Administration and Gardening. The scheme combines intensive training, a five-week work placement and advisor support to improve delegates' opportunities for work.

Work Right

Work Right is a dedicated team to support jobseekers with a range of barriers to employment, including those who have been actively seeking work for over 12 months. Prior to Work Right, this client group was supported by the Long Term Unemployment Unit and Work Wise.

Work Zone and Ready for Work

These teams are for jobseekers who are more 'work ready', and do not require the specialist support offered by the other schemes. They provide advisers who offer wide-ranging guidance on job-seeking and training to help clients step into the workplace.

Projects

Back to Work collaborates with employers to run targeted projects and specific recruitment drives which use innovative initiatives to tackle unemployment. Each project is evaluated to enable Back to Work to continue to enhance its existing provision to provide a swift and flexible response to the

needs of both jobseekers and employers. Key projects that have been run by Back to Work are outlined below – customers taking part in these projects will also receive support from one of the ‘core’ employment teams above.

- **Hospitality:** The Hospitality Programme has continued to evolve since it first ran in 2012 based on regular evaluation and extensive feedback from industry and partnership working with JHA. The current initiative gives Islanders who have not worked in the industry before the chance to train on the job. It also gives employers the opportunity to recruit and train locally-qualified jobseekers with financial support from Back to Work. As well as giving candidates the opportunity to gain practical skills in a hospitality environment, Back to Work also provide trainees with the opportunity to secure relevant certificated qualifications such as health and food safety, responsible alcohol retailing, and customer service.
- **Construction:** A number of construction initiatives have been run by Back to Work over the last 3 years. They include a training building site at the Waterfront run in partnership with the Jersey Construction Council and local employers, specific window fitting training responding to industry demand, bespoke ‘summer school’ in dry lining and plastering, and the current initiative of paid training – enabling employers to train individuals ‘on the job’ for up to 12 weeks.
- **JobsFest:** launched in 2013, is centred on an employer incentive that helps locally qualified jobseekers find paid work during October and November. Up to eight weeks’ wages and social security contributions are paid to employers that hire locally qualified jobseekers who have been registered as actively seeking work throughout that year. In addition there is a ‘festival’ of daily training events that are available to inspire and skill up jobseekers (including those not on the incentive programme).
- **The Community Jobs Fund** was launched in 2013 and provides up to six months’ wages for young or long-term jobseekers employed by a charity or organisation that can provide a role offering a clear, additional benefit to the community.
- **Foundations** was launched in 2014 and is designed to support registered jobseekers who are furthest from employment. It aims to bring clients closer to employment by offering them paid work on projects to act as a stepping stone towards more open employment. Foundations projects involve work on community benefit projects on various sites across Jersey such as various Island Games venues and the, Railway Walk. All work undertaken benefits the community, and is maintenance that would not otherwise have been undertaken. It provides workers with experience of work, and improves their general employability in areas such as attendance, positive attitude, teamwork and motivation to work.
- **Self- Employed** – In 2015 Back to Work added 70 people to the ASW register and supports self-employed customers whose income is not sufficient for them to be considered ‘full time employed equivalent’. This involves dedicated advisor support and training on business development topics.

Employment Incentive

Some jobseekers have barriers to employment which minimise their chances of being recruited in open recruitment – but given the chance to ‘get a foot in the door’, an employer can have the opportunity to employ candidates they may not previously have considered, and have greater flexibility to allow additional training time to get their new recruit fully up to speed. Back to Work have offered different financial incentives over the last 3 years including the Employment Grant and Youth Incentive which have now been replaced with the Employment Incentive. This incentives offers 6 months’ salary at minimum wage for an employer who hires a long term unemployed jobseeker into a permanent role. The structure, scope and value of employment

incentives has changed into our current offering as a result of evaluation and feedback from employers.

Back to Work Recruitment

The Back to Work Recruitment team act in a similar capacity to a recruitment agency, matching job-seekers to employers' requirements. This includes assisting employers with their recruitment process, from the pre-selection of candidates to providing interview feedback.

They can help with everything from recruitment campaigns to ongoing training once the position has been filled:

- candidate search and selection
- job trials, vocational training, and work placements for candidates
- job match events
- shortlisting, interviewing and feedback
- tailored industry or company-specific recruitment campaigns

Support provided for employer and trainee

Back to Work's key aim is very much to help keep someone in a job, not just get them into a job. Once a jobseeker has been supported into finding employment, their Back to Work advisor will continue to keep in touch and provide In Work Support for the employee for the first six months of their employment as well as keeping in touch with the employer (if required). This In Work Support plays a crucial role in helping employees with some of the challenges of starting a new job and supports employers with any issues that may arise. The aim is to ensure the employee moves from unemployed into the workforce smoothly and stays in work longer. This In Work Support is offered across all areas of Back to Work.

Measures of success

BTW measures success in terms of outcomes and progress made. Key outcomes are around number of job starts, type of job start as well as sustainability, that is, 6 months in work. Additionally, while jobseekers are on one of the BTW schemes we measure participation in activities that bring jobseekers closer to employment, for example attending training or job club, or carrying out a work placement. Back to Work also monitors progress made by jobseekers in terms of readiness for work as well as skills they may have improved or gained through training.

Across the range of BTW services, nearly 8,000 job starts have been recorded since Jan 2012. This table includes the number who were offered a job on a permanent contract. The total number includes contracts that began temporary or seasonal work – their contract type may change as their employment progresses.

	All Job Starts (including contracted seasonal)	Permanent contract type at time of job start
Advance to Work	1150	640
Advance Plus	900	420
Work Right (and predecessors)	1710	720
WorkZone & Ready for Work	4030	1800
Other schemes	190	70
Total	7980	3650

NB. All job starts are rounded to the nearest 10.

As outlined above, Back to Work recognise that sustainable work (whether achieved through a permanent or temporary contract) is important, and the number of permanent contracts to jobseekers has increased year on year. As the Back to Work programme has developed, there has been increasing success at supporting individuals into a permanent contract from the outset.

Year	2012	2013	2014	2015	2016 (until 31/5/16)
% permanent contract	38%	40%	44%	54%	57%

Total costs

Although Back to Work started in 2012, Advance to Work and Advance Plus, which are now a significant part of the programme, were part of the Education, Sport and Culture Department until September 2012 and therefore the funding below excludes these initiatives until they joined Social Security.

2012	2013	2014	2015
£ 2,861,000	£6,187,000	£ 7,178,000	£ 6,175,000

2.18 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING ANY CHANGES UNDER CONSIDERATION FOR PATIENT TRANSPORT AND TRAVEL: [9481]

Question

Will the Minister detail for members what changes are under consideration for patient transport and travel both on and off-island for the years 2016 to 2019 along with his estimates for savings to be realised over this period in these areas including the numbers of posts likely to be lost?

Answer

The Health and Social Services Department is always seeking to deliver services to Islanders in the most efficient and effective way possible, while prioritising the safety of patients. As one would expect, services are always under review to ensure value for money.

The department is one of the priority areas identified by the Council of Ministers in the States Strategic Plan and as such is receiving almost £40 million of additional annual funding by 2019. However, like all areas of the public sector we are seeking to deliver savings through sustainable efficiencies, service redesign and cost reductions. Future plans are currently being finalised and will appear in the MTFP Addition. This would include changes, if any, to patient transport services or patient travel.

Ministers are finalising the proposals in the MTFP Addition, which follow the Strategic Plan agreed by the Assembly – to prioritise Health, Education, Infrastructure and Economic Growth and to balance the books by 2019 through savings, restructuring, economic growth & some charges.

The MTFP Addition is due to be lodged with the States Assembly on Thursday June 30th and detailed proposals for savings and investment will be made public on that date. States Members will receive a detailed briefing on the plan before it goes into the public domain.

2.19 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR ECONOMIC DEVELOPMENT, TOURISM, SPORT AND CULTURE REGARDING PROPOSALS FOR REDUCING CULTURAL GRANTS: [9482]

Question

Will the Minister detail for Members, what proposals, if any, he has under consideration for reducing cultural grants for 2017, 2018 and 2019 and, in the event of a reduction, which organisations will be affected?

Answer

The part that Culture plays in the well being and quality of life of Islanders cannot be underestimated and it is important that the States continues to invest in critical arts and cultural infrastructure at an appropriate and affordable level

The Medium Term Financial Plan Addition is due to be lodged with the States Assembly on Thursday June 30th and detailed proposals for savings and investment will be made public on that date. States Members will receive a detailed briefing on the plan before it goes into the public domain.

Ministers are now finalising the proposals in the MTFP Addition, which follow the Strategic Plan agreed by the Assembly – to prioritise Health, Education, Infrastructure and Economic Growth and to balance our books by 2019 through savings, restructuring, economic growth & some charges.

2.20 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR EDUCATION REGARDING TUITION FEES FOR JERSEY MUSIC SERVICES: [9483]

Question

Will the Minister state what plans, if any, there are to increase tuition fees or move to a full cost recovery basis for Jersey Music Services in 2017, 2018 and 2019? What impact assessment has been carried out on changes in the numbers of students taking up or progressing music as a result of any MTFP savings sought in this area?

Answer

The Education Department constantly reviews expenditure and priorities in order to address the additional demand for services from a growing population, to invest in improving standards and to ensure available funding is focussed on the young people who are most in need.

The Department is one of the priority areas identified by the Council of Ministers in the States Strategic Plan, and as such is receiving almost £11 million of additional annual funding by 2019. However we are all seeking savings through sustainable efficiencies, service redesign and cost reductions in order to achieve a balanced budget by 2019.

As the Department has statutory duties to meet and a budget largely taken up by paying front-line teachers and other staff, there is limited room for manoeuvre. All areas have been under consideration and, where possible, Lean techniques and technology have been used to streamline and improve services. The Department has also been exploring new partnerships with the voluntary, community and business sectors to secure the best possible outcomes for young people.

Finalised proposals for savings and investment contained in the Medium Term Financial Plan addition are due to be lodged with the States Assembly on Thursday 30 June when details of all savings, including any for the Jersey Music Service, will be available. In the meantime, the Education Department can confirm that its aim has been to affect the lowest numbers possible and any savings, while necessary, have been kept to a minimum.

2.21 DEPUTY M. TADIER OF ST. BRELADE OF H.M. ATTORNEY GENERAL REGARDING THE ISSUING OF PARKING TICKETS TO VEHICLES PARKED ON PRIVATE LAND: [9484]

Question

With reference to Question 8682, what legal basis exists for the issuing of parking tickets to vehicles parked on private land, are parking tickets issued in respect of vehicles parked on private land enforceable in court and has a ticket issued in such circumstances ever been enforced in a Jersey court of law?

Answer

This question is asked with reference to Question 8682 which was about a company which was said to issue “parking fines on private land”. I take it that the question now asked does not concern any fines imposed in the Magistrate’s Court pursuant to parking tickets issued under the Road Traffic Law; but that it relates to tickets or documents left by or on behalf of private landowners or occupiers on vehicles parked on private land seeking a monetary payment from the user of the vehicle.

When a person parks his or her car without permission on land owned or occupied by another he or she trespasses on that land, and does so on each occasion that the car is parked. This gives rise to a possessory action in Jersey law. Unauthorised entry on and use of someone else’s land is a civil wrong which is actionable in the Courts. A car in this respect is no different from anything else which may be left or deposited on someone else’s land without that other person’s express or implied consent. Unauthorized entry on and use of someone else’s land entitles the occupier to claim damages against the perpetrator in a civil court. There is no specific rule about how to calculate the amount (quantum) of damages for this civil wrong. Loss of use of, or damage to, the property may be an element, as may discomfort and annoyance to the owner/occupier, together with the costs associated with seeking to right the wrong. What this amounts to in money terms in any given case will depend upon the circumstances of that case.

In the context of a possessory action, what the question describes as a ‘parking ticket’ is in effect a written message from the occupier to the driver that the occupier will seek damages; but that, if a certain sum is paid, the occupier will desist from bringing an action for damages. It is then for the driver to assess whether he or she admits the civil wrong and, if so, regards the amount claimed as a fair reflection of the amount of damages involved. The driver will then decide whether to pay the amount claimed, or to resist a court action for recovery of that amount.

The amount involved would be within the jurisdiction of the Petty Debts Court (maximum £10,000). It is not known whether claims of this sort have been the subject of actions before the Petty Debts Court.

There may be cases also in which a driver has entered into a contract to park on private land and failed to comply with the terms and conditions of that contract. In such a case, there may be a civil claim, the precise detail of which will of course depend on the terms and conditions of the relevant contract.

2.22 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR ECONOMIC DEVELOPMENT, TOURISM, SPORT AND CULTURE REGARDING THE GRANTS GIVEN TO EVENTS JERSEY AND VISIT JERSEY: [9485]

Question

Given the importance of tourism to the local economy and the strategic aim to ‘encourage economic diversification’ what consideration has the Minister given to increasing the grants currently given to Events Jersey and Visit Jersey? If there are no such plans, can the Minister give an assurance that these grants will not be reduced in the next phases of the MTFP?

Answer

Members will be aware of the prioritisation that the Council of Ministers has placed on economic growth within the Strategic Plan and securing diversification within the local economy is a key component of this work.

The Medium Term Financial Plan Addition is due to be lodged with the States Assembly on Thursday June 30th and detailed proposals for savings and investment will be made public on that date. States Members will receive a detailed briefing on the plan before it goes into the public domain.

Ministers are now finalising the proposals in the MTFP Addition, which follow the Strategic Plan agreed by the Assembly – to prioritise Health, Education, Infrastructure and Economic Growth and to balance our books by 2019 through savings, restructuring, economic growth & some charges.

2.23 DEPUTY S.Y. MÉZEC OF ST. HELIER OF THE MINISTER FOR THE ENVIRONMENT REGARDING SUPPORT FOR ENERGY CONSERVATION: [9486]

Question

What plans does the Minister have to continue to support energy conservation, including by at least maintaining the current budget for energy grants?

Answer

The Minister has set out his commitment to energy conservation in detail in Pathway 2050: an Energy Plan² for Jersey which was agreed by the States Assembly in May 2014. The goal of the Plan is to deliver secure, affordable and sustainable energy for Jersey within an ambitious framework of targeted reductions in Jersey’s carbon emissions.

One of the three key policy areas of the Energy Plan is around demand management as follows ‘The Minister for Planning and Environment, working with other relevant Ministers and the Energy Partnership, will develop and implement the actions and work streams that will reduce energy demand through a series of interventions across all emissions sectors according to identified targets’. Thus the commitment to energy conservation is clear and remains a priority for me.

Since the agreement of the Energy Plan, it has been implemented by my department in conjunction with others who hold responsibility for specific areas (e.g. transport) and the Year One report can be found on www.gov.je and it outlines detailed progress against all the action statements³. Action statements 2, 3, 6, 7 and 8 particularly refer to commitments around energy conservation in the built environment. Action statements 11 to 15 refer to progress in energy conservation measures for the transport sector, another significant contributor to local energy consumption and emissions. Key areas of progress around energy efficiency in recent years include a States of Jersey led de-carbonisation programme that comprised of energy efficiency improvements in 4,463 social housing units and 1,727 private and rental units occupied by vulnerable Islanders, through energy

² <http://www.gov.je/government/pages/statesreports.aspx?reportid=1039>

³ <http://www.gov.je/government/pages/statesreports.aspx?reportid=1752>

efficiency grants. Other areas include significantly improved building-by-law with a wider reach through a requirement for consequential improvements alongside more stringent targets for new builds.

The Department is transparently reporting energy use and consequent emissions through a dedicated infographic that allows interrogation of the information⁴ which the Deputy might find interesting.

Going forward, I have had to consider the delivery of the Energy Plan in the context of both the MTFP1 the MTFP2. The Deputy has asked specifically about the current plans for energy grants and I believe that this refers to the previous programme of 100% energy efficiency grants that were offered to vulnerable people between 2009 and 2015. As mentioned above, this programme began before the agreement of the Energy Plan and actively assisted 1,727 householders.

The Energy Plan had already outlined how the budget for this energy efficiency programme was to be reallocated to delivery *all* of the action statements within the Plan in order to achieve the wide range of outcomes in the Plan, rather than just the narrow focus of the grant scheme. Thus the Energy Plan had already signalled the intent that the energy efficiency programme would be scaled back to release budget and resource to deliver the other action statements in the Plan. This was considered reasonable given that the target group of vulnerable islanders was finite and many people had been helped over the scheme. There was an intention to keep a core scheme available for entrants into that sector.

However, it was agreed in the States Strategic Plan that government should prioritise investment in Health, Education, Infrastructure and Economic Growth. So we are reducing costs, increasing efficiency and reprioritising our spending. As a result of this strategy departments have been looking for savings and efficiencies. A service review was carried out across the department's energy portfolio and the following savings were made:

- a service redesign identified that some action statements can be delivered differently;
- ceasing the reduced programme of grants to the socially vulnerable from the end of 2015; and
- staff reductions in connection with the administration of the grant programme.

Therefore the Deputy will note that the reduced energy efficiency grant programme for domestic properties ceased at the end of 2015 in line with the States agreed MTFP.

There remains some budget to continue to run the parallel grant programme for not-for-profit community buildings who provide residential and day care services for vulnerable islanders. This programme has been active since 2010 and has helped improve over 30 community buildings to date. It is a value for money way to assist the community with energy efficiency – examples of organisation that the programme has helped includes The Jersey Cheshire Home and the Little Sisters of the Poor residential care homes; a complete review of the programme to date will be available shortly from my Department and I would be happy to ensure that the Deputy personally receives a copy.

2.24 DEPUTY S.Y. MÉZEC OF ST. HELIER OF THE MINISTER FOR INFRASTRUCTURE REGARDING PAY RISES AWARDED TO STAFF: [9487]

Question

⁴ <http://www.aether-uk.com/jersey-greenhouse-gas-inventory>

Further to the answer to Question 9417 on pay rises for Department for Infrastructure staff since November 2014, could the Minister provide the same details for pay rises awarded to such staff in each of the previous five years?

Answer

It has not been possible to categorise in exactly the same way as per question 9417 due to the volume of data and limited time available to analyse and summarise it, however, taking a broad view of the categorisation based on grade and reason for pay rise, the summary figures are reproduced below.

Pay Award Only - no other increment or promotion

Year	% award	Other Staff	Managers	Senior Managers
2009				
2010	2%	1	14	19
2011	2%	2	18	17
2012				
2013	1%			1
2014	4%	274	20	24

Incremental Progression (plus pay award if applicable)

Year	% award	Other Staff	Managers	Senior Managers
2009		5	1	2
2010	2%	58	5	5
2011	2%	54	4	4
2012		26	6	4
2013	1%	26	3	6
2014	4%	117	7	8

Promotion or Change in Role (plus pay award if applicable)

Year	% award	Other Staff	Managers	Senior Managers
2009		17	3	2
2010	2%	6	1	2
2011	2%	32	3	1
2012		15	1	7
2013	1%	23	4	4

4	4%	12	4	5
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3. Oral Questions

The Bailiff:

3.1 Deputy R.J. Rondel of St. Helier of the Minister for Treasury and Resources regarding the reintroduction of tax relief on private health insurance: [9476]

Will the Minister reintroduce tax relief on private health insurance and if not, why not?

Senator A.J.H. Maclean (The Minister for Treasury and Resources):

I do not wish to start this morning by disappointing the Deputy but there are no plans to reintroduce...

Deputy R.J. Rondel:

Thank you. [Laughter]

Senator A.J.H. Maclean:

But there are, sadly, no plans to reintroduce tax relief on private health insurance. Evidence from the U.K. suggests that the availability of a more generous form of tax relief incentivised very few new contracts.

[9:45]

As a consequence, tax relief for private health insurance was succinctly summarised by the King's Fund, a renowned think tank, as being extremely poor value for money. Members of this Assembly will also recall that this matter was considered as recently as the 2015 Budget when former Deputy Young's amended amendment sought to introduce tax relief for marginal rate taxpayers aged 67 or older. It was rejected by 34 votes to 15.

3.1.1 Deputy R.J. Rondel:

Could the Minister confirm that detailed work has been carried out especially with the increase in cost of drugs and health care? I have been contacted by several constituents over the last couple of years who have cancelled their own private health insurance and the taxpayers are obviously carrying the financial cost of this within the hospital and health service. If I could use my own situation as an example, in the last 12 months the costs of my own health care has exceeded £70,000. Each time chemotherapy is introduced it is £1,000 ...

The Bailiff:

Is it a question, Deputy?

Deputy R.J. Rondel:

... each time. Would the Minister like to elaborate on that please?

The Bailiff:

I think the question is: have you made a full enquiry, researched the matter?

Senator A.J.H. Maclean:

I understand the sensitivities of this particular question. What I would say to the Deputy and to Members is that one of the reasons that we are earmarking a significant investment into health is to ensure that in the Island we have the finest healthcare services possible and affordable and as such there are tens of millions of pounds of additional investment being prioritised into our health service to ensure that members of the community can benefit. Work was undertaken previously by

my predecessor on this matter and, as I have said, information has been garnered from further afield as to the benefits or otherwise, as the case may be, of tax incentives in this particular area. Our chosen path is to invest in our health services and ensure they are as available to as wide a number of people as possible within our community and that they provide a high quality of care.

3.2 Deputy K.C. Lewis of St. Saviour of the Chief Minister regarding gas tariffs following the sale of the parent company of Jersey Gas: [9488]

Further to the sale of the parent company of Jersey Gas will the Minister seek assurances from the company as to whether there will be any resultant increases in gas tariffs in the foreseeable future?

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

I wonder if I could ask Senator Ozouf to answer this question as he is responsible for competition areas that this covers.

Senator P.F.C. Ozouf (Assistant Chief Minister - rapporteur):

Ministers remain committed to ensuring that markets work in the interests of consumers and that is why we commissioned the Oxera Review of the competition framework and have an action plan in place enforcing the fact that we are prepared to do whatever it takes to ensure that C.I.C.R.A. (Channel Islands Competition and Regulations Authorities) has the necessary resources and to make markets work. The fuel market is an important area and is a focus for Ministers and that is why we have asked the J.C.R.A. (Jersey Competition Regulatory Authority) to do a specific fuel market review including the gas market. The J.C.R.A. concluded that there appeared to be no reasonable grounds to suspect that the gas market is not acting in the interests of consumers at this time. Members have been advised for some time that we have been discussing with the J.C.R.A. what further work could be undertaken to explain the conclusions of this report. The J.C.R.A. are working on that explanation and particularly are going to reveal their full and more complete findings of that report later on this week. I can also advise the Deputy that having digested that information that I keep under review whether or not any further work will be required in relation to Jersey Gas. If there is evidence that emerges at any point that there is a return to a problem in relation to overpricing then I have no doubt that we will put resources in it but I cannot give a guarantee about the future gas prices as he asked me to do.

3.2.1 Deputy K.C. Lewis:

The Assistant Chief Minister will be aware last time there was a variance with Jersey Gas the unit price was reduced but the standing charge was increased. So even people who were on a limited budget who were trying to save money by turning the gas down, or even off, still had a yearly standing charge for merely being connected to Jersey Gas. I am delighted that the Assistant Chief Minister has a watching brief on this and I hope he undertakes to continue doing so. Does he not agree?

Senator P.F.C. Ozouf:

Well, I am glad that the Deputy agrees that it is certainly a watching brief. If I may just say that the J.C.R.A., I am advised, reviewed the tariff changes and opined on the fact that they were neutral. The issues of standing charges is something that all utility companies have had to deal with. Jersey Telecoms had to rebase their charges to reflect the cost of providing the network and then an appropriate unit cost. But, as I say, this is an important matter which I understand the Assembly and the public wants answers of and I hope that the report, which I think is going to be available later this week, will assist Members and giving them confidence in the conclusions of the J.C.R.A.

The Bailiff:

Very well, we will come on to question 3. Before we do so can I just inform Members that the gizmo on my desk here is not working for some reason this morning. So those who are in the habit of flashing their lights and thinking that it will have shown up it will not have done so you will need to take special care to make sure you draw my attention to the fact you want to ask a question or to speak.

3.3 Connétable A.S. Crowcroft of St. Helier of the Minister for Treasury and Resources regarding maintenance of the Steam Clock by Ports of Jersey: [9490]

Could the Minister detail what, if any, maintenance is being carried out on the steam clock by Ports of Jersey?

Senator A.J.H. Maclean (The Minister for Treasury and Resources):

The Ports of Jersey confirm that currently no maintenance work is being undertaken on the steam clock other than to keep it safe and keep the general area tidy. When the land was transferred to Ports at incorporation the steam clock did not appear on the asset register but we have made it clear to Ports that it is their responsibility. Ports are, therefore, working up appropriate plans for both the general site and the steam clock.

3.3.1 The Connétable of St. Helier:

Would the Minister agree with me that in our crowded capital open space is at a premium, this is an important area of open space, and would he confirm that there are no plans to develop anything upon it and that the water feature and indeed the timing of the clock will be restored as soon as possible?

Senator A.J.H. Maclean:

What I said a moment ago to the Constable was that at the moment the Ports of Jersey are working out plans for the site and the steam clock. I have not seen those particular plans so I cannot make a confirmation as requested by the Constable but I am very happy to ensure that as soon as the planning for that area and broader port area is finalised that that information is brought forward for him to be made fully aware of.

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

The Minister has just told Members that he has not seen any plans but has he had any indication at all from the Ports Authority what their plans are for the steam clock and the surrounding area?

Senator A.J.H. Maclean:

No. I will explain, perhaps, to Members why I am answering in that way. Quite simply, as I alluded to in my opening answer, on incorporation this land was transferred to the Ports. The steam clock, as an asset on it, was not included on the asset register. So there was some confusion between those currently or previously responsible for the steam clock, in other words States of Jersey Development Company - who, as an aside, were spending between £25,000 and \$40,000 a year maintaining the steam clock - and the ports. The position has now been clarified and, as I said in my opening answer, I have made it clear to Ports that it is their responsibility. The steam clock is on that particular site and they are, therefore, commencing plans for that site and the steam clock itself. Once those have been worked up I am more than happy to ensure that Members are kept abreast of such plans.

3.3.3 Deputy J.A. Hilton:

Supplementary. Has the Minister any power at all to decide or control what happens or is that a decision purely within the remit of the Ports Authority? So would any decision, if it was controversial, be able to be discussed in the States Assembly?

Senator A.J.H. Maclean:

I would say that controversial issues are quite frequently discussed in this Assembly regardless of whether the Minister may or may not have powers and that is exactly how a functioning democracy should work. With regard to this particular issue and this particular area, if it is an operational matter that is a matter for the Ports of Jersey but they are very minded of responsibilities, social responsibility for example. They have large areas of their portfolio, such as outlying harbours, that they look after in the public interest that as a purely commercial entity they would not wish to have had responsibility for. So, as I have said, I am more than happy to come back and ensure that the Constable and other Members who were interested in this area are fully updated on what plans, once they are worked up, are for this piece of land and the steam clock.

3.3.4 Deputy R.J. Renouf of St. Ouen:

I would like to ask: why was this area transferred to Ports when it was previously administered by another authority it seems and for what operational reasons would Ports want to have a steam clock?

Senator A.J.H. Maclean:

Well, the latter part of the question is an extremely good one, I would suggest, and I think in truth an operational port would not but, as I pointed out, the Ports have a number of areas of what one might describe as social responsibility that they look after that are not strictly commercial. Obviously the location of the steam clock is adjacent to a commercial port area and as far as the masterplanning of the ports areas are concerned this will fall into it and once that has been worked up, as I have said, I will come forward, more than happily, with further details so Members are fully aware of what is intended once those plans have crystallised.

3.3.5 Deputy R.J. Rondel:

Would the Minister, before expensive plans are drawn up, perhaps ensure that the Ports liaise with the Parish of St. Helier as to what they do plan to put there beforehand?

Senator A.J.H. Maclean:

It is, essentially, an operational matter for the Ports to consider how they are going to best use the land they have got but, of course, they need to be mindful of broader issues. They are, I am sure, very mindful of broader issues relating to the Parish of St. Helier. I know in the past there has a very good dialogue between the Ports and the Parish. I hope the Constable will confirm that and I hope that will continue in the future and that the Ports will be mindful of the views of the Constable when developing their plans in the future.

3.3.6 The Connétable of St. Helier:

The Minister is not giving us any timetable and I think with the arrival of summer, tourists looking for somewhere to come and sit and eat their sandwiches, residents of commercial buildings who have no convenient open space; I would appreciate it if he would give me a timetable for at least the restoration of the water feature and getting the clock to run on time. These are matters which surely could be done in a couple of weeks.

Senator A.J.H. Maclean:

I think the Constable, I was going to say, is joking because I am not sure that ... the steam clock has probably been not operating more than it has been operating in recent years, since it was first

introduced. As I have clearly pointed out, the Ports of Jersey are ensuring that the site is kept clean and tidy and general maintenance is undertaken while further consideration is given to the site and the steam clock. It is appropriate to do that work, to do both things. I take the point of the Constable that with the tourist season upon us we would not want that area to look poor and I can assure that that will not be the case but undertaking restoration of a clock is another matter altogether at this particular juncture.

3.4 Deputy M.R. Higgins of St. Helier of the Minister for Home Affairs regarding the initiation of an investigation by the Police Service of Northern Ireland into the Boschat case: [9491]

Will the Minister explain why Article 26 of the States of Jersey Law 2005 was invoked by the Assistant Minister in order to enable the Police Service of Northern Ireland to investigate the Boschat case rather than asking the Chief of the States of Jersey Police to initiate such an investigation?

Deputy K.L. Moore of St. Peter (The Minister for Home Affairs):

The complaint made by Mr. Boschat was addressed to the Chief Officer of the States of Jersey Police and subsequently referred to me as the Minister for Home Affairs. In my absence the Assistant Minister used the power in Article 26 of the States of Jersey Law 2005 as delegated which enables a Minister to enter into an agreement for the purpose of her office. The purpose of the Minister's Office includes having overall and ultimate responsibility for the functioning of the States Police Force in accordance with Article 3 of the States of Jersey Police Force Law 2012.

3.4.1 Deputy M.R. Higgins:

I find this very interesting because I have been trying to get an external police force to investigate another case for another individual and I have been told by the Police Complaints Authority the only person who can bring in an external police force is the Chief of the States of Jersey Police and it comes out of his budget. So why, therefore, did the Chief of the States of Jersey Police refer it to the Minister to use it under a general power to enter into contracts?

[10:00]

The Deputy of St. Peter:

It is quite simple and the information that the Deputy has been given in the particular case he is referring to would be correct but in this particular instance, due to the nature of the complaint made by Mr. Boschat, the Chief Office of the Police could not deal with the matter himself and for that reason it was referred to the Minister.

3.4.2 Deputy M.R. Higgins:

The obvious answer is: why could the Chief of Jersey Police not deal with the matter? If a complaint has been made against his officers and an external police force needs to be called in, he has the power to do so. Why did he not?

The Deputy of St. Peter:

Under the law there are certain instances when that does not happen and cannot happen and so it is for that reason that there is a provision for such matters to be passed on to the Minister, which is what has happened in this case.

3.4.3 Deputy M. Tadier of St. Brelade:

Can the Minister state whether this was one of those instances where it needed to be passed on? Was that automatic or was that simply a decision that was made?

The Deputy of St. Peter:

This is a decision taken under advice but it was very clear under the law that this was the procedure that was in place and it was one to be followed.

3.4.4 Deputy M.R. Higgins:

I have asked the Minister for Home Affairs how many cases this particular Article has been used to bring in an external police force and also would she tell us what the matter is because we are spending money here. There have been 2 external police force investigations into this case before and we are using a rather unusual procedure to have a third. Surely the States and the public should know why an extra investigation is being brought in.

The Deputy of St. Peter:

As I stated previously, there is a provision under the law for this process to occur and it has been done for the right reasons. I cannot go into the details of the case at this moment because the investigation is underway but it was not a decision taken lightly but it is a decision taken following the procedure. The Deputy also asks how many times this has been done before. I am not exactly aware of that figure but I can certainly ask and find out.

3.5 Deputy S.Y. Mézec of St. Helier of the Chief Minister regarding the vetting of businesses prior to the release of loans from the Innovation Fund: [9493]

What vetting takes place and what conditions, if any, are placed upon businesses before loans or grants are released from the Innovation Fund?

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

I would like to ask Senator Ozouf to answer this. I am grateful to Deputy Mézec for agreeing to waive his request that I answer it.

The Bailiff:

Senator, may I just say we have 2 questions on the Innovation Fund. This question deals with conditions before loans are released and not with what happens afterwards.

Senator P.F.C. Ozouf (Assistant Chief Minister - rapporteur):

This is a very helpful positioning of effectively 3 matters. We are going to also have a statement later on on the general issues of the fund, but I am grateful for Deputy Mézec's question; it is certainly the process before. So the Innovation Fund has advanced 7 loans to 6 companies over the last 2 years. The fund has not advanced any grants. The fund operates under the strict operational terms of reference that were approved by this Assembly - P.124/2012 - and that clearly defined the application process which was scrutinised and what matters should be taken prior to the Innovation Fund making a recommendation to the Minister to advance a loan. Due diligence, including background checks, a full and detailed analysis of business plans - and often carried out by the experts, entrepreneurs, on the Innovation Fund - and other forms of vetting specific to each application are undertaken. In addition, the Economic Adviser prepares an economic impact analysis based upon all the information provided by the applicant. The result of this due diligence reviewed by the board forms the basis of and including any recommendation the board makes to the Minister or, in my case, Assistant Minister obviously, to advance a loan. Each loan is conditioned by a loan agreement drafted by the Law Officers' Department and an associated repayment schedule. Consistent with the operating terms of reference loan recipients commit to report progress on the plan on a quarterly basis. I have reviewed the way decisions are made and am satisfied that both the board and officials have carried out what this Assembly asked.

3.5.1 Deputy S.Y. Mézec:

Supplementary. I am sure the Assistant Minister can anticipate what my next question is, which is basically how does £400,000 go missing?

Senator P.F.C. Ozouf:

I do not recall whether or not the Deputy was in the Assembly at the time. We brought an Innovation Fund forward in a world where there was a credit crunch. That meant businesses were not getting access to funding and where there is a gap in markets government needs to step in, and that is why the Innovation Fund was set up. It was made absolutely clear that, by definition, start-ups have a risk associated with them and some businesses will fail. Others will be spectacular failures and, as I have said in previous answers, no one has evidence of the future. Some businesses will fail, others will succeed and there can be and will be ... an indication of 50 per cent provision was made at the time and I hope that it is going to be less than that.

3.5.2 Deputy R.J. Rondel:

Would the Minister explain whether the loans are secured and how that is done against property or something else?

Senator P.F.C. Ozouf:

No, they are not often secured. Obviously there are personal guarantees and there is ... I cannot stress enough the diligence and the detail that the board, who have been appointed to carry out these tasks, go through. There are a couple of well-known entrepreneurs who have been approved by this Assembly and a chairman who is an Advocate and there is an enormous amount of due diligence gone in. No, they are not secured. By the very nature of a business it is going to be people that cannot access finance and sometimes they simply are not able to get bank loans. They certainly were not able to get bank loans at the time because of the credit crunch and so, therefore, there is a degree of risk and that has been made clear right from the start; it would be likely that there is up to 50 per cent write-off of the overall fund.

3.5.3 Deputy R. Labey of St. Helier:

I understand the start-up notion but was the whole of the £400,000 for the start-up and is it usual for such a large sum to be a one-off start-up cost?

Senator P.F.C. Ozouf:

That is a very good question and the fact is that I know what application the Deputy and other questions are naturally referring to. I, in fact, have a planned statement today anyway which has got nothing to do with the particular issue that has been in the public domain. It would be wrong for me to comment. As I have made very clear to the media, I am not going to comment on a specific business because it would be invidious to do so. What I can do is welcome any investigation under confidentiality arrangements with the P.A.C. (Public Accounts Committee) or the Scrutiny Panel process; that is absolutely open, but what I can say is that often with start-ups you need to put an awful lot of money in to effectively getting it into start-up phase and half a million pounds is a lot of money but when you are dealing with something that could be a really exciting product or service, which is going to be having a worldwide reach, which many of these applications could have done, and some will, then the money that went in, went into building effectively the sales pipeline, and on this occasion it may or may not be successful. It is too early to ... well, I do not really want to comment on the specifics.

3.5.4 Deputy R. Labey:

Quick supplementary. Is the business in question still trading and if it is not surely the Senator is at liberty to talk about it.

Senator P.F.C. Ozouf:

No. I am more than happy. We are dealing with a ... I do not want to raise expectations about any particular companies and I am going to be very careful in what I say in public because what I can say is that I am totally satisfied, and have been through the procedures that the ... this is almost going into the second bit of the answer that I was going to answer to Deputy Lewis, but the ongoing review process of what is happening with the company has continued and that continues to this day. But let us be clear, there are going to be some businesses that will not succeed and so, therefore, you almost have to say: "Well, are we going to continue to put money in something that ... and lend more money or provide more resource for something that will not work or is it a time to pause and see whether or not this great idea, which all of these companies have got some startlingly good ideas, can be redone elsewhere?" The other thing I would say that occasionally when stresses and strains ... people have got their own skin in the game too. They do not do this for fun. They are good people, had a good business idea and putting their reputations on the line and sometimes in a stressful situation they will fall out if there is a failure. On some of the businesses, unfortunately, it is inevitable we will see that but there should not be vengeance against decisions because nobody has got evidence of the future.

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

My understanding is that this is not just a failure of a start-up; that the company has disappeared. Is it the case, in the Assistant Minister's opinion, that the board made an error or did the Assistant Minister make an error?

Senator P.F.C. Ozouf:

Let me be absolutely clear about one thing. The Minister - and that is delegated to me - takes full responsibility and accountability for the decisions. While the recommendation is to the board it is the Minister who is the corporation sole according to the setting up of arrangements. So it is absolutely, I want to be very clear, that I do not think it is right or appropriate to apportion, with the benefit of hindsight, vengeance or unhappiness on some things, that with the benefit of hindsight, goes wrong. That would be entirely wrong. The board and officials have, on this occasion, in my view, acted properly and discharged their obligations properly so the answer is no. I think I would have made the same decision. In fact I did make the same decision in that I was a counter-signatory to that particular decision and it was a jolly good idea, as many of the others are, but some of them will fail and some of them will not. I am sorry about that.

3.5.6 Deputy A.D. Lewis of St. Helier:

I wonder if the Assistant Minister could answer with a bit more clarity re guarantees. I appreciate that the reason why people have come to this fund is because the banks are not prepared to loan such funds but are there any guarantees at all given? Also the Minister mentioned the words "skin in the game", in other words, is there an expectation for applicants to have funds in the company themselves, in other words taking risk, with their own funds already before in fact they apply for Innovation Funding?

Senator P.F.C. Ozouf:

Those are excellent questions. There is a good track record of governments around the world doing something called Zombie start-ups where the Government feels much better because it piles money into ideas and they do not work. Now, we have put up, effectively, a fund, approved by this Assembly, with very clear operational guidelines and a clear expectation at the time that credit was difficult to get and credit is almost impossible to get if you do not own your own home. If you are

an individual who has been working and got a family and got a mortgage of 90 per cent, where have you got the ability to find the funding for your brilliant start-up idea? Now, that is the issue, so I am afraid there is not going to be, and this was the expectation, it is easy to be ... and I am not saying that any Member is going to be an amoeba. It is very easy to simply forget where we have come from on this journey to boost innovation and get good ideas to diversify our economy and create jobs and growth. Some will fail and some will succeed but we should not be effectively casting now doubt ... well, I am happy to be scrutinised on it but I will not reveal individual issues and if there is a failure, if you make it bankrupt, then it certainly will not get any money back.

The Bailiff:

Assistant Minister, the question was whether or not guarantees were being requested and secondly, whether it was a standard term, not in relation to any particular borrowing, but the applicant had, as was put, “skin in the game”; put some assets of his or her own in.

Senator P.F.C. Ozouf:

I am sorry if I did not answer, you are right to pull me up. I am not going to comment in public on the commercial confidentiality arrangements of specific lenders that have been lent money from the fund.

The Bailiff:

No, it is about policy I think.

Senator P.F.C. Ozouf:

It is a policy, where possible yes, but generally no by the very definition that if you have got assets in a house then a bank will lend. If you have not got assets you cannot get credit and that is at the heart of the whole dilemma of the difficulty in the financial crisis where credit became almost impossible to access and that is the problem we are solving. Now, that means you cannot have guarantees but I am not going to make a specific in public comment about this particular applicant because it would be wrong to do so.

3.5.7 Deputy A.D. Lewis:

Supplementary. The Minister is not answering the question. It is a generally accepted fact that when you start a business you often put some money in yourself. So all I am asking the Minister is: when you use the tick box exercise of working out whether this applicant that stands head and shoulders above other applications, is the fact that they are putting some money in themselves, wherever that may have come from, in addition to what the Innovation Fund is going to give them, is that considered and is that one of the things that you use to assess the applicant?

Senator P.F.C. Ozouf:

One of the phrases that I like to use is: “Time is our most precious resource”, so there is money and time and effort. I have been truly astounded at the amount of effort that the individuals themselves are going to in getting their business idea into a commercial success and getting the good advice from sometimes some really ... the people on the Innovation Fund have gone almost beyond the call of duty, I would say, in helping applicants get that business idea into a position and there has been lots of good work by Jersey Business as well and we have got Business Angels and all the rest of it. So almost, just because you have not got any money does not mean to say you have not got skin in the game. Some people have dedicated years of their life to programming or working out a good idea, getting skills or going to university or whatever to do it.

[10:15]

Yes, they have got skin in the game and it is often their time if they have not got any money but that should not be a prevention of setting up good businesses.

3.5.8 Deputy J.A. Hilton:

Just very briefly. The Minister, in his initial answer, said that reviews were carried out on a quarterly basis. Can the Minister tell Members whether he is satisfied that those reviews were carried out when they should have been carried out?

The Bailiff:

No, that is a question that will come as a supplementary to No. 13.

Deputy A.D. Lewis:

Would it be useful, if you would allow, to move on to that question on the next question rather than leaving it to the end of the questions?

The Bailiff:

Well, I must admit I had wondered about the idea of grouping questions. We often have this difficulty but anyway, Deputy Tadier, let us finish this one.

3.5.9 Deputy M. Tadier:

In my parents' generation the States would loan money for people to buy houses when they could not get bank loans. That stopped and it seems that this Government is now adopting more of a Dragons' Den approach when it comes to funding businesses, some of which the Minister has already admitted are very risky. It seems clear that the risk on the States and the taxpayers' money is clear but when a business is a resounding success, and that business may or may not, of course, pay tax in Jersey, what mechanisms are there in place other than the loan and possibly interest being paid back to make sure that the States benefit in the success of that business either in the form of a dividend or in the form of co-ownership of the profits that are being made given that it is taxpayers' money that is being used in the first place?

Senator P.F.C. Ozouf:

I was looking to see the transcript of the proposition which proposed this to see where Deputy Tadier made his comments because I am sure that many people of his economic view of the world would welcome the fact that government was stepping in into a period where banks and credit markets were not working to step in. Now, I do not think the Deputy is fair to say that nothing has been done for homeowners with the innovative way that Andium and the plans that the Minister for Housing has to get effectively people on to the ladder of homeownership and shared ownership, and I think things like the scheme at Trinity is the case. It is just simply not right to say that: "Oh, it is just solution of the States becoming a bank." The States only becomes a bank for businesses or home ownership when markets do not ...

Deputy M. Tadier:

May I raise a point of order? It seems to me that I would not be allowed to ask a question about home ownership or the about the Minister for Housing. It would be ruled out of order so could I ask whether it is appropriate for the Minister to use up most of his 90 seconds to answer a question which I have not asked and it would not be in order anyway.

The Bailiff:

The Chair does not take control over what a Minister says in answer to a question. It sometimes points out later on that the Minister has said something which is irrelevant or perhaps has not

answered the question, sometimes. But on this occasion I think the point of order has resolved against you. Yes, Minister, would you complete your answer.

Senator P.F.C. Ozouf:

In relation to risk, which is an important question that he asked, start-ups have a risk associated with them and the return to the taxpayer is a return of jobs that otherwise would not be in Jersey. I can see Members again looking back to the lovely days when we have got lots of money from corporation tax. Corporation tax is not the way that we will raise revenue to any great extent in the future as we did in the past. We cannot reinvent the past and I would remind the Deputy that, as far as corporation tax, we have a greater proportion of corporation tax paid today than, for example, in the U.K. even with the Zero/Ten 20 rate. So it is about jobs and growth and diversification and this fund was set up to do that and that is to the benefit of the Island and his constituents who are getting job opportunities that they would not otherwise have.

3.5.10 Deputy S.Y. Mézec:

I accept some of what the Senator says in that a government can take a macroeconomic approach to it where banks loaning money would understandably be more self-interested but does he accept that the public have legitimate concerns when they see this as such a large amount of money which appears to have just disappeared especially when we have the context of the history of a certain grant being given to a certain film company, also a very large amount of money, which seems to have disappeared as well? Does he accept that the public are right to be concerned about this and what is being done and can he assure the public that steps are being taken to mitigate the chances of money being given to businesses when it appears that it is unlikely that the business will succeed when that surely is the wrong place for government to be giving loans when there is no chance at all of seeing a return on it?

Senator P.F.C. Ozouf:

I do not think we will ever win because effectively Members of this Assembly and the public want investment in public services. They want a growing income line in order to fund their spending aspirations. Now, that is only going to be achieved with a growing economy. A growing economy which is increasingly diverse and an economy which is fit for the future because the digital revolution is changing everything and many of these businesses are just about that. I understand absolutely the point, and agree, that the public should be concerned about every penny of taxpayers' money that is spent, or I would say in this case, invested. Half a million is a lot of money but when I think about an acorn of a trust company that was sold last week for £435 million, every oak or valuable company employing hundreds of people doing reputable business starts up with a start-up and sometimes you have to invest in order to accumulate and these numbers may appear conveniently politically large, to compare against certain things, but if we are serious about growing the income line at certain points we must invest. My statement later on will say furthermore on that subject. I hope the Deputy recalls the support that this proposition was given in the context it was at the time.

The Bailiff:

Deputy Andrew Lewis suggested we should take his question, which is at the bottom, next. I am not going to do that because Standing Orders provide for the order of questions but I can say to Members that the Greffier and I have had a discussion about whether a change might not be considered at some point to group together questions on the same subject matter which seems to me to be far more sensible but it is ultimately a matter for the States. It will be referred to Privileges and Procedures and no doubt if Members have any views they will be able to pass them on to Privileges and Procedures for consideration. Now, we come to question 6 which Deputy Southern will ask of the Minister for Health and Social Services.

3.6 Deputy G.P. Southern of the Minister for Health and Social Services regarding proposals to cut departmental revenue expenditure: [9494]

Will the Minister inform Members whether he has under consideration proposals to cut his departmental revenue expenditure by up to £55 million with the loss of up to 150 posts over the period 2016 to 2019?

Senator A.K.F. Green (The Minister for Health and Social Services):

As agreed in the Strategic Plan, we are investing in our priority areas of health, education, infrastructure and economic growth while at the same time aiming for balanced books in 2019. This, of course, means that we need to restructure our organisation and reprioritise our spending. As highlighted in last year's M.T.F.P. (Medium Term Financial Plan) debate this means reducing staffing in some areas of the States. We are achieving this through vacancy management, voluntary redundancy and, if necessary, some compulsory redundancies. However, there will be more staff in priority areas such as health and education and the figures provided to the media last week are not accurate. We will be publishing our figures in the M.T.F.P. edition on 30th June.

3.6.1 Deputy G.P. Southern:

Supplementary if I may. Within the overall sum that I mentioned, accurate or not, will the Minister explain what is meant by: "Review older adults' residential nursing home in-patient services and to stop this service." What does that mean, stopping that service? What will replace it?

Senator A.K.F. Green:

That means exactly what it says. We will review the services that we are providing at Sandybrook. It means exactly that. There are no plans at the moment to stop a service but to review how it might be delivered.

3.6.2 Deputy G.P. Southern:

Why then opposite this particular measure does it say "stop the service"? Clearly "stop the service".

Senator A.K.F. Green:

That might be the inevitable outcome but that review has yet to take place.

3.6.3 Deputy M. Tadier:

Will the Minister confirm whether there are any plans to close or cease services at Sandybrook?

Senator A.K.F. Green:

I have just said there are plans to review Sandybrook; that is where we are.

3.6.4 Deputy M.R. Higgins:

Will the Minister clarify his statement before, last but one, where he said: "We have not reviewed this yet"? If the M.T.F.P. is going to be given to the States on the 30th is the Minister saying that he has not done all the reviews that he has had to do, he has not decided which parts of the service he does not require any more or he is going to downgrade; that he has not come up with any figures for losing staff in one area and not another?

Senator A.K.F. Green:

First of all, I have got to correct the Deputy on one thing. There is no intention of downgrading services but we are going to review where it is appropriate for us to provide services, where it is

appropriate for us to buy-in other services. It is under review. We have a plan. We have already seen 20 extra social workers employed in Social Services

3.6.5 Deputy S.Y. Mézec:

In terms of achieving the cuts that the Minister is intending to achieve what areas is he looking at to introduce user pays charges and can he give any information at all about what form these charges will take? Whether they will be upfront charges afterwards and what will happen to the people who simply are not able to pay them?

Senator A.K.F. Green:

Dealing with the latter bit first: if we bring forward any plans for user pays those who are needing protection would be fully protected but at the moment there are no plans to bring forward significant user pays charges.

3.6.6 Deputy S.Y. Mézec:

Supplementary. In that answer he has chosen his words carefully to indicate that user pays charges are indeed a possibility. Does he accept that this is an end to the rights of people to have health care free at the point of use and does he not consider that move to be very regrettable indeed?

Senator A.K.F. Green:

The health service in Jersey is based on a co-payment system. I am merely reviewing whether that is appropriate in the secondary care system as well as the primary care. In fact we already have this in the secondary care system where people make a contribution towards X-rays.

3.6.7 Deputy G.P. Southern:

Will the Minister inform Members whether he has under consideration the introduction of new or the raising of hospital charges to the tune of £1.2 million?

Senator A.K.F. Green:

At the moment it is all under review but that figure does not ring a bell with me.

3.6.8 Deputy G.P. Southern:

The question is, what measures are under consideration. It is very carefully phrased. Not what has been decided, but what is under consideration. Does the figure of £1.2 million in hospital charges ring a bell?

Senator A.K.F. Green:

I said that it did not and this is policy under development and it will be published in the M.T.F.P.

3.7 Deputy A.D. Lewis of the Minister for Treasury and Resources regarding the retention by the Jersey Development Company of income from the Waterfront and Esplanade car parks: [9497]

Could the Minister advise why the income from the Waterfront Car Park and the Esplanade Car Park - currently totalling £1.7 million per annum - is currently retained by the Jersey Development Company rather than being remitted to the Car Park Trading Fund?

Senator A.J.H. Maclean (The Minister for Treasury and Resources):

The question is a little misleading. The income from the Esplanade Car Park has been remitted to the States by way of dividend as agreed under R.7/2012. In 2015, for example, that amounted to £759,000. The Waterfront Car Park is not part of Jersey Car Parking's assets as the land was

transferred originally to W.E.B. (Waterfront Enterprise Board) and then S.o.J.D.C. (States of Jersey Development Company) built the car park and currently operate and maintain it.

3.7.1 Deputy A.D. Lewis:

In a public hearing that P.A.C. conducted recently when reviewing the Car Park Trading Fund the then Treasurer of the States said: "Principally the concept of the Car Park Trading Fund is to make sure that the car parking activity is not being cross-subsidised from other areas." Does the Minister not think that the same principle should apply to the Jersey Development Company; a clue is in the name; it is a development company, not a property holding company.

Senator A.J.H. Maclean:

As I have already pointed out, half of the revenue the Deputy is referring to, more or less, in fact more than half, is already being paid by way of dividend. So in fact we are only talking about the Waterfront Car Park which was built by S.o.J.D.C. at a cost of £7.8 million. They retain the revenue which, by the way, since 2005 was round about £268,000, it is now £759,000, if I am right. So it has grown by about £700,000. That revenue is used to maintain key infrastructure around the Waterfront, like the road network, the Promenade, gardens, Weighbridge and so on. About £400,000 is used in order to maintain that important area. I think that is a perfectly appropriate use. I would simply point out one further matter and that is when you set a company up, as indeed W.E.B. were originally, you cannot set a company up with thin air and, of course, share capital and assets were transferred to them and they used some of that to build this particular car park.

3.7.2 Connétable C.H. Taylor of St. John:

When S.o.J.D.C. was set up with P.73, part of P.73 was quite specific that the Waterfront Car Park was returned to the States. Could you explain why it has not been returned to the States?

[10:30]

Senator A.J.H. Maclean:

Yes. The Constable is in part, of course, correct. What he failed to mention was that as part of that it said that the transfer would occur at market value and it would not be, therefore ... well, 2 factors: one in the interests necessarily of the States to see that transfer occur at market value. The second point of course is that S.o.J.D.C. have been using the assets that they have in order to undertake the developments that they have been tasked to undertake by this Assembly. One of those developments is the Jersey International Finance Centre and this car park. This point has been put in the public domain before; this is no revelation. This particular car park is part of the assets used as security for the first building on the Jersey International Finance Centre. Of course, when practical completion is made, that will be released and of course the issue of whether the car park should be transferred back to the States is one that will be taken after that point.

3.7.3 Deputy A.D. Lewis:

A report on the Car Park Trading Fund published by P.A.C. in 2013 predicted there will be some cash shortfalls in the fund. One of the purposes of the fund is to pay for maintenance and renewal of car parks and also contribute to sustainable public transport and associated environmental initiatives. Can the Minister explain how these objectives can continue to be met without the income from 2 of the States most profitable car parks?

Senator A.J.H. Maclean:

Well, first and foremost, there is a fairly considerable amount of money already residing within the Car Park Trading Fund and the revenues that are currently being generated are believed to be sufficient to undertake the requirements that it was set out to undertake in the first place. It is not

my belief necessarily that the figures that I think the report to which the Deputy is referring did appear to be somewhat inflated in terms of what the future costs may be of replacing certain car parks or certain levels of maintenance but my understanding is that the sums available are sufficient for the purposes they were laid out for.

3.8 Deputy M. Tadier of the Minister for Infrastructure regarding proposals to cut departmental revenue expenditure: [9499]

Will the Minister inform Members whether he has under consideration proposals to cut his departmental revenue expenditure by up to £30 million with the loss of up to 103 posts over the period 2016 to 2019?

Deputy E.J. Noel of St. Lawrence (The Minister for Infrastructure):

Neither I, nor my department's officials recognise the £30 million figure used by Reform Jersey in this question. In fact, it is greater than my department's annual net cash limit for 2016, excluding Jersey Property Holdings. Perhaps Reform Jersey would share their calculations with us so we can reconcile their figures with what will be published in the M.T.F.P. 2 addendum at the end of this month. Any numbers regarding posts are estimates which change as service reviews progress and I have said many times in this Assembly that we cannot unfortunately reduce the overall staff costs of the States of Jersey by some £70 million out of a total spend of approximately £350 million without a reduction in head count numbers. But let us not forget why we are making these savings. This Assembly agreed in the States Strategic Plan to prioritise investment in health, education, economic growth and the Island's infrastructure while balancing budgets by 2019. As highlighted in last year's M.T.F.P. debate, this means spending and staffing in some areas need to be reduced and in other areas expanded. So we are restructuring our organisation and reprioritising our spending, and my department is going through that necessary but difficult process.

3.8.1 Deputy M. Tadier:

I think we can take the preamble of reprioritising in health and education as read for every Minister and every written question from now on. Would the Minister specifically talk then about waste charges or waste reductions in posts? Is it true that there are projected to be 19 posts being lost when it comes to waste with £6 million in cuts and, if so, what form will these take and what form will the waste charge in the future likely take?

The Bailiff:

The question is about loss of posts and not waste charge so the very last part is not allowed.

Deputy E.J. Noel:

As I have said previously in this Assembly, we are carrying out service reviews across the whole of the organisation and some of those reviews are near completion but many of those reviews have not yet been completed, and those regarding our waste disposal have yet to take place, so we do not have actual figures. It is a moving target and I am unable to verify whether or not that savings target is the actual target that we will end up with or the head count reduction in that particular area will be anywhere near the figure mentioned by the Deputy.

The Bailiff:

The Deputy of St. John. No?

Deputy T.A. Vallois of St. John:

I was not asking a question. Apparently there was an issue with the microphone.

3.8.2 Deputy M.R. Higgins:

Can the Minister tell us that in terms of job losses that he is proposing whether they are all basically associated with manual workers and not associated with senior civil servants? Because we were told very, very early on that this process would be across the board. Are you planning on losing any senior civil servants within your department?

Deputy E.J. Noel:

Again, it is a question I have already answered a number of times in this Assembly and I just point to the voluntary redundancy figures that came out for the latter part of 2015 and 2016. We had a total of 25 V.R.s (Voluntary Redundancies) from my department, 4 of which were from civil servants and 21 were from manual workers, so it is clear, as I say, that it is across the board. We are looking at our service reviews and the way you slice a cake is you cut it from the middle outwards so there are always going to be less of the higher-grade jobs going because that is the nature of how you cut the cake.

3.8.3 Deputy M.R. Higgins:

A supplementary? Can the Minister give an assurance that any of those senior posts that are removed will not be replaced later on?

Deputy E.J. Noel:

That is a process of the V.R. process, and unfortunately for those that will have compulsory redundancy those posts are made redundant, they cannot be replaced.

3.8.4 Deputy G.P. Southern:

I remind the Minister, as I did previously, that the question refers to whether he has under consideration proposals. The supplementary must be proposals for changes to the waste services and has he yet started the consultation with the employee representatives in that particular service?

Deputy E.J. Noel:

The service review for waste is yet to commence and therefore the consultation with those employees in the waste area is also yet to commence.

3.8.5 Deputy M. Tadier:

As I walked here this morning through Howard Davis Park I noticed how well it was maintained. Someone was walking there and, as I walked further up, I noticed how clean the streets were, and the roads were also very clean, because the work is being done very well by our manual workers in that area and I think it is important to congratulate them for their jobs. Does the Minister agree with me that our manual workers, those who work for the States, are doing a very good job and that we should reward them and that when we have people at the top echelons who are doing a bad job but get to keep their jobs when they are not providing value for money, but we have good workers at the bottom who are doing a good job get rewarded with either redundancies, voluntary or compulsory, something is deeply wrong in our system?

Deputy E.J. Noel:

I certainly recognise the comments from Deputy Tadier about staff who keep our streets clean and our parks looking immaculate but I do not recognise the comments about senior staff not doing a good job. All of the staff that I have in my department... I have been in charge now for some 18 months, I have not come across anyone - I can say that hand on heart - who does not do a good job.

3.9 Deputy M. Tadier of the Attorney General regarding what the role of the Viscount's office and the Jurats is in a Remise des Biens: [[9489]

Will Her Majesty's Attorney General advise what the role of the Viscount's office and the Jurats is in a *remise des biens* and whether they have a duty to get the best value from the sale of a property or whether they can dispose of a property in a quick sale in which only secured creditors recover their money?

Mr. R.J. MacRae, Q.C., H.M. Attorney General:

A *remise des biens* is a form of insolvency remedy available to a person who is in debt and owns land in Jersey. For a *remise* to be successful, it is essential the value of a property is sufficient to repay in full the debts due to secured creditors, for example, a mortgage lender, and able to pay at least part of the debts due to any unsecured creditors. *Remise* is a discretionary remedy and a *remise* is only ever granted on the application of a debtor. When an application is made for *remise*, a court will appoint 2 Jurats to investigate the debtor's assets and liabilities. The Jurats have 15 days within which to report the value of the property to the court and to state whether a *remise* would be useful, that is to say, the value of the property would exceed the secured claims on it. Following the Jurats' report, the court will grant or refuse the application for a *remise*. If the court grants the *remise*, 2 other Jurats are appointed by the court to sell the property and distribute the sale proceeds to the creditors. This process normally takes 6 months but can be extended to one year. Part of the reason for the relatively short timescale is that of course interest will accrue against secured debts which may erode or even exhaust any surplus. The 6-month period is not intended to effect a fire sale but a sensible period of time to achieve a realistic price in the context of increasing debts and creditors. The Jurats will aim to achieve the best sale price they can for the property, normally by sale on the open market. They must ensure, however, that the sale proceeds are enough to pay the secured creditors. If they cannot the *remise* will fail and another insolvency procedure like a *désastre* or *dégrévement* may follow. While the Jurats are responsible for the sale of a property and distributing the proceeds to the creditors, they are assisted by a member of the Viscount's insolvency team who provide support. The Viscount's Insolvency Department may support the process and make recommendations to the Jurats; the Jurats decide ultimately whether or not to accept an offer for the property. At the end of the process, if the *remise* is successful, then a debtor will be discharged from all his debts, including those of unsecured creditors who may of course not have been paid. Therefore, a *remise* can be a beneficial procedure for a debtor.

3.9.1 Deputy M. Tadier:

I thank the Attorney General for his initial answer. Would he give an indication of what he thinks is the shortest acceptable period during which one of these sales could occur?

The Attorney General:

All I can say is that they normally last between 6 and 12 months. That is the period of customary law.

3.9.2 Deputy M.R. Higgins:

I may have one or 2 questions for the Attorney General. The first one: the Attorney General mentioned that it was to do with Jersey property but is not a property held outside the Island also taken into account in a *remise*?

The Attorney General:

I am thankful for the Deputy Viscount, who is in court, who of course is an expert in this area. The position is that the debtor will declare all its property but the jurisdiction to grant a *remise* is only engaged if the debtor owns property in the Island.

3.9.3 Deputy M.R. Higgins:

I thank you for the answer. Secondly, can the Attorney General tell me what the role of the debtor whose property is being sold is in this process? Do they work with the Jurats? Do they work with the Viscount's office in order to achieve the best possible price for the property? Because it is in the interests of both parties surely that it is.

The Attorney General:

Yes, the debtor has a duty to assist the Viscount and the Jurats.

3.9.4 Deputy M.R. Higgins:

Finally, I have learnt about the *remise*; I have been looking at it recently. Can I ask the question: in the event that the process has been granted by the court, it is going through its process and everything else and the property is being sold for a lower price than could be achieved, is there any right of appeal on the part of the debtor against the actions of the Jurats in selling the property?

The Attorney General:

There is no right of appeal as such. The debtor could make an application to the Royal Court lodging an objection but there is no right of appeal. The decision of the Jurats is final.

3.9.5 Deputy M.R. Higgins:

One final question, if I may? Is that Human Rights compliant?

[10:45]

The Attorney General:

It is not a point I have considered but it is not a point that has been raised before.

Deputy M.R. Higgins:

Could I ask the Attorney if he does not mind visiting, say, a written opinion to the States in the near future?

The Attorney General:

Yes, of course.

3.9.6 Deputy M. Tadier:

I am glad Deputy Higgins is so knowledgeable on the subject. My last supplementary: is it ever the case that these sales take place by auction or is that unusual?

The Attorney General:

I cannot speak for the history of this matter but nowadays it would be very unusual. Normally it would be on the open market.

3.10 Deputy M.R. Higgins of the Minister for Health and Social Services regarding the provision for the safeguarding of vulnerable children and adults: [9482]

Following the publication of the Children's Services' Independent Audit reports, what confidence does the Minister have in Health and Social Services' staff and the Multi-Agency Safeguarding Hub to provide the service required by the Island to safeguard vulnerable children and adults?

Senator A.K.F. Green (The Minister for Health and Social Services):

This report was commissioned by my department and I accept that some of it made disappointing reading. However, it sets an important baseline to work from. There is little point in investing, as we are, £5.5 million employing 20 extra social workers unless we can be sure of where we want the

services to be and the difference that our investment is making or made. As a member of the Sustained Improvement Board and having spoken directly to members of Health and Social Services' staff over the past 12 months, I am confident that staff are committed to the protection and safeguarding of children and vulnerable adults in Jersey. We are progressing with improvement of services in line with the improvement plan. With regard to the Multi-Agency Safeguarding Hub, this multi-agency team is made up of staff from different partner agencies who are progress-reviewed regularly via the M.A.S.H. (Multi-Agency Safeguarding Hub) Oversight Group.

3.10.1 Deputy M.R. Higgins:

Is the Minister not concerned though by the number of serious case reviews that we have had, one after another, repeating lessons that we are told have been learnt but have not because they keep on coming up? Also, with the Mary Varley report or this independent audit that was conducted in February of 2015, how confident can he be that we have learnt the lessons and we are going to change things?

Senator A.K.F. Green:

I am very confident that we are moving in the right direction. The serious case reviews in the main are historical and we do need to learn lessons. One of the biggest lessons in there is the record keeping and the sharing of information and an I.T. (Information Technology) system has been commissioned to achieve that. I am absolutely confident. The Mary Varley report, as the Deputy referred to, said quite clearly that no child was at risk as a result of some of the downfalls. But it also said - and this is very important to me - that we must work much more closely with the children. We must hear the voice of the child in particular and I am going to ensure that happens.

3.10.2 Deputy J.A. Hilton:

Can the Minister confirm whether the interim head of social workers and safeguarding was relieved of her post a few weeks ago? Considering the importance of this role, has the post been filled and whether the Minister has had any success in finding a permanent replacement instead of an interim post?

Senator A.K.F. Green:

I am absolutely delighted to be able to tell this Assembly that all the directors now have been appointed and offered permanent posts. They are not all in place yet but every single directorate within the service now has an appointed director, some of whom are in posts, some of whom are arriving, so we have moved on significantly. In relation to the first bit of the question, I am not aware that any director was asked to leave. I am aware of resignations though.

3.10.3 Deputy M.R. Higgins:

Unfortunately, I do not have the same confidence that the Minister has in this particular area. I also believe, just adding, that the head of governance has already just left as well recently. The reason why I do not have confidence in this sector, as the Minister well knows, is that in 2 of the cases I have been helping we have had problems, one where defamatory statements have been made. Before the Minister tries to criticise me on this case, there is documentary evidence to show that the statements made by that director were false. Secondly, we have a system where the multi-agency hub has in the past failed to carry out its job. When it has been pulled up on it and is supposed to go through a particular process to try and rectify matters that have failed, have broken the Data Protection Law in order to try to avoid going back to the court and telling the court that it had fouled up. So, how can the Minister tell me that he has great confidence in this department when they make defamatory statements which are definitely false and there is written evidence to show

that it is defamatory and agencies are covering up what they do, rather than admitting their mistakes?

Senator A.K.F. Green:

I am not going to rise to the Deputy's bait. I will never convince him that the service is moving on, that things are improving. As far as I am concerned, it is the service that is provided to children and vulnerable people that is important. I am not going to enter into slugging matches and correct him on some of his absolutely false statements. Incorrect statements, sorry, not false. Incorrect statements. This service is a service that has been under-invested in for years. The previous Minister started to improve that. I have continued with that investment and the staff have worked very hard, I think, under very difficult circumstances sometimes in order to try and provide a service. We need to invest. That is why we are putting £5.5 million in. That is why there are 20 extra social workers. That is why I am delighted to be able to report to the Assembly that we have, not interim, but permanent directors in place. This service is going forward, this service is going to provide the improvements that our young people deserve and have every right to expect.

3.11 Deputy G.P. Southern of the Chief Minister regarding proposals to cut his departmental revenue expenditure: [9495]

I draw the Chief Minister's attention to the form of words precisely. Will the Chief Minister inform Members whether he has under consideration proposals to cut his departmental revenue expenditure by up to £8.8 million with the loss of up to 36 posts over the period 2016 to 2019?

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

This Government is investing in health, education, infrastructure and economic growth while aiming for balanced books over the economic cycle. To ensure this spend, we are restructuring our organisation and reprioritising existing spending. This of course will mean reducing staff in some areas; however, we will be employing more staff in priority areas like health and education. The figures that the Deputy refers to, and those released in the media last week, are not accurate but we will be publishing accurate detailed figures in the M.T.F.P. Addition on 30th June.

3.11.1 Deputy G.P. Southern:

Included in the figures that I produced, whether accurate or not **[Laughter]**, there is a proposal, I believe, to cut 2 posts from the Statistics Unit. Does the Minister not think that this would be an extremely short-sighted cut given the changes that society is going through and the economy is going through and we ought to have the most accurate and best data we can on which to base our decisions? **[Approbation]**

Senator I.J. Gorst:

It is this Government and previous governments... and I think it was Senator Ozouf that really started the critical momentum in ensuring that we had proper statistics advice, a proper funded Statistics Department, proper economic advice and a proper funded Economics Department. I think we can be proud of the advice that they give us but every single department across the States is being asked to consider reprioritisation and to work more efficiently and effectively. There are proposals in the area that the Deputy suggests, as there are proposals right across the Government. It is too early to give the full details. Those details will be given on the 30th but if we can bring areas of expertise together and produce efficiencies with an agreed change in the service delivery, then surely that is a good thing.

3.11.2 Deputy S.Y. Mézec:

I know it is an old-fashioned tradition, but could the Chief Minister consider answering the question that was asked by Deputy Southern which is: is the cut to 2 posts in the Statistics Unit a short-sighted cut? Since that is now in the public domain and we know that the Scrutiny report which came out has said that the Government has not done adequate impact assessments and the cutting of posts in the Statistics Unit will infringe on the Government's ability to do adequate impact assessments in future, would he not agree that it is time to not go ahead with this proposal seeing as there is still time for the M.T.F.P. to be published? Will he agree to take that as an idea out of it so that we can have decent impact assessments and information in future?

Senator I.J. Gorst:

I did answer the question. The Deputy is not correct to say that I did not. Should I be expected to answer every piece of misinformation that he then put into his supplementary question? I do not think so. Every single department and that includes the Statistics Unit. I will repeat it so he can have it repeated again. Every single department is being asked to consider where it can make changes, where it can operate more efficiently and effectively and the details of those changes will be published on 30th June. The Deputy knows that. I ask him to be patient a little longer.

3.11.3 Deputy S.Y. Mézec:

The Chief Minister knows patience is not something I am particularly good at, so how does he reconcile saying that the information put out by Deputy Southern is both inaccurate and at the same time say that it is a perfect possibility that these 2 posts will be cut? Will they be cut or will they not be cut? If he is of the view that they would like to cut them, would he reconsider it, given the information that was put out by Scrutiny about insufficient information about government measures which are constantly being put forward?

Senator I.J. Gorst:

The Deputy may feel he has got insufficient information but Ministers do not feel that. The very Economics Unit that I was praising working with the Statistics Unit are doing the work that the Deputy suggests is not being done and has not been done. Members will see that work on 30th June or thereafter when we are publishing the details of the proposals. It is not right for the Deputy to say as he has. There are proposed changes right across the States. There are proposals to bring functions together where they might be carrying out similar functions to create efficiencies without detriment to service. There may be some changes in service but I think that when the Members of this Assembly see the changes that we are proposing they will support them. More importantly, they will see that what we are doing is creating better value for the taxpayer and that we are curtailing the growth of the cost of government to the benefit of future generations.

3.11.4 Deputy M. Tadier:

When the Chief Minister says that every single department is being asked to look at making cuts, he forgot to say that even if those cuts end up being a false economy in the long term, how can the Chief Minister get to his feet singing the praises of the Statistics Unit while at the same time knowing full well that a cut of 2 posts in that department - which I dare suggest are already over-stretched anyway - will not result in statistics which are being currently provided seeing a service reduction?

Senator I.J. Gorst:

We are working to deliver sustainable changes to our public service. That is why we spent a lot of time, that is why we are virtually there but we are continuing to refine and make sure that the changes that we are making are sustainable in the long term. If we take the Statistics Unit, the Deputy would think there are only statisticians in the Statistics Unit. There are not, there are other statisticians right across the States. Surely, as we are asking everybody, we should ask whether we

cannot work in a more co-ordinated way to enhance the delivery to the public and of course in that particular area, continue to enhance the information that that unit provides, not only to government and to the States Assembly, but importantly to the public at large.

3.11.5 Deputy M. Tadier:

The Chief Minister says that he wants to make sure that these proposals are sustainable. Sustainable, of course, in his opinion. But it will turn out that we probably will not even have the statisticians there in the future to tell us whether or not the sustainability has worked because their posts will be cut as well. Is this not an irony and a risk? Does the Minister not agree that he should rethink this critical department and its staffing? Not only do we have concerns about it but certainly also the business community, the Chamber of Commerce, have voiced their concerns too.

Senator I.J. Gorst:

I recognise that the party opposite do not want to make any changes to government. They do not want to make any efficiencies.

[11:00]

They do not want to transform government to make it fit for the future. They want to continue to spend, spend, spend without any reprioritisation and tax, tax, tax. This is not ...

Deputy M. Tadier:

I think we need a point of order.

Senator I.J. Gorst:

This is not what this Government is ... is it a point of order?

Deputy M. Tadier:

I think it is a point of order.

Senator I.J. Gorst:

Okay, I shall sit down.

Deputy M. Tadier:

I do not think the Chief Minister... while I am sure some robust banter is allowed, he cannot put words into the mouths of Reform Jersey which are not true, saying that we do not want to see any changes to government. Quite clearly we do and there are changes that we would quite happily make. So, I would ask the Chief Minister to not misrepresent us.

The Bailiff:

I am not sure that is a point of order, Deputy. I rather take the view this is robust political exchanges and at this stage I would not be minded to intervene. Deputy Rondel. I am sorry, Deputy Labey.

3.11.6 Deputy R. Labey:

Easy mistake, Sir. Thank you. **[Laughter]** He is a very good-looking man. **[Laughter]** Is the fact that the reform of the administration and management of the public sector seems to be torture and failing due to the fact that senior officers are paid on the Hay scale which rewards them for the amount of people working under them?

Senator I.J. Gorst:

Absolutely not. It is difficult when you have got a Ship of State and you have got a department structure. I have said right from the start that changing the culture, getting people to work more closely together and work more efficiently is difficult work, as it is in any single organisation. But we have got staff who are committed to it, they are delivering on it and Members will see, I think, an M.T.F.P. with proposals that they can support. Of course, the Hay evaluation takes as part of its factoring a number of staff but that is not the sole factoring and it is not the majority of the weighting.

3.11.7 Deputy G.P. Southern:

I will return to the topic of the statistics and the unit and the potential cuts. One of the things, as the Minister will agree, I am sure, is that the Statistics Unit must be seen to be and be rigorously independent. It is no use saying: "Let us roll them in with another group of advisers." That is not their function. Will the Minister reconsider any proposal that comes on his desk to cut posts in the Statistics Unit?

Senator I.J. Gorst:

I have tried to say it politely throughout the answering of these questions, there are proposals that are being considered and the Deputy, I am afraid, will have to wait until the 30th until he sees the shape and form of those proposals but I hope those proposals when he sees them he will be able to support them.

3.12 Deputy S.Y. Mézec of the Minister for Education regarding proposals to cut his departmental revenue expenditure: [9496]

Will the Minister inform Members whether he has under consideration proposals to cut his departmental revenue expenditure by up to £25 million with the loss of up to 40 posts over the period 2016 to 2019?

Deputy R.G. Bryans of St. Helier (The Minister for Education):

It seems to me that the ground has already been well covered in this discussion this morning and I will not repeat the preamble as asked by Deputy Tadier because it has been said and it is true. It has been extremely well articulated by the Chief Minister, the Minister for Infrastructure and the Minister for Health and Social Services. But the short answer to his question, the answer is no. There are no plans that involve cuts in revenue expenditure of £25 million and there are no confirmed job cuts.

3.12.1 Deputy S.Y. Mézec:

A supplementary? Could the Minister confirm whether or not his department has in consideration proposals to cut the grants given to Islanders who are studying degrees on-Island?

Deputy R.G. Bryans:

This has already been said before. We have lots of considerations on the table at the moment and we, like every other department, are expected to provide the detail of this when the M.T.F.P. is delivered on 30th June.

Deputy S.Y. Mézec:

Was that a yes or a no?

The Bailiff:

I think the question was out of order because the question was about posts rather than cuts of grants.

Deputy S.Y. Mézec:

Well no, Sir. The question does very clearly say it is about cuts and expenditure and my question was about a specific cut, whether it is under consideration or not to achieve the cut I have mentioned in my original question.

The Bailiff:

The Minister has answered in any event; you may not like the answer. Deputy Southern.

3.12.2 Deputy G.P. Southern:

Will the Minister state whether he has under consideration a proposal to reduce newly-qualified teachers' salaries with a saving of around £1 million over this period?

Deputy R.G. Bryans:

Again, the answer is exactly the same, and this has been exhibited by the previous Ministers. We have lots of considerations and we have combined our efficiencies and looked at the Lean strategy that we have employed. We are discussing this and the detail will be given on 30th June when the M.T.F.P. is delivered.

Deputy G.P. Southern:

Has this particular move been under consideration: yes or no?

Deputy R.G. Bryans:

I think the Deputy is referring to again the information that was provided to the *J.E.P.* (*Jersey Evening Post*), the details of which were incorrect, and I will provide the information in the Medium Term Financial Plan in June.

3.12.3 Deputy S.Y. Mézec:

I did not get anything close to an adequate answer to my previous one. It is a very simple question. It is: of the measures he is considering to reduce departmental expenditure, is one of them the prospect of reducing the grants to Islanders who are studying degrees or higher education on-Island? That can be answered a simple yes or no. Is it one that is being considered? If it is not, just say so and we can move on to something different.

Deputy R.G. Bryans:

Once again, I have been with the Deputy before where he has produced these yes or no answers. This is not a yes or no question. I have repeated this before. We have lots of considerations, we work very closely with the other departments and at this moment in time all the considerations are on the table until we reach the detail of the M.T.F.P.

Deputy S.Y. Mézec:

So that was a yes then?

The Bailiff:

No, it was not a yes and it was not a no. It was a "wait until the end of June". [Laughter]

3.13 Deputy A.D. Lewis of the Chief Minister regarding follow-up checks on successful applicants of the Innovation Fund: [9498]

What follow-up checks, if any, are made on successful applicants of the Innovation Fund to ensure they are meeting their business objectives as set out in their original application, and is funding

drawn-down in a lump sum or in tranches over an agreed period based on achieving those objectives? Thank you.

Senator P.F.C. Ozouf (Assistant Chief Minister - rapporteur):

I do not want to repeat any of the ground I have taken. The Innovation Fund has advanced 7 loans, as said earlier, over the past 2 years. The fund operates under the scheme that was set out and approved and scrutinised in P.124/2012 and that clearly defined the application process and what would be undertaken prior and after in recommending the Minister to advance a loan. Due diligence and background checks have been carried out and there is assistance that is given to recipients on the actual loans after they have been done with quarterly reporting. Perhaps it is best that I just deal with supplementaries.

3.13.1 Deputy A.D. Lewis:

Could the Minister explain what he means by “quarterly reporting”? In other words, are targets set and are K.P.I.s (Key Performance Indicators) expected to be met? What monitoring exactly goes on after a grant has been handed out? Could he answer the question about is it one lump sum or is it given out in tranches when they meet certain K.P.I.s and other business objectives that you may well have agreed as part of the application?

Senator P.F.C. Ozouf:

This issue of tranches: I can advise that I signed yesterday a further loan to one of the businesses that has been really quite successful. So what is a single lump sum? Every business is of course different and every business in the start-up phase is going to have different requirements. Some of them will need some research, some of them will need some particular sales activity, marketing, others will receive a sort of little-and-often assistance that can be almost limited and made over a period of time. Every business is different and that is why the monitoring is so important to see how the businesses are doing. I will allude in the statement later the fact that I think that there can be even some more support given to the businesses to ensure that they reach their potential that so excited the board to make the recommendation in the start. You did ask me another supplementary but I have forgotten it, I am sorry.

3.13.2 Deputy A.D. Lewis:

The Minister is not answering the question. In normal angel funding-type scenarios of which this is a similar scenario, it is quite normal for drawdown to be done in tranches so that you can monitor the progress of that business. So is the Minister saying that that does happen sometimes or it does not, or does it always happen or does it not? What is the answer?

Senator P.F.C. Ozouf:

It does happen in some cases and that means that every business will be different. So in one example it requires the upfront funding and its heavy cost to get the thing up and running and others will require more funding later on. But the example of the business that is being supported with an additional loan today is a business that is exceeding its expectations in terms of the markets that it can operate in, so it is just simply not possible to say. The thing of having a scheme that just has £50,000 or £100,000 or £200,000 of strictures on it is simply not as flexible as it should be to meet some of the different range of businesses that are there. I do not want to comment on any of the individual businesses but happy to brief the P.A.C. or a Scrutiny Panel confidentially so that they can see the rigour that goes into the prior and post-evaluation of the businesses. The board themselves receives this report, and the minutes that I have reviewed and seen, see that they get regular updates of exactly how they are doing. But now what we are going to do is provide some extra support for those businesses that was not available previously in E.D. (Economic Development) or Jersey Business but we will now do that.

3.13.3 Deputy R. Labey:

Does the board of the J.I.F. (Jersey Innovation Fund) have the ability to pursue money loaned through the courts if there is evidence of fraud or if that is suspected? If parties have moved to the U.K. because of our jurisprudence, can they chase the money through the U.K. courts?

Senator P.F.C. Ozouf:

Well, first of all, at the end of the day the recommendation is made by the board to the Minister. The Minister must be satisfied that the processes are being fulfilled. Thereafter, obviously the board themselves are not that mandated at the moment to provide that monitoring service but they have done that. They continue to provide really invaluable assistance to some of the businesses that have been supported by way of a loan. In any event, it is not their decision whether or not the loan is going to be written-off or taken off. That is a matter for my good friend, the Minister for Treasury and Resources Department. All I would say on that is that if you basically say: "Okay, this business has not succeeded. It has not met its targets so we are going to be taking proceedings against it and we are going to collect the debt", well that is one way of never getting the debt because the business may succeed at some time in the future. For example, the I.P. (Intellectual Property) that has been devised or basically created by the entity that failed to meet its objectives for an unfortunate set of reasons - and some businesses just do not work despite how great an idea they are - that if you effectively take proceedings against them and declare them bankrupt, well they are finished then. But the ...

The Bailiff:

Senator, your answers must be concise ...

Senator P.F.C. Ozouf:

Sorry.

The Bailiff:

... and should hopefully answer the question. Deputy Higgins.

Deputy M.R. Higgins:

Believe it or not, the Minister strayed into the area that I was going to ask a question about.

3.13.4 Deputy J.A. Hilton:

Can the Minister confirm to Members that he is satisfied that the review that he referred to in his original answer many questions ago about reviews taking place on a quarterly basis have been carried out in this case in a timely fashion?

Senator P.F.C. Ozouf:

From everything that I have seen, yes. Of course, given that every loan is different and of course there will be changes - these are start-ups - things will change. Markets will change. One market, for example, for an oil sector investment may well, because of a plunge in oil price, not get the sales that they think if they have an innovative product which has been investing in; for example, fracking. So things will change but it is the deftness and the appropriate advice that is important and the assessment of whether or not the business is going to be successful. I think it really is moving to a world where advice for start-ups rather than credit, which was the purpose of the Innovation Fund, is where we need to go.

3.13.5 Deputy J.A. Hilton:

A supplementary? Notwithstanding change, is the Minister confirming that the reviews did happen in a timely fashion?

Senator P.F.C. Ozouf:

Yes.

3.13.6 Deputy A.D. Lewis:

Does the Assistant Minister not accept though by giving money out in tranches rather than in one lump sum does mitigate some of the risk? But also furthermore, could he also let us know how many applicants have there been since the fund was set up, how many of them were successfully given out, and has there been any measureable impact on the Island's economy since the commencement of the scheme, or is it too early to tell?

Senator P.F.C. Ozouf:

That was an omnibus of questions. I will try and ...

[11:15]

The Bailiff:

None of the questions followed from the original question but still, do what you can.

Senator P.F.C. Ozouf:

Pardon?

The Bailiff:

Still, if you would like to answer it, please do.

Senator P.F.C. Ozouf:

I have now forgotten what they were. This issue about tranches, when you are starting a business, it could, if it is going to be successful, the issue of venture capital, which I am sure the Deputy knows, is that you have to almost put greater and greater and greater amounts of money into start-ups to get them to be successful. There are companies on the Nasdaq and the U.K. stock market and the fast-growing German market that have effectively not made a single penny and made huge losses because you are effectively shovelling money in to reach the potential of the business. So this concept of knowing everything from the start and a tranche is almost, if I may say, not really reflective of what happens. When you have a business that looks like it is going to be a success and you agree to fund those early start-up costs and it gets better and better, you might need to spend a lot more. The Deputy knows that and that monitoring has been carried out, but I think that we can provide additional mentoring and assistance for these companies to make sure that they reach their potential. I am satisfied that the monitoring has been carried out, but the officials and board have asked for more support and they are going to get it.

4. Urgent Oral Question

The Bailiff:

We now come to the urgent oral question, which I have allowed. Deputy Mézec will ask it of the Chief Minister.

4.1 Deputy S.Y. Mézec of the Chief Minister regarding what action, if any, is being taken against those who may not have followed the rules under States' Travel Policies: [9500]

Following the release of the review of travel policies and recommendations for improvement, which stated the review has not uncovered widespread misuse of procedures, could the Chief

Minister outline where any misuse has been uncovered and what action, if any, is being taken against those who did not follow the rules?

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

The investigation did not identify any serious occurrences which would warrant disciplinary proceedings against any individual. It did find some examples of documentation left uncompleted; for example, written authorisation was not received in advance for some flights supporting Ministers. However, it was clear to all that the flight was accompanying a Minister. It did not identify any deliberate attempts to circumvent procedures but in some cases processes were not clear. Departments had developed their own procedures and there was variation in how rules were interpreted, hence, of course, the recommendations made in the review, which is now published on the Government website.

4.1.1 Deputy S.Y. Mézec:

A supplementary: there have, of course, been occasions where even if the rules relating to booking flights have been followed according to the book, the accounts given about those flights, given to the public afterwards, have certainly been unsatisfactory. Has the Minister given any consideration to making further statements about the flight which was taken by 2 civil servants to South Africa and the account they gave afterwards, which did not seem to match the account they gave initially?

Senator I.J. Gorst:

I say things and I read about it and hear about it and it does not match the account that I gave and I was there in the room. How much more so, Members of this Assembly should know, that they can be misquoted and taken out of context from the things that they say in a way that the investigation, which was carried out by the Chief Internal Auditor, supported by an independent person, found in this case. So I hope the Deputy would realise that that report and the findings of the other report show that we need to focus on the changes that need to be made and we need to respect those independent reports and recognise that there are people that we are asking to work in various areas like Locate Jersey, like growing the economy, that need to travel around the globe and deliver inward investment and jobs into our community for the benefit of all.

4.1.2 Deputy S.M. Wickenden of St. Helier:

I would like to ask: on this independent review when did the States Employment Board receive this review and talk about it at their meeting?

Senator I.J. Gorst:

I do not have exactly the date that the States Employment Board received the review. It was an independent review so the States Employment Board could not influence the outcome of that review. It was a review to be received by them. The meeting of last week did not take place, but I can certainly find exactly the details of when the report was given to members of the States Employment Board. I think it was the end of the week before.

4.1.3 Deputy A.D. Lewis:

In a recent P.A.C. hearing, the Chief Executive of the States of Jersey did state: “I will say right at the outset today my own department has not complied with the absolute letter of the law of financial direction 5.7.” Does the Minister feel that that comes over clearly enough in the report that has been produced and does he also feel that the report does not address cultural issues in the way that these funds are spent, which we have had pointed out on a number of occasions in regard to public expenditure? Cultural behaviour within the States, does he feel that that has been addressed within this report?

Senator I.J. Gorst:

If I take the cultural issue first, there are a number of facets to this, are there not? There is the need for the trip and then there is about getting value for money once it has been agreed that the trip needs to take place. I can speak for my own area. There is oversight by the External Relations and Financial Services Board that looks at the trips that Ministers and officials will be taking and that meeting, therefore, in effect, says: “Yes, that is a necessary trip.” Then what this review is doing is saying that we need to make sure that where appropriate we are using the appropriate level of flight, and this report says that broadly that should be economy. Only in extremis, on long distance flights, should it be business and, even where it is business, we should look at ways of reducing that cost, perhaps, for officers. This is more difficult for Ministers, of course, but perhaps for officers they should be using different hubs around Europe for connecting flights, thereby reducing the cost. That is what departments will be doing.

The Bailiff:

Final supplementary?

Deputy S.Y. Mézec:

No, thank you, Deputy Lewis touched upon the thing I wanted to ask.

5. Questions to Ministers without notice - The Minister for External Relations

The Bailiff:

We come on to questions without notice. The first question period is the Minister for External Relations. It starts now.

5.1 Deputy G.P. Southern:

Can the Minister inform Members what savings he is due to make under the coming M.T.F.P. proposals because I cannot find any?

The Bailiff:

Minister, what savings are you proposing to make in the current forthcoming M.T.F.P. proposals?

Senator P.M. Bailhache (The Minister for External Relations):

The Ministry of External Relations has already made savings and I suspect they are incorporated in the accounts of the Chief Minister’s Department because until next year the Ministry of External Relations does not have a separate budget line for its own activities.

5.2 Deputy M.R. Higgins:

Can the Minister for External Relations tell the Assembly what plans they have in the event of a British Brexit? I see the latest opinion polls are 6 per cent in favour of leaving.

Senator P.M. Bailhache:

I do not know whether the Deputy had the opportunity to attend the informal meeting of States Members which I convened at which I answered that question in some detail, but in summary the Ministry of External Relations and, indeed, other related ministries as well, have been engaging very closely with the Foreign and Commonwealth Office and with other departments of the United Kingdom Government in order to ensure that the U.K. Government is aware of what Jersey’s position is under Protocol 3 and as to what Jersey’s aspirations are should the vote to leave result in the referendum on 23rd June.

5.3 Deputy A.D. Lewis:

Mindful of your own views you have expressed recently about Brexit, Senator, is there anything more that we as Members and members of the public in Jersey can do to articulate their own views, which may be of any assistance to friends and relatives and so on that will be voting in the referendum?

Senator P.M. Bailhache:

I think that any individual in Jersey has the right to express his or her views in any way in which he or she thinks fit. I am not sure whether the underlying thrust of this question is as to why the inhabitants of Jersey are not voting in the United Kingdom referendum, but the answer to that question is that the decision on who should vote in the United Kingdom referendum is a matter which obviously rests with the United Kingdom Government. The policy followed for the referendum on 23rd June is the same policy as was followed when a referendum on membership of the European Economic Community was held in 1975. Jersey is not part of the United Kingdom and, therefore, residents of the Island do not inherently have a right to vote.

5.4 Deputy S.Y. Mézec:

Given that the uncertainty that would be caused by a Brexit could potentially have a negative impact for Jersey and, therefore, the *status quo* is the safest option, does the Minister feel like he and his Government are doing enough to consult with ... not to consult but to have a dialogue with the people of Jersey and, in particular, leaders of industry and public commentators about the potential negative effects that could be had on the Island so that outsiders looking in at Jersey's prospects of a Brexit will see less ambiguity about what we as an Island believe and would hope to put a message out to the British public when voting about the negative effects it could have on Crown Dependencies and overseas territories?

Senator P.M. Bailhache:

The Government of Jersey has been engaging in informal consultation with very many institutional branches of commercial and political activity in Jersey during the last 2 to 3 months. As I mentioned in answer to Deputy Higgins, States Members were invited to a briefing - an informal briefing session - to explain what was being done in terms of discussions with the United Kingdom Government and what was being done in the way of planning for the possibility that voters in the U.K. might vote to leave the European Union. In very simple terms, the provisional position of the Government is that we seek to preserve the *status quo*, that is the situation which exists under Protocol 3, and that has been explained in a series of informal meetings with organisations such as the Institute of Directors, the Chamber of Commerce, the Fishermen's Association, the agricultural industry and the unions. I have attended most of those briefings and I have found that they have been quite well received by those who have attended them and it has confirmed to me that the provisional stance which the Government has taken is the right one. If there is a vote to leave on 23rd June, then the Government will in fairly short order be lodging with the Greffier a paper which explains in more detail what the Government's position is and consultation more openly will be possible in that event.

5.5 The Deputy of St. Ouen:

In the light of the answer to my written question this morning on the potential implications for Jersey of the U.K. Government proposals for a British Bill of Rights, I am sure Members will be pleased to note the situation is being carefully monitored by the Minister. Can the Minister say whether the U.K. Government has agreed to hold open a line of communication with the Jersey authorities to discuss any potential implications and is the Minister aware of the timetable of the U.K. Government for bringing forward its proposals?

[11:30]

Senator P.M. Bailhache:

Discussions have taken place, not only at official level but at ministerial level, with the Ministry of Justice where our interest in the outcome of the consultations in relation to the United Kingdom Bill of Rights has been taking place. I am not aware that there is any timeframe so far as the consultation in the United Kingdom is concerned, but the Ministry of Justice is very well aware of our interest and I certainly can confirm that there is an open line of communication with officials and, indeed, ministerially.

5.6 Deputy J.A. Hilton:

For Members who are not aware, the Yulin Dog Festival in China is due to start in the next couple of weeks, which entails around 10,000 dogs being slaughtered over a period of 2 to 3 weeks by being battered, skinned and boiled alive by Chinese butchers. There are a lot of pressure groups trying to address this and I know there are actions being taken in the U.K. as well. Will the Minister join with me in expressing his horror and disgust that the Chinese continue to support this festival each year and would he be able to do that through his diplomatic contacts in London?

Senator P.M. Bailhache:

I have to say I am sorry to say that I was not aware of the facts, if they are as the Deputy has outlined them, and certainly I do not think it would be difficult for me to confirm that we would certainly deplore any acts of cruelty to animals in the way in which the Deputy has described them. As to whether it would be appropriate to take any action internationally, I think I would really need notice of that question.

Deputy J.A. Hilton:

I thank the Minister for his answer.

5.7 Deputy M.R. Higgins:

Following on from the discussion about Brexit, obviously the Island's position - and would the Minister correct me if I am wrong - is that we rely on the finance industry and we have 12,500 people employed in that sector and it accounts for something like 44 per cent of G.V.A. (gross value added). If the U.K. leaves, has the Minister assessed the effect it will have on that particular sector? Because we are being told in the press in the U.K. that the large banks - a number of them - are planning on relocating into Europe. Is the Minister aware of any banks here thinking of relocating? Secondly, could he also say if the U.K. does leave whether it be advantageous for us to negotiate direct with the French to try and maintain protocol 3 or to work through the U.K.?

Senator P.M. Bailhache:

The Deputy is, of course, right that almost the only thing that Brexiteers and Remainers agree about is that a decision to leave the European Union would have at the beginning a detrimental effect upon the United Kingdom economy. That is something that I am aware is being closely monitored by the City of London, and through the City of London Jersey Finance is certainly monitoring the situation as well. To the extent that the City of London might conceivably be affected by a decision to leave, it can be anticipated that those effects would reverberate in Jersey, so the Deputy is correct to that extent. I am not aware of any indication by local banks of an intention to leave the Island and it seems to me that that would be a surprising decision because the fact of the matter is that Jersey is already outside the European Union and, therefore, there is no substantial change so far as Jersey is concerned in the event that the United Kingdom resolves to leave the European Union. Our position remains exactly as it is at the moment. We are a third country and banks that are established in Jersey are established here because we are a third country. So far as the last part of

the question was concerned, I do not think it would be practical for Jersey to engage directly with France in relation to these matters because these are matters of European competence.

5.7.1 Deputy M.R. Higgins:

Can I just clarify, sorry? The Minister I think misunderstood my last question. It was not just a question of France but would he try to renegotiate Protocol 3 or the provisions of that directly or indirectly?

Senator P.M. Bailhache:

I am sorry, I misunderstood the Deputy. If there is a decision to leave, the negotiations of Jersey's position in the future with the European Union will be as a matter of constitutionality a matter for the United Kingdom Government because we are not a sovereign state. We will certainly engage with the United Kingdom Government and explain exactly what Jersey would wish to achieve, but so far as the negotiations themselves are concerned they would be a matter for the U.K.

5.8 Deputy A.D. Lewis:

I just wondered if I had heard clearly that the Minister was saying that the Jersey Government position on Brexit is you would desire maintenance of the *status quo*. If that is the case, why is it that we are not making much more noise about that and articulating that message very loudly? Is there a good reason for not doing so? Gibraltar is doing quite differently, albeit they are in the E.U. and they have a vote, so I understand the difference is great. However, they are very clearly stating what their Government position is and making it very loudly known. Is there space for us to do the same and should we be doing that or is there a good reason why we are not?

Senator P.M. Bailhache:

There is a good reason and, as the Deputy rightly says, the position of Gibraltar is entirely different. Gibraltar is part of the European Union. Jersey is not part of the European Union. The reason why the Jersey Government does not think it appropriate to engage publicly in the discussion as to whether voters in the U.K. should vote to remain or to leave is really the very same reason why the Government of Jersey does not engage in party politics at election time in the United Kingdom. The Government at any given time might have a view privately that it would be in the Island's interests for one or other party to succeed in the general election in the United Kingdom, but we do not say so because if, in fact, the other party is elected it would not enhance our relationship with that new Government in power if we had publicly supported the opposing party in its aim to get elected. Quite apart from that ...

The Bailiff:

Thank you, Minister. We now come to the end of your session.

6. Questions to Ministers without notice - The Minister for Social Security

The Bailiff:

We now come to the second question period, the Minister for Social Security.

6.1 Deputy J.M. Maçon of St. Saviour:

Can the Minister advise what continued work is being done for the introduction of work-based pensions in Jersey?

Deputy S.J. Pinel of St. Clement (The Minister for Social Security):

I thank the Deputy for his question. This came up at a speech I gave at the Chamber of Commerce and it was a rhetorical question at the time as to what we would do. Guernsey have already introduced or are starting to introduce a scheme which is going to come into effect I think in 2020 of work-based pensions, and with the social security review that we commence now, beginning of this year, which will be completed hopefully by 2018, we will look into further work-based pension schemes.

6.2 The Deputy of St. Ouen:

In light of the Minister's news release today reporting that the number of cases of work-related illness increased by 21 per cent in the year to 2015 - being principally stress and musculoskeletal disorders - can the Minister say what measures can be taken to reduce the toll that workforce stress takes on a large number of Island residents?

Deputy S.J. Pinel:

I can only answer the Deputy in saying that along with our medical advisers we have now introduced a mental health adviser to help the determining officers at Social Security ascertain what level of benefit or comfort or work-related days off are taken. So we are assessing it in that way.

6.3 Deputy J.A. Hilton:

In answer to my written question about long-term invalidity allowance benefits being paid to recipients outside of Jersey totalling approximately £1.24 million, is the Minister satisfied the necessary checks and balances are being carried out on claimants, especially bearing in mind the average percentage awarded falls below the 40 per cent which requires recipients in Jersey to actively look for work.

Deputy S.J. Pinel:

It is an excellent question from the Deputy, thank you very much. This again is going to be part of the social security review because it is very difficult to say that as Minister I am satisfied that the claimants overseas are being necessarily monitored so this is something that we are certainly going to look into. It is only 8 per cent as the Deputy says and it is to the tune of £1.2 million paid overseas out of the £15 million that is paid in total.

6.4 Deputy G.P. Southern:

Does the Minister for Social Security recognise that these are contributory benefits? These people whether they are here or elsewhere have contributed and therefore are due to receive what they have contributed for and distinguishing between those not resident here and those resident here may well be discriminatory.

Deputy S.J. Pinel:

The average length of time of contribution for long-term incapacity allowance is 12 years so yes, I do recognise it and no, I do not think it is discriminatory.

6.5 Deputy J.A. Hilton:

Can I just have a supplementary? The average years of contributions received before claims started for those residing outside of Jersey was 12 years paying into the system, does the Minister for Social Security agree with me that the way the situation stands at the moment a recipient could be receiving the benefit from 10, 15, 20 years thereby qualifying for a Jersey pension even though they have only contributed on average for 12 years into the system? Does she think that is cause for concern?

Deputy S.J. Pinel:

As in my previous answer to the Deputy, I think there is cause for concern because it is very difficult to monitor these payments overseas as to whether the level of incapacity is maintained. It is difficult to monitor and, as I say, we are going to look at this in the social security review which is happening this year.

6.6 Deputy G.P. Southern:

The Minister for Social Security has obviously made arrangements to do her share in the M.T.F.P. coming but her admin costs may well be affected by the number of redundancies, whether compulsory or voluntary, coming from the public sector over the coming years. What measures has she put in place to estimate what this level of redundancies might be and what the demand and cost on her department might be?

Deputy S.J. Pinel:

Social Security, along with all other departments, as the Deputy will well know, have had to make very stringent savings and we along with other departments have also put into effect a voluntary redundancy scheme of which there have been 9, to date, voluntary redundancies. We are a leader in Lean, along with the Health and Social Services Department, making efficiencies across the board which will help in the administration which continues to increase with all the different measures that we are putting into place.

6.6.1 Deputy G.P. Southern:

Supplementary if I may. Will the Minister for Social Security come to the House with an estimate based on what the turnout in the M.T.F.P. is for redundancies across the public sector, and the demand that that will make on her department and how she is going to cater for that demand?

Deputy S.J. Pinel:

I rather thought I had answered that question when I say that we have so far had 9 voluntary redundancies. We are not expecting a huge amount more. The cost of administration and staffing in Social Security is about 5 per cent of the overall budget so it will not be affected further.

6.7 Deputy R. Labey:

If the recipient of a long-term care benefit has it cut to the extent that that they can no longer travel back to the U.K. hospital they were referred for major transplant surgery with thrice annual check-ups this is not right, is it? What can they do?

Deputy S.J. Pinel:

I am not aware of anybody who has had their long-term care budget cut. I cannot answer on individual cases.

6.7.1 Deputy R. Labey:

Okay, take it from me that this constituent has had their long-term care benefit cut by about £350. It does mean that they cannot go back to the U.K. and they have been told that if they go to the tribunal and win it they will not get the money anyway. What does the Minister for Social Security think of the situation?

Deputy S.J. Pinel:

As I said previously, I cannot answer on an individual situation.

6.8 Deputy G.P. Southern:

The Minister for Social Security, I think, has misunderstood my question. I believe that there may be up to 400 posts removed from the public sector overall. Some of those posts will be

redundancies and they will end up in her department saying: “Will you help me to seek work?” and that will be a demand on her budget. What estimates does she have, and will she come to the House with estimates for what that might cost dealing with up to 400 posts lost in the public sector?

Deputy S.J. Pinel:

It is impossible to give an estimate of that sort of figure when I do not even know that there are going to be 400 people. That is the Deputy’s number, not mine. Obviously the Back to Work sector of Social Security has a budget in order to help people get back into work, into other jobs with training, with mentoring, with all sorts of schemes, employment grants, in order to do exactly that, to find people other jobs.

6.9 Deputy J.A. Hilton:

Currently deaths resulting from exposure to asbestos are not required to be monitored under law. Would the Minister for Social Security agree to work with the Minister for Health and Social Services in either updating or changing the law so that in future individuals who die from asbestos-related diseases are recorded in order that we can keep a good account of who is passing away with this disease and possibly to see whether there are any connections?

The Bailiff:

I am not sure that is within the responsibility for the Minister for Social Security.

Deputy S.J. Pinel:

I will try to answer the question because we have the Health and Safety Department under our wing. There is no register of asbestosis at all in Jersey. There is in the U.K. It is very difficult to entertain even trying to do something like this because asbestosis or diseases linked with asbestos can take 10, 20, 30 years to exhibit themselves so people may have come from England or from anywhere for that matter having been exposed to asbestos. It is very difficult to register something and Social Security will not hold a register of deaths. The Medical Officer for Health does that. From the point of view of seeking out asbestos and getting rid of it we do as much as we can but registering deaths from it is very difficult to diagnose and register.

6.10 The Deputy of St. Ouen:

How does the Minister for Social Security react to the recent youth story that young people placed in a new business by the Back to Work scheme were lazy in many respects and, for example, refused to work night shifts claiming that it would interfere with their social lives?

Deputy S.J. Pinel:

I have to answer the Deputy from St. Ouen to say that is the fourth article on 4 consecutive days where the facts were wrong in the *Evening Post*, and they were, and there is a huge amount of effort and work that goes into getting young people into work over here. I think some of them find it difficult in the hospitality or agricultural industries where the shifts are difficult, sometimes it is weekends, it is evenings. Of course people find that difficult but any job is better than no job and the self-esteem, not to mention just the financial aspects of having a job, overwhelms everything else and I think the Back to Work team are doing a brilliant job at Social Security and should be commended for doing so.

6.11 Deputy M. Tadier:

To follow on from Deputy Southern’s question, after 30th June once the figures are known to do with redundancies in the States, at what point will the Minister come back to the Assembly with an assessment of how the redundancies will affect her department and those perhaps seeking employment, going on Back to Work schemes and so on?

Deputy S.J. Pinel:

The Deputy has raised a similar question. It is very difficult to know at this stage in the game. We have prospective redundancies with British Home Stores but we do not know. There has been no definite notification of the closure of the store; and for Austin Reed, we do not know how many people are going to be affected, how many people are on part-time work within these retail outlets and so we will not know what the numbers are until the end of this month.

6.11.1 Deputy M. Tadier:

Does the Minister for Social Security accept that there is a problem here? We see redundancies will go up because of the private sector events and also the fact that States' policy is to make redundancies at the same time she is proposing, we think, to have the budget cut for Back to Work. These 2 do not tally. There is a tension there. Does the Minister for Social Security accept that and does she accept that something there has to give, and if so what will she do about that?

Deputy S.J. Pinel:

The budget for Back to Work was quite considerable in 2012 when it was introduced because we expected huge amounts of redundancies from L.V.C.R. (Low Value Consignment Relief) which did not happen. It has not been cut as much; it has just not been used as we were anticipating it would be used. There is enough budget, as far as I am concerned, within Back to Work to retrain people, to provide employment grants which for an employer is an incentive to take on somebody for 6 months. The minimum wage rate is paid. It does not mean to say that they have to pay that but Social Security pays that and pays for their contributions for 6 months on the basis that the employer will keep them. There are plenty of incentives throughout the Back to Work scheme.

The Bailiff:

That brings Questions without notice to the Minister for Social Security to an end. There is nothing under J and K.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

7. The Minister for Health and Social Services - statement regarding the future of the hospital

The Bailiff:

Members have received the statement to be made by the Minister for Health and Social Services.

7.1 Senator A.K.F. Green (The Minister for Health and Social Services):

The new hospital is desperately needed. The current buildings, plant and services are reaching the end of their lives. The clinical environment does not meet current standards and the buildings are either fully utilised or overcrowded. The ageing infrastructure is letting us down. I have said before our excellent hardworking staff are providing a first-class service within the confines of a Victorian infrastructure. We need a new hospital. We need a new hospital to deliver the health care that the people of Jersey deserve and would wish to see both for themselves and for their families. At the same time we need to continue the expansion of the community-based healthcare services as approved in P.82/2012 brought by the previous Minister as she started to shape the service going forward to meet the challenges posed by the ageing population. But I come back to the fundamental question as to where to put the new hospital that is so desperately needed. This Assembly and the people of Jersey told me that building on the People's Park was a step too far, the facts were never going to make that possible, the emotion was never going to overcome the facts. When we withdrew that proposition States Members indicated that they would work with us to

deliver that much needed new hospital. My officers arranged for States Members to attend workshops. These workshops explained the technical assessments and included discussions on the pros and cons of the different site options. I am delighted to say that nearly all Members attended either one of the workshops or, if due to diary commitments, they had one-to-one briefings where they could give their views and ask questions. What became clear from Members is acknowledgement that the future hospital should be seen as a special case as befits its status, and as a special place where special events happen. They also recognised, as we do, that this was a once in probably a generation, but probably several generations' investment. Therefore they said that we should be prepared to look again at the potential constraints, for example the planning rules, when considering the height of a building. Members agreed that they would look sympathetically within reason, not throw the rule book away, at some sensible ways of flexing those constraints if it meant that a more acceptable solution could be forthcoming. Operating within these new parameters has meant new thinking on our part. The Future Hospital team has come up with early stage proposals that would retain the hospital in the built-up area of St. Helier but would remain easily accessible to the bulk of the Island's population and those who work within it while not making demands of green open space. In proposing a way forward we stress that any successful project would need to maintain a safe operation of the hospital during the project delivery, deliver a new - I stress new - fit-for-purpose hospital, be deliverable within 8 years in a single main phase construction, be comparable in costs to the new clean build option. The team responded with a creative approach based on the current general hospital site. This involves developing the areas of the current site occupied by the Gwyneth Huelin Wing and the Peter Crill House together with some adjacent properties in Kensington Place. This cleared site would allow a whole new hospital to be built fast and in an efficient, single main phase construction. There would be a distinct border between the area of construction and the continuing hospital. This would minimise disruption far more than under the original site proposal. Building on the existing site only works because it uses Patriotic Street multi-storey car park to enable easy access to the hospital on a number of different levels from the car park; therefore a smaller site but a higher building would work on this site where it would not work on other locations. The proposal will deliver a new hospital not a refurbished one on a familiar and recognised health site. I am pleased to say that the Council of Ministers has given its support for this as a preferred site option. Further work will now be undertaken in the coming weeks as the Future Hospital team moves beyond the preliminary scoping work to finalise the proof of concept. Once this work is completed in a month or so the intention is to work with States Members and then lodge a proposition confirming the preferred site. I will continue to liaise with the Scrutiny sub-panel as the project moves forward. The intention would be for the enabling works to be undertaken from 2017 to 2018 with the main construction starting in January 2019. To conclude, I would like to thank Members once again for their assistance. I am determined to see us build a safe, sustainable, affordable hospital for Islanders on a site that has widespread political and public support. A future hospital that is a safe place, a special place, a place that we can be proud of Islanders would expect nothing less. **[Approbation]**

The Bailiff:

We now have 15 minutes of questions. Deputy Martin.

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

I thank the Minister for Health and Social Services for the update. I do ask the question that he says it is dependent on some adjacent buildings, properties in Kensington Place. Could he inform the Assembly whether we have already purchased these properties because I can just hear the pound signs going up, up and up, and if nothing else these days would not the Minister for Health and Social Services agree that this should have waited until we had purchased the properties?

Senator A.K.F. Green:

There are always a timing issue, chicken and egg. No, we have not already purchased the properties. We know that the owners in 2 of the significant cases are willing sellers and it may be the compulsory purchase may be used not because people do not want to sell but because that is a fair way of determining the appropriate price.

7.1.2 Deputy M. Tadier:

Is it just me or was this the worst option, the one which we and the public were steered away from at all costs because we were told it would be too costly and too disruptive and it was the longest build period, yet in a kind Orwellian double-think way it now seems that this is the best option and the one that the Council of Ministers want to proceed with. Can the Minister for Health and Social Services elaborate on why he had the change of heart and why when he told us that the Waterfront was the best clinical option he is opting for what is now the worst one on paper?

[12:00]

Senator A.K.F. Green:

Absolutely delighted to help the Deputy see the way that we have moved forward. The worst option was the original plan for the original site. We were going to try, if you went with that scheme, to build a hospital and renovate the hospital around the patients. Why did we end up there? Because planning constraints would not allow us to build to the height that we can now consider building. I must stress that no approval has been given but clearly we have an understanding that the Minister for Planning and Environment is prepared to look at it. Planning constraints did not allow that height therefore you could not get a clear site to provide a one-construction, one-build site. If we had gone ahead with the proposal of the single site as it was before it would have been £612 million. It would have been 12 years of work around people that are chronically ill: unacceptable. This is an 8-year programme, a 6-year new build, a completely brand new hospital within a comparable price for a new build. What more could we want?

7.1.3 Deputy M. Tadier:

The Minister for Health and Social Services says that planning restrictions did not allow us to build up to this height. He is suggesting by his tense that something has changed here. Could he confirm that planning restrictions still do not allow a hospital or any building to be built to the height that he wishes it?

Senator A.K.F. Green:

The Deputy knows full well that the way that planning works is that when an independent inspector is appointed - which no doubt the Minister for Planning and Environment will do - before you deviate in any way from the normal planning brief he would have expected us to have at least tested the water of other options. We have done that. We have listened in our engagement to the public who while we did not formally conclude that very clearly said that they wanted to be on this site. This is an exciting, a really good option to create a health quarter within St. Helier with expansion for the future, with hope to develop services in the future, and might I say that in 50 years' time or 70 years' time when they want to have a new hospital there is potential to do that next door on the current health quarter. What a brilliant solution.

7.1.4 Deputy K.C. Lewis:

I do believe that this is the correct option to take as most people live in St. Helier and most people that work at the hospital live in St. Helier and all roads lead to St. Helier. I think this is the correct option. However I am not really in favour of compulsory purchase because completion date was around 2028, anticipated, and if this goes for compulsory purchase then this could drag on possibly

for a very, very long time. Would a negotiated settlement with the owners of the properties be better?

Senator A.K.F. Green:

Of course the officers at Property Holdings and Infrastructure, all of whom will be working with me in this, would try and settle with negotiated settlement to what we know are 2 willing sellers. Compulsory purchase need not be drawn-out but will only be used when no other option exists.

7.1.5 Deputy C.F. Labey of Grouville:

When People's Park was being put forward as a preferred option the estimated delivery time was 11 years. The Minister for Health and Social Services is now suggesting an 8-year timescale. What has changed to deliver this 3 years faster and why was this whole scheme not considered in the first place?

Senator A.K.F. Green:

A similar question was asked by Deputy Tadier but it helps me to explain it more clearly, so I am very grateful to the Deputy for her question. The thing that has changed here is that if you have a smaller footprint we can provide south of the Granite Block a clean site providing we can go high, to provide the square meterage that is required for the new hospital. The reason the other one took 11 to 12 years, £612 million was that we were confined by height therefore we never really got a clear site. We were working around different departments. Some departments had to move 4 times in the renovation and the partial new-build, and some 47 different phases were in that scheme. What we have here is a number of temporary moves, some permanent, for outpatients, relocation of offices and a complete new-build which everyone can move into in one go. That is why it is so much quicker.

7.1.6 The Deputy of Grouville:

Supplementary, because he did not finish answering the question. Why was this not put forward in the original set of proposals?

Senator A.K.F. Green:

We were complying with the planning guidelines at the time. It is as simple as that.

7.1.7 Deputy M.R. Higgins:

I will start off by saying I have an open mind on the Minister for Health and Social Services' proposals. However he is saying that it is conditional on the building going up. How many floors up? What sort of size are you proposing before you go to planning?

Senator A.K.F. Green:

While we are yet to work out the detail clearly, I would not have come to this Assembly unless we were convinced we could get the square meterage we need to provide all the services within the hospital. If you imagine the edge of the site, Gloucester Street and Patriotic Street, so the whole of coming down Newgate Street, if you imagine that quarter where the hospital currently is there would be fairly low level, 2 or 3 storeys there. In the centre it would be considerably higher but to put it into context imagine the 1980s building on the Parade, one floor higher than that and lower than the current chimney. That will give you the idea of the sort of centre - we have not designed it - of the building might look like.

Deputy M.R. Higgins:

Supplementary. The Minister for Health and Social Services did not explain how he thought --

The Bailiff:

Deputy Higgins, I am sorry, we have lots of people asking questions. Deputy Labey.

7.1.8 Deputy R. Labey:

If hospital storeys are 5 metres high how many storeys will there be at its highest point?

Senator A.K.F. Green:

That has yet to be designed but I believe something like 7 or 8.

7.1.9 Deputy G.P. Southern:

It may be a stupid question but I will ask it anyway. What is the life span of Patriotic Street Car Park? Does it match the life span of the hospital?

Senator A.K.F. Green:

It is in very good condition and the Minister for Infrastructure has held off the renovation project for the car park and he will do that as part of the hospital scheme, and may even - and I do not want to steal his thunder - put an extra floor in.

7.1.10 The Deputy of St. Ouen:

Does the Minister for Health and Social Services propose any public consultation or engagement particularly to gauge people's views on having such a tall building in St. Helier?

Senator A.K.F. Green:

I do propose engagement not consultation, and I want particularly to engage to understand what people want from us in terms of accessibility and services as well.

The Bailiff:

Deputy Higgins, I am sorry, I cut you off. Would you like to ask your question? I am sorry, you were cut off because there was a long list. Would you like to --

Deputy M.R. Higgins:

No, fortunately Deputy Labey put the question.

7.1.11 Deputy J.M. Maçon:

I am a pictures person. When this is going out perhaps the Minister for Health and Social Services could provide a map which clarifies more for the public for this but, on my major point, will the new hospital site also incorporate all the services that are currently delivered at Overdale?

Senator A.K.F. Green:

The plan is that the rehabilitation centre - the Poplars, William Knott - will remain at Overdale but the rest of the site would be vacated.

7.1.12 Deputy G.P. Southern:

The Minister for Health and Social Services did not quite answer my question. I said: does the life span of Patriotic Street Car Park match the life span of the intended hospital? That is a very specific question.

Senator A.K.F. Green:

If the Minister for Infrastructure, and I have every confidence in him, and his team maintain the property yes.

8. The Chairman of the Education and Home Affairs Scrutiny Panel - statement regarding the Panel's review of proposed changes to nursery education funding

The Bailiff:

No other questions? Very well. We come on to the next statement which is to be made by the chairman of the Education and Home Affairs Scrutiny Panel.

8.1 Deputy L.M.C. Doublet of St. Saviour (Chairman, Education and Home Affairs Scrutiny Panel):

Members will be aware that we have published our report today and I thank Members for their patience. We were hoping to get the report out as early as possible and thank you to those who have read it. I am sorry we could not get it out earlier. We have done our very, very best to work as quickly as we can. At the end of March this year the Minister for Education published a proposal, which means testing will be introduced for families to qualify for their 20 hours of free nursery education for 4 year-old children with a threshold of £75,000 and where the child is in a private preschool provider. On 23rd March this year the department held a meeting with owners and managers of private nurseries and preschools. On the same evening as this meeting took place the proposal was sent to the media. This was the first anyone in the nursery business had heard of the proposal. The school holidays started on 25th March and both the Minister for Education and the Chief Education Officer were out of the Island. Nursery owners and managers who attended that meeting we are informed that this was a proposal that would be introduced in September 2017. The matter was reported on 24th March in the *J.E.P.* which stated that the policy would be introduced in December 2016. It was made clear by the Minister that this was being introduced in order to save the department £250,000 per year and was expected to impact on between 75 and 100 families. As a panel we always approach our work with the aim of establishing whether policies are in the best interests of children in the Island, and we assume that the Minister also has this intention. The panel has maintained a good working relationship with the Minister and therefore was surprised that it had not been informed earlier of his intentions. As the Minister and Chief Education Officer were out of the Island at the point of going public, members of the public who were concerned about the proposal contacted members of the panel and on 24th March I held an urgent meeting at the request of stakeholders. The panel at this point launched a review due to concerns that these proposals were not in the best interests of children. There was also an extremely high level of public interest almost immediately as soon as the press release was sent out. We were bombarded with calls, emails and messages. Submissions came into the panel from the public private sector and from other stakeholders. At the time of drafting our report 80 submissions had been received and 2 members of the public also started petitions, both of which stated: "Scrap the plans to means test nursery places from 2017." Those petitions were presented to me on 31st March and as of 1st June 2016 had received 2,680 in total and 357 separate comments supporting the statement. The panel held urgent meetings and hearings with the Minister and other stakeholders. Public interest in the initial hearing with the Minister was high with the Scrutiny room packed full and with people standing. In addition there were another 50 or so people outside the States Building in the Royal Square who were opposed to the imposition of the proposal. The panel responded to the public interest by holding an additional public meeting at the Pomme d'Or Hotel on 13th April. This meeting was attended by approximately 200 members of the public. All other panel work has been reprioritised so that we could focus on this and produce a quality evidence report that would be useful to the Ministers and to all Members in assessing these proposals. The panel bases the comments within its report upon the submissions and the evidence provided to the panel. The conclusions we have reached include: stakeholders, pre-school professionals and the Minister for Education himself have agreed that this is not in the best interests of children. This proposal is not in line with the Strategic Plan approved by the States Assembly.

States Members have agreed to significantly invest in education and it appears that only a very slight investment is being made along with significant cuts such as the one in question today. The proposed nursery education funding policy of the Minister is in direct conflict with the 1,001 critical days' manifesto which has been endorsed and supported by the Council of Ministers and the Assembly. The reduction of investment in the early years of children is also contrary to the findings of research related to value for money when investing in education. This review has highlighted a number of potential negative consequences of the proposed funding change that the Minister has been unable to satisfactorily address, not least due to the absence of any impact assessments or appropriate consultation. Potential consequences include negative financial impacts on household budgets, parents choosing or being effectively forced to leave the workplace or to work fewer hours, reduced numbers of women in the workplace, potential parents being denied the opportunity to start or add to a family due to the additional financial burden - this reflects the submissions we have had - young children being denied the opportunity for essential early years development.

[12:15]

The £75,000 family income threshold over which free nursery provision would be denied to a child has not been adequately researched or subjected to impact assessment. How can a decision be made about means testing if the consequences of this decision are not known? Members will be aware that yesterday, before the publication of the panel's report, the Minister published a new criteria for the threshold of his proposal. I will attempt to address this as best I can later in the statement. The panel is disappointed to conclude that the Minister for Education has produced a policy that is directly in conflict with the Strategic Plan, is in danger of moving early years policy in a different direction to the U.K., made inadequate communication and consultation with stakeholders, parents or other interested parties and is effectively prepared to disadvantage some children - 70 to 100 using the Minister's own figures - to save money. The Minister is apparently prepared to negatively impact a number of families for a relatively small saving and is proposing a policy that is at odds with previous decisions of the States Assembly. The Minister failed to illustrate in the 2016 M.T.F.P. that the additional funding of £1.2 million for pupil premium and £0.7 million for S.E.N. (Special Educational Needs) children was insufficient to complete the plans and that he would be taking funding from other areas to complete those plans. I will remind Members that the panel's main concern, and one that the Minister has publicly agreed, was that this policy negatively impacts on children, but it seems that he still wishes to pursue it. The panel is unable to support the Minister's proposal. It has not been developed with appropriate levels of research, impact assessments or consultation with stakeholders and, as such, raises too many significant issues that the Minister has been unable to adequately answer. We strongly recommend that it is withdrawn, at the very least until such time as that work has been carried and the information gathered is taken fully into account. As I mentioned, yesterday the Minister sent out a press release changing the threshold of the means testing. He was aware that Scrutiny was intending to publish a report on the N.E.F. (Nursery Education Fund) for today. It is difficult for me to stand here and describe the impact this has had. The Scrutiny process is an integral part of our system and in order to have good government we need effective scrutiny. **[Approbation]** Publishing new proposals without properly considering an imminent Scrutiny report is demonstrative of a complete lack of respect for the Scrutiny process. A fair and balanced approach is key, I believe, to making this process work and I have endeavoured to take this approach at all times with the Minister. It is extremely disappointing when the same respect is not afforded to the panel. We feel that we have been let down by this Minister. It is unfortunate that a piece of work that has been a dedicated focus of the panel for the best part of 2 months, which we have given our best attention to and aimed to produce within a reduced timescale at the request of the Minister so it can inform his considerations, seems to have been completely ignored. It is highly unusual for a

Minister to disregard the process of government in this manner. Everything in this Scrutiny report still stands; it is only the thresholds that are different in the Minister's new proposal. However, the panel is unsure as to whether the proposals could change again. A previous statement from the Minister informs us that he would be looking into this over a 6-month period. There is still a huge amount of uncertainty surrounding this policy, how it has been formed and evidenced, what impacts it will have and whether this is the form it will take. Every point of the report's conclusion is still valid and applies to these new proposals. **[Approbation]**

The Bailiff:

Fifteen minutes' question time is allowed. Deputy Higgins.

8.1.1 Deputy M.R. Higgins:

Just for a point of clarification, the Chairman has gone through her statement, can she clarify: does she know what consultation and impact assessments have been made on the Minister's new proposals and has she at any time been previously advised or contributed to his latest proposal? I mean her panel.

Deputy L.M.C. Doublet:

No, the panel has not contributed to any consultation. I am not aware that any formal consultation has been entered into. I think if I was to reflect on the Minister's press release or statement from yesterday, I think it said he had spoken to people but I am unaware if the Minister has evidence of this in the same way that Scrutiny has a rather large - I should have brought it with me - stack of evidence against the proposal. So, no, I am not aware of any consultations that have been done and the panel has not seen any impact assessments, not just for the first proposals but for these subsequent ones either.

8.1.2 Deputy M. Tadier:

Would the Chairman elaborate on section 12.3 where some people making submissions referred to the proposals as a stealth tax, a tax on young families and a tax by any other means? Does she have sympathy with those expressions?

Deputy L.M.C. Doublet:

The evidence in the report is not with my own sympathies or otherwise, it is purely the evidence that has been collected by the panel and the views within it are not the views of the panel, it is the views of the public and the evidence that we have presented so those views in 12.3 reflect the submissions from the public that were given.

8.1.3 Deputy M. Tadier:

A supplementary. Did the panel look into whether there is a more efficient way of the Minister making his savings rather than attributing an arbitrary figure now, it seems £85,000, as to what he considers are a wealthy household? Is there a more efficient way that the panel has looked at raising that revenue?

Deputy L.M.C. Doublet:

It is not the job of Scrutiny to produce alternative policy but, saying that, part of our evidence was that members of the public were very prepared to say: "Okay, we know that savings or we can understand perhaps if savings need to be made, we would work with you, we could suggest other areas" and that is one of the limitations of it, that no consultation work was carried out. Members of the public were not given the opportunity to have that say and to make the point about perhaps other areas that they could see might be better to make savings from. In fact States Members were

not given that opportunity to suggest to the Minister where we might think the savings might be better made.

The Bailiff:

Minister, remembering this is a question, not a statement please.

8.1.4 Deputy R.G. Bryans:

Yes, of course. I wonder if the Deputy could confirm to the Members that the Deputy and I, along with the Director, had a lengthy meeting on Friday and she was made aware of the revised proposal?

Deputy L.M.C. Doublet:

Yes, we did have an informal meeting that I did not have an officer present at. At the time, the Minister, near the end of the meeting, did make me aware that he was thinking about some new proposals. I have to say I was quite shocked then because the Minister was aware that our report was not coming out until Monday. I urged him not to present any new proposals until he had read the report and considered it. My feeling of shock remains, to be honest, that so much work has been put into this report, not just by myself but 3 other Members of my panel, and Scrutiny Officers, for 2 months that the Minister should go away formulate alternative proposals without waiting for this large piece of work.

8.1.5 Deputy R.G. Bryans:

Will the Deputy confirm that I had received the summary report from her department and we were both aware of the information?

Deputy L.M.C. Doublet:

The Minister, when we met on Friday, informed me that he has not yet read the report and he presented me ... well, he gave me an outline of his idea of the new proposals he wants to make. So, yes, I can confirm that the Minister, at my urging, possibly read it over the weekend and I am perhaps grateful for that small concession, but the fact remains that the Minister had formulated these new proposals without having read the panel's report, which the panel was endeavouring to reach him in time before the M.T.F.P. so he could consider it before he changed his proposals.

8.1.6 Deputy K.C. Lewis:

I always find it quite bizarre that there are many, many young couples who spend more on nursery and childcare than they do on their mortgages, but should we not also be attacking the other end of the problem as to why Jersey is the most expensive place in the British Isles for nursery care?

Deputy L.M.C. Doublet:

I am not sure I can answer as to why we are the most expensive place in the British Isles for nursery care but obviously that point that was made was in the *J.E.P.* last night on evidence from the Childcare Trust. It is another point to take under consideration, I suppose, when we are considering these proposals that, yes, childcare and nursery education is clearly hugely expensive for families and as a States Assembly we have committed to supporting families and to investing in education, so it appears to me that we should be investing, in line with what we have agreed in the Strategic Plan, in those areas and helping families and not making cuts.

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

What is the Chairman's opinion in relation to the process on how this matter has been dealt with and/or communicated?

Deputy L.M.C. Doublet:

I did mention it in my statement, but I have to say it has led me to feel really quite disappointed. We were very lucky that the Greffier arranged a seminar for the Chairmen's Committee - I think it was Friday morning - with a lady called Dr. Hannah White from the Institute of Government in the U.K., and she gave us 2 hours of phenomenal input on how important Scrutiny is in the governmental process. She has done a research report into improving government and making government more effective, which is what we all want, is it not? That is what we are all here for. We want more effective government and it was highlighted to us in the Chairmen's Committee how important the Scrutiny process is and the relationship between a panel, the Minister and a department is key in that. That is something that I have tried to establish and build-up as best I can. I am not sure if it is calculated in any way, it appears to me to be almost as if it did not occur to the Minister that this report might be useful and that worries me. It worries me greatly because ...

The Bailiff:

Chairman, your responses have to be concise.

Deputy L.M.C. Doublet:

Okay, when we make policy decisions I think we would all like to make them based upon evidence, and Scrutiny is there to help with that. So I would hope that Ministers are seeing Scrutiny there as helpful and as giving some of that evidence. That would be what I would like to see in terms of process.

8.1.8 Deputy G.P. Southern:

May I congratulate the Chairman on her effective and powerful report and ask whether she agrees with me that being informed of a change is far from being consulted?

Deputy L.M.C. Doublet:

Yes, I would agree and I think our submissions from the stakeholders and from the public reflect that as well.

8.1.9 Connétable J.E. Le Maistre of Grouville:

Would the Deputy tell us if her panel would consider a threshold at all? Surely it comes to a point where household income will be sufficient to afford nursery education.

Deputy L.M.C. Doublet:

Yes, it is a very good question and we would like to perhaps look ... I think if new proposals are being put forward it would be something the panel would consider, to look at those new ones as well and see if ... we have not said in our report that means testing is not a good idea. Our conclusions generally have found that it is not ideal. Means testing for a child from a wealthy family, if you means test that family you are still taking away that child's chance to go to nursery. It does not mean that just because that family has been means tested that they have the funds to afford it, it does not mean they will necessarily send the child to nursery. So while my personal opinion is means testing I would need to look at that on a case-by-case basis. In this particular instance we found if we are looking at what is in the best interests of children the conclusions were means testing really is not the best thing for children in this instance and, just to remind you all, not at all in line with any previous States decisions when this Assembly instigated the nursery fund.

8.1.10 Deputy R.G. Bryans:

Can the Deputy confirm that it is the Minister's prerogative to formulate his own proposals ahead of an important States debate regarding P.39, and is she also aware that the Jersey Childcare Trust are now supportive of the new proposals?

Deputy L.M.C. Doublet:

I was not aware that the Childcare Trust was supportive of the new proposals and that is something that I would have to look at in more detail. Can the Minister just repeat the first part of the question?

[12:30]

Deputy R.G. Bryans:

Yes, certainly. Can the Deputy confirm that it is the Minister's prerogative to formulate his own proposals ahead of an important States debate on P.39?

Deputy J.A. Martin:

Sorry, Sir, is this out of order ... a point of order? The Minister is asking Scrutiny under what he can operate; surely he knows his own answer, why is he asking the Scrutiny these sort of questions?

The Bailiff:

It is not the first time a question contains a point being made, Deputy. It probably does not need an answer.

8.1.11 Deputy M.R. Higgins:

Can the Chairman state what she was told by the Minister? In your report you say it was made clear by the Minister that this was being introduced in order to save the department £20,000 to £50,000 a year and was expected to impact on between 75 and 100 families. Has he given any indication of what upping the tax by £10,000 is going to do in terms of reducing the income he is going to get and, secondly, the impact on families?

Deputy L.M.C. Doublet:

No, I am not aware that that information has been released in the Minister's statement so far.

8.1.12 Senator P.F.C. Ozouf:

The Chairman is being very critical of the Minister. Does the Chairman accept that there is a real difficulty for Ministers in needing to meet the deadlines required for the M.T.F.P. and effectively nothing is going to ever be easy in dealing with savings that are required, and where there are refinements made to a proposal that that should not necessarily be criticised?

Deputy L.M.C. Doublet:

I am not quite sure what the question was.

Senator P.F.C. Ozouf:

The question is that the Minister has to meet a requirement to put with the rest of the Council a budget with M.T.F.P. savings and therefore there is going to be a constant iteration, as we have seen from other questions, and therefore it is a bit unfair to vociferously criticise a Minister who is refining process up to the point at which this 30th June deadline has to be met.

Deputy G.P. Southern:

That is not a question, Sir.

Deputy L.M.C. Doublet:

No, I will answer it. I am not sure it is unfair to criticise because the Minister gave the impression that he was looking forward to the report, he gave the impression to the panel that it would take it under consideration, which is why we invested so much time and resources into it to get it ready with a reduced deadline so the Minister could have it to take under consideration.

8.1.13 Senator P.M. Bailhache:

The Chairman has criticised the Minister's process but would she not accept that the Minister was between a rock and a hard place in the sense of the need to respond to Deputy Tadier's proposition before the matter came forward for debate?

Deputy M. Tadier:

He has not.

Deputy L.M.C. Doublet:

Thank you for the question. I do accept that. I am not unreasonable, I do accept the Minister has been put in a difficult position but notwithstanding that, I expect the Scrutiny process to be given the respect and priority it deserves over any other political curveballs that have been thrown. I will not compromise on that. Scrutiny deserves to be prioritised by Ministers and it deserves to be given the respect it is afforded.

8.1.14 Senator P.F. Routier:

I do sense and appreciate the sense of frustration that the Chairman has with regard to this issue. Senator Bailhache just picked up on one of the points that I was going to make about the issue regarding this House is going to be asked later in the day to make a decision about Deputy Tadier's proposition. My understanding is the Minister for Education put forward the additional information into Members' hands so that it would help Members have information about the way to decide about Deputy Tadier's proposition. I do not believe it was in any way trying to devalue the work of the Scrutiny Panel. The Scrutiny Panel's report is vital to ...

The Bailiff:

The question, Senator.

Senator P.F. Routier:

I was hoping that I might be able to get some recognition from the Chairman that does she agree with me that there was a need to have some information before Members to be able to address Deputy Tadier's proposition?

Deputy L.M.C. Doublet:

I will answer it. I absolutely accept the Assistant Chief Minister's point that the Minister wanted to respond to the Deputy's proposals. I am not getting into a debate on that, we will have that later. But the fact is what the Deputy is asking is for the Minister to rethink his proposals. It appears he is doing that. I am absolutely baffled as to why the Minister did not just say: "Yes, I accept your proposition, Deputy Tadier, and I am considering other measures" and then go away and look at the report. I am completely baffled as to why ... yes, I accept that perhaps a response was required. I will say it again, I am baffled as to why that route was not taken.

8.1.15 Deputy J.A. Martin:

I think I am baffled. I am just waiting for one more Minister to try and dig the Minister for Education out of this hole. **[Laughter]** I absolutely admire the Chair of the Education Scrutiny Panel and my question is: how would she feel now that we do have these revised plans on the table, is she confident that she wants to really look at these again and then have the goalposts moved just before she publishes her report? I probably know the answer but I ask her the question.

Deputy L.M.C. Doublet:

I am not sure I can be confident that I know where the goalposts are at all. I have been left completely not knowing what to think and not knowing how best to place my energies to best serve the public.

The Bailiff:

Well, your time is up for thinking aloud. There is now a statement to be made by the Assistant Chief Minister.

9. The Assistant Chief Minister - statement regarding the Jersey Innovation Fund

9.1 Senator P.F.C. Ozouf (Assistant Chief Minister):

I would like to update Members on the Jersey Innovation Fund. I should stress that this is not a response to the answers in earlier questions today on the same subject. It was the planned review of the fund and what was signalled last year. As Members will recall, the fund passed formally to the Chief Minister's Office on 1st January this year. Prior to this I had delegated responsibilities for the fund as Assistant Minister in Economic Development. The Chief Minister has delegated responsibility for innovation to me and I am therefore responsible and accountable to this Assembly for the fund, including all ministerial decisions past, future and present that are associated with it. As was made clear in the proposal to set up the fund, it was an important component of the economic growth strategy to boost production through innovation and our economy. The objective of the fund was consistent with the Tera Allas excellent innovation review which was published in September 2015. I am able to report to Members today that following a meeting with the Innovation Fund Board last week, taking the loans already advanced in 2014 and 2015 plus new loan applications received, the fund would, if those applications were all successful be fully subscribed. The original objective was clearly stated in P.124/2012 to deliver growth improved competitiveness, diversify the local economy and create employment. That has not changed. The decisions made by the board have fulfilled the purpose and approved objectives of the fund and have supported a broad range of potentially highly innovative businesses. When the idea of the Innovation Fund was conceived in 2010 it was in the eye of the worldwide financial storm. The tail event which we are seeing today. In 2012, when the proposal was brought, there was real concern that good businesses were finding it difficult to start up or expand. When the States approved the P.124/2012 it was recognised that we have to pull all the levers to enterprise jobs and economic growth. The proposal was scrutinised at length and changes were made to the original operational arrangements to meet Scrutiny recommendations. It was approved with one Member against. Start-up and scale-up businesses carry, of course, significant potential risk and typically such businesses really struggle to raise funds from other sources. The working assumption was that the failure rate of up to 50 per cent could be expected. No one, in other words, has evidence of the future. However, having reviewed the process of the board, I am confident that the success rate will be much better than 50 per cent. The board is made up of some of Jersey's most successful and experienced entrepreneurs supplemented by banking and legal professionals who have been diligent in discharging their duties. It should also be noted that although J.I.F. (Jersey Innovation Fund) can make grants, to date the board have only recommended interest-bearing loans and many of the loan recipients have attracted additional private investment into their businesses, a clear signal that the funding is doing its job. The world of credit has changed significantly since 2012, happily businesses now have more access to more funds. There is more banking competition and innovative routes, such as crowdfunding, are now available to fast track new businesses. But as we have said on many occasions, there can be no room for complacency. In a fiercely competitive world we need to do all we can to boost innovation and secure jobs and growth. Now that the fund looks set to approach full subscription, as we signalled last year, I can advise Members that I have

asked that we now bring forward the review recommended by Tera Allas immediately. In addition, following consultation with the board and officials, I have accepted recommendations to make some changes to provide additional support to the successful loan applicants through Jersey business and further in-house resource. While Jersey Business have been working with the Innovation Fund board members to help applicants and loan recipients on their start-up journey, we can do more. So on advice, we are going to agree greater levels of support in the form of mentoring and business advice. When Members approved the Innovation Fund they clearly recognised the role of innovation in supporting productivity, economic growth and improving our standard of living. It is the case that government has a part to play in supporting innovation but we must continue to review and enhance how that support is delivered. The landscape in which innovative businesses are financed by both government and private capital is changing rapidly. The future operation of innovation funding has to reflect this. Subject to Members' agreement and consistent with the original proposition in future the fund could include the option of taking equity stakes. Some of the loans contain a permissibility to convert debt into equity, if and when the law permits now that more funding options are available to business, I want to review whether there is currently an opportunity to take a greater uplift of profits. This approach would require changes to legislation and it could offer applicants additional flexibility while giving the States a greater financial interest in the success of companies that were supported by the fund. It is likely, however, that the historic challenge of access to finance for innovative start-up and early stage business, however, continues. In jurisdictions small and large this issue is being tackled by a combination of tailored government interventions allied to both traditional and new forms of private funding. Access to funding was an issue when the fund was launched, indeed it was one of the main drivers behind the fund when it was established. The recent review from the innovation review is that we should continue to focus our efforts on ensuring that innovative businesses have access to funding from the broader spectrum of sources. This may include us considering a new approach such as crowdfunding allied to improve links between innovative businesses and source of private capital in the Island. Nothing should be ruled out at this stage. The Innovation Fund has assisted and continues to assist a range of innovative businesses to boost Jersey jobs and growth. Businesses supported by the Innovation Fund are developing products in markets locally and in the U.K., and further afield. It is the financial support provided by the fund that has helped these business realise their potential. Much has been learnt and achieved over the last 2 years of the fund's operation and I am determined to build on the huge amount of valuable work undertaken by the board and officers. The review is now underway flowing from the Tera Allas report and the published 2015 report into access to finance. This will further improve the support for innovative businesses in Jersey, diversify the economy and bolster income to the Treasury. I look forward to continuing to work with the board and officers in discharging the responsibilities of the fund.

The Bailiff:

Thank you, Assistant Minister. The time is now 12.45 p.m., do Members wish to take questions on this now or to adjourn and return?

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

There are more calls for adjourning. The States stand adjourned until 2.15 p.m.

[12:43]

LUNCHEON ADJOURNMENT

[14:16]

The Bailiff:

We resume with questions to the Assistant Chief Minister on his statement and the time opens now. No questions? Must have been a good lunch. Deputy Mézec.

9.1.1 Deputy S.Y. Mézec:

Go on, I will have one. I said earlier on during questions that I supported the purpose of the Innovation Fund because of its ability to take a macroeconomic approach where banks can often act self-interestedly and not provide loans. On that basis, does the Assistant Minister believe that more should be done to signpost the praises of businesses who are successful on the back of a loan from the Innovation Fund, not just to assure the public that money is being well spent but to encourage other potentially aspiring entrepreneurs?

Senator P.F.C. Ozouf:

I thank the Deputy for his question. Yes, absolutely. What I would say is that it is difficult to answer specific questions about some of the specific companies that we know but under confidentiality we are having to brief scrutiny or the P.A.C. as appropriate and to say more than we could do in public. What the Deputy says is the importance of continuing to find sources for funding and crowdfunding is one of those digital solutions that could provide ways of getting money into business. But as for recognising success, absolutely because hopefully this is not a failure, it has been a success.

The Bailiff:

No other questions? Very well, then we return to the agenda and come to Public Business.

PUBLIC BUSINESS

10. Draft Education (Amendment No. 3) (Jersey) Law 201- (P.15/2016)

The Bailiff:

The first item on the agenda is the Draft Education (Amendment No. 3) Jersey Law 201- which was adopted in principle on 26th April and it was lodged by the Minister for Education who is probably nearly going to be in his seat. Minister, the principles were adopted and comments have been made by the Education and Home Affairs Scrutiny Panel, where are we in relation to P.15? Do you wish to take us through the Articles?

10.1 Deputy R.G. Bryans (The Minister for Education):

Thank you. I wish to ask for leave to withdraw the proposition. The original suggestion was to create a law that would allow the department to change a school name more effectively. Thanks to Deputy Le Fondré we found an aberration that in a sense granted me greater powers. That was never my intention and I do not wish to waste the Assembly's time. So with that in mind, I would ask leave to withdraw the proposition.

The Bailiff:

Do Members agree the proposition can be withdrawn? Very well, that proposition is withdrawn. I give notice to Members that there has been lodged an amendment to the Draft Dormant Bank Accounts Jersey Law 201-, P.25. The amendment is lodged by the Chief Minister and copies should be available on Members' desks.

11. Draft Telecommunications (Amendment No. 3) and Crime (Miscellaneous Provisions) (Jersey) Law 201- (P.19/2016)

The Bailiff:

We now come to the Draft Telecommunications (Amendment No. 3) and Crime (Miscellaneous Provisions) Jersey Law 201-, P.19. The principles were adopted on 12th April and comments have been lodged by the Economic Affairs Scrutiny Panel. Chief Minister, it was your proposition, but you are dealing with it, Senator Ozouf, Assistant Chief Minister, it is your proposition now

11.1 Senator P.F.C. Ozouf (Assistant Chief Minister - rapporteur):

Yes, the Assembly has already approved the principles so I will not rehearse the arguments in any detail about the principles. I propose to take the Articles in 2 parts. I will in introducing Part 1 remind Members that these were amendments that were debated in April, they were called into Scrutiny and, if I may say at this stage, in proposing both parts the Minister for Home Affairs, the Assistant Minister and I are very grateful for the Economic Affairs Scrutiny Panel for taking the time and consideration in considering both the Articles. They have, in relation to both the Articles, but the first one, said that they support the changes and I quote to say that: "They are proportionate and fit for purpose." We are encouraged that they have been persuaded by the arguments put forward. There was a concern in both the Articles that there could be a negative impact on the freedom of speech and we are pleased that we have been able to allay concerns of that and also allay concerns that there was a need to clarify when an offence had been committed. There has been, as I say, quite a degree of concern about the issue of a potential curtailment of freedom of speech and I value particularly the endorsement of the panel in saying that they do not believe that there is. When we originally proposed these Articles we spoke about the digital revolution. Society is changing but there are risks so I say that it is appropriate that we amend or propose Articles which both deal with matters which fall within my remit as Telecommunications Law and the Minister for Home Affairs, that is the second part that I will come to. It is taken together the intention that both Articles provide additional clarity to the legal provisions regarding telecommunication systems and their potential misuse. These Articles make these comments in both the Articles, they will act as a deterrent to bad behaviour and make it clear to users of online technology that they would be given appropriate protection from the wrongdoing. These measures, as we rehearsed, are designed to future-proof legislation and are not specific to any particular devices or platform. These amendments will apply now and into the future whatever hopeful technology evolves as. But most importantly, we have taken great care to ensure that they will not inhibit freedom of expression and I recognise the important debate that is had about that. I think this Assembly will always uphold rights of freedom of speech and we do not want to prevent what one would describe perhaps as normal interaction that does not cause offence to be in any way made illegal. We do not want to prosecute jokes or satire and the amendments do not do so. So in Article 1 it proposes an amendment to Article 51 of the Telecommunications (Jersey) Law. It will ensure that a prosecution can take place where a message of a requisite character is sent in any way over a network, in an office or other private place, for example by Bluetooth or other technologies that could never have been envisaged when the Telecommunications Law as originally taken is encompassed within the definition of something that is grossly offensive. By making the definition of what is communications, definition is less prescriptive. It ensures that effectively we can take account of anything that we can think of, of whatever technology. The proposed first part deals with the offence of sending a message that is grossly offensive and I repeat the words "grossly offensive" because there is an important distinction. Indecent, obscene or menacing character can only apply if the sender knew or it was intended that the message would be of such character or was aware of the fact that the risk of the message would be viewed as such. Grossly offensive is absolutely different from simply something that is not grossly offensive. The guilty mind, the *mens rea*, sets a higher bar than the current legislation has because, as I have said, we value the importance of freedom of speech. This will reflect the current practice in criminal courts which have drawn on English case law in respect of the United Kingdom's equivalent Communications

Act legislation, which is similar to our Telecommunications Law and will no doubt assist in interpreting Article 51 or the new changes to Article 51. This will ensure that the law provides a healthy balance between prosecution of wrongdoing and that important protection of freedom of speech. There is a third reason for this first Article and that increases the penalty for an offence to a maximum of 2 years to an unlimited fine. This is a necessary strong deterrent to give citizens the security that where wrongdoing is proven it will be dealt with appropriately and it will give the ability to react appropriately to some of the most egregious behaviour and mirrors the penalty in the U.K. for, for example, revenge pornography. It is important to reiterate the amendments do not create a specific offence for things like revenge pornography as recently introduced in the U.K., because this is neither necessary or proportionate. Our existing legislation is sufficient to deal with this area and what we want to do is have effectively a wide compass of what could be regarded as grossly offensive. That is important because technology will change but behaviour almost should not in the way that the courts are able to interpret behaviour. We cannot predict what technology does but we can certainly define what is right and tailoring our law, as the first part of the proposition does, to address specific behaviour deals with the issue of a legislation becoming outdated, which is a risk at the current time given particularly the way that technology has evolved since the Telecommunications Law was adopted. So those are my proposals in relation to the first Article, and I move the Article 1.

Deputy M.R. Higgins:

Sorry, do we have a chance to speak?

The Bailiff:

I am sorry? Is that seconded? **[Seconded]** Does any Member wish to speak?

11.1.1 Deputy M.R. Higgins:

Thank you, I was getting ahead of myself. In part I welcome the law and in other parts I have major concerns, despite what the Assistant Chief Minister has said about freedom of speech. However, what I want to concentrate on is in Article 51 and that is that it states: "51(1) Grossly offensive or of an indecent, obscene or menacing character is guilty of an offence." While things like revenge porn and grossly offensive things you can understand, but the problem we have is one of definition. What is indecent? Just to think of 2 examples we have had in this Island in the past where there has been a debate about whether something is indecent or not is, I remember, a previous Bailiff banned the *Life of Brian* which I personally thought was a fantastic film. I did not see anything indecent in it, but the point was the Bailiff of the day did ban it in the Island. Secondly, a previous Bailiff also banned *Coriolanus*, if I am pronouncing it correctly ...

Senator I.J. Gorst:

Could I just, as a point of order, while on the one hand the Deputy is absolutely right to say those powers are vested in the office of Bailiff I think it is only fair that it is pointed out that, as I understand it, it would not have been the Bailiff themselves of the day, it would have been the panel advising. The Bailiff would simply have acted upon the advice of that panel. I just want to clarify that.

The Bailiff:

Chief Minister, I am grateful. That is certainly the position today but I do not ...

Deputy K.C. Lewis:

Sir, if I may expand on that. The film was not banned, it was made, I believe, an 18 at the time and the film distributor said either it is shown as everyone else shows it or not at all.

The Bailiff:

Deputy, thank you. Perhaps we can return to Article 1.

Deputy M.R. Higgins:

Well, my purpose ... I will accept what the Chief Minister has said about a panel and so on. What I am trying to come to is the question of what is indecent?

[14:30]

I can remember they have had a case in the U.K., *The Little Red School Book* is another one. I have never read it but the point was I think that was banned. It all comes down to what people believe is indecent. I know the courts have got themselves tied in knots in the past about what is indecent or what is grossly offensive. In fact, further down in the Article: "If the person knew or intended the message to be grossly offensive." Again, we are talking about the *mens rea* element of this: what did people have in mind. The only way you can determine that I think is through their conduct, although I stand to be corrected. The point is the court has to determine what was in the person's mind at the time they sent the message they did. So we have not only got that, we have also got the problem of definition. If I remember correctly from looking through the law it does not define these terms and, therefore, it comes down to the judges to determine this when the case comes to court. So we, as an Assembly, are basically passing the buck on this type of thing by passing on the interpretation of these phrases to the court. My concern with Article 51 is to do with how we define indecent or obscene. Menacing character I can understand. The same as I can understand on Article 51(4) it says: "A person who, for the purpose of causing annoyance, inconvenience, or needless anxiety to another, sends by means of telecommunication system a message that the person knows to be false and persistently makes use of a telecommunication system." If someone is making a false statement and keeps on sending it, which is annoying people, that is fine. But if it appears once it could be a mistake rather than a deliberate action, so I am just saying that I have concerns on this in terms of definition. So while I have spoken in this Assembly before about people who have harassed people, the cyberbullies and so on, I have no truck with them, they deserve what they get; but I do say that we could be creating some problems for ourselves in the future depending on how these matters are dealt with when they arrive in the court. I hope the court shows great wisdom in determining the use of these terms.

The Bailiff:

Goodness only knows what the court will do, Deputy, but if you have a legal question you put it to the Attorney.

11.1.2 Deputy R. Labey:

Of course this amendment to the law is borne out of good intentions, and there is nothing sinister in it. There is nothing sinister certainly in the aims here, they are very laudable, but it is a worry to me that there could be sinister consequences later on down the line for free speech. There is a phrase or cliché attached to this Assembly sometimes that we sleepwalk into passing dodgy legislation, I do not know the exact words. I confess that I am one of the sleepwalkers thus far. I know the Assistant Chief Minister is not going to be particularly happy with what I am saying and I did go to his first briefing on this and then this law left my consciousness for some reason and it has just come back into it over the last 24 hours. This morning I have been scribbling my concerns about it all morning down on this piece of paper, so I might be not particularly coherent. But I think there is a serious element of muddled thinking in the way that this law has been drawn up. The glaring issue is the introduction of the *mens rea* concept alongside the reasonable test. It is fundamental that the mental intention of the perpetrator is understood in order to determine criminality. The issue of intent is usually understood by the public in terms of whether somebody

is convicted of manslaughter or murder. Under the new Article 51(2) and 51(3) the offence in Article 51(1) would only be committed if the sender knew or intended the message or post to be grossly offensive or of an indecent, obscene, or menacing character. If the perpetrator, for whatever reason, mentally challenged, what have you - even a professional pornographer - if the perpetrator for whatever reason does not consider the message offensive or menacing then no offence has occurred. Then a catchall is added. Amazingly a message sender who does not consider that anything offensive or menacing has taken place is expected to additionally consider and determine whether a reasonable member of the public would be offended. This makes no sense at all. Why would the sender make such an assessment? Consider a range of photographs, for example, such as a provocative nude posing or sexual activity, or a kiss between 2 women or 2 men, perhaps on the occasion of their wedding. Whatever the reason for disseminating such a photo they would all have the potential for offending a reasonable member of the public. Meanwhile, the photo sender does not believe it is offensive or menacing but faces getting a criminal conviction because the reasonable member of the public is offended. This is appallingly bad law. It is quite seriously something one might expect - and I know this is a cliché, and I know this is not what the Assistant Chief Minister is intending here - but it is something that you would find in totalitarian states of social engineering, Saudi Arabia, North Korea, Turkey, what have you. Consider further where a complaint relates to a photo, say a schoolgirl allowed her boyfriend to take intimate or compromising pictures of her, the copyright in the photo remains with the photographer; it is the photographer's property. If someone is foolish enough to allow someone to take ownership of a private aspect of their life then they have to accept the potential consequences. The Scrutiny Panel refers to police procedures and notes it does not have to be the victim of an offence who reports it or makes a complaint. Third parties can also do this. Thus the school girl's annoyed parent taking exception at the photos of their daughter being circulated amongst the ex-boyfriend's mates can initiate a police investigation. Is this appropriate? I would consider that the determination for investigation should be conditioned by the alleged victim, the schoolgirl. It is easy to estimate a response gap here between generations. The parents might be outraged whereas the schoolgirl, being the 10th or 11th or 12th person in the school to have intimate photos of her passed around on mobile phones, might have a "whatever" attitude, might have the attitude that it is best to just let it go rather than incite proceedings and risk the Barbra Streisand effect where of course it reaches a whole load more people than originally would have seen the thing. But the parents of anyone else can initiate a prosecution because of them taking offence by it, it is their offence once removed, as it were. This is another element in the public interest element associated with the reasonable member of the public. The law is damaged by the intrusion of the public interest elements which are far too wide-ranging in potential interpretation. The Scrutiny report concludes that free speech is unlikely to be affected. That is not a strong enough conclusion for me. I think we should consider the freedom of speech here with relation to this law and we should consider the bloggers. Our political bloggers, citizen's media, whatever you want to call them, are a source of irritation sometimes to Members of this House, to Ministers, to authorities, Government, to any of us, and to the mainstream media or the accredited media. But the bloggers are a product of this Assembly and us all here and indeed how we are reported in the mainstream media. Rightly or wrongly, over the last decade or decade and a half, a perception grew among some section of our population that the Government was out of control and unaccountable and the media had gone native and were letting them off the hook. I am not alleging that this was true. I am saying that was a recognised perception. So the citizen's media may have been naïve in the beginning, they may have sailed close to the wind or across it or what have you, and they may have made mistakes, but they did become trusted and relied upon by a section of our community, such that it is to the bloggers that whistle blowers eventually began to turn. The whistleblowers began to trust the bloggers more than they did taking their information to perhaps a States Member or to our recognised accredited media. So the bloggers begin to get a fair few scoops. I do not want to go

over old history and I am going to make this as brief as I can, but take the Barton report which was a report into how 3 police officers came to be facing a disciplinary action for their work in bugging that car. I think we are all cognisant of it. The result of that report, which was a private report, was not necessarily glowing for the members of the Law Officers' Department, and they might have preferred that that report never saw the light of day. But it did see the light of day because somebody was concerned enough to leak it to one of the bloggers who put it on their website and I think we are all better for having read that report, frankly, and they did a service to the public. I worry that this law is going to - with its prison sentence and fines, the way that people can be offended and bring stuff in - if the Law Officers' Department were offended by that they could bring a prosecution presumably. It is going to potentially have a chilling effect on our press, both the accredited ones who I have to say are performing really well at the moment I believe, confidence has been restored with our accredited media, it is doing really well. It is certainly doing much better than when I was part of it 25 or 30 years ago. **[Laughter]** So I am extremely worried that there is going to be an effect on freedom of speech, on investigative journalism. I am also worried that the report proudly states that the police will be able to decide what constitutes offensive. The report also proudly states that the law does not even need a victim to make a complaint, third parties can do it. The report boasts that the law does not even need a third party to make a complaint; the police can decide to act of their own initiative. As I say, do I think our police force or our authorities are going to misbehave because this law has been passed today? Of course I do not, I am not alleging that. There is a lot of talk about future proofing in the Assistant Chief Minister's report and I think we have to be worried about what the consequences could be down the line in different circumstances. I do not know whether we are sleepwalking into this one because I know the Assistant Chief Minister, because he is a hardworking diligent man, wants to get this to the Privy Council so we can get it on the statute books as quickly as possible before the summer break. That might have something to do with the fact that I do not feel we are considering this and the implications of this deeply and strongly and widely and broadly enough. It worries me greatly.

11.1.3 Senator P.F. Routier:

Members may be aware that one of my roles within the Chief Minister's Department is to chair the Children and Vulnerable Adults Group, and part of that work I have the job with other Ministers and officers to look at safeguarding issues. During that work we do review serious case reviews and I have to say that reading some of the serious case reviews and the issues which we are made aware of can be a very harrowing job for all of us to do. There have been times when in some of those reports there have been issues with regard to people being bullied or being threatened through social media, and there have been some really difficult outcomes through people having to deal with issues regarding social media.

[14:45]

It has ruined people's lives and I mean ruined people's lives and ended lives in some cases. We have an opportunity here with this legislation to put in place some protection for people who are affected by what is said about them on social media. I do hope that Members will take this opportunity to add some protection for those people. The previous speaker spoke about another aspect of this but the way I would like to think about it is when people are posting stuff on social media they need to look through it from the other end of the telescope. They need to think about not what they are saying and how they feel about it, it is the effect that they are having on the people that they are commenting about. I know probably some people cannot get to that place in their minds but the effect that they are having on people is quite traumatic. I have looked at the definitions in Article 51 and I believe that they are appropriate for our community. They will give

that added protection to people and protection in the law. I do hope that Members will support this legislation and be able to give that protection to those people that we need to give it to.

Deputy M.R. Higgins:

A point of clarification from the previous speaker. He said that he had looked at the definitions that were in Article 51 and he is satisfied. It is the lack of definition we have ...

The Bailiff:

That is a second speech, Deputy.

Deputy M.R. Higgins:

Sorry, okay, that is my concern.

11.1.4 Deputy M. Tadier:

I agree that there is a lack of definition in here in the interpretation; I thought that Deputy Labey summed it up well. I share many of the same concerns. I will start with a point that I hope might be poignant. In France I think it was at the beginning of last year when the terrible atrocities happened at Charlie Hebdo: that was triggered because Charlie Hebdo decided that they wanted to depict in a series of front covers on their magazine the face of Mohammed, which many Muslims throughout the world and indeed in France would have found offensive, and they would have also found that grossly offensive. That does not mean that of course Charlie Hebdo were wrong to do what they did. It does not mean necessarily that all of us should always seek to cause offence in public. But what it does show, the reaction to that and of course the tragedy that ensued, is that people came together in an act of solidarity I believe across the communities, and there were of course Muslims and non-Muslims who attended the protests in Paris and also here in Jersey when we had our own vigils because they believed that freedom of speech is the most important thing and that taking offence has to be subservient to one's fundamental right to have freedom of speech. It was pointed out to me - by a blogger, no less - that there is a slight amount of irony that the person who is moving this proposal today and in the past is somebody like myself who values freedom of speech and he will be able to sum up on that. Clearly there is a tension here because I think that this ultimately is a Trojan Horse, whether that is the intention or not. It has the consequence of undermining free speech and it purports to be light touch legislation. One question is: well if it is light touch what is the point in having it? I will read through some of the report because there are echoes in the report which come out like it says: "Having undertaken the research mentioned above it became apparent that the existing legislation in Jersey is in fact largely fit for purpose and does provide protection from cyberbullying and other types of behaviour on social media that would be considered criminal if conducted via traditional means of communication." So protection already exists. It goes on to say that: "It is apparent that prosecution for harmful electronic communications can already be made under the Article 51 of the Telecommunications (Jersey) Law 2002. However, there is no room for complacency." What does that mean? It sounds like scaremongering to me: "Both technology and people's behaviour online are changing all the time." I am not sure what that means. I think human nature, irrespective of what the medium for the communication is, remains pretty constant in that you get some good eggs and some bad eggs and you get people who say sometimes silly things, sometimes they say funny things. That is all part of the mix of humanity. I do not think the idea of having a different platform really makes the difference. I did think to myself that maybe that was one part of the legislation I could support. It sounded fairly inoffensive in that of course it does not matter what platform it should go over, if you send something offensive over Bluetooth rather than over a more traditional telecommunications network there should be consistency. But then it does go on to say at the beginning that there are already provisions under the Telecommunications Law for that. I am not one for having legislation for the sake of it and I know there are others in the Assembly perhaps

even more Libertarian than myself who do not necessarily like to pass legislation for the sake of it. I think that there is a risk that is exactly what we are doing here. Deputy Russell Labey commented on the idea of the *mens rea* and on face value that looks like it is a positive thing to put in there. If somebody sends something grossly offensive then of course they needed to know what they were saying was offensive at the time for them to be culpable of the crime. But then there is the added part, which is very worrying, that is saying or if they knew that somebody somewhere out there, a reasonable person, might find it grossly offensive. So essentially you have to be either pretty naïve or pretty stupid, or be a liar, if you sent something out there which was perhaps witty and perhaps was making a political point and you truly believed that nobody out there in the ether would find it offensive or grossly offensive. The test that no doubt could be applied: what would a reasonable *Daily Mail* reading prude who sits by the radio, the T.V. (television), Facebook and monitoring all the blogs with a pen and paper at their hand ready so that they can write a letter to the editor or to complain. What would a reasonable person like that think of what was being sent, would they find it grossly offensive? You can be sure that there will be multitudes of people out there writing letters but not just to the editor. They will be writing to presumably whoever this legislation comes under to bring proceedings against whoever it is who sends that daft tweet or makes that joke which is ultimately highly offensive. I do not think someone like Frankie Boyle would last 5 minutes if he was in Jersey. He would no doubt be locked up and find himself subject to an unlimited fine, which I think is the next point. Where does this unlimited fine come from? We do not suggest that you give somebody an unlimited prison sentence because somebody might have found something grossly offensive that you have said; it is a 2-year prison sentence. What is all that about? If you do not have any money you might get 2 years in prison, if you do have lots of money you could find yourself sued. So if the idea of this is to bankrupt people, why on earth would we want to bankrupt people in this Island for saying something offensive? Well, look at individuals who we have bankrupted in the past, who coincidentally have been active Members of this Assembly, and only find that under the States of Jersey Law you cannot stand for election now because you have become bankrupted. Future proofing is one thing but I like the expression that Deputy Le Fondré often uses: what could a future Government - not necessarily this one - what could a future judiciary, a future Ministry of Justice ... just remember we will not necessarily have the judiciary in its current form, we may soon have a Minister for Justice who oversees prosecutions and oversees all that area, we may have a Crown Prosecution Service or something akin to that which falls under political control, and we could see this kind of law being misused. I think that is the strong issue here is that there are concerns. I notice the Bailiff is shaking his head there ...

The Bailiff:

No, Deputy, I am sorry, it was your statement that a Crown Prosecution Service might come under political control. I am sure you would like to think a bit more about that because that would be constitutionally very improper. **[Approbation]**

Deputy M. Tadier:

Obviously what I meant to say, on my feet, was “come under political oversight” rather than “political control”.

The Bailiff:

I am not sure that is any better.

Deputy M. Tadier:

So if we did have a Minister for Justice then there would be some oversight of that. But it is good to have a judge in the Chair to correct me and to shake his head. **[Laughter]** Long may that continue.

The Bailiff:

It is good to be in the Chair, Deputy.

Deputy M. Tadier:

Also another irony with the *mens rea* is that if you are genuinely somebody who sends something which is grossly offensive but you had no idea that it either was grossly offensive or that there was somebody there sitting in their lounge with the *Daily Mail* in one hand, pen in the other, and a paper poised ready to make that letter of complaint; if that person is genuinely stupid and naïve he or she will get away with it because there is no way that they can prosecute this person under this law. But someone who is perhaps slightly more intelligent and slightly more witty, trying to make the same point which may again be political or whatever, who knows that someone out there will find it offensive, or who is simply much more honest and will admit that they of course knew that somebody out there would find it offensive, that person will be prosecuted, the former will not be prosecuted, which to me seems like a strange irony. If you drop some litter in the street or if your dog does its mess - which is quite topical at the moment - you will be liable for prosecution or for a fine. It does not matter whether you were ignorant of the law, because I always thought that ignorance of the law was no excuse. So why is it that they have crafted it in such a way here, notwithstanding the differences between manslaughter and murder that Deputy Labey alluded to? You can imagine some very strange cases coming up where people are trying to prove what somebody is thinking, so it no longer becomes about what was said, what was offensive and what was not offensive, it is also about what you were thinking at the time when you send it. We become thought police, we try and get inside people's heads to find out what they were thinking at the time when they sent the said offensive message. This does not sound good to me. Of course, will we be able to follow the proceedings? Because it seems to me these kind of cases I suspect in many cases will be subject to injunctions, that there will be confidentiality requirements, will we ever be able to oversee the functions to make sure that what is going on is proportionate and is protecting freedom of speech. That is already a concern. We know in the past that the Data Protection Law has been, I believe, misused to try and shut up local bloggers, one particularly well known blogger, and I do not know why that is the case. We know that we already have libel laws ...

Senator I.J. Gorst:

Sir, I am struggling and I am not sure whether it is a point of order or a point of clarification the Deputy would ...

Deputy M. Tadier:

If it is a point of clarification the Minister has yet to speak and he can make that point when he speaks. If it is a point of order I will give way to him.

Senator I.J. Gorst:

I look forward to doing that.

The Bailiff:

Is it a point of order? It sounds as though it is not. Sorry, Deputy, please continue.

Deputy M. Tadier:

Of course when one moves a proposition one always tries to make the most reasonable case, the typical case that everyone will have sympathy with rather than necessarily the one that will infringe on one's basic human right to the freedom of expression. Senator Routier said this is about people who have nasty things said about them on social media. Well, I know it is not always the most

convenient and that lawyers are not necessarily everyone's best friend but there are libel laws out there and if somebody feels that they have been defamed they can put in for libel and they can pursue it in a civil way. So I am not sure why we are seeing this become a criminal matter. Clearly there are issues to do with harassment and we should make sure that our other laws to do with harassment, whichever format they come, are robust and that they are there to protect the most vulnerable in our society. But I have strong concerns and reservations that this is not the way to do it. I make those comments; I think that is all I have to say on those issues. Clearly I will not be supporting this principle. Just perhaps one last addition. I have full respect for the way that the Scrutiny Panel called this in at the last moment, I think it is important that they did do that, they clearly had concerns and wanted to make sure it was proportionate, and I know they did that in a very limited timeframe. My one concern perhaps in the whole process, not just limited to Scrutiny - and no doubt the answer will come that there was an extensive consultation programme previously, which I understand largely focused on young people and online bullying which is not necessarily the whole scope, by any means, of this proposition - that members of the public were not necessarily listened to fully.

[15:00]

Certainly from my part I know that those members of the Jersey Human Rights Group had strong reservations about this law and the potential for it being misused in the future and silencing people. I will finish with the words saying that one has a right to freedom of speech, you do not have a right to be offended but you do have a right to offend. That is something is a strong British trait that needs to be protected.

11.1.5 The Deputy of Grouville:

I have a couple of points to make that I would like the Minister to address when he puts this forward. I would like to know how is the Minister going to intend to prosecute those people that write under pseudonyms and fake identities because there are many of them, especially in a jurisdiction such as this, who write under false identities most menacing material. The police turn around and say: "Nothing we can do, this person does not exist." End of. Also I would like the Assistant Minister to address the jurisdiction of the source of the telecommunication, and this was an issue that came up on the C.W.P. (Commonwealth Women's Parliamentarians) when we looked into this topic in great detail. It was an issue whereby if the telecommunication comes from California, Nigeria, anywhere else in the world, our police here wipe their hands of it and say: "Sorry, we cannot do anything. Yes, we have the legislation in place here but I am afraid there is nothing we can do." So I would like some clarification or to know what is being done to address this issue. In the C.W.P.A. it was suggested that we should look beyond and there should be some sort of working together on international laws because telecommunications do not organise themselves the same way as local police forces organise themselves. The telecommunication goes beyond that, we are looking at a global issue here. So what is being done to address this on an international scale? Because having some fig leaf of legislation here so we can hold our hands up and say: "Yes, we are combatting this issue, we are doing all that we can", sorry, I am not convinced.

11.1.6 Deputy S.Y. Mézec:

I am delighted to follow the previous speaker who I think made a very powerful case, every word of which I agree with wholeheartedly. I voted against this law the last time it was before the Assembly. I will be voting against it today and I hope a majority of States Members will also vote against it. At the last debate I asked some questions of the Assistant Chief Minister, which from my point of view were fundamental to whether or not I would support it, and I went back over Hansard last night just to remind myself that no answers on some of these serious points were given

then and I want to offer him an opportunity to provide answers to those questions once more before this vote. But the basic point of this legislation I do not pretend for a single minute is easy. Human rights are not easy and sometimes human rights conflict with each other. We have of course the right to free speech but you do not have the right to stand in a crowded theatre and shout “Fire” because the right of people not to be crushed to death in the ensuing stampede trumps your right to free speech on that occasion. So we have to be very careful, and I would hope intellectually coherent, about how we accept different human rights should relate to each other in the law and where we consider one particular right to be more important than another right and how they interact. So I do not pretend that this is an easy subject but I think in this piece of legislation we absolutely have the balance wrong. Freedom of speech must be protected and in particular we must allow all citizens - that includes elected representatives as well as members of the public - to be able to take part in robust discussions on issues of public life and the actions of people in public life without worrying about potential criminal consequences, so long as what they are doing in those discussions is within the realms of what is reasonable and what is fair. But then determining what is reasonable and what is fair is incredibly difficult. I think that this law to me - and I think it is a point that the Deputy of Grouville made - feels like it is just ticking the box for the sake of it to say we have an up-to-date law, even though I do not believe on the ground this will make much difference to the people who deserve to have a fit-for-purpose law which will protect them when they are put at risk by people on the internet who are doing terrible things to them. Part of this law talks about the concept of something being grossly offensive, something that Deputy Labey of St. Helier spoke about, and in particular it referred to the *mens rea*, the guilty mind, and they intended what they were saying to be offensive. But the problem here is that this does not take into account how some people are. There are people in our society who are incredibly stupid, incredibly ignorant, and intrinsically nasty people that they do not believe they are doing anything wrong when they target people to say things that are of an absolutely abhorrent nature to them. I think of one example I saw several years ago was of somebody who I saw online made a comment about a story that was in the news then about a young mentally ill girl who was being bullied on the internet who ended up committing suicide because she was distraught at her experiences. This person made public comments and I believe the disgustingly offensive phrase he used was that it was some form of natural selection and that the person who had resorted to that was weak. That communication was absolutely disgusting and offensive and I would hope that every reasonable person would think that it would be an abhorrent thing for somebody to say. But that person believed there was legitimacy in the comment he was making. He thought that it was a sensible contribution to an issue like this and did not believe that what he was saying was being offensive and if people were offended by it he would have said “Tough luck” to them. So where does the *mens rea* sit there? That is a serious question I would like to hear the Assistant Chief Minister attempt to give some sort of answer for so that at least in my mind - even though I will not be voting to support this law - I would hope that the law when it is put into place will have some sort of safeguards to take into account those positions. But then equally to make this a strict liability offence would open all sorts of potentially difficult issues as well so, as I said, I do not pretend it is an easy issue. But what I have read of this law I do not think takes into account the nature of some people who deliberately contribute disgusting things to discussion, be it openly in public or be it on the internet. I regularly see people conducting themselves in a way that I would consider to be dangerous and malicious and so bad that in my opinion they should face a criminal sanction to punish them and deter them from doing it again and deter others from doing it. For this I suppose I am more referencing Article 51(4) which is not so much about grossly offensive but it is more about causing annoyance, harassment, and anxiety to people, because that is where I think it is more specifically about vulnerable people who are targeted, completely irrespective of what their own personal sensibilities may be to do with offensive statements. Now, I have seen people make comments online which have been racist and you may say that people have the right to be racist. As much as we would

condemn it you may say people have the right to be racist, and if we have freedom of speech then perhaps those people should have the right to express views which at the very least have racist undertones to them. But when seeing people make racist comments online I have seen people tie those racist comments to specific groups here in Jersey. In particular I have seen occasions where people have made very derogatory and offensive comments about Muslims and, of course, people are entitled to have views about a particular religious faith but in making those comments they specifically drew it to Jersey's local Muslim community and asserted that they had the attributes which they were prescribing to Muslims in general. Were I a local Jersey Muslim I would look at comments like that and see dozens of people coming on to agree and express the same derogatory views about that group in our community and I would begin to feel unsafe. I would wonder: "Could I go out into the street and potentially see these people who have said such offensive things and wonder whether they were going to do something to get some sort of retribution against me.?" That is an example of human rights conflicting here; whether that person had the right to make those racist comments and make racist comments which tied into a local minority group, weighed up against the right of people in Jersey from minority groups to be able to live their lives in peace in Jersey and not fear for their safety when they walk down the street just because of who or what they are. I have seen people online attacking victims of child abuse mercilessly, naming them, talking about what had happened to them, and when those people have been brave enough to speak out publicly about what had happened to them in an attempt to track down the perpetrators and have them see justice I have seen people go out of their way to ridicule them, make them feel worthless for having gone through what they have gone through and deter other people from doing the same, leaving perpetrators to continue doing what they are doing without facing justice. I have seen people online attacking severely mentally ill people which I have seen to be particularly dangerous because of the nature of some mental illnesses, as I mentioned before the story about the girl who was bullied so badly that she ended up committing suicide. So long as there are no rules in place to deal with this that remains an open possibility that some people when they are faced with these situations, situations that they do not deserve to be put in and situations that they are put in because of the absolutely horrible and pernicious nature of some other human beings, could end up with their own lives being risked. So that is why it is absolutely important to have some sort of law regarding cyberbullying and why, when Senator Routier in his speech quite rightly said that people's lives are ruined, and I would go further and say some people's lives are ended because of cyberbullying, and we have to take whatever opportunity we can grasp to get something done about it to ensure that these people are protected. But the reason I am voting against this law is because I do not believe it will make a difference and I do not believe for many of those vulnerable people they will suddenly have a legal infrastructure there that will protect them. I have been through the clauses that I have seen in here and when I have compared it with the situations that I have dealt with, sometimes with constituents who I have had to go down to the police station with because they believe that they have been treated in a pretty terrible way by others online and it is affecting their mental health and it is affecting their well-being, only to be told by the police that they cannot do anything about it. When they have explained why they could not do anything about it, mostly because the law does not allow them to do anything. What I have read of the clauses in the law here does not change that situation. I disagree because some of what the police need the ability to be able to do is they need the ability firstly to take up complaints that are made by people who are not the victim. Because often when the victim is somebody who is being spoken of online, which they may not necessarily have seen at that point, they may find that they have friends and family who encounter the comments that are being made about them, perhaps about their personal circumstances or about the nature of their mental illness.

[15:15]

Those people - be it friends or family - need to be able to take up that complaint on that person's behalf and essentially keep it secret from them that those comments have ever happened because of the effect it might have on the state of their mental health, and take it to the police and have the police be able to take action and go to the person who is putting up stuff online which could put a vulnerable person's life at risk and say to them: "You must take this down, no ifs, no buts, and if you do not you will be prosecuted for it because it is putting someone's life in danger." They must have the right to be able to do that, and from what I have read of the law - maybe I am misunderstanding it, but what I have read of it - it does not look like that is the case, that what will allow that to happen. If we are in a situation where that particular problem is not dealt with we will continue to see people who are ... for whatever reason, whatever they have that motivates them to do that, they will continue to do it. I have seen it too many times and have been involved personally myself having to go with people to the police, sometimes constituents, sometimes people who are close to me in a personal capacity, and from what I have read, I just cannot see there being the clauses in this law to make it so those people will be protected and to give the authority to the police to take the proactive measures that they would need to to protect these people. It simply to me seems too reactive about prosecuting people after something has happened, rather than getting in there at the beginning to protect them. What I would like to hear from the Assistant Minister in his summing up is to tackle those issues directly, because I asked him questions in the previous debate and I felt that I was not given answers at all in the summing-up. I would like him to say what powers does this give the police that they do not currently have so that they can be proactive, and when people come to the police to say that vulnerable people are being targeted online, what will they be able to do, to go to those people and have something done about it? What will they be able to do, as the Deputy of Grouville said, when that person is using a pseudonym, because that is a real issue, finding out who the person is behind that fake profile, because it is unbelievably easy to make a fake profile, whether it is on Facebook, whether it is on Twitter. I could do it in 30 seconds on my iPad if I wanted to right now with no authentication process from the social media group sites to be able to make sure you are an actual real person. So I want to hear from the Assistant Minister confirmation that this law will tackle those issues, because my reading, as it stands, I do not think it is tackling those issues. I worry that if we pass this law as it is, saying we are updating the legislation when in actual fact it appears that we are just ticking the box and we are not going to make a tangible difference to these vulnerable people, then I will not vote for it and I hope other Members will not vote for it as well, because to do so and pretend as if we have done something means it will be even more years before we finally get this back on the agenda to come up with something that is fit for purpose. So if we conclude that this law is not fit for purpose right now and it does not do what it needs to do to protect vulnerable people, we absolutely must vote against it.

Deputy M.R. Higgins:

Can I just ask a point of order? I thought we were on Article 51 only as part of the Articles, rather than ... because there are things being raised here which, to be perfectly honest, I was going to raise in the Third Reading. Are we on Article 51 or are we doing the lot?

The Bailiff:

We are on the detail of Article 51, although inevitably this is a principle that has come back again, but the principles have already been adopted by the Assembly. But we are on the drafting of the language of Article 1 of the law, which includes the amendment to Article 51. Deputy Le Fondré.

11.1.7 Deputy J.A.N. Le Fondré:

Yes, I was in the original position of very happily hoping this was going to be a short debate this afternoon supporting the proposition, and particularly given the Scrutiny report. It sounds odd:

what we are meant to do is come in and listen to the debate and it has raised some queries in my mind, because genuinely I thought this was going to be a shoo-in. It has taken me back to 2007, and there is a relevance there because there is a direct parallel, and in those times, the then Minister for Home Affairs brought a piece of legislation through - I have been looking it up, thanks to the permission of the Minister for Housing, because I have just nicked her iPad, Sir - which stated at the time that the person ...

The Bailiff:

Borrowed, I think, Deputy.

Deputy J.A.N. Le Fondré:

Borrowed, Sir. The person committed an offence if he or she displayed any writing, sign or other visible representation within the hearing or sight of the person likely to be caused alarm or distress. The point about that was that at the time there was a big issue going on, I think it was in Denmark, about satirical cartoons against of the Prophet Muhammad, and obviously that was when it came into the issues around freedom of speech, because obviously those cartoons were causing offence to a part of the population worldwide, but obviously the feeling was that that was relevant within the general issue of satire and freedom of speech. I always remember it, particularly as a relatively new-ish Member of the day, I stuck my head above the parapet, raised some queries, and it was the late Senator Vibert as Minister for Education said: "I am delighted to follow this last speaker, because I have same concerns" and essentially the debate spiralled downhill from there onwards, and in the end that particular proposition was withdrawn. I was looking at Article 51, so I am glad Deputy Higgins has brought us back to the point. What is the definition of "grossly offensive" in the context of knowing that it could be offensive? The person should know it is grossly offensive, but also, interestingly enough, Deputy Mézec has pointed out a later part of that Article, which says: "A person, for the purpose of causing annoyance or inconvenience or needless anxiety, sends by means of a telecommunication system a message that the person knows to be false" and I think a message can be anything, if I have understood it correctly. Then it comes down to ... in fact, I have been looking at a past speech. I was reminded not only of the danger of cartoons issue, I was reminded of attending a Housing Trust meeting of the day in the Town Hall, when there were some very satirical cartoons which were generally very well-drawn, but definitely not complimentary, and could have caused offence to the individuals, if one wanted to be pushy about it. All we are saying is that basically it is that same principle, that this has been sent electronically. Then I was thinking about going back to the miners' strike when I was in student days. It was definitely the hot topic of the day and obviously there were some violent elements to it, but there were some peaceful demonstrations, but within that lot the placards of the day were "Death to Thatcherism" and "Death to Thatcher", which is pretty offensive to the Prime Minister of the day, I suspect. It might be the political robustness. So it is at what point does that draw the line, because, effectively, we are taking those kind of issues and just adding an electronic wrapper around it is the way I am looking at it, because I agree with everything that has been said: we do not condone in any shape or form cyberbullying. That is what you are trying to address and you are trying to address the vulnerability of particularly youngsters, but anybody who is affected by that area. But equally, it is this issue around the freedom of speech. I am open to being persuaded the other way and I was reminded by the Scrutiny report obviously, but the purpose of causing annoyance, so: "A person who, for the purposes of causing annoyance, sends by means of telecommunication a message that the person knows to be false", so an image, a cartoon image which distorts the facial characteristics of that individual, which would therefore knowingly be false; I am obviously stretching the limit and I do not know where you go there. But those are the kind of things that are in my mind and I am just thinking we are stretching into the issues of freedom of speech probably further than I would want to do. I have covered the dangerous newspaper, Charlie Hebdo has been referred to,

that is obviously a much more recent and far more violent example, but it is the same principles. I thought about locally, there used to be a house at the bottom of Mont Conchon which had lots of biblical phrases written all over it. Now, if you are an atheist and somebody sends you an image of that, is that offensive? I do not know, but it is on that cusp. We all know you get the comments on the bottom of the *J.E.P.* or the various media websites and some of those are not particularly complimentary and they are obviously not thought through, but there is the ability of people to express their frustration. At what point does that become offensive, because the sending is not necessarily to an individual, it is the sending to people, as I said, in a generic sense. To be honest, as I say, I was very much minded to support this proposition and I thought: "Great, it is an easy one, do not have to worry about this at all." But the comments I have heard today from a fairly wide variety of people is causing me to rethink that and unless I hear something to really change my mind, at the moment I am going to switch and I am going to be not supporting this Article.

11.1.8 Deputy P.D. McLinton of St. Saviour:

Grossly offensive: there are things I find absolutely hilarious that my mother would find grossly offensive. I am one of the people, along with my mates, who went to Guernsey to watch *Life of Brian* - and you can bet Malcolm Muggeridge did not join us - and I found it hilarious, but he would have found it grossly offensive. This legislation will not work and I will qualify that statement, because you cannot legislate people's emotions, you cannot legislate people's opinions and no matter what was brought before this Assembly, it would not work for those reasons. The question you have to ask yourselves is: is it better to have something in place than nothing, and will in general this be a benefit to the people of the Island of Jersey or will it be a distraction from it? Because, no matter what comes back to this Assembly, it will not work because it is not black and white and Legislatures like black and white, they like clarity. There is no clarity on people's opinion on anything, on their feelings. So what this Assembly has taken a very long time to say is just that. This does not work because it is about people's feelings, but you have to have something in place. Is this the something that you would like in place? That is the only question you need to ask yourself. I suggest that you think heavily and carefully on this before pushing the button.

The Bailiff:

Through the Chair, Deputy: "suggest Members think carefully."

Deputy M. Tadier:

I have spoken, but may I ask the Attorney General 2 questions?

The Bailiff:

Yes.

Deputy M. Tadier:

It is largely on the back of that. It is about the idea of what would happen if we do not pass this today and I would like to ask, because there have been several references in the report that there are other provisions which deal with much of this. Could he give us a scenario, a case whereby if this law was not ... sorry, I will rephrase that. With the laws that currently exist or other avenues, is there anything that is not covered by those which would be covered by these proposals today?

The Attorney General:

If the law is not passed, we are back to the existing law which, of course, only relates to communications over public telecommunications systems, which is the main thing that the new law covers: it covers all communications. In terms of the conduct in question, the first words of 51(1), if you look at Article 1 of the law, 51(1): "A person who, by means of telecommunication system, sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing

character.” That is precisely what the law currently says, so we are back to the old law without, of course, the safeguards of the need to prove *mens rea*, which the new law introduces and, in relation to the existing law, if you go over the page to the new Article 51(4), that is more or less what the existing law provides for. So we will be back to the existing law, but without the safeguards in terms of *mens rea* and without the additional sentencing powers and without the protection for individuals who are the subject of harassment over a private telecommunications system.

Deputy M. Tadier:

I have got a further question which arises from that. On page 6, when it talks about platform neutral and future proofing, it does say at the end: “It is not to say that this behaviour would not be covered by the current legislation, but that this will ensure there is no uncertainty in the future.” Can the Attorney General confirm whether this behaviour is, or is not, covered by current legislation?

The Attorney General:

Plainly, the concern is that a good deal of the harassment that currently is suffered by victims of this sort of behaviour is not covered by the current legislation.

[15:30]

While I am on my feet, can I mention something about freedom of speech, because it has been mentioned by various speakers? I want to make it clear from the English C.P.S. (Crown Prosecution Service) guidance, to which I and my prosecutors have regard, that prosecutors are reminded that these provisions are interpreted consistently with, and subject to, free speech principles. Article 10 provides: “Everyone has the right to freedom of expression, that right shall include the freedom to hold opinions and to receive and impart information and ideas without reference or interference by public authority and regardless of frontiers.” As the E.C.H.R. (European Convention on Human Rights) has made clear, Article 10 protects not only speech which is well-received and popular, but speech which is offensive, shocking or disturbing, and as the English Courts said in 1992, that freedom of speech constitutes one of the essential foundations of a democratic society. It is applicable not only to information or ideas favourably received or inoffensive, but also those that offend, shock or disturb. Prosecutions under this sort of Article will only be warranted by me and my office if they are in the public interest and taking into account those considerations.

11.1.9 Deputy A.D. Lewis:

If I could just break the mould of the debate to date a little bit on this. I think there have been some excellent speeches, very articulate and very well-meaning and quite academic in their approach as well and well-rehearsed. Like I say, well-intended speeches, spoken for all the right reasons. However, I would say to Members you really, really should support this legislation. There is a legislative void here. We do not have anything that will tackle some of these issues at the moment. It is important. There are people that are suffering from mental illness, there are people that have probably committed suicide in this jurisdiction, certainly in others, as a result of offences committed that have not been able to be prosecuted or even investigated. The police, for example, were mentioned, about how do you prosecute somebody that is anonymous online? There are lots of bogus accounts that make statements, often defamatory, that you would say: “How do we pursue them?” The police can pursue them, but it is very, very resource-intensive. They are not going to do that unless they have got a law that allows them to prosecute at the end of the case. So this law is absolutely essential. Now, I agree with many of the speakers today that it is not perfect, because we are dealing with matters that the Deputy of St. Saviour behind me mentioned, it is emotion; there are all sorts of things here that are difficult to make black and white. But our courts are faced with black and white issues every day of the week and they have to take a view on it and the bench

and the Jurats and the prosecutors, in the form of Centeniers even, they have to take a view, they have to present evidence and then the bench, whether they be magistrates or Bailiffs or Commissioners, they have to take a view based on the evidence before them, and a balanced view is normally what our justice system presents. I know there are many cases people could cite where they do not think they have been balanced, but again, that is a matter of opinion, but they will take a balanced view based on the evidence in front of them and then prosecute on the basis of the legislation that is in front of them. We do not have any legislation to deal with this. We do not have sufficient legislation to deal with this, not in the modern context that has been spoken about today, and this is what this legislation does, and I would say it is absolutely essential. If Members feel there are some errors here, or there are things that are not quite right, and I think they have articulated those things very well today, then bring amendments to it, bring suggestions as to how it can be done better. That is possible. We should pass this legislation today and if there is some kind of deficit in the law, we should then bring amendments forward. This is not being done on the back of a fag packet. We have consulted with a huge number of experts on this. The Assistant Minister, he has not just written this himself. There have been law officers, there have been experts, all sorts of people consulted on this matter and this paper has been produced as a full consultation paper, which you all probably hopefully have read, which is in great detail. This has not been done quickly, it has not been done on a whim. We have been waiting for this for years, because we have had electronic communication in place for many years and we have had offences caused by these devices for many years. They are not going to go away, they are going to get worse, so we have to have the incentive there to stop people from committing offences like this online, knowing that they may well be tracked down, caught and prosecuted. At the moment they know they can get away with it. I am all in favour of freedom of speech as well, but there is a limit, and at the moment there are no boundaries, because people seem to think they can say and do whatever they like online and it does not matter. It does matter. People are offended, people are distressed by it and people do end up ill by it. We have an opportunity today to do something about that. I would suggest that people that think there are other ways of dealing with this, there are other laws that currently exist that can deal with this, think twice. If you want to take a case of defamation or libel to court and use the civil prosecution process, it is lengthy, it is very expensive, it is daunting, it is distressing, all of those things, so people do not do it, so people get away with it again and so it goes on and perpetuates. This legislation will start stopping that. It will not stop it tomorrow, but it will start making people think before they press the send button, before they press the post button: "What have I said? Is it going to offend somebody?" People need to start thinking about that and this sort of legislation makes people think about it, so I would say it is absolutely vital that we get this in right now, right here today. Then, if there are serious deficits in it, you bring forward amendments at a later date and have the discussion about it and make those amendments later. The Scrutiny report, which I hope you have all had a chance to read, I think in the time they have had to do it, I think it is excellent, well done to the panel. It says quite clearly that there is nothing wrong with this, that we should be using it, we should be going ahead with it. They made some very useful comments, but they have not said we should not use what has been laid before the Scrutiny Panel to scrutinise. So we have the scrutiny, we have done the research, we have done the consultation. We have seen what other jurisdictions do and we have followed some of that as well. It is not perfect. How many laws have we passed in this Assembly that have not been perfect, that have been subject to amendment later? It has not stopped us passing them. "The law is not perfect" the Chief Minister is saying behind me. He is quite right. This is not perfect, but it is better than what we have got at the moment and there is opportunity to appeal, there is opportunity for judgment from the bench when necessary, there is opportunity for evidence to be presented and the definition of black and white may well sometimes be grey, but without this sort of legislation, you are never going to have anything near black and white. You are going to have white, probably, not grey, not black. This is what we need; we need it now. I would urge Members

to think very seriously about rejecting this today, because we need it and we need it now and I would urge Members to vote for the proposition.

11.1.10 Deputy L.M.C. Doublet:

I want to thank the Scrutiny Panel again for their comments. I found them really helpful, and also the Members that have spoken today have helped me to move on in my thinking. I am concerned somewhat about the freedom of speech concerns here. I think the Attorney General has allayed some of my concerns somewhat, but I wanted to ask the Minister, or the Assistant Minister perhaps, before we vote in favour on this - or before I vote in favour of this - I would perhaps like some assurances, particularly around what the Deputy of Grouville was saying about the international crime issues and what liaisons have happened around that, what meetings have been had or what has been planned in that respect, not just with international crime prevention organisations or police, but with the actual website providers. The conference that we both attended, the C.W.P. conference, the issue was highlighted to us of the intimidation and humiliation that women around the world are having to suffer via the circulation of intimate images. It is such a huge problem and it is getting worse and worse. I am inclined to think that we do really need this law. Even with the concerns that are there, I agree with Deputy Lewis from St. Helier that I think, yes, there are some concerns. I am hoping the Ministers can perhaps allay them somewhat, and I think, perhaps, we should put this in place, but could the Minister perhaps commit to a review of the law, perhaps a year or year and a half down the line, so that we can see if any of these fears, negative impacts, are happening, to see what positive impacts the law has had, and just to see if there are any improvements that can be made down the line? I think if the Minister could commit to that, I could vote in favour of this and it might mediate some of the concerns that other Members have.

11.1.11 Deputy M.J. Norton of St. Brelade:

It is a great pleasure to have followed previously to the last speaker, as well Deputy Andrew Lewis, who said more or less what I wish to say. Some will not be surprised that I may stand and talk about social media and about bullying, when clearly it is something that I use a great deal, social media, and something I have been aware of for some time and been a great supporter of the proposition and the laws coming forward. Deputy Lewis said we have been waiting some years for this kind of legislation to take a step forward. Some people have been waiting all their life for legislation to move forward on this. It is a step forward. Many people have talked about freedom of speech and how they value freedom of speech and yet, in the same breath, they are the same people who would be fearful of going on social media and making a comment, because they would be likely to have a torrent of abuse thrown at them. They want freedom of speech, but they fear it too, because what they are going to get back is not worth them speaking their mind in a fair and open way. That cannot be right. Fifty years ago, I knew someone who had to put up with racist comments sprayed on the wall of his house, because that is how the messages were sent. Twenty, 30 years ago, it was anonymous phone calls in the middle of the night. At school, under your desk and in your sports lockers, there were messages put in there, because they had been broken into, they had been messed around with. Ten years ago, it was text messages on your mobile phone. Today it is on social media. You either shut up and not join in with freedom of speech because you are too scared to do so because you are going to get the torrent, or you stick your head above the parapet - a phrase that was used earlier on - and you are probably going to get it clocked off with a piece of 4 by 2, because you spoke your mind, not offensively, you just spoke your mind, you just gave your opinion. What you got back was a whole pile of abuse from people, sometimes racist, sometimes just simply abusive and rude, and sometimes involving members of your family. This is a step forward. This is a step in the right direction and I personally will be supporting it.

11.1.12 Senator I.J. Gorst:

I do not necessarily want to go into all the things that Deputy Tadier invited me to clarify or correct in his speech. I just want to perhaps touch on one, and that was with regard to data protection and the work of the Data Protection Commissioner. I think he was unfair, because what he said was the case was not what the court found and was not what was found in the judgment of the court in that case, but I do not think I will address any of the other things that I also felt were unfair. I had the pleasure, in Senator Ozouf's absence - this is an area which he has delegated responsibility for, so I would not normally be speaking or involved in it - but in his absence I had the pleasure of attending upon the Scrutiny Panel and, of course, as one would expect, in order to do so I had to refamiliarise myself with the legislation, with the rationale for why we were doing what is being proposed with the Law Officers, with the extremely competent officers that report to Senator Ozouf in this regard. So I hope you will forgive me for talking more in generalities rather than just on the Article, as other Members have done so. I had to be convinced.

[15:45]

Why did I have to be convinced, knowing those officers, knowing the Law Officers involved? It is because all of us in this Assembly have experience, all of us have a history, all of us have a connection to the community in which we live. For part of my experience, part of my daily life is being a father and part of my consideration of not only my life but the life of our community has to be through the lens of that responsibility and the responsibility that I have, and many Members do, towards their family and particularly where they have young children. I have to put behind me the fact that I suffer abuse in my job. It goes with the job. I knew that when I went knocking on doors all those years ago and I knew that when I stood in this Assembly and asked this Assembly to entrust me to be their Chief Minister. I knew that, so I put that to one side, but I find it much more difficult to put to one side the effects of what happens in social media and how we communicate in the current world and the fact that young people in our community have mobile technology that means that they can be instantly in communication, they can be instantly bullied, and that bullying does not stop when they leave the school gate at 5 o'clock, it continues, and it can continue 24 hours a day. I struggle to put that to one side because my girls are still innocent. When someone pushes in in a queue or is unkind, they say: "Daddy, why has that person been unkind?" and I have to explain to them that people are unkind, people do use language that I would not want to use in my family, people are mean to each other in a way that I hope we teach all our children not to be. I found that it was difficult for me to put those considerations to one side in thinking about this legislation, but I had to, because I have a responsibility to all members of this community and I have a responsibility, particularly in this job, to know that freedom of speech, the exchange of ideas, for people to think the unthinkable is an important tenet of democracy and we must guard it and we must protect it. I would say to Deputy Labey that this piece of legislation does just that. I do not want any Member of this Assembly to vote against this legislation because they fear for freedom of speech because it protects it, and the Attorney General has very clearly explained why it protects it. I do want them to ask whether there is sufficient protection for those vulnerable members of our community, for our young people, who have to live in an ever-changing world. That is where I think some of the things that Deputy Mézec was raising were important. I particularly speak to him: I do not think his heart is in voting against this. I think he would like to see the law improve and implemented in the way that the Assistant Chief Minister will ably explain later, and in the way that the Scrutiny Panel said it would work, because without this change there will not be those protections and those safeguards there. Deputy Doublet said would the Minister review in 18 months' time to see whether those safeguards are sufficient, to see if they are working appropriately. I have got no doubt that the officers in his department and he himself will give that undertaking to such a thing. One Member said they were not going to vote for it today, they have been persuaded by the speeches of others and they were not going to vote for this change, but they did not want to see that as condoning bullying. I ask them to search their conscience: they cannot

have it both ways, they cannot say that they do not want to vote for the implementation of this legislation and at the same token, a piece of legislation that is going to help in that fight, so that they do not want to condone bullying. I have come on a difficult journey myself, but I believe that the balance of this legislation is correct, I believe it will need to be kept under review as technology and means of communication ... although it is now technology neutral, so it will be fit for purpose into the future, but as the way people behave because of how those technological channels change, it will need to be kept under review. The Assistant Chief Minister will answer all the detailed questions about international obligations, working with Europol and friendly nations and all those things which can be dealt with through this legislation, but on the fundamental principles Members cannot have it both ways. I believe it sufficiently protects freedom of speech. I am extremely grateful for the conscientious work of the Scrutiny Panel. They made that same finding: that it protects freedom of speech and I think also it moves forwards the protections for those that each one of us in our community would want to be protected. There is the ability for third parties to use this legislation in the way that Deputy Mézec wanted to ask the question of, but that was in the way that Deputy Labey felt was inappropriate. We have to balance whether that is right or not. I think it is right and I think that this will move the protections, as I have said, for those who are suffering, often silently, often without any hope whatsoever of any redress for the suffering that they are having imposed upon them. So I ask that Members think extremely carefully, extremely carefully, about the implications of not improving that protection in this way, because what that will ultimately mean is that there are less safeguards, there is less options for those people who are suffering in ways in which we must all agree are unacceptable.

11.1.13 Deputy S.M. Brée of St. Clement:

As chairman of the Economic Affairs Scrutiny Panel, I feel it beholden on me to expand on a number of areas which Members have brought up as a reason not to support this legislation. It is very interesting to note that all of the areas that they have brought up, we as a Scrutiny Panel also had concerns about. I think it is important for those Members who have not had the opportunity to read our comments paper to expand on these areas. First of all, if we take as a concept what this legislation is trying to achieve, I do not think any Member in this Assembly would vote against bringing in greater protection to victims of cyberbullying or revenge porn. The interesting thing is that the difference between the existing legislation and the proposed legislation is that the police are able to act on one instance of cyberbullying or a similar offence. Under the existing legislation, a pattern of behaviour needs to be established, so that is quite an important distinction. But moving on, if we talk about *mens rea*, this was a matter that the panel talked very long and very hard about, because it is a very important concept about you have the intent to commit a crime or the knowledge that your actions will commit a crime. I will not go into great depth as to our discussions, but what we discovered was that speaking to the Law Officers and the Police Authority, the bar to prosecution is set very high in this legislation, because the *mens rea* test has to be passed. That protects people who do not have either the intent or the knowledge that they will be causing gross offence. If that was the perpetrator's genuine position, then no offence is committed and it is important that Members do try to read our comments paper, because I think we do expand on that, but I will not spend too much time on that. The area of what is grossly offensive, once again, we were concerned that there did not appear to be any effective definition of exactly what is grossly offensive. As, I think, one Member previously stated: "What is offensive to my parents, or my grandparents, I find extremely humorous" and I suspect vice versa, knowing my grandparents. But anyhow, it is all about what is generally accepted behaviour or standards and I think that is a very commonplace sentiment found throughout many laws. It is about the society we belong to, the society we wish to belong to, and while we did have concerns, at the end of our review we were satisfied that there were enough safeguards in place and guidance in place that most people would accept that what is grossly offensive to our society is going to be grossly

offensive to most people in it. I will admit that my biggest concern as chairman was the question of free speech. I looked at this legislation and was very concerned that there was an attempt to somehow impinge or restrict on freedom of speech. The Attorney General made mention of the European Convention on Human Rights, Article 10, which protects our right to free speech. I would stress again it also protects our right to speech that is offensive, shocking or disturbing. Now, we do know that free speech is one of the fundamental building blocks of our democracy and anything that impinges on that should be vigorously objected against. But having looked at it, this is not setting out to restrict free speech, no matter what some may have you believe. The high bar to prosecution also protects the right to free speech and I think that really one has to be sensible, if I may use that word, in looking at really what is this legislation intending to do? There are 2 ways of looking at it, as was explained to me by somebody who I probably should not mention. It is either a caring government bringing in protection to protect the vulnerable and the bullied in society or it is a cynical attempt by an ever-increasingly tyrannical government to impinge free speech. I am of the opinion that this is a very important piece of legislation. It brings in protection, it does not impinge on free speech, but it brings in protection. The panel, however, did have the comment that because of the high bar for prosecution, it may well be that people will be disappointed by this legislation and it will not give the prosecution or the attempt at prosecution that they had hoped it would do.

[16:00]

One thing that I think is important to note - and perhaps it has gone not unnoticed, but not much bias has been placed on it - is the fact that within this legislation, the restraining orders that are now available under the Article - which I know that we will discuss later on - is an important extra weapon in the armoury to combat some of the worst cyberbullying crimes out there. I feel that perhaps people who are saying this is going to restrict free speech are missing the point of this legislation completely and are being very over reactive to it and I would urge Members to support this as a very important piece of legislation to protect the vulnerable in our society. Thank you.

11.1.14 The Deputy of St. Peter:

This has been a wide-ranging debate so far so I shall keep my point brief. At this point, I would just like to talk to the point raised by the Deputy of Grouville regarding the international or the borderless boundaries of the internet. I would like to remind Members of the S.I.N.C.E.R.E. (Small Island Nation Centre of Excellence for Research and Education) Project which has received funding from the E.U. (European Union) of €320,000 and Jersey hosted the first meeting of the S.I.N.C.E.R.E. Project. S.I.N.C.E.R.E. stands for the Small Island Nation Centre of Excellence for Research and Education. Now this group of small island countries - Cyprus, Malta, Gibraltar, Isle of Man, Guernsey, Lithuania and ourselves - is a group of law enforcement agencies with a special interest in dealing with cybercrime. The whole point is to share knowledge and the knowledge of the other 17 centres of excellence around the E.U. and, therefore, I would just like to reassure Members that a lot is being done to look at this important area and changing area in our modern society and I hope that will go some way to do this.

11.1.15 Deputy G.P. Southern:

Briefly as well, certainly I have been convinced by many of the speakers of one central issue and I think it is fairly typical of what this Assembly tends to do, which is it tends to be seen to do something. Whether or not it is effective in what it does is another question and one that I think has not been addressed properly here today. Some people have argued that this step forward is not perfect but nonetheless we should accept it. That seems to me a very strange logic because my experience of this Assembly and the way in which it works is when its concern is merely to be seen to do something on this issue, then what happens is that, with the best possible will in the world, we

end up burying the issue. It is all very well to say: “We must revisit this piece of legislation periodically and see what is happening” whereas I think the reality is if we accept this today, that will be that: “We have done that. We have dealt with it. We may as well bury it. Now take that in the Royal Square and bury it” because all too often we are seen to do something about it, that is dealt with and it just goes away. We never revisit it. That is the reality. The Chief Minister talked about the bullying that does not stop when you get to the school gates, quite rightly. The question to be asked is: “Will this piece of legislation stop that bullying?” I think the answer is that that will not stop it either. Nonetheless, we will have been seen to do something: “Oh, we have dealt with that.” The previous speaker bar one in front of me, Deputy Brée, repeated several times what this legislation is intended to do but that is not the question. The question is what does it effectively do? With the best possible will in the world, I think we have set out to design a horse and what we have got is a bit of camel.

11.1.15 Deputy D. Johnson of St. Mary:

I was not originally going to speak, because my views are well set out in the report of the Scrutiny Panel, of which I am a member. I would, however, refute the idea that this is a measure simply to show we are doing something. It is not. The purpose of this legislation is to create the framework which the police and judiciary can then implement afterwards. As matters stand, there is difficulty in a prosecution if someone commits an offence. The legislation provides that it is an absolute offence if they do it with the relevant *mens rea*. I accept that that might be difficult to prove, but my understanding too is that on receipt of such a complaint that an offence has been committed, that will also automatically give rise to a follow-up by the police who will give a warning and, beyond that, the culprit then is aware that he has committed an offence. It is, therefore, a very useful measure to put in place. I will, as the Scrutiny Panel suggests, be voting for the proposal.

Deputy J.A.N. Le Fondré:

Sir, can I just ask a further question from the Attorney General? It is really just to dot i's and cross t's because I was very much influenced by his words earlier and I just want to confirm that what we are debating, the difference between the Article that we are substituting into the old Jersey communication system, is in relation to Article 1. Effectively, all we are doing is adding: “Is guilty of an offence” if either paragraphs 2 or 3 applies, which is when you get to the expression of *mens rea*. Relative to, I think, Article 4, there is almost no change so I think that is hopefully a one-word answer which I think is the case, and if that is the case, then that is very welcome clarification and, on that basis, I would be supporting the proposition.

The Attorney General:

Yes, the *mens rea* is being added and it will no longer be required to be proved. It is a public telecommunications network that is covered. All communications over all networks are now covered. Those are the 2 changes.

The Bailiff:

Does any other Member wish to speak? If not, then I call on the Assistant Chief Minister to reply.

11.1.16 Senator P.F.C. Ozouf:

This Article is part of legislation, which has been consulted on, and for the avoidance of any doubt, has been given the most careful of consideration by the joint working of officials responsible for the Telecommunications Law and Home Affairs, Law Officers and police colleagues. There has been much discussion about consultation and indeed, if I may say, Sir, you have also, at a recent informal briefing of States Members, spoken of the importance of legislative scrutiny and legislation being properly scrutinised. This, I think, is an example of good consultation and proper scrutiny and Deputy Brée and his panel, I do not think anybody would say, are easy to convince.

The Deputy is smiling. I was not absolutely delighted when he called it in, but I have to say to the Deputy and his panel “thank you” because they did call it in. In hindsight, they were right and I think that has benefited from a proper ventilation and debate as Scrutiny sometimes does not get. There has been good media coverage. It sometimes feels as though we cannot win. Members are, of course, entitled to their views and they will vote on their consciences but they do regularly chastise Ministers for evidence. Well, they have evidence, they have an awful lot of evidence and the evidence is compelling. There is a definition in the Telecommunications Law which does not cover what it should and needs to be fixed. It is not about those nuisance calls simply made as we concede in 2002 before text message, before Snapchat or any of these other forms of communication were conceived. If I may say to Deputy Mézec, I said to my neighbour much of what Deputy Mézec appeared to be doing, from where I was sitting, was speaking in favour of the proposition and if I may just politely say to those Members who have spoken today and made comments to Deputy Higgins, to Deputy Labey, to Deputy Mézec and Deputy Southern, I have reviewed the evidence and the call for evidence by the Scrutiny Panel and, unless I have missed something, I have not seen them making any of their remarks. I have not seen any because I think the Scrutiny Panel operates on a completely transparent basis and they publish their evidence. Now Members cannot have it both ways. They cannot say they are going to call something into Scrutiny, give it a good discussion and a good thrashing and give Ministers a good grilling - and I was grateful for the Chief Minister standing in when I was unable to be present for the Scrutiny Panel’s Chair - but I am afraid simply, I say to Deputy Labey, to suggest this is the kind of prohibition that exists in totalitarian regimes is, if I may say, rather farfetched. This is, if I may say, the exact kind of comment that really does put fear into people and Deputy McLinton, the guardian of emotions and cognitive behaviour, spoke of fear. There is an awful lot of fear in politics these days, but we have to be balanced and careful and we should not engage in fear politics. This is not a proposition which should engender fear. On the contrary. It should engender a level of protection. Deputy Higgins spoke of passing the buck to the court. I am not giving Members a lesson, because you will tell me off, on being a lawyer, or a prosecution service, or a prosecutor, because I am not that but, I say to Deputy Higgins, democracy is founded on checks and balances. He said that it was possible to simply prescribe something in English. Well, I am afraid that that does not work. I am on the liberal side of politics. I understand that views and issues change in terms of views of all sorts of things, things like homosexuality et cetera, things that I certainly, I think, know a thing or 2 about and the way society members regard as offensive. We have a system - and this is not passing the buck to the courts, I would say to Deputy Higgins - where police investigate, a prosecutor has to be persuaded that it is in the public interest to charge, a magistrate, jury, a judge, juror consider a case and even if they convict, then they are, of course, subject to appeal, an appeal right the way up. Now those are checks and balances. This is not a Council of Ministers’ restrictive freedom of information stopping of blogging and stopping of everything else. This is just absolute nonsense to suggest this. The prosecution has to prove that a person committing an offence knew that a message was grossly offensive, or knew that a reasonable person would view it as grossly offensive.

[16:15]

I am afraid as important as individuals Members’ views are, that is not really the point. It used to be described as the person on the Clapham omnibus, or maybe it may be the person on the St. Peter or Trinity ... maybe that does not exist ... on the St. Clement bus, before I get into trouble. The fact is that grossly offensive in objective terms is even then not enough. The offence is only committed if offences are known to be false or persistently sent to cause annoyance, inconvenience, needless anxiety, et cetera; many of the issues that Deputy Mézec was saying. I am going to refer particularly to the remarks of Deputy Doublet and the Deputy of Grouville. This is an issue that protects, perhaps more strongly than before, freedom of expression by ensuring a very high

threshold for prosecutions and allowing the courts to make that determination within that very high bar. We want to ensure, of course, that there is no prosecution for people making jokes. Examples are invidious and I hesitate to give examples but I will try one. Say I call somebody 10 times in a row and I have genuinely got a wrong number, because I have got the number wrong because I think I am calling a cab company where I am trying to call somebody, and it is a genuine mistake, then I do not think I have caused an offence. However, say I call the wife or partner of somebody that I think is having an affair with somebody I know, or my own partner, then I am not guilty of an offence, but if I make the same call out of malice and make up the allegation repeatedly, then I may commit an offence. It seems to me common sense. I cannot really say any more than that. This is common sense. It is what a reasonable person would regard not as offensive, but grossly offensive and of which there are case studies. We are not the only legislator in the world to pass protection to individuals. We are one of hundreds of legislators. I do not know how many legislators there are in the world in parliaments and we are, of course, looking at the experience of others, which brings me on to the, I think, incredibly important points that the Deputy of Grouville makes and she powerfully makes about the problem of transnational co-operation. Deputy Doublet says also that she is concerned with that. Now, it looks to me as though she is in the care of potentially, hopefully, the emerging person of 1,001 Days and I am not a parent and I do not expect anybody to be. We have spoken about the protection of children and the Avatar issue for children and others is a real issue and has been some of the most heartfelt and distressing things that I have ever heard from individuals who have asked me not to name them because they have contacted me because their lives, as Senator Routier said - and we know of some - have been literally ruined as a result of it. This is clearly an international problem and we cannot here legislate for extraterritorial legislation but we can, of course, work with other jurisdictions, as the Minister for Home Affairs has said. What I can say to the Deputy of Grouville and Deputy Doublet is that if an attack on somebody - and we are not aware of any and I have no notice of anything that has been complained for - is originating from, for example, a Europol Member State or indeed another jurisdiction such as Australia, the United States or, dare I even say it, the E.U., then the ability, I am advised, is much better to seek assistance as we do in any other areas where a request for mutual assistance would be managed and facilitated as we have done in other ways. In terms of harassing and bullying, not including online grooming, we are not aware, I have to say, of any cases originating from outside the jurisdiction and if they are, then we must encourage people to make those complaints, because they cannot be investigated unless a complaint is made. There have not been any prosecutions or any attempt at prosecutions or investigations that I am advised of where the crime has been committed outside of the Island and so it would be a matter for the Jersey courts to test that in due course. But I have to say that complaints have to be made and people have to believe that the legislation is capable of then concluding something that could be a complaint. There is an important issue about victims for online abuse and harassment and there is a need for better international co-operation on that and that is something that has happened. I do not want to say anything about the E.U. Brexit debate, but one of the odd things about the E.U. planned single market for digital services is that many of these things, oddly, would be brought together in the E.U. and E.U. protocol in terms of dealing with many of these things as the single market for digital and that is something that is happening across the northern corridor in Africa and other places. There is international co-operation on these issues as never before. The legislative world of co-operation as in tax and beneficial ownership and these issues have got to catch up with technology. That is absolutely clear. So there is a digital framework consultation underway at the moment and if the Deputy and others wish to make any observations, I will take the comments on board and Deputy Doublet's point is committed to it. I say there should be a review. It is a good idea. I thank the Deputy for that very good example of that. This has been an important issue and it has been a really heart-wrenching problem to deal with and the balance of the public right for freedom of expression has been at the heart of the thinking and the protections put before. There

have been many concerns raised, but the evidence is that it is fair and proportionate and will not result in a kind of doomsday scenario and I really do ask Members to think on their consciences. Are they going to vote against something that widens the definition of what a telecommunication message is in the way that the law does not allow us to do? That is what this first Article does and it describes and sets that very high test in terms of what is a grossly offensive message. I think it is plain English and I have confidence in our courts to get that definition right and, if they get it wrong, then thankfully they get appealed and then there are other people that have a second chance. I am not prosecutor, and I certainly will not try and be a lawyer, but I would invite the Attorney General, if he wishes to make any observations, before making one final sentence.

The Attorney General:

No, save to say I do support the idea of a review after a year to 18 months. It is a good idea in my view.

Senator P.F.C. Ozouf:

I was in London yesterday and, after a busy day, I was fortunate to get a £10 ticket to an opera and I heard the word “vengeance” and I thought about today’s debate and if anybody wants to think about the word “vengeance” and the dictionary definition of “vengeance”, then it is the infliction of injury, harm, humiliation or the like on a person by another who has been harmed by that person. Violent revenge was the subject of the opera *Nabucco*. Now things do not change, but if we are going to deal with vengeance that is grossly offensive, then this Article deals with that protection. As Deputy McLinton said - I think he was going to vote in favour and I hope he does - it is a protection against something that is vengeful that is intended repeatedly to cause misery and wreck people’s lives. I ask Members to support the first Article.

The Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt Article 1 of the Draft Telecommunications (Amendment No. 3) and Crime (Miscellaneous Provisions) (Jersey) Law 201- and I invite the Greffier to open the voting.

POUR: 41		CONTRE: 5		ABSTAIN: 0
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy M. Tadier (B)		
Senator A.J.H. Maclean		Deputy M.R. Higgins (H)		
Senator I.J. Gorst		Deputy S.Y. Mézec (H)		
Senator L.J. Farnham		Deputy R. Labey (H)		
Senator P.M. Bailhache				
Senator A.K.F. Green				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				

Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Brée (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

11.2 Senator P.F.C. Ozouf:

I did take the Articles in 2 parts. Perhaps I am going to regret that now, but I think it is important, Sir, as you have said, to have debate on legislation. This is certainly important and the reason why I wanted to take the second Article separate is because we were in an interesting position of promoting legislation for the Home Affairs Department. Maybe the Minister will want to say something herself on this, or her Assistant Minister who has been very helpful also in the careful consideration of this. This provides additional protection to victims. The amendments are made under Article 2 of the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008, which falls within the Minister's remit and would have the effect of permitting the courts to make or impose a restraining order on conviction for any offence that the court is satisfied that it is necessary to do so to protect the victim or any person named in the order from further harassment or perceived threat of violence. Secondly, the proposed amendment also increases the penalties and maybe if the Attorney General could comment because we take advice. Ministers do not simply dream up penalties themselves. We take advice from our Law Officers on this issue and I am advised that the penalty is absolutely the right, fit and proper way to approach this to create the correct deterrent. This legislation will not criminalise legitimate political debate and discussion, humour or satire or again, I say, restrict the right of people to interact in frank and open conversation. I think we have discussed that in detail and some of the previous things have dealt with this. I am grateful for the joint work. I think this has been an excellent example of joint work between departments. Sometimes people think that the States and Ministers do not work together. This has been, I think, a textbook example of good work and good research by 2 departments and I thank the officials in the Community and Constitutional Affairs and the Law Officers' Department for their work. I propose the rest of the Articles. I think I will take them all.

The Bailiff:

Articles 2 and 3?

Senator P.F.C. Ozouf:

Yes, 2 and 3.

The Bailiff:

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

Deputy M.R. Higgins:

Yes, thank you, Sir.

The Bailiff:

Before you do, can I just say that we have had a very full discussion about principle in dealing with Article 1 of this law and the purpose of this part of the debate on a piece of draft legislation is to look at the detail; the language used.

11.2.1 Deputy M.R. Higgins:

Yes, Sir. I am fully aware of that. In fact, I was amazed everyone raced away like they did.

The Bailiff:

I was probably too slack.

Deputy M.R. Higgins:

I am saving that for the Third Reading so I will make my comments there.

The Bailiff:

Excellent.

Deputy M.R. Higgins:

What I would say is I am somewhat concerned about the penalty of 2 years and a fine or rather than of 2 years and/or a fine. I would like the Minister to comment on that especially when other laws which relate to certain things will refer to 6 months and a level 3 fine on the standard scale. Restraining orders too. In fact, I am going to refer back to the Harassment Law when I do come to part 3 because we already have the power for restraining orders within the Harassment Law. The Harassment Law can also be used for online harassment. It does not have to be one thing or 2. We already have these powers and I will come back to that later, but I would like the Minister at the moment to comment on the penalty. Why 2 years and an unlimited fine? It does seem rather onerous.

11.2.2 Deputy M. Tadier:

I share the concerns again that I raised earlier about the unlimited fine. In particular it does not seem particularly proportionate to have that ability, but something that has also struck me more generally is that it seems to me in a case where somebody has been wronged for whatever reason and not necessarily to say defamed or libelled, that one might expect the money to be better used in terms of reparations and I guess it might the point to ask the Attorney General whether or not there are provisions in this particular Article that would allow, more generally, for the court to make an order of payments of costs and damages to the individual plaintiff in that case. So I do maintain my general reservations to the point of voting against this Article.

The Bailiff:

Sorry, Deputy, are you asking the Attorney to address that?

Deputy M. Tadier:

Yes, please.

The Bailiff:

Attorney, are you able to address that now?

[16:30]

The Attorney General:

Simply in relation to costs and damages? Perhaps I could ask the Deputy to repeat the question that he wants me to answer. I would be grateful.

Deputy M. Tadier:

Yes, it is essentially is there an ability in relation to this Article for courts to make a cost award for damages to the person who has been offended.

The Attorney General:

Well, restraining orders will only follow a conviction for an offence. So where there is a conviction for an offence; let us say an offence of common assault or grave and criminal assault, then the court has a general power to order compensation under the relevant statute and also a power to order costs under Costs in Criminal Cases (Jersey) Law 1961. So there will be a power to order costs and compensation in addition to making a restraining order on conviction.

11.2.3 Deputy G.P. Southern:

I, too, wish to repeat my qualms about an indefinite fine and remind Members that the thing which acts as a deterrent is not the severity of the punishment. It is the certainty of being caught. I think that is what we have got here; no certainty of being caught, but a massive fine in an attempt to deter. I do not think that is the right way around to do things.

11.2.4 The Deputy of St. Peter:

I just would like to rise and say how grateful that Home Affairs and Community and Constitutional Affairs are to the Assistant Chief Minister and his team for their work in accommodating us in this aspect of the amendment. As the Economic Affairs Scrutiny Panel have also helpfully explained in their comments, it is not currently possible for a court to impose a restraining order when an offender is convicted of an Article 51, Telecommunications (Jersey) Law 2002 offence. In certain cases this does not provide adequate protection to victims from further harm from cyberbullying, which can be highly distressing as we have all discussed in the previous debate. So, while preparing instructions to amend this Article of the law, it was recognised by my department that there would be an advantage to amending the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 at the same time to offer additional protection to victims. In order to address the issue specifically, but also to protect victims of other offences, the amendment to Article 2 of the law will have the effect of permitting the courts to make or impose a restraining order on conviction for any offence - not only the offence of harassment - if the court is satisfied that it is necessary to do so to protect the victim or a person named in an order from further conduct, which would amount to harassment or from perceived threat of violence. The amendment also increases the penalties for the offence in Article 3, covering harassment, and Article 6, covering breaches of the restraining order, to bring them into line with the penalties set out in the new Telecommunications Law. To answer the point made by both Deputy Higgins and Deputy Southern, it is a reason of parity that the penalties for an offence of harassment, or the breach of a restraining order, would be increased correspondingly to a maximum of 2 years' imprisonment or an unlimited fine. Parity with other similar laws there. In new provisions also made for amendment or revocation of the restraining order on the application to the Attorney General or person against whom the order was made. I am very grateful to the Economic Affairs Scrutiny Panel for their positive remarks and pleased to support the Assistant Chief Minister and his team.

The Bailiff:

Does any other Member wish to speak? If not, I call on the Assistant Chief Minister to reply?

11.2.5 Senator P.F.C. Ozouf:

I do not really need to say anything. I think that all I would say is that I recall visiting the prison a number of years ago when he said: “This place is full of failed risk takers and it is full of, to some extent, people who thought that they could get away with doing something wrong.” Now there has to be an effective law to ensure that there are those protections and also proper prosecution investigation arrangements in order to do that. I am aware of the increased amount of resources that are being put increasingly into the police in terms of being able to investigate and understand this whole nature of what is the source and really current and ongoing and growing issue of cyberbullying, which is ... there are many advantages of the digital age, but it is certainly one of its down sides. We have an obligation to put in place that right protection and also give our authority to the appropriate resources in order to do that, including dedicated officers that are, as I understand it, dedicated and now expert in dealing with these very issues. I hope Members are going to support this. I did not compliment it; I was going to do that in the Third Reading but I will just do it now. I do thank Deputy Brée for the comments that he made and for his panel members for giving us a hard time and making us really have to work and prove the fact that this was necessary. So I propose Articles 2 and 3.

The Bailiff:

Articles 2 and 3 are proposed. Those Members in favour of adopting them, kindly show. The appel is called for. I invite Members to return to their seat. The vote is on Articles 2 and 3 of the Draft Telecommunications (Amendment No. 3) and Crime (Miscellaneous Provisions) (Jersey) Law 201- and I ask the Greffier to open the voting.

POUR: 39		CONTRE: 6		ABSTAIN: 0
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy of Grouville		
Senator A.J.H. Maclean		Deputy M. Tadier (B)		
Senator I.J. Gorst		Deputy M.R. Higgins (H)		
Senator L.J. Farnham		Deputy S.Y. Mézec (H)		
Senator P.M. Bailhache		Deputy R. Labey (H)		
Senator A.K.F. Green				
Connétable of St. Helier				
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Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Bailiff:

Do you propose in Third Reading?

11.3 Senator P.F.C. Ozouf:

Some Members might need reminding about what a Third Reading is, because we do not want to have another debate on the principles and the whole rehash. I will not try to do so. This is a law now; the Article has passed, which will provide the appropriate protection for freedom of speech and I send a very clear message, which I think has been made by this Assembly, is that no reasonable person doing something reasonable in the course of human interaction is going to be prosecuted for something online. That is not the intention and so to those bloggers and those other people who have made very strong representations that they are concerned about this, I ask them to read the evidence, take advice so that they can continue to say what they want, as rude as they like about people like me who are elected and make horrible decisions. I will only cite myself because I do not want to say anything nasty about anybody else. This is not the intention. This is something grossly and vengefully offensive; designed to call so and we are going to provide the protection and our officials and our law enforcement agencies with the protection to deal with some of the most harrowing examples of cyberbullying that in all the years in politics, I have heard of. I know that this is going to protect them and I thank Members for their support.

The Bailiff:

Does any Member wish to speak on the Third Reading?

11.3.1 Deputy M.R. Higgins:

As I say, other Members jumped the gun on me earlier but I will not be repeating too many of them. I just want to correct something that Senator Ozouf said earlier. He was going on about my passing the buck to the judges. There was an argument that is centuries old about the Legislature and the role of judges. It is the role of legislators to pass law and we should pass good law and we should not have to leave it to the judges to interpret the errors and omissions that we have made and that is why the reference to that. Now page 6 of the proposition states: “It should be remembered that the existing legislation is largely fit for purpose.” Well my concern with this is: why have the powers that we already have not been used and been used to deal with some of the worst of the cyberbullies we have experienced over the last few years? It comes down to a question of enforcement. The law is fit for purpose. Now, I know that this particular law we concentrated on

the Telecommunications Law. Where there are existing powers that can be used against these cyberbullies is the Crime (Disorderly Conduct and Harassment (Jersey) Law 2008. This law states for example: “A person commits an offence if he or she pursues a course of conduct - (a) that amounts to harassment of another person; and (b) that he or she knows, or ought to know, amounts to harassment of another person.” So in other words we can use the Harassment Law. It does not say you cannot use it for online business or online statements; you can. Maybe the Telecommunications Law does not allow you to do it, but the Harassment Law does. Now this law here, for example, has a term of imprisonment up to 6 months and a level 4 fine, and what does it mean by “course of conduct”? It says here in this Article and in Article 4: “A course of conduct includes speech. Includes conduct of a kind that occurs on one occasion and conduct of a different kind that occurs on another occasion” and (c) does not include conduct that occurs on only one occasion. So, in other words, most of the people are going constantly at people, having a go. It is not a one-off, maybe an inadvertent one, which would be caught by this new one and then we have to get into the whole question of did he intend to sort of cause this offence to other people. So we have a law here already, the Harassment Law, that enables us to bring these people to book but we have not been using it. This is something that really annoys me about this Assembly: we pass an awful lot of laws which various bodies, whether it be health and safety, whether it be the police or others, say: “Oh, we have not got the resources, we are not going to do it, we do not think it is important.” The truth of the matter is we have laws on the books at the moment that can deal with it. We do not need for this particular one to come in. In addition to that, you will note that the idea of restraining orders, well, they are part of the harassment law, we already have it. We can get restraining orders on which the court has to be satisfied on the balance of probabilities that it is appropriate to do so in order to ensure that the person does not commit a further offence. So what I am saying here is: we already have a law, we do not necessarily need this one. Despite everything that has been said, I still have fears for freedom of speech because the laws ... it is how people use them. Very often they can be quite bland and look okay on the face of it but it is how people use them. Now, we talked earlier about the law is all about balance. Now, nobody wants to protect cyberbullies or those who engage in revenge porn and we obviously want them to be brought to book, but if the existing law is largely fit for purpose then, as I say, why has it not been policed, why do we not use it, we have it already. Now, as I say, one of the problems that we have is that once the law leaves this Chamber it is down to others and this comes back to Deputy Southern’s comments earlier that we should be passing good laws not bad ones or – I was going to say half-baked ones – half-thought-out laws and we should be leaving it to this House to decide. One of the things I dislike about this particular one is the third party element. For example, we talk about third parties, now how many people here remember Mary Whitehouse? Right, she was the person who was the guardian of our morals through, I think, the 1960s, 1970s and 1980s and she would be bringing action on one thing and another. There is always a danger that we will have that here as well. I mention again that the law could be misused by the people who apply it. Now, I happen to disagree with the Chief Minister about the misuse of the Data Protection Law, and the reason why I believe it is misused was the fact that it resulted in a secret trial, because of injunctions no one could even talk about it. We still do not even know where the money came from for that trial and we do not know how much it cost. This is because it was kept secret. We ask questions in the States, we cannot get answers. That law was misused, in my opinion, and it was a stain on the legal system in Jersey. They use secret trials in the U.K. for terrorism offences, not for data protection. So I do believe that freedom of speech could be affected by this particular law. I believe we have an existing law and I am concerned that the responsible bloggers ... I mean the responsible bloggers are the ones who go seeking the evidence and reveal things, such as those who were revealing the child abuse that was going on in this Island that people would not recognise and were campaigning for the Care Inquiry, that has heard, beyond all doubt, that there was abuse and the authorities failed at different levels in trying to deal with it. So the bloggers are the ones who kept

us honest in a sense because they have been on at us to address these issues. In the same way they are now moving on to other things, they are monitoring and questioning the police search for Adrian Lynch, for example.

[16:45]

Are we wanting to stop people reinforcing and asking questions about things like that? So I am concerned also, as I have already said and I voted against the unlimited fines and the 2 years' prison sentence, we already have a law, they can get 6 months in prison and they can get a fine already. I would urge Members on Third Reading to vote against this law. Thank you.

11.3.2 Deputy M. Tadier:

It is good to be able to have robust debate and even though we sometimes get the impression that Ministers, or perhaps any of us who move a proposition, would like to have unanimous support, I think it is valuable when there is some dissent and some challenge of ideas and difference of the interpretation, especially in what is effectively our National Assembly. The first point to make is a general one about the importance of the Third Reading and the value that I think Scrutiny added by pulling this in. Just the simple act of pulling this in for scrutiny is something that often does not happen. We know that legislation, complex legislation, gets passed in this Assembly often and it seems inversely proportional that the more complex the legislation, the less debate there is and the quicker the legislation goes through. The reason I say that is because it is very easy for legislation or propositions to slip through, if not without us necessarily having fully read them, certainly without them being brought to the attention of the wider public. I know that it certainly provided an opportunity for key individuals or groups in civil society to have a keen interest in these particular kinds of areas to have discussions and debates about them. We often live and breathe politics and live and breathe legislation or proposals that are coming forward but, of course, your average punter, who does not necessarily spend all their waking hours thinking about politics, has other things, understandably, to contend with. That is why I think the principle of pulling things in for scrutiny and having a proper time differential between the First Reading and the Second Reading is in itself valuable, even if that does not go to Scrutiny. I would like to flag that up for further consideration with Privileges and Procedures. I know it is something that has been discussed already on the sub-panel. I do not want to make undue criticism of the Scrutiny Panel's work - partly because I do not want to lose their votes for the education funding, but hopefully they have thick enough skins to be able to separate the 2 issues - but I think it is important to pass on some comments and perhaps constructive feedback from members of the public. They did not feel that there was necessarily an opportunity for them to engage with this particular part of the Scrutiny process, and that might be because of time restraints, or whatever, and I am aware that the Chairman obviously does have an ability to respond if he sees fit so I am just passing that on. It has been interpreted ... of course when Ministers stand up and say how well Scrutiny have done in their report, that normally does ring a little alarm bell with me because it could be interpreted to say that Scrutiny had a pretty short window, I think, to scrutinise this. They had certain questions they wanted to ask. They got the Ministers in and the Ministers told them that everything was fine and that is what we have in the comments essentially. Now, if that is unfair, I apologise, but that is certainly the comments that I have heard outside, so I am simply putting those on the record. But I go back to the point that the process in itself was a valuable one and many members of the public and, indeed, I think, Members are much more informed for the fact of having been able to have a period of reflection about what this legislation might or might not mean, what the limits are on freedom of speech, if any, and how effective these amendments will be. I do come back to the point that Deputy Higgins made that it is one thing to have good intentions and to have a nice theory when it comes to these laws and these protections and the nice words. I think, ultimately, we all want the same thing. Nobody in this Assembly wants to think that there are vulnerable

people out there who are being abused online, or by any other means, and who would suffer negative consequences of that often in silence. Nobody wants that to happen. But it seems to me that should not be confused with resourcing the police, the authorities for the law, be it the old law to which Deputy Higgins referred, which I think largely was sufficient anyway. It is one thing having the law on the statute book, it is another thing giving the police the resources that they need to do that effectively. So it comes back to the points that Deputy Mézec made earlier: if the money and the resourcing does not follow what we passed today, then we could find that we have something sitting there that is not really being used, which is too light touch to the point of it not being effective. So I think we will all be keen to keep an eye out in the next 18 months on how this progresses, and I do hope that we remember there has been a commitment today to review this legislation at the end of 18 months and, certainly, I hope that all Back-Benchers and Scrutiny members in the future, whether it is a new Assembly or not, will hold the Ministers to account on that particular matter.

11.3.3 Deputy S.M. Brée:

I feel it is important to both respond to Deputy Tadier's criticism of the panel and to correct possibly a misunderstanding of both his and other Members of this Assembly. The Scrutiny Panel call in the draft legislation after the principles had been approved by this Assembly, so as such we were constrained on the areas that we could scrutinise. Our role was to ensure that the proposed legislation was fit for purpose and would address the areas that the principles, already approved, set out to achieve. With regards to the comment from Deputy Tadier about the public not being able to engage in the Scrutiny process, I am afraid that is somewhat misleading. We were approached by various members of the public, we did invite them to make submissions, we received none. So until we receive a submission from somebody who wishes to make comments about the areas that we are scrutinising then I feel it incorrect to be criticised. Thank you.

Deputy M. Tadier:

Can I just say thanks to the Deputy for clarifying that, I did not mean any offence and I think putting the record straight will be valuable to those who spoke to me outside the Assembly.

The Bailiff:

If no other Members wish to speak, I call on the Assistant Chief Minister to reply.

11.3.4 Senator P.F.C. Ozouf:

I will be very brief. Clearly, Deputy Higgins will not be silenced and, of course, neither should he be. It is a democracy and he is entitled to his views. Over the years I have heard him say some pretty jolly offensive things across this Chamber. I will not ask for point of order because I do not think there is anything grossly offensive in anything that he has said, even though he has parliamentary privilege. If I may say, after hearing his remarks, if he was a judge, and I do not think this is grossly offensive, I am jolly pleased in an appeals process because I would certainly appeal some of the things he would say. He did make some new arguments and I think his view on the Data Protection Commission are, in my view, incorrect and he is also unfair to cast wide aspersions on a difficult office with difficult things. I would encourage him to read the digital framework and the important work that we are going to be doing in a proposition that will be lodged, I hope, tomorrow to deal with improvements in data protection and the apparent importance of that. Some Members will never be convinced; others will be convinced upon evidence, and I think this has been an interesting debate, because it has tested some new ground rules about process, procedure, scrutiny and what works and what does not work. I think, at the end of the day, it has been a bit of a long haul but we have done the right thing for Jersey. But I think we have also set some new precedents in terms of Scrutiny, the way that a Minister should interact, the splitting of a principles debate and articles, and at the end of the day we have done what we should do,

which is be a Legislature and test legislative arguments. So I hope a strong majority of Members will be supporting the Bill in the Third Reading and I call for the appel.

The Bailiff:

The appel is called for. The vote is on whether to adopt the draft Bill in Third Reading. I ask the Greffier to open the voting.

POUR: 40		CONTRE: 5		ABSTAIN: 0
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy M. Tadier (B)		
Senator A.J.H. Maclean		Deputy M.R. Higgins (H)		
Senator I.J. Gorst		Deputy S.Y. Mézec (H)		
Senator L.J. Farnham		Deputy R. Labey (H)		
Senator P.M. Bailhache				
Senator A.K.F. Green				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Bailiff:

Senator, for the avoidance of doubt, in relation to Standing Orders one can evoke the ire of the Chair from being offensive and not just grossly offensive.

Senator P.F.C. Ozouf:

I hope I was not either, Sir.

The Bailiff:

You were not.

Senator P.F.C. Ozouf:

Thank you, Sir. I do thank all the officers that have been party to this work. There have been law draftsmen, a whole chorus of people, and I thank them for their work.

12. Draft Removal of Vehicles (Private Land) (Jersey) Regulations 201- (P.36/2016)

The Bailiff:

We come to the Draft Removal of Vehicles (Private Land) (Jersey) Regulations P.36 lodged by the Minister for Housing. I invite the Greffier to read the proposition.

The Deputy Greffier of the States:

Draft Removal of Vehicles (Private Land) (Jersey) Regulations 201-. The States in pursuance of the Order in Council dated 28th March 1771 have made the following Regulations.

The Bailiff:

Minister, do you wish to promote the principles?

12.1 Deputy A.E. Pryke of Trinity (The Minister for Housing):

I do. I am very pleased to bring forward the Draft Removal of Vehicles (Private Land) (Jersey) Regulations and I would like to begin by thanking the Environment, Housing and Technical Services Scrutiny Panel for reviewing the draft Regulations and for the helpful comments they have provided to assist with this debate. It is important to make clear at the outset that these are very narrow Regulations, which only apply to Andium and the Ports of Jersey. The Regulations will provide Andium Homes and Ports of Jersey with limited powers to remove unauthorised vehicles from their land and dispose of such vehicles if it has not been claimed by its owner within 6 weeks. The broader issue of parking on all private land is being considered by the Minister for Home Affairs who will, hopefully, bring forward a draft law within the next year and certainly by the end of this term. Back to the Regulations: they have set out the circumstances in which Andium Homes and Ports of Jersey, specifically, will be able to remove vehicles from their land and procedures they will need to follow in order to remove vehicles that have been left without authorisation on their land, including taking reasonable steps to contact the owner before selling or disposing of a vehicle. Members will be aware that the Housing Department and the Harbours and the Airport used to have powers to remove unauthorised vehicles from their land under the 1963 Removal of Vehicles Order. However, when Andium was incorporated in July 2014 and the Ports of Jersey in October 2015 these powers came to an end, because they were no longer classified as a States authority for the purposes of the law. This change has created a particular problem for Andium especially that has been unable to legally remove vehicles abandoned on their estates or parked in spaces reserved for their tenants without permission. So we are primarily introducing these Regulations for the benefit of the tenants and service users who have been disadvantaged by unauthorised parking. During 2015, Andium issued over 2,900 warning notices for parking related issues and 138 notices for potentially abandoned vehicles. For many of these cases, vehicles could

have been removed if Andium had had the legal powers to do so. In the case of the Ports of Jersey, although they have been able to use the powers that the Airport Director and the Harbourmaster have under the Aerodromes Regulations 1965 and the Harbour Regulations 1962, to remove vehicles, these powers do not cover other areas of land outside these 2 laws, which is why we have included Ports of Jersey in these Regulations. It is important to make clear that while we are reinstating powers that Andium and Ports of Jersey had before they were both incorporated, these are triannual Regulations and are brought forward just as an interim measure. The Department for Community and Constitutional Affairs is actively working on developing a broader legal framework for the removal of vehicles from all private land. As I have said already, the Minister for Home Affairs is hoping to bring forward a draft law within the next year and certainly by the end of this term. Consideration was given to extending these Regulations to all private landowners, but on discussions with the Comité des Chefs de Police and the Department for Infrastructure, it indicated there were a number of operational practicalities that must be dealt with before a regime for all private landowners can be introduced.

[17:00]

The Scrutiny Panel's comments helpfully explained the current position on this broader piece of work as well as identifying some of the challenges in developing a regime that will fit for all private landowners. Their report has also been very helpful in answering some of the questions and comments to ensure that this draft Regulation is a robust and proportionate mechanism for Andium and the Ports of Jersey to remove and, if necessary, dispose of unauthorised vehicles from their lands. So, to summarise, these proposed Regulations are narrow Regulations and apply just to Andium and Ports of Jersey, reinstating what was there before they were incorporated. The bigger piece of work, which needs to be done, is underway and hopefully will come back before the end of this Assembly or sooner if possible. I propose the Regulations.

The Bailiff:

Are the Regulations seconded? **[Seconded]** Does any Member wish to speak on the principles? All Members in favour of adopting the principles kindly show. Those against? The principles are adopted. There has already been a Scrutiny review. How do you wish to take these Regulations, Minister, altogether?

12.2 The Deputy of Trinity:

I think so, yes please. I am happy to go through them unless Members have questions and I can answer them specifically.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on any of Regulations 1 to 6? Those Members in favour of adopting Regulations 1 to 6 kindly show. Those against? The Regulations are adopted. Do you propose them in Third Reading, Minister? Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Those Members in favour of adopting the Regulations in Third Reading **[Interruption]** ... the appel is called for. I invite Members to return to their seats. The vote is on the Draft Removal of Vehicles (Private Land) (Jersey) Regulations in Third Reading and I ask the Greffier to open the voting.

POUR: 33		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				

Senator A.K.F. Green				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Brée (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

We now come to P.39, Nursery ...

Senator P.M. Bailhache:

I wonder if I might ask for the co-operation of the Minister for Education and the indulgence of the Assembly to allow me to take the Chief Minister's proposition in relation to the Draft Royal Court (Amendment No. 14) Law at this stage before we get into a long debate. This is, I hope, an uncontroversial matter and I have to leave the Assembly at lunchtime tomorrow and I do not wish to place the Chief Minister in an embarrassing position.

The Bailiff:

Do Members agree this item should be taken now? Very well, Greffier, you will take over the chair please.

Senator P.F. Routier:

Just one other thing. If we manage to deal with this matter fairly promptly perhaps we could then take Deputy Wickenden's proposition as well. It is just a matter of timing that we would use our time effectively.

13. Draft Royal Court (Amendment No. 14) (Jersey) Law 201- (P.43/2016)

The Deputy Greffier of the States (in the Chair):

Very well, I will ask the Greffier to read the citation.

The Assistant Greffier of the States:

Draft Royal Court (Amendment No. 14) (Jersey) Law 201-. A law to amend further the Royal Court (Jersey) Law 1948. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

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

This is a minor amendment to the Royal Court (Jersey) Law 1948 which is brought to the Assembly by the Chief Minister at the request of the Bailiff. It would, if the Assembly passes it, amend and expand the time limits for dealing with a vacancy among the Jurats. If Members will allow me very briefly to explain the procedure. As Members are probably aware, once a vacancy occurs among the Jurats the Bailiff must, within 14 days, give notice of the vacancy to members of the Electoral College and the notice also prescribes the date by which nominations of candidates for the vacancy must be received, this being not less than 10, nor more than 14, days from the date of the notice. A nomination meeting of the Electoral College must then be summoned within 14 days of the last date for the receipt of nominations. Usually this causes no difficulty, but this year there is a potential practical difficulty which has highlighted a wider problem with these time constraints. A Jurat will be retiring on 25th November 2016, which means that the Bailiff must give notice of the vacancy by 9th December at the latest and the latest date for the receipt of nominations would therefore be 23rd December and if there is only one nomination the swearing in must take place before 30th December. As Members, I am sure, will be aware, it is really not practical to make arrangements for the swearing in ceremony of a Jurat at that time of year. The purpose of the amendment is, therefore, to give greater flexibility to the Bailiff in convening the Electoral Assembly to take account of practical difficulties of this kind but also, for example, where there was an important debate in the States where many Members of the Electoral Assembly would be obliged to attend this Assembly rather than attending the Electoral Assembly. So the proposal is that the number of days should be expanded from 14 days to 28 days so as to create this flexibility. I move the principles of the bill.

The Deputy Greffier of the States (in the Chair):

Are the principles seconded? [**Seconded**] Does anybody want to speak on the principles?

13.1.1 Deputy M. Tadier:

It is just for information and, obviously, if I come over as ignorant of this particular process I do apologise, but it is not one that I am overly familiar with even though I have seconded a Jurat candidate myself not so long ago. Would it not be possible for the Jurat in question simply to retire a bit earlier, maybe 2 weeks earlier than he or she is doing, so that we did not need to pass this law? If that is not possible for whatever reason then that can perhaps be explained but it seems to me maybe that person could retire a bit earlier so that we do not have to change the whole law just because of this one occasion, which I admit may recur. I have other comments that relate to Jurat selections but they are probably best reserved for a different time and place so I will reserve that for another time and place.

The Deputy Greffier of the States (in the Chair):

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

13.1.2 Senator P.M. Bailhache:

That is a very practical suggestion from the Deputy but, unfortunately, the law provides expressly that a Jurat holds office until his or her 72nd birthday and we will need to amend the law in that

respect if one were going to give effect to the Deputy's suggestion. So I maintain the principles of the Bill.

The Deputy Greffier of the States (in the Chair):

Members in favour of supporting the principles please show.

Deputy M. Tadier:

Can we have a vote on that please?

The Deputy Greffier of the States (in the Chair):

Can we have the appel? The appel is called for. If all Members will return to their seats and I ask the Greffier to open the voting.

POUR: 35

Senator P.F. Routier
Senator A.J.H. Maclean
Senator I.J. Gorst
Senator L.J. Farnham
Senator P.M. Bailhache
Senator A.K.F. Green
Connétable of St. Helier
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
Connétable of St. John
Connétable of Trinity
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy K.C. Lewis (S)
Deputy E.J. Noel (L)
Deputy of St. John
Deputy J.M. Maçon (S)
Deputy S.J. Pinel (C)
Deputy R.G. Bryans (H)
Deputy of St. Peter
Deputy S.Y. Mézec (H)
Deputy L.M.C. Doublet (S)
Deputy S.M. Wickenden (H)
Deputy S.M. Brée (C)
Deputy M.J. Norton (B)
Deputy T.A. McDonald (S)
Deputy of St. Mary
Deputy G.J. Truscott (B)

CONTRE: 1

Deputy M. Tadier (B)

ABSTAIN: 0

The Deputy Greffier of the States (in the Chair):

Do you wish to take the 2 together? Oh sorry, Deputy Le Fondré, it is your panel, are you ... no.

Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):

No, thank you, Madam.

13.2 Senator P.M. Bailhache:

I move the 2 Articles of the Bill *en bloc* and ask Members to support them.

The Deputy Greffier of the States (in the Chair):

Are the Articles seconded? **[Seconded]** Does anybody wish to speak on the Articles? No. If Members would show if they are in favour of supporting the 2 Articles. The Articles are adopted. Do you wish to move to Third Reading?

13.3 Senator P.M. Bailhache:

I move the Bill in the Third Reading, Madam.

The Deputy Greffier of the States (in the Chair):

Is that seconded? **[Seconded]** Does any Member wish to speak on the Third Reading? Deputy Tadier.

13.3.1 Deputy M. Tadier:

It is just to clarify why I voted against. I am pleased that Senator Bailhache said it was a practical suggestion, but it seems to me that the correct change to bring to the Assembly would be to allow Jurats to retire when they want to, rather than insisting they necessarily stay on until the bitter end, which may be their 72nd birthday, which I use that metaphorically, of course. Of course 72 is not old these days. Sometimes I feel 72 and I look across the Chamber at the Constable, who is still bounding around like a spring lamb, and that is when I realise age is relative. That is really the reason, that clearly it does not seem necessarily even human right compliant that we force people to take an office until they are 72 and if their circumstances change for whatever reason, we say: “No, you have to stay there.” It seems rather than necessarily changing the time period for lodging or giving notice that that might be a more holistic approach, but no doubt that may come as part of a more wholesale review, Madam.

The Deputy Greffier of the States (in the Chair):

Thank you, Deputy. Senator, did you wish to reply?

13.3.2 Senator P.M. Bailhache:

I note the comment of Deputy Tadier. The Bailiff will receive a report of this debate and I am sure he will take it into consideration. I maintain the Bill in the Third Reading.

The Deputy Greffier of the States (in the Chair):

Those Members wishing to vote in favour in the Third Reading, please show. Those against? The law is carried in the Third Reading. We will move on to the ...

Senator P.M. Bailhache:

I made a suggestion earlier that perhaps we could take Deputy Wickenden’s proposition and it might take us until 5.30 p.m. perhaps.

The Deputy Greffier of the States (in the Chair):

Is that acceptable, Deputy Wickenden?

Deputy S.M. Wickenden:

Yes.

14. Collective Responsibility Statements: propositions, amendments, comments or statements lodged or submitted by a Minister (P.40/2016) - as amended

The Deputy Greffier of the States (in the Chair):

Very well. Then I ask the Greffier to please read the proposition of Deputy Wickenden.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion to agree that the Standing Orders of the States of Jersey should be amended to require that any proposition, amendment, comment or statement lodged or submitted by a Minister should include a statement including which Ministers and Assistant Ministers are bound to vote in accordance with collective responsibility in respect of the proposition or amendment and to request the Privileges and Procedures Committee to bring forward for approval the necessary amendment to the Standing Orders of the States of Jersey to give effect to the proposal.

The Deputy Greffier of the States (in the Chair):

Deputy Wickenden, before we start, just to clarify, we did read the proposition as amended. Is that what you ... we did not read it as amended.

Deputy S.M. Wickenden:

We did not.

The Deputy Greffier of the States (in the Chair):

Perhaps it would be in good order then for the Greffier to read to the amendment as well or to read it as amended.

Deputy S.M. Wickenden:

Please could you read it as amended, as that is how I wish to take it?

The Deputy Greffier of the States (in the Chair):

Yes.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion (a) to agree that the Standing Orders of the States of Jersey should be amended to require that any proposition lodged or submitted by a Minister should include a statement detailing which Ministers and Assistant Ministers are bound to vote in accordance with collective responsibility in respect of the proposition and to request the Privileges and Procedures Committee to bring forward for approval the necessary amendments to the Standing Orders of the States of Jersey to give effect to the proposal.

[17:15]

14.1 Deputy S.M. Wickenden:

I know it has been a long day and hopefully this one is not too contentious and I will try and make it brief. My proposition today is not about the merits or demerits of collective responsibility. My proposition here, how it came about was when I was doing my research on a previous proposition I could not find out who was the Minister or Assistant Minister in a previous Assembly. Therefore, when you are looking at voting records, it just was not abundantly clear for me. If it is not clear for me, then it is not going to be clear for future States Members and it is not going to be clear for the people of Jersey that have an interest and look into these things. I am asking today just really to say

that let us make this more transparent, let us just have a document that lays out: “These people are held by collective responsibility” and then, when we look at the voting records, we can refer back to it. When I first submitted the proposition I included amendments, comments and statements in it, but after meeting with the Chief Minister, we came to a joint conclusion that that was not very helpful, because where a Minister normally will speak to somebody that has had a proposition, they could come up with some kind of middle ground up until the point of the debate, but if they have already laid out and set their statement of how they are going to vote, that kind of hinders that whole process, so slightly undemocratic. So this is really it. All I am trying to say is let us just have a statement, let us make it clear for the future States Members, for the people of Jersey, let us just make it a bit more transparent and let us just make it in that level. With that, I uphold the proposition.

The Deputy Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]** Does any Member wish to speak? Senator Gorst.

14.1.1 Senator I.J. Gorst:

I just wanted to clarify the position, which would not have been clear from the previous comments, that the Council of Ministers does support not only the intention of what Deputy Wickenden is trying to achieve, but the practice of it. Therefore, we are supporting his proposition as amended.

14.1.2 Deputy M. Tadier:

Just to make absolutely sure there is no chance of me starting my debate today. **[Laughter]** It seems a cruel irony of the advent of the Council of Ministers and collective responsibility that collective responsibility is never applied when we want it to be applied and it is applied, it seems, when we do not want it to be applied. I do not necessarily need to say anything more about that. I think the Chief Minister knows what I am talking about. It would be good to see the Chief Minister’s whip come out now and again on other issues, which he stood for election on. I agree with this; it clearly looks like it is going to go through and I congratulate the Deputy with what he is trying to do. It seems to me, though, the time for putting the statement of collective responsibility is not necessarily when a proposition or an amendment or comments are lodged, but it is when you stand for election. I think the public would find it very helpful to know who is bound by ministerial whip before the election takes place and who is not, and that is certainly the kind of policy that we apply to our part. I think it would be helpful if it were applied to the public so they know exactly what they get before they elect a Council of Ministers, a motley crew, who will ultimately end up with a ministerial whip and collective responsibility sometimes, of course unless there are long-held beliefs. That is the message I gave to the students and pupils of La Moye School when I saw them last week with my 3 tins without any labels on, I said: “Choose a can that you want to vote for” and they all voted for the middle one, and even when I put a label on one of the tins saying it was strawberries, they still voted for the one in the middle for a variety of interesting reasons, some of which were psychological, some were peer pressure and so on, and some were the fact that that is the one that they had always voted for. **[Laughter]** When I got to the end of it ...

Senator I.J. Gorst:

I wonder if the Deputy would give way?

The Bailiff:

I think he will, because he wants to spin it out until 5.30. **[Laughter]**

Senator I.J. Gorst:

I am not sure if the Deputy is in confessional mode, Sir, but he seems to be suggesting that centre ground politics is the future and not the left.

Deputy M. Tadier:

I think that is what the pupils saw, until they found out what was in the can, because much to their chagrin - if it is possible to have chagrin when you are a year 5 pupil at La Moye in St. Brelade - I told them before that they were able to eat the can that they chose. So they all got one vote, one man, one vote, so to speak, even though they were not all men and some of them were female, and they all chose the one in the middle. I got the 3 volunteers that had voted for each can, opened it up and they were very disappointed to find out that the tin in the middle contained prunes, stewed prunes nonetheless. I said: "Well, that is tough. I am afraid you are going to have to stick with it until the next elections because that is all you are allowed to eat." Then they wanted to turn the time back and either vote for the strawberries, or in fact the third can was even better, it had peaches in there, and maybe that was the middle ground option, that they should have voted for the peaches rather than strawberries, which had gone slightly off-colour, and the prunes, which certainly would have had some kind of medical effect on them, but not necessarily the desired one. So although these words were said in jest, there is an important point when it comes to collective responsibility. It is very strange to have collective responsibility when nobody knows about it before the election, when you cobble together a collection of Ministers, who all have separate manifestos, some of which they have to either throw in the bin straight away because they realise they cannot do it. So I think this does address part of the issue, but of course there is a wider context here. If we are to continue to have ministerial government and we have to move away from the committee and consensual system that used to exist in the past, which, I think, is probably long gone now, we need to be honest with ourselves and be honest with the public and hopefully we will see a Council of Ministers in the future which has either been elected on a proper mandate collectively or certainly forming a coalition government, which they can enact the policies that they promised to the public.

14.1.3 Connétable L. Norman of St. Clement:

Yes. As Chairman of the Privileges and Procedures Committee, I would like to confirm that, obviously, we have no problem in acceding to the request of the States, if the States approve this proposition, but I would say this: the Council of Ministers now seem to be supporting this proposition, as amended. They can do what is requested voluntarily now without having to wait for a change in Standing Orders, which clearly, as I say, if the States approve this proposition, we will bring. So they may wish to consider that. But I would like to comment on their comments. There are a couple of things that the Council of Ministers say. They say there is merit in P.P.C. (Privileges and Procedures Committee) exploring whether the same principles of disclosing voting intentions should be applied to other committees and panels. I think the point that the Council of Ministers have not come to terms with, is that these committees and panels do not have the mantra of collective responsibility as the Council of Ministers does. Quite rightly, in my view, they are the only group that do. Also they suggest that it is a matter that should be considered by the Privileges and Procedures Committee. No, we are not going to consider it. It is the States who are considering the matter. The proposition is very clear: that if the States approve this proposition the P.P.C. will bring amendments. We will not be considering it, we will be bringing amendments to Standing Orders to give effect to the proposition.

The Bailiff:

Does any other Member wish to speak? If not, I call on the proposer to reply.

14.1.4 Deputy S.M. Wickenden:

Thank you to the Chief Minister for clarifying the position where we are at and for the very amusing story by Deputy Tadier and to the Constable of St. Clement. I agree, I know that the Council of Ministers could do this anyway, but I think it is quite important to do it in Standing Orders, so it is all clear and again more transparent and open. If a future Council of Ministers decides they are not happy with collective responsibility, all they have to do is leave that page blank, so it will make a big difference anyway. But I thank everyone for their views and I call for the appel, if possible, please.

The Bailiff:

The appel is called for. I invite Members to return to their seats, and the vote is on the amended proposition of Deputy Wickenden, P.40 Collective Responsibility, and I ask the Greffier to open the voting.

POUR: 39		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator A.K.F. Green				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				

Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

Senator P.F. Routier:

May I propose the adjournment?

The Bailiff:

Although it is not 5.30 p.m., it seems very sensible to adjourn at this stage. The States now stand adjourned until 9.30 a.m. tomorrow morning.

ADJOURNMENT

[17:24]