

---

# STATES OF JERSEY



## FORESHORE ENCROACHMENT POLICY REVIEW (S.R.1/2021): RESPONSE OF THE MINISTER FOR INFRASTRUCTURE

---

Presented to the States on 18th October 2021  
by the Minister for Infrastructure

---

STATES GREFFE

**FORESHORE ENCROACHMENT POLICY REVIEW(S.R.1/2021):  
RESPONSE OF THE MINISTER FOR INFRASTRUCTURE**

<b>Ministerial Response to:</b>	S.R.1/2021
<b>Ministerial Response required by:</b>	25th February 2021
<b>Review title:</b>	Foreshore Encroachment Policy Review
<b>Scrutiny Panel:</b>	Environment, Housing and Infrastructure Scrutiny Panel

### INTRODUCTION

I wish to thank the Environment, Housing and Infrastructure Scrutiny Panel (the Panel) for its review: “Foreshore Encroachment Policy Review” of 14 January 2021 (S.R.1/2021). The review of this complex and difficult matter is comprehensive and provides useful discussion of many of the strands to the policy principles.

### FINDINGS

	<b>Findings</b>	<b>Comments</b>
1	The Foreshore is a moveable concept that is impacted by various factors including the changing high-water mark. Its uncertainty is amplified due to structures including the sea walls and the action of reclaiming of land over the years.	Agreed, this is a very complex boundary line.
2	Numerous submissions received, and information gathered during public hearings, indicate sustained uncertainty over what land was Crown-owned land and this uncertainty of the boundary line is a concern to the Panel. Particularly as the boundary line would be pertinent to any revised policy and understanding of whether an encroachment of the foreshore had occurred or would occur in the future.	The Foreshore is not one boundary, but a collection of boundaries between what was crown owned land and several hundred landowners. How and when the foreshore boundary was established with each landowner also varies.

	<b>Findings</b>	<b>Comments</b>
3	Whilst open to legal interpretation, it is a recurring view that Clause 2 of the deed of transfer from the Crown to the public implies that any longstanding habitual and recognised custom by the general public should remain unaffected by the transfer of ownership. Therefore, it is deemed by many that seeking compensation payments for encroachments on what was previously Crown-owned land would not be in keeping with the spirit of the contract.	Agreed, longstanding habitual and recognised custom by the general public should remain unaffected by the transfer of ownership. In general encroachments by private landowners are not likely to benefit the public.
4	There is much uncertainty regarding the foreshore boundary, as well as the land that is defined as public-owned foreshore land.	Agreed, this is a very complex boundary line.
5	A Master Schedule is being compiled to capture all key data including the extent of encroachments around the island and possible resolutions.	Correct, a Master Schedule has been compiled and is undergoing a review.
6	The reasons given for not disclosing the Master Schedule publicly is that it is derived from privileged legal advice and contains information relating to private landowners. This has been contended on the basis that it is the Minister's policy, not Law Officers' advice which is being discussed. Moreover, that the information relating to individual property owners would likely be obtained from research of individual title deeds contained in the Public Registry which is publicly accessible.	Correct, it may not be in the best interest of all landowners concerned to make public the Master Schedule.
7	There is a notable lack of public transparency over where the boundary is and how it has been determined. A Master Schedule of encroachments has been provided in confidence to the Panel, however there is currently no	A map showing the boundary line of the Foreshore using data from the Master Schedule is being compiled.

	<b>Findings</b>	<b>Comments</b>
	map showing a definitive boundary line or justification provided to the public as to how this has been determined.	
8	There is insufficient evidence to suggest that encroachments along the foreshore have significantly affected the Minister for Infrastructure's ability to maintain sea defences.	I consider that policy information on the maintenance of sea defences exists in the "Jersey Shoreline Management Plan (2020)", which provides an assessment of coastal risks and specific advice for the management of coastal defences to maintain a resilient coastline. It also sets out shoreline management policies and identifies methods to deliver them. This covers sea defence maintenance, adaptive management and 'advance the line' management, where appropriate.
9	There are other policy mechanisms which could be explored, such as a separate Sea Defences Maintenance Policy and/or Planning Obligation Agreements to ensure that maintenance and upkeep of sea defences is not compromised. Therefore, it is questionable as to whether the revised foreshore encroachment policy is required to seek compensation payments in the matter it currently does.	Consideration is being given to both a Sea Defences Maintenance Policy and Planning Obligation Agreements.
10	Jersey conveyancers and / or lawyers would be aware of the issues and possible ramifications relating to the difficulty in determining the foreshore boundary when an adjoining property is sold and would draw this to the attention of the prospective purchasers during the conveyancing process.	Agreed, a Jersey conveyancer and / or lawyers should be aware of the issues and possible ramification.
11	Due to the fact the foreshore previously belonged to the Crown, the prescriptive title relating to 40 years exclusive possession, which legally applies to most other forms of ownership, does not apply in relation to land owned by the Crown.	Correct, this does not apply in relation to land owned by the Crown.

	<b>Findings</b>	<b>Comments</b>
12	Property owners seeking planning permission have a legal duty to declare ownership of the land they are seeking planning permission for.	Correct, a person(s) must declare ownership of the land they are seeking planning permission for
13	In some cases, planning approval has been granted where it has already been acknowledged that encroachments either may exist or were likely to be incurred. Furthermore, that prior to the transfer of ownership from the Crown to the public of Jersey, when requests were made for works which would incur an encroachment, under its ownership, the Crown generally acquiesced to these requests. In these instances, property owners have still been required to pay compensation payments for these encroachments.	I do not believe that POAs can be connected to land encroachment situations <i>per se</i> , and used to form part of the resolution – the two matters are quite distinct.
14	The ‘trigger’ approach utilised in the current policy identifies encroachments when either the property is transacted, planning permission sought or a direct approach made to Jersey Property Holdings by a property owner.	Correct, this will cause the least interference.
15	Evidence received by the Panel appears to support an overwhelming and unanimous view that the revised policy remains an unfair approach. That it is complicated, unclear and lacks transparency.	Every effort has been made to produce a policy that is workable and fair.
16	There appears to be no clear differentiation between how a deliberate or unintentional encroachment on the foreshore would be dealt with.	It is felt that all encroachments are deliberate because a combination of conveyancing and physical features will in generally make it clear where the boundaries lie.
17	Jersey Property Holdings will continue to apply a sliding scale mechanism to determining the level of a foreshore	A sliding scale reduction has been applied, so those third-parties with historic encroachments

	<b>Findings</b>	<b>Comments</b>
	encroachment compensation payment. However, the criteria for the sliding scale is not included in the current or the revised policy.	generally have the opportunity to acquire the Public land at a significantly reduced value.
18	There is a lack of information contained in the revised policy as to how the approach will be taken to judge each case by its own merits and what processes will be in place to ensure this happens.	The policy is not the final version. It will be tested, updated and revised.
19	There is some degree of impact felt in relation to property transactions being delayed due to the policy development process for the revised policy, although the actual scale of this impact is uncertain. It is, however, conceivable that the length of time and approach taken is likely to significantly impact some property owners along the foreshore.	Agreed, any delay is regrettable.
20	There is currently no suitable complaints or appeals mechanism provided for in either the current or the revised policy to satisfactorily enable individuals appeal a decision made by the Minister in relation to foreshore encroachment compensation. The only option available to them is to make a case to the States of Jersey Complaints Board.	Appendix 1 of the revised Policy provides the option of referring a dispute to an expert third party, but arbitration is a more expensive form of process than Court proceedings.

## RECOMMENDATIONS

	Recommendations	To	Accept / Reject	Comments	Target date of action/ completion
1	<p>The Minister for Infrastructure should give further consideration to how encroachments are dealt with in relation to those that pre-date the gifting of the foreshore from the Crown in 2015. Specifically, this should consider whether the land in question was Crown-owned land to begin with and a date determined from when alleged encroachments should be considered. This should be considered prior to the adoption of the revised policy.</p>	MI NF	Reject	<p>The Public's ownership of the foreshore was considered thoroughly prior to the adoption of the original policy. It is axiomatic that a policy in respect of the Public's land can only apply to land owned by the Public.</p> <p>The Public of the Island owns all the foreshore and seabed of Jersey. The Crown in right of the Bailiwick of Jersey ceded the foreshore to the Public in a series of contracts starting in 1895 and culminating in the contract of gift from Her Majesty to the Public of the Island in 2015. Further, the Public has been in uninterrupted possession of the foreshore for over 70 years since 1950 by virtue of leases of the foreshore from the Crown in right of the Bailiwick of Jersey.</p> <p>I would mention that the Land Transaction for the 2015 transfer of the foreshore and seabed from the Crown to the Public of the Island was reported to members in accordance with Standing Order 168(3) on 21 May 2015 [R.61/2015]. Subsequent to the presentation of R.61/2015, only one question was asked by a States Member, which was by Deputy R Labey of the then Chief Minister on 2 June 2015 during questions without notice [<a href="#">Hansard June 2015, 7.6 at Page 59</a>].</p> <p>Also, during the recent States' debate of 'Foreshore: policy for alleged encroachment payments (P.101/2020): amendment (P.101/2020 Amd.)' the Attorney General provided responses and advice to us on number of questions concerning ownership and potential claims [Hansard 24 and 25 September 2020 = attached as Appendix A].</p>	N/A

	<b>Recommendations</b>	<b>To</b>	<b>Accept / Reject</b>	<b>Comments</b>	<b>Target date of action/ completi on</b>
				<p>I am advised artificial reclamation did not divest the Crown of its ownership of the foreshore. Where a seawall has been built on the foreshore, any section of foreshore behind the sea wall remained in the ownership of the Crown. The 2015 contract of cession has the express intention of ceding to the Public sections of foreshore that are behind the sea walls.</p> <p>There is a misconception, and a degree of hyperbole, that addressing encroachments on the foreshore is somehow something new which has only occurred since completion of the 2015 Contract. This is incorrect.</p> <p>The Public dealt with encroachments when it was the Crown's tenant and would enter deeds of arrangement as appropriate which would often involve a consideration payable by the encroaching property owner. As part of my answer to written Question W.Q. 16/2020 I explained and confirmed this was not a new process. Payments in respect of encroachments on the foreshore were made prior to the gift of the foreshore to the Public of the Island by Her Majesty. A schedule of past transactions is attached as Appendix C.</p> <p>Ownership of the foreshore and the seabed brings with it all the rights and all the responsibilities of ownership. That responsibility includes how best to protect the public's interest in the foreshore as a valuable amenity for the benefit and enjoyment of all. now be provided for the public benefit. No individual member of the public has any form of personal ownership interest in the land which is owned by the Public.</p>	



	<b>Recommendations</b>	<b>To</b>	<b>Accept / Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
2	In the interests of greater clarity and transparency, the Minister for Infrastructure should consider further how the boundary line of the foreshore and the basis of evidence for its determination can be made publicly accessible. This should be considered and the outcome reported back to the Panel before the end of Q2 2021.	MI NF	Accept	<p>Recommendation 2 is agreed in principle. I have sought to address it by the addition of Appendix 1 to the policy, which Appendix deals with certain procedural matters connected to the application of the policy.</p> <p>I am confident that in setting-out the procedure which will be followed in the initial contact by JPH with third-party owners, and subsequently making available the map or plan(s) in accordance with Data Protection (Jersey) Law 2018 principles, it will show that this recommendation has been addressed. I also confirm that I will report to the Panel on this point before the end of Q2 2021.</p>	July 2021
3	The Minister for Infrastructure should consider a separate Sea Defences Maintenance Policy, in addition to how Planning Obligation Agreements might satisfactorily be utilised going forward, to ensure adequate upkeep and maintenance of seawalls where encroachments are concerned. The Minister should investigate these possibilities and report back to the Panel before the end of Q3 2021.	MI NF	Accept	<p>I agree with the principle of this recommendation. I consider that policy information on the maintenance of sea defences exists in the “Jersey Shoreline Management Plan (2020)”, which provides an assessment of coastal risks and specific advice for the management of coastal defences to maintain a resilient coastline. It also sets out shoreline management policies and identifies methods to deliver them. This covers sea defence maintenance, adaptive management and ‘advance the line’ management, where appropriate.</p> <p>However, I am also happy to work with the Panel to understand the specific points of policy for the maintenance of sea defences which have been analysed, to determine whether an additional policy, or an expanded policy, is necessary.</p> <p>Regarding the use of Planning Obligation Agreements (POAs) for seawall infrastructure works arising from new coastal development applications, I</p>	Oct 2021

	<b>Recommendations</b>	<b>To</b>	<b>Accept / Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
				<p>consider that there may be scope to make such agreements to that effect, having due consideration to the guidance document ‘<i>Supplementary Planning Guidance: Advice Note - Planning Obligation Agreements – July 2017</i>’. I have therefore arranged for JPH Officers to collaborate with Planning Officers regarding the opportunities for the use of POAs on coastal applications for infrastructure works.</p> <p>However, I do not believe that POAs can be connected to land encroachment situations <i>per se</i>, and used to form part of the resolution – the two matters are quite distinct. The advice which I have received to date is that a POA cannot be used as mechanism to off-set the loss of land arising from an encroachment. Nevertheless, I will report back to the Panel on this recommendation before the end of Q3 2021.</p>	
4	The Minister for Infrastructure should, in collaboration with the Minister for the Environment, seek to put in place a suitable, formal protocol for dealing with planning permission applications relating to properties along the foreshore. This should be put in place before the end of Q2 2021.	MI NF	Accept	<p>I fully support this recommendation. It is indeed a matter which had already been previously raised with a former Minister for the Environment and with “Planning”. It is now being re-investigated, and whilst a form of protocol has not yet been established, discussions between Officers from the respective departments indicate that it is now possible for a formal process to be put in place.</p> <p>Foreshore encroachments tend to be, in the main, on land behind, and up to, seawalls. They also tend to arise when properties are being developed, with owners seeking to benefit from having access up to, onto, or even over, a seawall.</p> <p>I am firmly of the view that a preventative approach is sensible. Where an application for planning permission for</p>	July 2021

	<b>Recommendations</b>	<b>To</b>	<b>Accept / Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
				<p>development that falls within an area of responsibility or concern of to me, or may affect the boundary of the foreshore, it should be referred to me for comment. Although this is a matter of detail for the protocol, for the purposes of Article 32 of the Drainage (Jersey) Law, 2005 and Articles 16 and 17 of the Planning and Building (Jersey) Law 2002 (as the sewerage undertaker and flood defence authority for Jersey and Minister with political responsibility for the Public's landholdings), I am likely to ask to be consulted on all applications for planning permission where any part of the application site is on, by, or adjacent to the foreshore. Please note that for convenience I have attached the above-mentioned articles, plus other relevant ones, as Appendix B.</p> <p>I will revert to the Panel once the details of the protocol have been finalised before the end of Q2 2021.</p>	
5	The Minister for Infrastructure should seek to apply the policy in a fair and non-discriminatory manner, and not solely to those where a trigger event has occurred. Compensation sought or paid should be reflective of the encroachment and limitations agreed. This should be reflected in the revised policy prior to its adoption.	MI NF	Accept	<p>I agree with the principle of this recommendation, although it does require an adequate level of resourcing to achieve it. The recommendation deals with three aspects: firstly, the approach, in respect of timing, as to how all foreshore encroachments are dealt with; secondly, the value which is attached to Public land when it is sold to the third-party as part of an encroachment transaction; and thirdly, the principle of being non-discriminatory to a particular owner or set of owners.</p> <p>It should be noted that following the setting-up of the former Property Services Department in the early 1990s (which preceded JPH), many foreshore encroachments cases have been dealt with in conjunction with the Crown. Some of</p>	July 2021

	Recommendations	To	Accept / Reject	Comments	Target date of action/ completion
				<p>those cases arose where third-parties were selling their coastal properties and approached the government, seeking the government’s co-operation to resolve an encroachment to allow the property to be sold. Other cases arose where a new significant encroachment had been seen taking place.</p> <p><u>Timing</u></p> <p>The timing of how <i>all</i> foreshore encroachments are dealt with, is of course a difficult matter given the extent of the problem.</p> <p>It will be virtually impossible to deal with every foreshore encroachment case simultaneously. Some property owners will prefer to defer dealing with a foreshore encroachment relating to their property until a trigger event such as a sale or transfer of the property. However, I do agree that if certain individual encroachments are being resolved, then there has to be a plan in place to address all encroachments over a reasonable time frame.</p> <p>At present, JPH and the Law Officers’ Department are not sufficiently resourced to complete the task of contacting every owner and resolving every foreshore encroachment simultaneously. We therefore need to work with the relevant sections of the government to put in place the necessary resources to complete this piece of work in a timely manner, so that all affected third-parties are contacted etc together. JPH considers that it requires two additional full-time Officers dedicated to the task, or equivalent consultancy resource. I understand that the Law Officers’ Department will also need at least one full time conveyancer.</p>	

	<b>Recommendations</b>	<b>To</b>	<b>Accept / Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
				<p><u>Value</u></p> <p>Turning to the matter of the value which is attached to Public land when it is sold to the third party as part of a foreshore encroachment resolution, it would be wrong to depart from the valuation methodology developed by the Royal Institution of Chartered Surveyors. The amount which a third party should be asked to pay for land which is acquired as part of an encroachment resolution should be based on a market assessment to reflect the use to which the land is being put by the third-party and the benefit which the land is giving to the third-party property. Thus, an encroachment comprising a strip of garden is likely to be less valuable than, say, balconies on a block of apartments.</p> <p>I cannot put forward an alternative method of valuation to the one developed by the RICS.</p> <p>However, I would reiterate that despite the principle of '<i>possession quadragénaire</i>' (<i>i.e. 40 years of uninterrupted possession</i>) <i>not running against Crown land</i>, historic encroachments have always been treated in a manner which acknowledges the period of existence. A sliding scale reduction has been applied, so those third-parties with historic encroachments generally have the opportunity to acquire the Public land at a significantly reduced value.</p> <p><u>Non-discrimination</u></p> <p>The policy will of course be applied in a fair and non-discriminatory manner.</p>	
6	The Minister for Infrastructure should seek to differentiate	MI NF	Reject	Recommendation 6 presents significant difficulties and I believe is unworkable in practice. Encroachments do not happen or	N/A

	<b>Recommendations</b>	<b>To</b>	<b>Accept / Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
	between a deliberate or unintentional encroachment in the revised policy and this should be incorporated into the revised policy prior to its adoption.			appear by accident. Each encroachment needs to be considered on its own merits. Whilst the Minister would not wish to be unduly unsympathetic in respect of an owner who has been poorly advised, or has made a genuine error of judgment, to try to draft or create a policy by way of exception will make it unworkable.	
7	The Minister for Infrastructure should further define and set out the criteria for a Sliding Scale into the revised policy so that it is clear and transparent. This should be incorporated into the revised policy prior to its adoption.	MI NF	Accept	<p>Members will recall that the original 2017 draft of the policy included an associated procedure document which contained the sliding scale to be used for historic encroachments. Members will also recall that the Complaints Board disagreed with the principle of reducing the value of encroachments to reflect their age , and it was in light of this, that the sliding scale was not included in the revised draft of the policy, what was included as a policy principle.</p> <p>In view of the Panel's recommendation 7, I have re-introduced the sliding scale to the procedural matters in Appendix 1 to the policy. Members will note that the sliding scale has also been revised since its original 2017 publication, with the % reductions now being more favourable for third-parties.</p>	July 2021
8	The Minister for Infrastructure should be explicit in the revised policy as to how each case will be considered on an individual basis and what processes will be in place to ensure this happens. This should be incorporated into the policy before its adoption.	MI NF	Accept	I believe what is sought is clarification on the approach and process for resolving encroachments through the policy. I have therefore arranged for this to be included in the procedural matters in Appendix 1 attached to the revised policy.	July 2021

	<b>Recommendations</b>	<b>To</b>	<b>Accept / Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
9	The Minister for Infrastructure should seek to incorporate a suitable and workable process for dealing with complaints relating to foreshore encroachment compensation payments and in addition a clear appeals and arbitration process for dealing with any such complaints. This should be incorporated into the policy before its adoption.	MI NF	Reject	Recommendation 9 is not acceptable as drawn. I have included matters of procedure in Appendix 1 of the revised Policy including the option of referring a dispute to an expert third party, but arbitration is a more expensive form of process than Court proceedings. There are also some practical issues, such as how an appeal would be funded or paid for. This is an area that may benefit from discussion with Scrutiny.	N/A

### **CONCLUSION**

I reiterate that I am grateful to the Environment, Housing and Infrastructure Scrutiny Panel for its review and the work undertaken on this complex and difficult matter in respect of the policy principles.

I am pleased that it has been possible, in conjunction with departmental officers who are involved with foreshore encroachments, to offer my support to many of the recommendations of the Panel's review.

# STATES OF JERSEY

## OFFICIAL REPORT

**FRIDAY, 25th SEPTEMBER 2020**

<b>PUBLIC BUSINESS .....</b>	<b>4</b>
<b>1. Foreshore: policy for alleged encroachment payments (P.101/2020): amendment (P.101/2020 amd.) - resumption.....</b>	<b>4</b>
1.1 Deputy S.G. Luce of St. Martin: .....	5
1.1.1 Connétable C.H. Taylor of St. John: .....	6
1.1.2 Deputy J.A.N. Le Fondré: .....	6
Deputy M.R. Higgins of St. Helier: .....	9
Mr. M.H. Temple Q.C., H.M. Attorney General: .....	10
Deputy C.F. Labey of Grouville: .....	11
Deputy J.H. Young of St. Brelade: .....	12
Connétable S.A. Le Sueur-Rennard of St. Saviour: .....	12
1.1.3 The Constable of St. Brelade: .....	13
1.1.4 Deputy J.H. Young: .....	13
1.1.5 Deputy I. Gardiner of St. Helier: .....	15
1.1.6 Deputy M. Tadier of St. Brelade: .....	15
1.1.7 Deputy J.H. Perchard of St. Saviour: .....	16
1.1.8 Deputy J.M. Maçon of St. Saviour: .....	17
1.1.9 Connétable P.B. Le Sueur of Trinity: .....	17
1.1.10 The Deputy of St. Ouen: .....	17
The Attorney General: .....	20
1.1.11 Deputy K.C. Lewis: .....	20
<b>1.2 Foreshore: policy for alleged encroachment payments (P.101/2020) - as amended....</b>	<b>25</b>
1.2.1 Deputy M. Tadier: .....	25
1.2.2 The Deputy of St. Ouen: .....	26
1.2.3 Connétable R. Vibert of St. Peter: .....	27
1.2.4 Deputy D. Johnson of St. Mary: .....	27
1.2.5 Senator S.Y. Mézec: .....	28
1.2.6 Deputy J.H. Young: .....	28
1.2.7 Senator L.J. Farnham: .....	28
1.2.8 Deputy L.B.E. Ash of St. Clement: .....	29
1.2.9 Deputy K.C. Lewis: .....	29
1.2.10 Deputy G.C. Guida of St. Lawrence: .....	30
1.2.11 The Deputy of Grouville: .....	31
<b>2. States meetings in 2021: move to a 3-week cycle (P.106/2020) - as amended.....</b>	<b>34</b>
2.1 Deputy R. Labey (Chair, Privileges and Procedures Committee): .....	35
2.1.1 Deputy G.C. Guida: .....	38
2.1.2 Deputy I. Gardiner: .....	39
2.1.3 Deputy K.G. Pamplin of St. Saviour: .....	39



<b>LUNCHEON ADJOURNMENT PROPOSED .....</b>	<b>41</b>
<b>LUNCHEON ADJOURNMENT.....</b>	<b>41</b>
2.1.4 Deputy K.F. Morel of St. Lawrence: .....	41
2.1.5 Deputy G.P. Southern of St. Helier: .....	42
2.1.6 Senator S.Y. Mézec: .....	44
2.1.7 Deputy J.H. Young: .....	45
2.1.8 Deputy M.R. Le Hegarat of St. Helier: .....	45
2.1.9 Deputy J.A. Martin: .....	46
2.1.10 Connétable J. Le Bailly of St. Mary: .....	47
2.1.11 Deputy L.B.E. Ash: .....	47
2.1.12 Connétable K. Shenton-Stone of St. Martin: .....	48
2.1.13 The Connétable of St. Brelade: .....	48
2.1.14 Deputy R.J. Ward: .....	48
2.1.15 Deputy R.E. Huelin of St. Peter: .....	50
2.1.16 Deputy T. Pointon of St. John: .....	50
2.1.17 Deputy M. Tadier: .....	50
2.1.18 Senator J.A.N. Le Fondré: .....	52
2.1.19 Deputy G.J. Truscott of St. Brelade: .....	53
2.1.20 Senator T.A. Vallois: .....	54
2.1.21 Deputy C.S. Alves of St. Helier: .....	55
2.1.22 Senator L.J. Farnham: .....	56
2.1.23 Deputy J.M. Maçon: .....	57
2.1.24 Deputy M.R. Higgins: .....	57
2.1.25 The Deputy of St. Martin: .....	58
2.1.26 The Deputy of St. Ouen: .....	59
2.1.27 Deputy J.H. Perchard: .....	60
2.1.28 Deputy R. Labey: .....	61
<b>ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS.....</b>	<b>64</b>
3. Deputy R. Labey (Chair, Privileges and Procedures Committee): .....	65
3.1 Senator K.L. Moore: .....	65
3.1.1 Deputy R.J. Ward: .....	65
3.1.2 Deputy S.J. Pinel of St. Clement: .....	66
3.1.3 Deputy M. Tadier: .....	66
3.1.4 Deputy G.P. Southern: .....	66
3.1.5 The Deputy of St. Peter: .....	66
3.1.6 Deputy J.H. Young: .....	66
3.1.7 The Deputy of St. John: .....	67
3.1.8 The Deputy of St. Mary: .....	67
3.1.9 Senator J.A.N. Le Fondré: .....	67
3.1.10 Deputy R. Labey: .....	67
3.2 Deputy R. Labey: .....	69
3.2.1 Senator K.L. Moore: .....	69
3.2.2 Deputy R. Labey: .....	69
3.3 Deputy R. Labey: .....	71
3.3.1 Senator L.J. Farnham: .....	71
3.3.2 Connétable L. Norman of St. Clement: .....	71
3.3.3 Deputy M.R. Higgins: .....	72
3.3.4 Deputy R. Labey: .....	72
<b>ADJOURNMENT.....</b>	<b>73</b>



[9:30]

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

**PUBLIC BUSINESS**

**1. Foreshore: policy for alleged encroachment payments (P.101/2020): amendment (P.101/2020 amd.) - resumption**

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

We are this morning resuming the debate on Foreshore: policy for alleged encroachment payments, P.101. We are on the amendment where the debate has just started. Before we start I would like to just read on to the record the ruling about the application of Standing Order 106, which I circulated to Members by email. I was asked yesterday about the applicability of Standing Order 106 to the current debate on the foreshore, given the request for a ruling I received from Senator Gorst and Deputy Pinel. My view is that if a Member owns a property which encroaches on the foreshore or which they think may encroach on the foreshore then they should declare the interest and withdraw from the debate. This is because a Member in this position may be affected financially by the Deputy of Grouville's proposition and by the Minister's proposition for debate later this autumn. In my view, owning a property which encroaches on the foreshore is not an interest which is widely shared. I am also aware that some Members may own property which they do not think encroaches on the foreshore but which adjoins the foreshore. In my view, Members should declare such an interest in view of the complexities of the legal position but it is not a financial interest and therefore a Member in this position does not need to withdraw from the debate. Members must judge for themselves whether they own properties in either of these categories and make the appropriate declaration. I would recommend that where there is doubt Members should err on the side of caution. Just to be clear, I have discussed this with the Bailiff, who has agreed the terms of this ruling. Just looking at the chat; Chief Minister, you wish to make a point of interest.

**Senator J.A.N. Le Fondré:**

Thank you for the ruling today, that clarifies matters greatly. As Members will be aware, I do own, through a company, a property in the west of the Island, which adjoins the areas of the issue in question. To the very best of my knowledge and belief it does not encroach in any shape or form and therefore, having declared the interest, I am in the second category you referred to. Having declared the interest I will at some point take part in the debate and be voting on it.

**Connétable M.K. Jackson of St. Brelade:**

Just to declare that I am responsible for a Parish Hall that is on reclaimed land from the mid-19th century and own a property which is on reclaimed land from the late 18th century.

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

Thank you to both. I think it is clear the Chief Minister's interest falls into the category of an interest which should just be declared. Constable of St. Brelade, same because you do not have a personal interest in the matter. You are declaring it as the Parish Constable. I think that has dealt with those matters. I have 2 Members down to speak, I believe, beginning with the Deputy of St. Ouen and then the Deputy of St. Martin.

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

If I can first of all deal with a possible interest.

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

Sorry to interrupt, Deputy, but you are very unclear. You sound underwater. I am afraid that is really inaudible at the moment so you may need to have an equipment refresh. Perhaps I will call the

Deputy of St. Martin and we can come back to you when you have had a chance to look at your equipment.

### **1.1 Deputy S.G. Luce of St. Martin:**

I only intend to speak once during this debate so I hope Members will allow me a little bit of latitude if I move slightly away from the amendments at some point. This is an issue which clearly needs resolving and I liken it to campervans at Le Port in a way, inasmuch as we know there is a problem, we need to sort it out, and the longer we leave things like this go on the more difficult they become to resolve. I am grateful to both the Minister and the Deputy for bringing this to the States Assembly; it needs to be done. We need to be resolving a policy and we need Islanders who own land near or on the foreshore to know where they are. When I became Minister for the Environment some years ago now I made, as Members may expect, a number of speeches. One was quite a big speech to the Chamber of Commerce where I outlined what I wanted to do and that sort of thing. One of the points I made, and I made this point very strongly, was that I was absolutely opposed and would fight against any deliberate development over boundaries. All too often I had seen it in the past. One instance I can remember where a parishioner of mine was asked to go into a field by his neighbour where the neighbour presented him with a couple of brand new boundary stones and said that he wanted to move the boundary another yard into my parishioner's field to allow the neighbour to build a larger garden wall and extend his garden. In an even worse case, I had a case where a developer built over a boundary in order to build an extra unit on to the development that he was developing. I told the Chamber of Commerce at the time, where I had the ability to, I would not tolerate deliberate building over boundaries, and I think that is absolutely right and something that should be sacrosanct. However, the important word in that sentence is "deliberate". While I may have sympathy for the Minister when it comes to encroachments, I certainly have sympathy with the Deputy of Grouville and the people she represents when it comes to being accused of deliberate, because in many cases it will not be. It will be people who have brought these properties in good faith and have done nothing wrong. Indeed it may well be the previous property owners also bought the property in good faith. Of course we then have to decide how far back we are going to go and we have the issue of the high-water mark, a boundary which is a moving feast, as we already know from the Attorney General. In some cases, this boundary may have moved not just tens of yards but hundreds of yards over the centuries. How far back are we going to look? On the one hand I have sympathy for Islanders that have been hugely affected and will be hugely affected by whatever policy we get to. But on the other hand, I also have sympathy for the Minister who has 2 things to do here. The first one is to protect the land that is owned by the Islanders and if it is going to be built on by others there should be some payment. But more importantly, and I think this is one of the vital issues that we need to talk about when we come to policy, the Minister has to protect the Island and Islanders from increasing tidal levels and climate change. To do that, he has to have access to the sea wall in order to do that.

[9:45]

So here we are, faced with a dilemma. On one hand we have the Deputy of Grouville and at the other extreme we have the Minister for Infrastructure. I hope Members would agree with me that the commonsense place, a fair and equitable policy, has to be somewhere between the 2. Where it is between the 2 I am not quite sure. But I am sure that we need a pragmatic and commonsense outcome to this, and we have to find it. For those who have in good faith bought property which runs up to the foreshore, and potentially on to the seawall, will have to accept in the future that if they want the ability to own that, that they will also have the responsibility to protect other Islanders and themselves from rising sea levels. They cannot have their cake and eat it. They cannot own a seawall without the knowledge that they will have to pay to extend it up and they cannot be allowed to leave their bit as it is, when everybody else is lifting their seawalls, and leave a small area for the sea to come through to affect everybody. But similarly, the Minister cannot just ride roughshod over people who have, in good faith, and absolutely not deliberately, found themselves in this situation. So the policy,

as I have said, is something that we have to arrive at, it has to have common sense, it must be pragmatic, and I think it is right that we have a policy brought to this Assembly. So when it comes to the amendments proposed by the Minister, some I am prepared to go with but only because I think it is right that he comes with this policy. But the one I am not prepared to go with is the last one where he says in the amendments that he wants to bring forward the map of all public accesses for paths by the end of quarter one because it is very clear to me that if we agree to amendment (d) that we could have a debate without a map and we may not know what we are talking about. Let me be very clear, I am voting with this proposition but in the pragmatic and commonsense way I am going to allow the Minister, or I am going to vote to allow the Minister, a little bit of latitude and I am going to agree with him on (a), (b) and (c) but I am not going to go with (d). I cannot see how we can have a proper full debate with all the information without a map of all the public accesses and the foreshore. I leave it there. I urge Members to find a way to resolve this issue. It is not one that is going to go away and it will only get more complicated with every year that goes past.

#### **1.1.1 Connétable C.H. Taylor of St. John:**

This to me is one of the greatest travesties of justice. The Crown generously donated the land to the Island on the basis that it was for the good of the Island. It is not for Property Holdings to go and make profit from and to start enforcing unintended encroachments. I was very interested to hear the previous speaker, the Deputy of St. Martin, talking about deliberate encroachments, which clearly must be unacceptable. But where encroachments have taken place over a period of time and have been unintended or you have bought a property that has an encroachment, I fail to see how, especially the terms of the gift by the Crown to the Island, can justify the action Property Holdings have taken. There is also the issue of the Complaints Board. The Complaints Board have made a finding and I am very concerned at the repeat way in which Ministers ignore and ignore and ignore that Board. They are a very well-setup Complaints Board. They do a fantastic job and it is time Ministers started to sit up and take a little bit of notice of the work they do. That Board has very clearly made a ruling and I believe that Ministers should be obligated to follow those rulings. I am delighted the Deputy of Grouville has brought this Proposition. There has been plenty of time for Property Holdings to bring their case forward and what the Minister is attempting to do is simply a delay tactic. I am sorry, I cannot support the Minister's approach. This has got to be sorted and once this is sorted it is for the Minister to come back then with the policy that he is going to continue from henceforth. I urge Members to reject the Amendment.

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

Am I allowed to circulate a photo in the chat while I am talking?

#### **The Greffier of the States (in the Chair):**

I do not think you will be able to technically and otherwise, no, not really.

#### **Deputy J.A.N. Le Fondré:**

Never mind. I think it might be helpful just to give a bit of background to this because my involvement goes back to 2006 on this matter, and we will start there about general principles. Absolutely, by the way, I commend - I very much like the Deputy of Grouville, it is not about liking people today - but I did commend her tenacity in pursuing this matter for trying to get the issue resolved. Equally, particularly having been at Property Holdings in the past, I have a lot of sympathy for the Minister because what sometimes looks nice and simple, when one gets down to the detail it involves a lot of legwork. One of the delays, as I understand matters, has been that an individual was commissioned to do this and I believe, in effect, that individual has pretty well, if not walked the Island coast, has certainly researched the entire Island coast to try and get this matter to a legal resolution. That is what has caused the delay, coupled with COVID and other health matters, and that is why obviously there have been delays going through this, which is frustrating. But is a

practical recognition of where we are. I think what is also absolutely relevant, which has been alluded to but perhaps, for example, my friend and colleague, the Connétable of St. John, may have missed, is that the Minister - again I accept it is all relatively recently - but had lodged P.111/2020 which is the revised policy. That is down for debate in November, I believe. So in other words, the Members who have said this needs to be resolved are absolutely correct. But the Minister is trying to take the steps to achieve that. What I wanted to do is go back to the precursor to this because it has been suggested in the past and during the debate that the only reference that the department had was a statement of valuation issued in 2006, which was a Ministerial Decision. There is a Ministerial Decision. I actually was the one who signed it in 2006, which was a statement of valuation. But it was based on the principles that had been approved by the previous Assembly in 2005 when Property Holdings was being established, and also had been set down in the Strategic Plan for 2006, which was approved by the then Assembly. Just to get some extracts out of it, is that they made it very clear that the ... I am talking about general principles that then applied to the issue we are dealing with. Anyone seeking agreements, it was basically made clear that the property section of Property Holdings regularly negotiated with private landowners over the grant of wayleaves and rights of access as well as resolving boundary issues and buying and selling of land. Fairly obviously I am quoting from the relevant paragraphs. It made it very clear that: "Anyone seeking such agreements is strongly advised to contact the department at the earliest opportunity. They should be aware that no proposal involving public land or access through such land should be taken for granted and that full market value is likely to be charged." That is because the States had asked for a new approach as to how the public dealt with property. It does make exceptions where there might be economic benefits for tourism, agricultural or charitable projects but it made very clear that that was an exception. But it also says that: "For the avoidance of doubt such States land may include, but not exclusively be restricted to, footpaths, fields, car parks and sundry strips of land." That is where I actually probably agree with the Deputy of St. Martin. If one looks at the principles of access to land, if one has - let us say a developer - and that developer by accessing across one's own land, your land, Members' land, to access some form of service and that access is going to give that developer a £1 million profit, whereas if the developer had to go another way, and obviously I am exaggerating, and that achieved a £500,000 profit to achieve the same thing, then that access across your own land is worth £500,000 to that developer. Therefore your question then is: does the private land owner say: "If I am going to grant that developer an extra £500,000 profit should I not be charging something to that developer for that extra benefit?" One can have all sorts of arguments around it but that is the general principle and that is generally supported, I think from memory, from the likes of the Royal Institute of Chartered Surveyors, the R.I.C.S., and other general property valuation entities. It is absolutely standard practice. Obviously a level of encroachment will vary, to the extent the degree of encroachment is important and is treated on a case-by-case basis. But the policy that the Minister has lodged does seem to address that. The other issue which has also been alluded to is the future global warming, if one likes, impacts. In other words, the issues that the department as a whole will face in maintaining the seawall. As there have been experiences, the Minister himself had some the last time he was a Minister I think it was, when chunks of the southeast corner of the seawall were basically destroyed by a very high tide, coupled with high winds. Obviously people's land was washed out to sea and that had to be repaired. Of course water does not respect boundaries so it is no good if 9 of 10 landowners are co-operative and allow access, if one does not then they threaten the other 9 landowners as well as themselves. I go back to the 1990s - the big storms we had in the early 1990s - and I saw entire sections, hundreds of metres long maybe, of the seawall in St. Ouen moved by a couple of feet forward. If you think of the power of the sea that was quite an awe-inspiring event, as far as I was concerned. But that gives us indications of the challenges over the next 10, 20, up to 100 years, that the Minister and his successors will be facing on protecting the coastline. That is why ownership and access to the seawalls will be becoming increasingly important. I think what I tried to lay out is I have been aware of many of these issues for a long time and I am glad, one way or another, that these will be sought to be addressed. But I hope that covers the

principles around this issue of “extracting” money from people. It is a principle that has been established for a very long time in all sorts of areas. Any professional I would expect to be aware of that. I think the point here is - I do not like using this expression - one being asked to bear that with professionals for perhaps lapses on their behalf going back goodness knows when. I can certainly say from personal experience ... when I say “personal experience”, personal knowledge of a transaction where the Germans had built something and it overran 2 boundaries. It had never been resolved and it did delay a house transaction because the potential purchaser was a professional in that area and did not like that uncertainty. Usually it can be resolved in one of 2 ways. Either one gets the boundary sorted out or one essentially recognises there is an issue and takes a slightly lower purchase price in recognition.

[10:00]

In other words, it is built into the transaction. I think it is important to recognise as well that planning permission, as any Member on the Planning Committee will know, does not mean permission is given from the landowner. Planning permission is the ability to construct something. It does not mean landownership or title has passed. I think the other point that comes out is issues around land transactions that land is for ever. Therefore, certainly from my past memories, often because things had not been addressed because things had been kicked down the road, as the expression goes, when one was dealing with land transactions 25 years later from the previous transfer there was always a feeling that you were starting to pick up a can of worms because it had not been dealt with properly in the past because people had not been willing to take the difficult decisions that needed to be done. I think the other one is around the gift of the transfer of the land from the Crown to the States has obviously acted as a trigger mechanism. But my understanding - and the Minister or his Assistant Minister can talk to this if they need to - is that one of the encroachments particularly in question in this had been identified and was in discussion with the Crown just before the transfer took place. That is what we have been advised but, as I said, the Assistant Minister can correct me if I am wrong because it is not really that crucial. What I would also say is that having taken an interest in this in February of this year I went for a walk, and I went for a walk from roughly the Royal Jersey Golf course and headed along the promenade going to the south. Certainly what is clear - and I may be able to send an email shortly - is that as one starts there is quite a wide, and I use the word “promenade”, that any member of the public can walk along. Generally any certain encroachments are basically minimal; all the properties there are set back, therefore, in general it would seem to me that access to the seawall for maintenance would appear to me personally, not professionally, to be fine. As one goes along it becomes very, very apparent that there are obvious encroachments that any, I would have thought, self-respecting professional would have identified and notified to any potential purchaser. Some are very minor, some are literally what appears to be washing lines and the odd bit of pipework and things like that, that go along. Others are where wooden huts, concrete extensions project all the way out into that promenade. So if we are talking about an area, let us say, of 3 metres abreast it has gone down to maybe less than half a metre to get past, and then the promenade carries on beyond it. In certain areas, much further around, there are areas again where the public - particularly if you have got a strimmer - could walk another third of a kilometre. Then one comes along and some are where areas have been fenced off, so broadly speaking the area is still there but just not accessible, and others where again blatantly little balconies have been put out and over time this whole area has been extended. That is what the Minister is trying to resolve. There are 2 issues in dealing with all this lot: (1) is the ability of the public as a whole to walk along areas that were in the past accessible to the public, and then (2) is obviously the fairness to individuals. The fairness to individuals splits between how we deal with - and that is a process issue - individual people we are transacting with; and then secondly is consistency with all those other landowners who have not encroached on the land that is right in front of their property. That is the balance. What I will say, to go back to the Amendment, is that I do not think people are too far off and I will be supporting the Minister on the Amendment. Part (a) of the unamended Proposition basically says

that: “Jersey Property Holdings should, at immediate effect, cease charging Islanders a consideration for alleged encroachments on to the foreshore until a revised policy has been approved by the Assembly.” The only difference is that the Minister is saying that no further land transactions should take place between the public. Essentially it is about risk. It does not say that a Mr. A and a Mrs. B, or whatever, cannot transact with each other, it is just saying the public is not going to resolve. So there is clarity, we are not worsening the position, any purchaser will be aware what is going through; and actually depending on the views of the Assembly we are talking between now and 6th November. Whereas the unamended version is that essentially J.P.H. (Jersey Property Holdings) should cease charging for alleged encroachments - well, there has either been an encroachment or not an encroachment - until the policy has been approved. But that unamended bit does not give any greater certainty to purchasers because essentially it does not require Property Holdings to transact; it just says they cannot charge. What I am unclear on is if one does not charge, even £1, then I am not entirely sure that any title can change. That is why for me what the Minister is doing is essentially slightly amending the Proposition to make it more practical and it does give the certainty but it also addresses some of the other issues. There is a view that essentially once that policy is in place, to the 2 individuals in question, their transactions would be reassessed in light of the new policy as approved by the Assembly, and if there are any adjustments in that price that could remedy the situation. So it does for me represent, I don’t know about a compromise, but what I would call a practical solution to the position. To be honest, the policy is around the principle. I do not necessarily think we need to know all of the details, that is a matter for Members, and so part (d) is very much a matter for Members to bear in mind the comments of the Deputy of St. Martin. But I think the Amendments from the Minister do represent an appropriate way of moving forward. The Deputy of Grouville obviously does not agree with them but I do think from a practical position they do represent a good way forward. As I said, and Members can look, there is a proposed policy, P.111/2020, it is on the States website and it is lodged for debate in November. That is the timeframe we are looking at. On that basis I would ask Members to support the Minister in the Amendments and then we can see what the views are on the Amended Proposition.

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

We have a question for the Attorney General from Deputy Higgins.

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

Yesterday I asked the A.G. (Attorney General) a question regarding whether the Les Pas Holdings case had any relevance to the debate on this issue. He thought not. This morning I had a chance to look up the Les Pas issue and came across the following statement from Advocate Richard Falle, made just after the Queen’s decision to give the Island’s foreshore and seabed to Jersey. He said: “that the Island and the Crown could be sued under feudal law following the Queen’s decision last week to give the foreshore and seabed to Jersey. He believes that under centuries-old law private rights to many areas of the foreshore do not belong to the Queen but instead to Seigneurs, or feudal lords, who were granted fiefs - hereditary property rights - by past monarchs.” Advocate Falle said: “The legal view in my opinion is that you cannot give away something that you do not have.” Now, in a *J.E.P. (Jersey Evening Post)* report on his statements it said: “If he is right, the Island could see several reruns of the 14-year legal battle he fought over the area of land on which the reclaimed waterfront now sits. In 2003, the States effectively paid off Mr. Falle and others in a £10 million out of court settlement after he argued that the land belonged to an ancient fief, the Fief de la Fosse, which he owned. The advocate ...”

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

Sorry, Deputy, this is a question for the Attorney General, can you ...

**Deputy M.R. Higgins:**



It is quite specific, but he needs to hear the background to do it. I will be there in a second. It said: “The advocate issued his warning after it was announced that the Crown would be transferring ownership of the Island’s beaches and seabed to the public, which will give Jersey more control over those areas, including its territorial waters. Ministers have said the move would allow Islanders to profit from leasing out the seabed for wind farms or tidal turbines. But Advocate Falle says that if any future projects are undertaken in areas where fiefs exist, seigneurial rights to the land must not be breached or the Crown and the public of Jersey could both face legal action from the Seigneurs. Because the States settled out of court, his claims to the land under feudal law were never tested.” So my question to the Attorney General is: could the Attorney General give his opinion on Advocate Falle’s legal opinion and clarify if at the time of the transfer of the foreshore to the Island this matter had been legally addressed and settled.

**Mr. M.H. Temple Q.C., H.M. Attorney General:**

Yes, I am aware of Advocate Falle’s assertions and arguments and I stand by the answers that I gave to the Assembly yesterday. In terms of legal rights, feudal rights, that is one thing, but ownership of the foreshore is another. There are many arguments that can be made against Advocate Falle’s assertions that could have been made back in 1990 when he brought his claim, having bought the Fief de la Fosse seigneurship. All those arguments remain to the public now, but in addition there are even more powerful arguments in my view based on lapse of time since the Les Pas Holdings case. The Crown has always owned the foreshore but, uncontrovertibly in 1950 the Crown and the public entered into a lease of the entirety of the foreshore. That is a clear demonstration of ownership and in order for a party to overcome that sort of demonstration of ownership they would have to have contest it. The fact is that only Les Pas Holdings brought a claim just before the expiry of the 40-year period, the *possession quadragénaire* right, which I alluded to yesterday which is a right in the 1771 Code. So since 1950 it is only Les Pas Holdings and Advocate Falle that have done that, and we now have a further 31 years that have passed since the Les Pas Holdings claim. So it is incontrovertible that the Crown and the public now have ownership of the foreshore. All these arguments around feudal rights I can assure Deputy Higgins were thought about, were the subject of advice, that they were carefully considered both here and in London when it came to the transaction whereby in 2015 the Crown conveyed its interest in the foreshore to the public of the Island. All that was thought about, carefully considered and addressed. I hope that reassures the Deputy.

**Deputy M.R. Higgins:**

I cannot say that I am reassured in one sense because all the legal opinion before the Les Pas Holdings case was they had no chance whatsoever, but the Island Government in the end capitulated and paid £10 million. Can the Attorney General confirm that because it never went to court and was never settled in court there are still outstanding issues that could pose problems going forward?

[10:15]

**The Attorney General:**

I am not sure I can add much to the advice that I gave the Assembly yesterday. I cannot guarantee that no Seigneur will make a claim. That is up to them; I cannot control that and nor can the Assembly. But what I can say is that any such Seigneur I think would be foolish to do so, or ill-advised to do so, because in terms of the legal merits my view is that sort of claim will fail. So I am not sure that I can add too much to what I have already said to the Deputy. I gave the answers yesterday as to why the Les Pas Holdings claim was compromised in the way that it was. Yes, we did not get a judgment which dealt with ownership of the foreshore, but that was for the reasons that I gave yesterday. It is common in civil litigation to resolve matters consensually without all the cost and stress and risk of going to court; 99 out of 100 civil claims do that. They do not usually go to trial. Since that date we have had the further passage of time in the way that I have outlined in both my previous answers, so I do not think I can add any further to what I have just said to the Deputy.

**Deputy M.R. Higgins:**

Could I just seek clarification of one point then? Advocate Falle was arguing the Crown did not have the right to transfer all the foreshore, but that part has not been tested. If the States are going to try and extract money from people because the States now has the foreshore, and if someone sued and said: “No, the Crown did not have the right transfer the part of the foreshore that I am concerned with” what is the legal position on that?

**The Attorney General:**

I have already answered those questions. The fact is that the Crown was party to transactions where it did extract money from private individuals in relation to transactions concerning the foreshore. It has been doing that for a very long period of time, as has the public of the Island. The specific point that has just been raised by the Deputy is covered by my previous answers that I have just given.

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

I would like to move on. There are a couple of other Members who wish to ask questions of the Attorney General, beginning with Deputy Martin.

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

I think Mr. Attorney covered part of this yesterday. On part (c) it is asked where we pay back those who have grievances upheld, and I think the Attorney said that it would be very hard to get a few more people in front of the complaints board. My extra question was: did the Attorney General not also say that there have been quite a few people willingly paid? Would we have a moral obligation - or I think we would - if we start paying one would we not have a legal moral obligation to start paying everybody back? I am quite concerned about that.

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

I think the Attorney General can answer about legal obligations; I am not sure he is the right person for a moral obligation, Deputy. Attorney General, do you want to answer the question in relation to any legal obligations there?

**The Attorney General:**

Well I think I answered yesterday. For my part, I would find it very difficult to see a legal claim that could be constructed on the back of paying back these 2 individuals. The fact is that other individuals have chosen to transact with the public or the Crown in the way that they have done in the past, but that is their decision and they are bound by their contracts. If there has been a subsequent change of policy by the Assembly in relation to these 2 specific transactions concerning the Complaints Board then that is something that is a change of policy essentially that is being driven by the Assembly. I cannot see a legal basis for claims in those circumstances but, as the Presiding Officer has just said, moral obligations are another matter.

**Deputy C.F. Labey of Grouville:**

Could the Attorney General then just clarify that there is no definitive judgment on the law governing foreshore titles, and currently there are 5 **[Interruption]** ... Also I raised an issue yesterday for him to confirm that more than 60 properties were given to property owners between La Rocque and Pontac quite a few decades ago.

**The Attorney General:**

In terms of having no definitive judgment on ownership of the foreshore, we have no such judgment in Jersey. There are some judgments in England which concern the foreshore. Those judgments are not binding on the Royal Court of Jersey but they are of persuasive authority. I think those judgments from memory were before the Human Rights Law so they would need to be looked at again in the

context of the Human Rights Law. As regards the second part of the Deputy's question which concerned Pontac; my reflection is that, yes, there was a contract involving Pontac whereby it was agreed that there would be a transfer of land from the Crown at that stage to private individuals. But that is simply a matter of agreement and private contract between the Crown and those private individuals, so that is done consensually and in agreement. I cannot now remember what consideration passed in return for that agreement but maybe someone else will be aware of that.

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

I was going to ask a question during my speech when I am on the list but I think I would like to give notice because it is a slightly wider question and the Attorney may wish to consider it. The issue obviously arises as to what the Minister for Infrastructure's legal powers are in terms of intervening to construct seawalls, if necessary, in order to be able to deal with climate change and sea rise. I would like to know please if the Attorney could tell us that irrespective of all these issues of individual boundaries and owners which are obviously complex, does the Minister have powers to, irrespective of that, intervene and effectively construct seawalls involving perhaps compulsory purchase; what legal powers exist? I will leave that with the Attorney.

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

I will allow the question for the Attorney General to think about but this debate is about encroachments so I do not want to see it stray into a general debate about seawalls, climate change and things which are not strictly about the subject matter.

**Deputy J.H. Young:**

Well that may be so but can I question that, Sir? Deputy Luce's speech raised a really important issue because the Minister for Infrastructure's role is to protect our coast and I cannot see that you can resolve this issue without ...

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

Deputy, that is why I have said I will allow the question so I have allowed the question and the Attorney General can answer it, but I am just saying to Members to remember in the context of this debate it really is quite narrowly about encroachments and what might be done in relation to them, not an opportunity for a wider debate. That is an important subject but not the Proposition before the Assembly. So I have said, yes, the Attorney General can address that question but a note of warning. Attorney General, do you want to come back on that at this point?

**The Attorney General:**

Yes, I am happy to do so. I will be as brief as I can. Those powers are set out in part 4 of the Drainage (Jersey) Law 2005. In summary the position is that where the public owns or controls the land then it can build sea defences. There is a provision whereby the public or the Minister can build a sea defence on land which it does not own or control, but that can only be done by Ministerial Order. So there would be challenges available to a third party who is affected by that Order. In summary the position is - to put it in simple terms - it is easier for the Minister to construct a flood defence on land that he does own than on land that he does not, albeit there is a provision that he can by Ministerial Order specify land which he does not own to build sea defences on.

**Connétable S.A. Le Sueur-Rennard of St. Saviour:**

I was intrigued in something that the A.G. said about the fiefs not standing and if the Seigneur of manors or people who owned land around there would be ... the word was not "stupid" that he used, but would be silly to question everything. Does that mean that the old Jersey laws now no longer stand?

**The Attorney General:**

In 1966 the States passed the Seignorial Rights (Abolition) Law so the vast majority of seignorial rights were abolished all the way back in 1966. There are still some seignorial obligations such as they have to appear at the Royal Court, which they did at the beginning of the week, to offer their comperance to Her Majesty. They also continue to have the right obviously to be called Seigneurs, so some limited rights still exist. But the 1966 Law abolished the vast majority of seignorial rights.

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

Thank you. The next person to speak in the debate is, I hope, the Deputy of St. Ouen.

**The Deputy of St. Ouen:**

First of all I need to declare an interest, which I do not believe prevents me from speaking, but I have close family members who own fief land on the north coast which borders the foreshore. It is perilously steep and I do not think there could be any question of encroaching on the foreshore there.

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

I am not sure, Deputy, I can properly follow what you are saying. I think perhaps you need a microphone or something to speak into that computer but it really is coming in and out and looking at other Members in the Chamber I think we are all struggling to follow what is being said, I am afraid. I have got some other speakers so perhaps we can come back to you further down, but I think a headset or a microphone might help.

**1.1.3 The Constable of St. Brelade:**

I commend the Deputy of Grouville, as have others, for her tenacity in her efforts to bring this to the States in an attempt to arrive at what in my interpretation is a pragmatic solution. My Scrutiny Panel has received several presentations on the matter from interested parties, from the Law Society and indeed the Minister and his officers. This was well before the COVID restrictions and we have been promised for, I believe, some 9 months the report which has now been presented in conjunction with P.111. The Minister will correct me if I am wrong but it has been extremely frustrating for the panel to be treated in what I can only describe as deference with regard to this matter. The long awaited presentation of P.111 causes me difficulties in supporting this well-researched proposition as I fear we would be more effective in focusing our attention on the nitty-gritty in that P.111.

[10:30]

I fear that acceptance of this Proposition may not conclude the matter as most of us would wish. I agree with the Deputy of St. Martin that the map alluded to should be made available before the P.111 debate so that Members can be fully informed and receive input from affected constituents. There are historic areas in my Parish which could well be affected by decisions made here and I would like some clarity over the options available to the relevant landowners. There are some 17th century properties with walls bordering the sea at high water and these in the past have been protected by wooden piles sunk into the adjacent shingle in what I presume is foreshore. Who is responsible for these piles? Maintenance is conspicuous by its absence. One property owner demonstrated to me said he was waiting for a reply to his seventh letter to Property Holdings on the matter about which he is deeply concerned. The Minister and his predecessor and officer have not, I do not believe, covered themselves in glory over the handling of this whole affair. I would like to hear the Deputy of Grouville's views in her summing up on how she feels her proposition should be dealt with in relation to P.111, and in turn how she feels that Proposition should be dealt with when it is scheduled for debate later on. It may be that if her Proposition only serves as a stimulant for the Minister to act it can be regarded as a success.

**1.1.4 Deputy J.H. Young:**

Sir, your guidance and the Attorney General's answer to my legal question will help me considerably to narrow on the question of transgression of boundaries. Of course we do not in Jersey have a land

register, boundaries are based on I think 40-year histories of past transaction contracts in the Registry, and though there are stones on land sometimes they get moved and therefore the thing is a very complex system. Of course that is the very stuff of conveyances. Sometimes there are maps, sometimes there are not, sometimes there are just words. So I think this is relevant to expectations frequently that somehow the planning application system is going to deal with these issues when people apply to do developments on land. Obviously there is a facility there that people are asked to sign that they own the land when they make an application, and in the event of there being any issue then the landowner is asked also to sign. That is an important provision though that can be overridden if it is justified. Nonetheless, the key point - and I think it is worth repeating because people expect otherwise - planning consent is only permissive. It does not enable anybody to do development. For example, one can get a planning consent on a piece of land, say a field, a house, but unless you own it and you have got the legal right to go in and do that it does not entitle you. Of course I know that in the planning side disputes happen frequently, and they are alleged encroachments. I do have a concern because obviously in some cases these are deliberate, and I think the Deputy of St. Martin mentioned that, where sometimes it might be that it was not the original intention of a developer to do something, sometimes errors occur in drawings and something gets constructed where it should not be. It might only be a matter of a few feet or maybe inches or metres or whatever but, nonetheless, where that happens and neighbours raise issues and a dispute happens ordinary people do not have easy resolution of that and they end up at the Complaints Board usually. I have had to deal with a number of those cases in the past, and neighbours who are aggrieved, who have some encroachment on their land cannot really do anything about it because the only real challenge is to the court. Then there is the expense, the risk, the cost, it is just not worth it. Of course developers take a commercial view. Now, I do not know the rights and wrongs in this case but my feeling is I want to rely on our Complaints Board because that is all we have got. In the long run I have always argued that we need some other process - but that is a story for another day - for land disputes. We do not have that. But, nonetheless, the Complaints Board is what we have got. So I am with other Members, I do not like the issue that the Complaints Board tend to be given short shrift or ignored by Ministers historically I think. I would like to think that is not the case now but it is certainly historically so. I remember I brought complaints and I still have issues outstanding for 3 years despite strong reports from the Complaints Board. I do not think you can detach that situation from this particular matter. Clearly we have got ourselves in terms of the Propositions into a bit of a pickle I think, because I see benefits in both bits but not wholly. So, for example, on the Minister's Amendment I am not keen on the moratorium because I think that sounds a bit of a rough justice. We have got the debate coming, I see it is scheduled for 7th November, P.111 - I think the Constable just referred to it - but it is still going to affect things in transit and I really am troubled about that so I am not keen. I prefer the Minister's suggestion about the funding arrangement, and he says that any transaction correction or considerations adjusted would be based on the new policy; it would be the difference, if you like. Whereas I think the substantive Proposition is much stronger that says give them the money back straight away now. So I think what I have got is a situation where I like parts of the Amendment. Of course we clearly need a policy. I suspect that the Amendment about a map is a bit in theory because - and I may be wrong - but I would guess that it is going to be very difficult to provide a definitive map. When you do I can guarantee there will be arguments and debates and challenges to it all over the place. So how effective that will be I am not sure. But equally I think that something has clearly gone wrong here, that the Deputy of Grouville is right to bring to us and so I am struggling. I am hoping that we are not put in a position where we have to vote for all parts of these Amendments and I shall decide what I am going to do on the Amendment and the substantive Proposition, because I think parts of each are wrong. The answer lies in the middle, as the Deputy of St. Martin said.

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

Deputy of Grouville, you have a point of clarification to raise?

**The Deputy of Grouville:**

Yes, I do. There seems to be some confusion. The Deputy of St. Martin seemed a little confused, as did Deputy Young there. In my clause (b) I am asking for a map to accompany the policy to determine boundaries, and that is my clause (b). The Minister gets rid of this in his Amendment. So for the Deputy of St. Martin to say that he wants a map, then I think he was confused about not supporting my (b) that is asking for the boundary map. Clause (d) is an additional map displaying public accesses, footpaths and rights of way. It is not the boundary map. So I just wanted to make that clear.

#### **1.1.5 Deputy I. Gardiner of St. Helier:**

I would like to thank the Deputy of Grouville for her last comment because when I asked to speak I actually had 2 questions. One question, if it is not a map how it will be determined who owns land. So if it is not a map, is it drawings? So let us see drawings. I do not know how it will be called but there should be something in place that will help to determine where the boundary is, and according to this the people will be charged or not charged. So I would like the Minister in his closing speech to explain to me how it will be determined and what evidence will be used. The second question that I would like to ask, it is about paragraph (a) and land transactions. Does the Minister suggest that people who would like to sell their houses in the meantime - that we will debate, it is another month and a half - would put their transactions on hold? What would happen if people need to leave? People need to do these transactions to go forward so how will it be dealt with for the people who are in between this debate and the debate in November?

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

I am going to do something which is virtually unheard of for me and try and speak in less than 90 seconds on this. I think that the Amendments seem entirely sensible. The first part, of course there should be no transactions taking place until we have got some kind of clarification on the underlying policy because there are disputed pieces of land. I mean, that seems to be obvious. I think paragraph (c) as amended is correct, that we need to pay attention to the Jersey Complaints Board. The Minister for the Environment quite clearly said why it is preferable to have a map of public accesses, footpaths and rights because we know what those public accesses are. We do not know what the other boundaries are and they will be disputed. So this is very simple, let us vote for all of the Amendments and get on to the main debate. There you go, that is less than one minute. **[Approbation]**

#### **The Greffier of the States (in the Chair):**

Thank you very much. General approbation from Members in the Chamber. No approbation from me, Deputy, however because you were not appropriately dressed for the meeting, so please keep your camera off or put on a shirt and a tie.

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

Can I respond? I did deliberately put a tie on that I keep in the outer room in here because I was without a tie and I thought a tie and jumper is normally deemed sufficient.

#### **The Greffier of the States (in the Chair):**

Well maybe it is your camera angle because it looks like a lively t-shirt. That is much better. I stand corrected.

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

I would never do anything to upset you, Sir, but now it means that I have spoken for more than a minute, which is a problem.

#### **The Greffier of the States (in the Chair):**

Well that is my fault.

### **1.1.7 Deputy J.H. Perchard of St. Saviour:**

I just wanted to make sure that we ask the Minister if he will be taking his Amendment in parts. I think there has been a lot of discussion about the different parts of the Amendment in relation to the different parts of the main Proposition, so if he could clarify that he would be willing to do that, that would be really helpful to me. Just looking through the Proposition and the Amendment side by side, I agree that no further land transactions to take place until the policy has been debated, but I also agree that we should pause the charging of a consideration until a revised policy has been approved. So to my mind it makes sense to reject the Amendment on part (a) with the view that the Minister can assumedly enforce that himself without that being amended, but we also get the benefit of the pausing of the charging, which I personally am in favour of, especially as a policy is coming for debate so soon. I think it would be certainly a gesture of goodwill and sends the message that the States are willing to seriously review something that is currently causing some concern. To my mind I feel that the rejection of the Amendment part (a) is preferable as it can also perhaps be achieved in itself anyway by the Minister doing it in addition to part (a) of the main Proposition. Part (b), I am inclined to agree with the Deputy of Grouville in that it makes a lot of sense to have a map showing boundaries that establish land ownership in conjunction with a policy debate because we need to be able to see how the policy applies and in this case it is all about boundaries. So I am not entirely sure how effective it would be to have the policy without that, so again I will be supporting the main Proposition on that in comparison to the Amendment.

[10:45]

In terms of part (c), I am a bit confused by part (c) of the Amendment. To my mind part (c) of the main proposition captures all people whose grievances have been upheld by the Jersey Complaints Board, and that the Amendment focuses specifically on 2 cases. My question to the Minister is, is that because these are the only grievances that are referred to by the original part (c)? If that is the case I have no problem supporting part (c) of the Amendment because it makes sense to be specific. If those 2 cases are all that part (c) refers to, then I would happily support the Amendment in part (c). But if it goes beyond that, if there are several more, then I think it would make sense to support the main Proposition because, obviously, it would capture all of them so that clarification would be really helpful. Part (d) as well. They are very similar, are they not? So, timing wise, again it makes sense to me to have all the information together at the same time at the policy debate, so I am minded to support the main Proposition on that. But if there is a good reason for the Minister pushing it to the end of quarter 1, then I would certainly welcome understanding that reason and I will listen over-mindedly to that. So with that, just in conclusion, I hope the Minister considers taking his Amendment in part because it would be very difficult to consider. For me, I am currently thinking about (c) and (d) so it would be very helpful to know if that is even an option and, otherwise, I will be supporting the main Proposition in parts (a) and (b). Thank you.

### **The Greffier of the States (in the Chair):**

Thank you. I would very much like to call the Deputy of St. Ouen. Apparently, the sound quality was much better online for those who were on Teams than it was in the Chamber and, on that basis, I am happy to get him in. Chief Minister, you have asked to speak but you have already spoken.

### **Senator J.A.N. Le Fondré:**

No, Sir. It is just an update on the Deputy of St. Ouen. He has moved his location and he is literally just turning his laptop on so, hopefully, you will be able to talk to him in about a minute, Sir. I doubt you will be able to contact him right now.

### **The Greffier of the States (in the Chair):**

If only Deputy Tadier had spoken for longer.

### **Senator J.A.N. Le Fondré:**

So he is trying to login now, Sir, I believe and, hopefully, certainly when I have just spoken to him, his sound quality is a lot better.

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

Well, we have no other Members who wish to speak, so unless somebody else comes forward, I am very happy to wait a short period for the Deputy of St. Ouen. Deputy Maçon.

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

There are just a few things I want to throw into the debate which have not been said and it is a case of: "How did we get here?" Like other Members, I congratulate the Deputy of Grouville for bringing this forward because it has been rumbling on some time. I suppose my concern with this - and I would wait because I want to see this in a new policy - is I think there was also kind of a divide. There will be some people out there who, in good faith, went to the Crown and sought permission for, say, their little steps on to the beach or whatever and would have got permission and done things in entirely the right and appropriate way. Unfortunately, there will be some others who did not do that and, for me, there is a complication and there is a difference between these 2 groups. Therefore, in the revised policy of the Minister, I would like to see that taken into account when it comes. What I also want to add to the debate is: "How do we get here?" I stood up in the Assembly and I said this before. Infrastructure, T.T.S. (Transport and Technical Services) as it was, is not a glamorous department and of course under the previous Minister, Deputy Noel, the toilet tax did not go through and the funding for the department has not been there. We all know, in Jersey Property Holdings, there is plenty of property that does not have enough funding in order to do what they want to do and that has been a failure of this Assembly or consecutive Assemblies not to fund it properly. So now the department is scrambling around grasping at anything in trying to get the funding that we, as States Members, have failed to give it. So I do have some sympathy for the position that the Minister finds himself in in that, obviously, he wants to stand up for his department but we have found ourselves in quite a crazy situation whereby this disjointed method has come forward. So I thank the Deputy of Grouville for what she is putting forward. I would just like to add my call, like Deputy Perchard, to be able to take the Amendments in part because there are some which I think do make sense. There are some which, after listening to Members, perhaps I would not support and therefore that is what I wanted to add at this time. Thank you.

**1.1.9 Connétable P.B. Le Sueur of Trinity:**

I come at this from a moral perspective. When the foreshore belonged to the Crown and successive monarchs have been gracious enough to permit adjacent landowners to establish steps and structures, the Crown representatives, the Attorney General and, more recently, the Receiver General have not taken any action to oppose this. Now that the foreshore is transferred to the public of the Island, this has given Property Holdings and the Minister the opportunity to put their hand out and exploit these historical situations for financial gain and this is my objection. I accept that, going forward, a policy needs to be established to regularise the existing conditions, rights of access, et cetera, for repair of the sea defences but not at the cost of the existing landowners. I will not be supporting the Minister's Amendment but I will be supporting the Deputy of Grouville.

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

Thank you. I am going to call the Deputy of St. Ouen next and then the Attorney General after that.

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

I do apologise to you and to Members for the disruption I have caused. First of all, I would like to declare an interest. I am perhaps being a little cautious but I must declare that I have close family members who own cliff land on the north coast which adjoins the foreshore. It is perilously steep so I do not think there is any question of encroachment but I declare that interest. I should also say I have heard parts of this debate but, because of my technical issues, I have not heard everything so I



apologise if I may cover ground already covered. It is clear from the questions asked in yesterday's and today's debate that the issue of the foreshore is hugely complex and if we are really after seeking legal certainty, I am afraid we are not going to find it in a States debate. There is no definitive judgment but we are advised by those appointed to advise us, the States Members, that the Crown had title to the foreshore and it was entitled to transfer it to the public. I think we must take account of that advice. There is no current claim to the contrary that is being litigated and the advice is that that is unlikely to happen and unlikely to succeed if it did. We can discuss the legal issues ad infinitum but if the matter was to come before a court, I believe the courts would set-aside weeks to determine this claim and we should not try and think that we can resolve it in this debate. The issues that we have before us in the proposition on the Amendment are very narrow because putting aside for a moment the lack of a clear policy since the public acquired the foreshore, putting aside any questions of the conduct of Jersey Property Holdings and questions of delay, what is clear now is that a policy has been lodged by the Minister as P.111 and both the Deputy of Grouville and the Minister wish it to be debated by this Assembly. When approved, it seems both also wish for the 2 cases upheld by the Complaints Board to be reconsidered in the light of the approved policy. Now the Minister's debate is set down for 3rd November so we will be back here in 5 or 6 weeks to debate the foreshore once again. So what do we need to do today? What we are left to argue about today are interim arrangements pending the approval of the policy. When I look at the Proposition and the Amendment, the word "until" is repeated a great deal. "Until a policy is approved." So we are talking just about that short period and I suggest we need not go on for too much longer because we just have to deal with interim arrangements and await the real policy debate on 3rd November. Now both the Deputy of Grouville and the Minister make different proposals for their interim arrangements but, in practice, given the short time before the main debate, the differences may not be crucial. For me, it is a matter of regret that the Deputy and Minister could not meet to discuss interim arrangements and perhaps avoid today's debate. It means I and other Ministers are in an uncomfortable position in that we have to make a decision in the disagreement between 2 valued ministerial colleagues but decide we must. I must say that I prefer the Minister's proposals as interim arrangements and I will explain briefly why. So in respect of part (a) of the Proposition, the Deputy of Grouville suggests that, until a policy is approved, Jersey Property Holdings should not negotiate a payment for any encroachments. We are told by the Minister in the Amendment report that there are several ongoing foreshore boundary cases being negotiated by Jersey Property Holdings and the Deputy of Grouville's proposal would tie their hands behind their back if those negotiations continue. If I was the other party in these negotiations, I would start putting pressure on Jersey Property Holdings to conclude those negotiations very quickly knowing that they could not charge me for any encroachment hoping they would be forced into a position to waive what they thought was rightfully due to the public. Or, alternatively, there might be situations where I might be content to pay a consideration or I might already have agreed a consideration but a contract has not yet passed through a court. That could be because many other things not involving Jersey Property Holdings might need to fall into place before a contract is passed and suddenly Jersey Property Holdings could not proceed in the agreed way and would have to stall until a policy had been agreed by this Assembly or, if there was an urgency to pass the contract, the public would have to forego the agreed consideration. On the other hand, the Minister's preference is that no transaction takes place involving the foreshore until we have debated his policy, hopefully on 3rd November. It is not an ideal situation but marginally better than the Deputy of Grouville's I think because it does not tie the hands of Jersey Property Holdings in any negotiations on behalf of the public. This Assembly would have to pause in concluding any transactions to do with the foreshore for a short period. Negotiations could still continue but, in reality, I suspect all parties would await the debate on the new policy. It would, for a few weeks, prevent any contract being passed in court where terms have already been agreed so I expect the Minister would have told us in his speech if this proposal would immediately delay any contract due to be passed before 3rd November. Then I look at part (b) of the Proposition. The Minister resists the request of the Deputy of Grouville that he fix a date from which encroachments

will be determined and that he produce a map showing boundaries. I think the Minister is right only in this respect and only in the sense that this need not be an argument for today. If the Deputy of Grouville thinks the policy lodged by the Minister is deficient because he does not give a date or he does not produce a map, she can seek to amend the Minister's Proposition and she can argue those points in 5 or 6 weeks or so when we debate the policy. I have to ask: what is the point of arguing over part of the policy today? Then I come to part (c) of the Proposition. The Deputy of Grouville suggests that the considerations paid for the encroachments by the 2 landowners be returned to them until this Assembly adopts a policy but I struggle to find, in the Proposition and report, exactly what should happen next. Is the question of the payment for the encroachments to be reopened in the light of new policy or is it just a return and then what? I do not know if the 2 landowners have now sold their properties. If they have, they are likely to have received from their purchasers some value for the encroachments on public land which were legalised in the contract negotiated with Jersey Property Holdings and passed before the court. Thus, we would have a situation where they may have received value for the encroachments but also have returned to them a payment they made for those encroachments, which I find a strange scenario.

[11:00]

That was not a solution suggested by the Complaints Board. The Minister is putting forward the solution that was suggested by the board. When a policy is adopted by the Assembly, the Minister will reconsider the transactions with the 2 landowners in the light of the new policy and refund the difference, if any, between the price paid for the encroachments and the price that would have been payable had the new policy been in place. The rules of natural justice would require that the Minister consult with those landowners in that process and I am sure the Deputy of Grouville would also be invited to be involved. So, in that respect, the Minister's proposal seems to be fair to everybody and it also protects the public interest. Then there is part (b) of the Proposition. The Minister accepts the request of the Deputy that he publish a map of public accesses et cetera. He simply asks for an extra 3 months. Legal research is sometimes complex. If the Minister considers that a little further time is needed to get it right, I think it is better to have the time to ensure we get an accurate map. I really do not think this debate need go on at some length and I really do not think that we need to concern ourselves today about complex legal issues. We need not discuss the past actions or policies of Ministers for Infrastructure or Jersey Property Holdings because we will be doing all that again on 3rd November. These interim arrangements perhaps could have been sorted out without a debate but we are here in a debate and we must move on I think as quickly as we can. I wish to adopt the Amendment. I believe that is the most appropriate way of proceeding on an interim basis and I would urge other Members to vote in that way. Thank you.

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

Thank you. I think there is another microphone live at the moment so if Members could check and please mute it because I can hear somebody else.

**Deputy M.R. Higgins:**

I think it is the Chief Minister, Sir.

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

Thank you, Deputy.

**Senator J.A.N. Le Fondré:**

No, Sir. I am muted, Sir.

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

Thank you. Next to speak is the Attorney General.

**The Attorney General:**

It was simply to add I have found out some further information in relation to the Pontac transaction which was raised by the Deputy of Grouville and so I just have some additional information, which I thought I should add to my previous answer. So the Pontac seawall relates in fact to 57 properties rather than 60 but that transaction was based on a decision of the States Assembly back in 1970, which approved the gift of reclaimed land to the rear of the Pontac seawall free of charge to neighbouring landowners. That decision took some time to honour in that the Crown transferred this coastal strip to the public in 2010 and all the neighbouring owners were offered the strip adjacent to their property on the basis that they would accept certain contractual rights in respect of maintenance of the seawall and also payment of their legal fees. So I just wish to add that information to supplement my previous answer to the Deputy of Grouville on that question.

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

Thank you. Does any other Member wish to speak in the debate? In no other Member wishes to speak, I will close the debate on the amendment and call the Minister to reply.

**Deputy K.C. Lewis of St. Saviour:**

I believe the Constable of St. Martin is asking to speak.

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

I am not aware that she does wish to speak, Deputy, but if the Constable does wish to speak, she is very close to me. She does not look like she does.

**1.1.11 Deputy K.C. Lewis:**

I thank everyone who has spoken. I thank Members for their contributions to the debate and I would especially like to thank the Attorney General and indeed the Solicitor General who was kept very busy with Members' questions. Running through the points made, the Deputy of Grouville left me in no doubt she was not going to withdraw her Proposition. She spoke at length about the time it had taken to get a revised policy. We have a draft one now and in fact, in 2017, the Foreshore Policy was a sound approach but just needed more development. The Deputy said her concern was for the many people who are seeking to sell their coastal properties, downsize or are prospective purchasers. However, we have heard from the Attorney General that purchasers of coastal properties would presumably have taken professional conveyancing advice at the time they bought their properties and should have been made aware of the boundary situation towards the foreshore. The Deputy argued a date and a map would provide clarity but the position is that encroachments vary from new or recent to historic, and the public's foreshore where it is being encroached can fall into any of those categories. By creating just one date, the implication is that all prior encroachment will be deemed not to exist and the land will automatically transfer to the encroached parties. The land is public land and the public has options regarding what it can do with that land. Recovery of the land is one option, albeit that it is harsh for older encroachments. Another option is the sale of the land to the party but at a fair price to the public. Quite why the public should give a date and a policy and then write off all prior encroachments is a concept I cannot support. I suppose there is an argument that a map would provide clarity but it would also be rather dictatorial and could be seen as naming and shaming. We feel it is more courteous to deal with parties on an individual basis. I must correct what seems to be a misunderstanding by the Deputy. She stated my Amendment will prevent any coastal property owners from selling their property. That is not correct. What I am saying is that we were approached by a seller who has encroached and the buyer of the property wishes that encroachment to be resolved as part of the sale, and the public is requested to participate and essentially resolve the problem. Then we say that we cannot participate until this new policy has been debated. The seller will still have options open to them. For example, they could choose to pull back from the encroachments or reach some other interim agreement with the purchaser with a view to the encroachment being resolved at

a later date. I strongly refute the claims that anyone was held over a barrel but I feel it is inappropriate to go into the detail of certain circumstances as to what happened in those cases in this debate. I think we must remember that, in both cases, encroachments existed and settlement was reached by land being sold which allowed the respective properties to sell with the public receiving a fair price for the land it lost. The Deputy goes on to suggest that it will be far more decent to simply return all of the money paid for the land to the 2 complainants now, but I must stress to Members that giving away encroached land is a most serious precedent to set. I feel we must be most cautious about creating a situation where public land is viewed as easy takings for encroachment. In these 2 cases, the legal advice given to us was that the public land had been encroached. It was valued independently in accordance with standards published by the Royal Institute of Chartered Surveyors and the land was conveyed at a fair price. In one case, when the encroachment was of some age, the value was reduced by use of a sliding scale. I am grateful to the Deputy of St. Martin for his sympathy and for his understanding regarding the importance of safeguarding the integrity of sea defences. I can assure him that the draft policy is fair and equitable. I am confused that the Constable of St. John agrees that the foreshore was transferred for the good of the Island, however, he does not agree that those who have taken land for themselves alone should be allowed to do so. I will just go through my listings very briefly. I have mentioned the Deputy of St. Martin and I am grateful for his clarification. The Constable of St. John makes reference to the Complaints Board, which is completely wrong, I am afraid. The Complaints Board's notes we have taken onboard in the policy, if he cared to read it, P.111, and the Complaints Board stated not that we should give the money back to the people who have encroached on the land but that, in the future, when we have the policy in place, any difference between what the policy says and the fees they were charged should be returned. Not the whole amount. This is a great misconception. Deputy Young raises some good points. The Chief Minister, I am grateful for his support pointing out in fact that various transfers were made by the Crown prior to the land being transferred to the Public of Jersey so these transactions have been going on for decades so this is nothing new. Deputy Young made some excellent points, which obviously we take onboard. The Constable of St. Saviour mentioned the Seigneurs and, as the Attorney General has pointed out, much of this was removed in 1966. I have the greatest respect for the Seigneurs and of Jersey traditions but, in my humble opinion, the Seigneurs are noble servants of the Crown. The Constable of St. Brelade confused me with his speech. We have had a lot of difficulties. We had a senior law officer who was unfortunately ill and of course we had COVID and so the delays were going to be there but we have gone as fast as we can. It is a very, very complex piece of work. Very complex and cannot be rushed. I will repeat again, I am very grateful to the Attorney General and the Solicitor General for their comments but I wish to stress that we need to clarify things as a matter of urgency, which I am legally obliged to do so, because I have several roles here, not just with Property Holdings. But as the Minister for Infrastructure, I am responsible for the seawall and the safety of the people predominantly on the east coast where most of these encroachments have taken place. If there is a flood there, I may need to raise the seawall in the future. As for the Deputy of Grouville's comments that every time I hear of an encroachment I rub my hands with glee is complete and utter nonsense. Every time we hear of an encroachment we collectively at Property Holdings put our head in our hands saying: "Oh, my goodness, not another one." We have to go through all the legal hoops we go through to try and sort it out so there are no winners here. This is a job that we have to do. Deputy Tadier made some comments. I congratulate him. He was precise and concise. The Constable of Trinity, I am sorry, was absolutely wrong with his assertions that various permissions have been given and that is that. I am afraid that does not wash.

[11:15]

We have to do this properly and if Members listen to the Attorney General and the Solicitor General, the answer is there. I am very grateful to the Deputy of St. Ouen, a trained lawyer, for his clarity with what is going on. My wife and I started buying our house over 20 years ago and our lawyer rang to see us, who was Nigel, a lovely man and brilliant lawyer, sadly no longer with us. He spoke

fluent French in which conveyancing was done at that time. He pointed out to the inch where the boundaries were, what was a party wall, what was our wall and all I can say is any lawyer worth his salt will know exactly where the boundaries are. If someone has bought a house and there is some confusion, I think they need to contact their lawyer as soon as possible. Now, as I say, we have to clarify this. We have to safeguard the Public's land. I am not talking about starting up a bulldozer and driving down the foreshore. We want a pragmatic, sensible resolution to this, and that is what I am proposing. I make the Amendment.

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

Thank you, Minister. A number of Members asked whether you were prepared to take the Amendment in parts. It is entirely your decision as to whether you take it as one package, with one vote, or whether you are prepared to allow separate votes. Can you let us know?

**Deputy K.C. Lewis:**

If it is the will of the Assembly, then separate votes will be fine.

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

Okay, if you wish to do that, we will proceed on that basis. So, the first vote will be on the first part of the Amendment, which relates to paragraph (a) of the Proposition. Shortly, the Greffier will put a link into the chat channel which will relate to part 1 of the Amendment. So, the link is there for Members to use to vote on part 1 of the Amendment. Any Member who has a problem with the link should vote in the chat channel and they must vote before the vote is closed. I ask Members to vote as we are moving towards the end of the voting period. I will ask the Greffier to close the voting, and he will place the result in the chat channel. So, the first part of the Amendment has been adopted:

<b>POUR: 25</b>		<b>CONTRE: 10</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Senator S.W. Pallett		
Senator J.A.N. Le Fondré				
Senator T.A. Vallois		Connétable of St. John		
Senator K.L. Moore		Connétable of Trinity		
Senator S.Y. Mézec		Connétable of St. Peter		
Connétable of St. Helier		Deputy J.M. Maçon (S)		
Connétable of St. Lawrence		Deputy S.M. Wickenden (H)		
Connétable of St. Saviour		Deputy L.B.E. Ash (C)		
Connétable of St. Brelade		Deputy of St. Peter		
Connétable of Grouville		Deputy of St. John		
Connétable of St. Mary		Deputy J.H. Perchard (S)		
Connétable of St. Ouen		Deputy K.G. Pamplin (S)		
Connétable of St. Martin		Deputy I. Gardiner (H)		
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				

Deputy R.J. Ward (H)			
Deputy C.S. Alves (H)			

We now come to the second part of the Amendment, which deals with paragraph (b), and the Greffier will place a link in the chat channel very shortly for the vote on the second part of the Amendment. The link is there for Members to use. I would ask Members to use the link if they possibly can and if they have a problem to vote in the chat. Members have had an opportunity to vote, so this is the last chance. I am going to ask the Greffier to close the voting. **[Aside]** The second part of the Amendment has been adopted:

<b>POUR: 26</b>	<b>CONTRE: 16</b>	<b>ABSTAIN: 0</b>
Senator L.J. Farnham	Senator T.A. Vallois	
Senator J.A.N. Le Fondré	Senator K.L. Moore	
Senator S.Y. Mézec	Connétable of St. John	
Connétable of St. Helier	Connétable of Trinity	
Connétable of St. Lawrence	Connétable of St. Peter	
Connétable of St. Saviour	Deputy of Grouville	
Connétable of St. Brelade	Deputy J.M. Maçon (S)	
Connétable of Grouville	Deputy of St. Martin	
Connétable of St. Mary	Deputy R. Labey (H)	
Connétable of St. Ouen	Deputy S.M. Wickenden (H)	
Connétable of St. Martin	Deputy L.B.E. Ash (C)	
Deputy J.A. Martin (H)	Deputy of St. Peter	
Deputy K.C. Lewis (S)	Deputy of St. John	
Deputy M. Tadier (B)	Deputy J.H. Perchard (S)	
Deputy M.R. Higgins (H)	Deputy K.G. Pamplin (S)	
Deputy of St. Ouen	Deputy I. Gardiner (H)	
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy J.H. Young (B)		
Deputy K.F. Morel (L)		
Deputy G.C.U. Guida (L)		
Deputy of Trinity		
Deputy M.R. Le Hegarat (H)		
Deputy S.M. Ahier (H)		
Deputy R.J. Ward (H)		
Deputy C.S. Alves (H)		

Other votes on the chat, which will be dealt with, but that is a very clear outcome. So we now move on to the third part of the Amendment, which deals with paragraph (c) - that is a new paragraph (c) - and the Greffier is just preparing the link to publish in the chat. The link is available, so Members are invited to cast their votes either using the link or in the chat. Members have had the opportunity, hopefully, of casting their votes. This is the last opportunity to vote. So, I will ask the Greffier to close the voting. The Amendment to paragraph (c) has been adopted:

<b>POUR: 33</b>	<b>CONTRE: 8</b>	<b>ABSTAIN: 0</b>
Senator J.A.N. Le Fondré	Senator L.J. Farnham	
Senator T.A. Vallois	Senator K.L. Moore	
Senator S.W. Pallett	Connétable of St. John	
Senator S.Y. Mézec	Deputy of Grouville	
Connétable of St. Helier	Deputy R. Labey (H)	
Connétable of St. Lawrence	Deputy L.B.E. Ash (C)	
Connétable of St. Saviour	Deputy of St. Peter	

Connétable of St. Brelade		Deputy of St. John		
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy G.C.U. Guida (L)				
Deputy of Trinity				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

, finally, we deal with the fourth part of the Amendment, which is the change in paragraph (d), and I will ask the Greffier when he has had a chance to set it up to put the link in the chat channel. The link is available. I ask Members to vote using the link if possible. Members have had an opportunity to cast their votes, so I will ask the Greffier to close the voting. The Amendment to paragraph (d) has also been adopted:

<b>POUR: 27</b>		<b>CONTRE: 15</b>		<b>ABSTAIN: 0</b>
Senator J.A.N. Le Fondré		Senator L.J. Farnham		
Senator T.A. Vallois		Connétable of St. Brelade		
Senator K.L. Moore		Connétable of St. John		
Senator S.W. Pallett		Connétable of St. Martin		
Senator S.Y. Mézec		Deputy of Grouville		
Connétable of St. Helier		Deputy M.R. Higgins (H)		
Connétable of St. Lawrence		Deputy of St. Martin		
Connétable of St. Saviour		Deputy R. Labey (H)		
Connétable of Grouville		Deputy L.B.E. Ash (C)		
Connétable of St. Peter		Deputy K.F. Morel (L)		
Connétable of St. Mary		Deputy of St. Peter		
Connétable of St. Ouen		Deputy of St. John		
Deputy J.A. Martin (H)		Deputy J.H. Perchard (S)		
Deputy K.C. Lewis (S)		Deputy K.G. Pamplin (S)		
Deputy M. Tadier (B)		Deputy I. Gardiner (H)		
Deputy J.M. Maçon (S)				
Deputy of St. Ouen				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				

Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy G.C.U. Guida (L)				
Deputy of Trinity				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				

## **1.2 Foreshore: policy for alleged encroachment payments (P.101/2020) - as amended**

### **The Greffier of the States (in the Chair):**

So, we now move back to the main Proposition as amended, and I would ask if any Members wish to speak in the debate on the main Proposition. If nobody wishes to speak ...

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

I will put the camera on so you can get a nice look at my blue tie and my red V-neck jumper. It makes me think that I am back at school. The battery may die so that may naturally curtail the length of my speech, which unfortunately will not be quite as short as the previous one. I just wanted to ask the question in all this: where are the lawyers? I think the question has been asked how did we get into this position, and I think it is germane to the general debate because, first of all, I have always found it strange that property transactions need to go to court and you need to get ... if you want to buy a house you need to go into the court and dress up in a suit and presumably take some kind of oath. I do not know, I have never done it. It seems a very arcane process when it could really be just a paper-based exercise. You do not go to court when you buy a car and you do not go to court when you buy a dog, for example, even though you could argue a dog is much more important than a property, depending on what your value system is. I was told by one young lawyer, in fact, she said to me: "I think that it is important that we keep that tradition because one of the benefits of going to court means that an advocate has had to look through the property deeds and we make sure that everything has been properly scrutinised and it goes through that formal process to make sure there are no errors." Well, that clearly has not happened in the case of the foreshore. Even before the land was gifted to us by the Crown to the Public of Jersey ... and it does make me chuckle how land which has always effectively been enjoyed by the inhabitants of Jersey, whether it was prehistorically or more recently, it has always been there and our land anyway, but at least our land has been given back to us by the Crown. That is nice to know. So, I just do not know, with all these eyes of esteemed lawyers that have cast their intellects and their vision over the document, why were these things never picked up? It should have been patently obvious when the boundaries were going through that parts of land which did not belong to the person who was selling them were being sold and transacted, and it was all happening under the eyes of the Royal Court. I question why ... well, I probably know why this has not really been questioned in this debate. I think it is because the Island is run by lawyers, and I do not mean any disrespect to our esteemed Chair, but you need to be a lawyer to be the effective Head of State in Jersey. If you are a Jurat, you need to be elected by lawyers. We see in the annual processions that we normally have that it is the lawyers who take precedence above any sovereignty that this Assembly might think it has. This Assembly, of course, cannot even set alcohol policy. It is the Royal Court which sets policy matters on alcohol in the absence of Ministers and Government being able to do that. So, I just ask the question quite openly in this debate because there are people, clearly, who are suffering the consequences of this and it will be the people of Jersey, like in the Les Pas case, who end up footing the bill and it will be the lawyers who have made the mistake who end up benefiting the most from whatever the outcome is with this. So I thought it is important to put that on record that the real culprits here, I suspect ... some might say it is unfair and I look forward to hearing them because they do have the right of reply, but somebody has clearly not been doing



their job properly over the decades and possibly over the centuries to allow what I think are fraudulent transactions to take place. That is why I have lots of sympathy for the position the Minister finds himself in and, of course, for the Deputy of the Parish in which I live for what she is trying to do. But I think we need to be fair-minded about this because I doubt ... the people who are selling property should know naturally that they cannot possibly own parts of the beach which are being transacted because it is public land and they should know not to sell and trade land which clearly cannot belong to them. Similarly, the lawyers in all this should have picked that up because that is what they are paid to do.

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

Perhaps it will not surprise Members that I seek to speak following what I think was a very unnecessary speech by Deputy Tadier. He began by asking why these transactions are passed through the Royal Court.

[11:30]

They have been for centuries. If this Assembly should wish to change that procedure, it is entirely within its power to do so. But the reason it is passed before court is to give a public record of the transaction. Land is treated differently in Jersey. It is treated differently to dogs and to cars. It is considered important. We, as members of the public, should know who is the owner of land in Jersey, and that information should be, first of all, transacted through a public forum and then recorded in a public forum, as it is in the public land registry. But if the Deputy thinks that should be changed and it becomes an entirely private transaction, he is free to bring a proposition and we can debate it. Then the Deputy asks why have lawyers not picked up on the question of the boundaries, that they have not done their job. Well, that is not correct because all conveyancing lawyers, all conveyancing clerks, know that the Crown has claimed the foreshore. They know about these issues that have been problematical for many decades, and when those lawyers are advising clients who wish to buy a property on the foreshore, they will be alert to the sort of questions that arise. They will find out whether there have been any previous agreements with the Crown or the public that might regularise the position. If not, they might get in touch with the representatives of the Crown or public and seek to regularise it. Indeed, we have heard in this debate how there have been transactions previously with the Crown and with the public and that is as a result of lawyers acting for the prospective purchasers or vendors of property, safeguarding the interests of their clients and seeking to regularise the position. If the clients - and it is ultimately the clients who decide - tell the lawyer that they do not wish an approach to be made to the Crown or the public, then the lawyer will still advise that there is a risk that the Crown or public might have claimed the land beyond the seawall. So, this has been known to lawyers. It has been communicated to clients. Of course, if a lawyer has failed to do that and the property owner is then met with a claim to the foreshore, then that property owner will have a right of redress against the lawyer for not giving adequate advice. But it is my personal knowledge that the issues around the foreshore are well-known to lawyers and lawyers would advise clients appropriately. Then we get into the argument as to whether the Island is run by lawyers, totally unnecessary and illogical argument because this Assembly has the sovereign power to change whatever Deputy Tadier was complaining about. If Deputy Tadier does not like the rules on the election of Jurats, he can bring a proposition to change them and we can vote upon it. Similarly, we can change the Licensing Law; I hope we might and will in the near future. It is this Assembly that has made those laws and this Assembly is sovereign over the Island, not lawyers, of course.

### **The Greffier of the States (in the Chair):**

Deputy Tadier wishes to raise a point of clarification.

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

Yes, I just wanted to respond to Advocate and Deputy Renouf by asking ... it is a clarification, Sir. Is the Deputy saying that going to court is the only way for a transaction to be recorded publicly and that there is not another way to do that?

**The Deputy of St. Ouen:**

I am not saying that. There may be other ways. For example, in France transactions are concluded before notaries, who are public officials. We come from the same sort of custom. In Jersey it has evolved and the court does it. The court essentially acts in a notarial function. It is not passing judgments. In France, that function has passed to public officials called Notaires. There are different ways. It need not be public even if the States decided to change the rules.

**1.2.3 Connétable R. Vibert of St. Peter:**

I am only speaking as a result of Deputy Tadier's speech. I do not believe that the Island is run by lawyers and ...

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

I am sorry to interrupt, Constable, but we cannot hear you very clearly. I do not know whether you could move closer to your microphone.

**The Connétable of St. Peter:**

Oh, sorry, let us try that. Can you hear me now?

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

That is better, yes.

**The Connétable of St. Peter:**

I am about 3 inches away from my laptop now.

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

Yes, stay there.

**The Connétable of St. Peter:**

However, I would say that, unlike Deputy Tadier, I do not believe that the Island is run by lawyers and it is unnecessary to say so. I have undertaken a number of property transactions over the years and in every case conveyancing has taken place and it becomes clear if any areas of land do not correspond with those when the land was previously surveyed. However, in one case it was my neighbouring land owner who was undertaking a sale and, although he was not obliged to do so, he contacted me to say that his lawyers had established that he had, in fact, encroached on to my land over a small strip about 2 or 3 foot wide and perhaps 100 foot in length. I would say that we reached an amicable agreement. However, he had no obligation to contact me. His lawyers advised him to do so but he could have gone ahead with that property transaction without telling me and without accepting the advice of the lawyers. So the lawyers are there to advise their clients. It is the clients who decide whether to proceed or not. I think that is what may have happened in many cases with the foreshore. I think the fact that under the Crown's ownership unfortunately it seemed to be particularly easy to acquire areas of the foreshore and, therefore, people probably said to their lawyers: "I am aware this has taken place in the past. Let us see what happens." I would think in every case where the lawyers found discrepancies, they would have told their clients that that was the case and their clients would have decided to go ahead, thinking that it was very unlikely that any action would take place. That is really all I have to say. I do not believe that the lawyers are to blame here.

**1.2.4 Deputy D. Johnson of St. Mary:**

I hesitate to perpetuate what I see as a side issue introduced by Deputy Tadier, but I think it does call for comment. There was during the last Assembly a review on the mode of conducting transactions of Jersey property. Deputy Tadier is right in saying at the current time transactions do have to go to the Royal Court, except, of course, those where the property is held through a company, where it is effected by share transfer and one would not even need to get a lawyer involved in that, although it would be, I suggest, remiss not to do so. The Review Panel did suggest possible other ways of completing transactions other than through the Royal Court, which as I say is a side issue. In many jurisdictions they are just dealt with between lawyers without going to the court. I do not think that affects the basic issue we have here, but I thought it worth clarifying the situation.

#### **The Greffier of the States (in the Chair):**

Thank you. I hesitated before the last speaker to say anything, but this cannot be allowed to turn into a general debate about the position of lawyers in the Island or how transactions go through the Royal Court. This has to be about the proposition in front of the Assembly, so I would remind Members of that.

#### **1.2.5 Senator S.Y. Mézec:**

I will try and keep it as relevant to that but the point remains that we have quite a poor system for managing land use in Jersey and it is that system that can lead to problems like this, which is the subject of this debate. I have to say it is quite amusing that some of the lawyers in the Assembly can get quite sensitive about what Deputy Tadier said when I think there was a point in what he said that made perfect sense to me, which is that there is often a deference to certain types of profession in all walks of life. In health matters we defer to doctors and medical experts and, of course, that makes sense, but our politics does seem to have quite a focus on deferring to lawyers in a way that I think is quite unhealthy. It prevents us often from having good discussions about how we can better manage not just our public services but some of the systems that are connected to that as well, which I think does connect to the proposition we are debating here. Just simply the point I want to make is that I hope that this debate will provoke some wider thought about how we can have a much better system for managing land in Jersey. My preference is to move to a land registry and to get rid of this bizarre and weird requirement to go through the Royal Court to have these land transactions. I think that if we were to modernise our system it would provide a better way of ordinary people acquiring land for legitimate purposes without then having it come back to bite them all of these years later. I think that Deputy Tadier's point that lawyers can often be resistant to this when it might have an impact on their profession, I think it is entirely appropriate to make that point and he should not be castigated for doing so. So, I support the points that he made and I hope that this debate on this issue will provoke that wider discussion about the better management and administration of what is a very finite resource in our Island.

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

Sticking to the issue of encroachment, there is no question that these issues and problems of encroachment will not all be so much easier to deal with if we have a registered land system. That is an issue that has to be picked up in the future because so many of the policy issues concerning property require it. We need to look to our sister Island to see their Cadastre and their land registry system and how much better it is. So, I make the point that we are having to spend a lot of time today sorting out issues which potentially arise as a complication of what is a very convoluted and complex system, and expensive.

#### **1.2.7 Senator L.J. Farnham:**

I think probably the most poignant speech we have heard today was the Constable of Trinity's, who reminded us of the morality of the issue that we have been discussing today. It was a difficult choice for me, as my votes will show, on the Amendment. My heart is with the Deputy of Grouville's

proposition, but I think my head probably supported part of the amendment for the reasons stated in the report, and which was ably assisted by the Deputy of St. Ouen with his contribution to that part of the debate. Then listening, of course, to all of the detail and some of the excellent speeches and the legal advice we have been having as well was also helpful. I have to admit to being uncomfortable at the apparent shift in policy, and behaviour it could be argued, from Crown to State ownership. I, and I hope many other Members, will be looking to any new policy to act absolutely in the spirit of which the transfer of ownership was made. I am sure the Deputy of Grouville will be paying particular attention and bringing any amendments to the Proposition 111, I think it is, that has been lodged for debate. I look forward to the opportunity to tidy this up so we can all move forward, again I say in the spirit of which the transfer of ownership was made from the Crown to the States.

#### **1.2.8 Deputy L.B.E. Ash of St. Clement:**

I will be very, very brief. I am delighted to follow the speech there from Senator Farnham. Much of what we have heard throughout this whole debate has been a succession of questions to the A.G. (Attorney General), where he always gives his very measured: “As I see it under the 1893 Act, this is something that could be construed as” sort of replies. As Deputy Tadier said yesterday, for us non-lawyers sometimes it is a bit of a minefield.

[11:45]

To an extent, I see this as something away from the legalities of everything and it is about whether or not we did the right thing. Let me use an analogy. In the unlikely event of Portsmouth reaching the Champions League final, if I manage to get a pair of tickets for Constable Norman to attend the event, he would then obviously legally be able to do what he wanted. If he put them on eBay and made himself some money, he would be legally entitled to do that, but it would be a pretty shoddy act and not the act of a gentleman. I believe in some ways that is the way the Government or the States have behaved in this. They may be perfectly legal in doing it, but I do not think it is the right thing and I do not think it is being conducted in a very decent manner.

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

I am grateful to the Deputy of St. Ouen and the Constable of St. Peter and indeed the Deputy of St. Mary for their commonsense approach. I would also like to say to Senator Farnham that nothing has changed. As I said previously, when it was the Crown who administered the foreshore, they were doing exactly the same thing as we are doing now, but I was pleased to see so many Members at the briefing held on Monday. To act as an *aide-mémoire* for those unable to attend, the Solicitor General has kindly provided a summary of what he said. This was emailed out to States Members a few days ago. I agree, it is a complex subject. I hope Members have also had the opportunity to look at the proposed revised policy which was lodged last week, P.111, due for debate on 3rd November. I have been annoyed by the way the Government have been portrayed over this, a lot of very emotive language used. The Deputy has chosen to perpetuate this. She said, albeit in inverted commas: “The Department of Infrastructure are set about going after Her Majesty’s subjects for encroachments.” There are 2 members of staff in Property Holdings who deal with encroachments and this is just a small part of their routine role. There is no taskforce going after anyone. Members who have been party to land transactions will know this is the time when boundaries are checked. It is therefore understandable that this is probably the most likely time that encroachments are brought to our attention. Often this is done by a conveyancing lawyer, who is properly doing their job. This is not usually a protracted event, but is equally dependent on the actions or lack thereof of the property owner. It has also been suggested it was once the Crown gifted land to the people of Jersey and that we decided to ask for payments for encroachments. This is simply not true. Encroachments were pursued and considerations paid well before the transfer in 2015 and the policy just continued after the transfer. This also does not support the argument that the Crown did not expect encroachments to be pursued after the land was transferred. I could go on explaining and refuting other allegations

made against the department, but perhaps it is better to concentrate on the principle. Encroachment should not happen. Unfortunately it has happened and probably will continue to happen. Action needs to be taken to demonstrate it is unacceptable to dissuade others. As I have already said, I will be voting against this Proposition and I believe it sets a dangerous precedent ahead of the forthcoming debate on the policy. It also risks harming a number of negotiations currently underway between Jersey Property Holdings and the property owners to resolve issues of encroachment. There are in fact, I believe, 3 under negotiation at the moment, but I do not expect them to come to fruition until after the debate. Ironically, acceptance of the Proposition could do exactly what the Deputy says she wants to address; it could hold up transactions, as she proposes, but could make the process more stressful for those who are currently awaiting resolution of their encroachments and they will have, using her words, the uncertainty hanging over. I do not think that is fair. I will finish on something that the Deputy of Grouville sent around this morning from one of the aggrieved landowners, shall we say, and I quote: "I simply paid out for the encroachment made by previous owners (probably centuries before)." I do not think so really, because - inadvertently misleading the Assembly, of course - this House has modern cantilevered extensions that extend right over the seawall and because part of it was historic, that was reduced by 50 per cent paid. I will leave it there. I will be voting against the main Proposition and urge Members to do likewise.

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

Thank you. The Constable of St. Ouen wishes to raise a point of clarification.

**Connétable R.A. Buchanan of St. Ouen:**

It is a point of clarification for the last speaker. I may be a bit slow and St. Ouen may be a long way away from the States Chamber, but I really do not understand Deputy Lewis, who has had his Amendments accepted by the Assembly, now voting against the main Proposition. Perhaps he could clarify that.

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

He has clarified it because he said he is going to do that and he has explained why, so I am not sure the Deputy needs to say anything more. If he wants to, I will give him the opportunity.

**Deputy K.C. Lewis:**

Basically it just muddies the water. It is not crucial, but it just muddies the water and I would rather vote against it and wait for P.111 on 3rd November.

**1.2.10 Deputy G.C. Guida of St. Lawrence:**

I think I am going to stick my neck out on this one. I have lived all my life in a country where encroachment is a bit of a sport and you would not go out and walk your dog without giving a little outward kick to your boundary stones and you would not plough a field without expanding it by a couple of metres. It is normal. Then you call the surveyors and put the stones back where they belong. However, I think we have to call a cat a cat. I have heard this word "encroachment" over all this debate. Could we just call it by its name, which is theft? Encroachment is theft of land. You are appropriating bits of property that belong to other people, so if the people that property belongs to are angry at it and want to do something about it, it is very difficult to go against that. Now, it needs to be done properly, you need to be responsible, to do it in a decent manner. I think that in the case of the Jersey Government the fact that the Jersey Complaints Board upheld some of those complaints means that we have not been very good at it. However, I do not think we can argue about theft being pursued at all. So I would like to put this out. This is quite important. We cannot allow it to happen. The Proposition again is fair in terms of a couple of cases where the Jersey Complaints Board was not happy about our processing, but we cannot muddy the waters and make it uncertain when we have a clear policy coming up in November. We should discuss that policy when it comes out, so I will be voting against the Proposition.

### **The Greffier of the States (in the Chair):**

Does any other Member wish to speak on the Proposition? If no other Member wishes to speak, I will close the debate and call on the Deputy of Grouville.

#### **1.2.11 The Deputy of Grouville:**

I would like to thank all Members who have contributed to the debate. It has not been an easy one. It is a very complex matter and obviously we have required a lot of legal advice. In this regard, I would very much like to thank the Attorney General. I regard my Proposition as a success, despite the Amendments, because on the one hand the report of the Jersey Complaints Panel had thus far been pretty much ignored. There had been 2 individuals, 2 members of the Jersey public who the report described to have been treated in an unjust, oppressive and improperly discriminatory manner. If I have got the Minister to finally reconsider some of the clauses in that, then I think that is a success. With this regard, I felt that the last speaker, Deputy Guida, has used some very unfortunate terminology and I would just say if something is a theft, surely in order to define that theft, we have to have some form of boundaries which illustrate where the boundaries are so people know what is and what is not part of their property and somebody else's. That we do not have. States Members supported the Amendment, which has written out the requirement of a map, so not very good, so we still will not have a map defining the boundaries. I also believe that we have had some action from the Minister. I have been asking for a revised policy, as did the Jersey Complaints Panel, so that we could get some resolution to this issue. The revised policy arrived on Friday and we learn today that we will be debating it in November, so I think that is progress anyway. The nature of this debate has aired the issue and I think the States Members have been able to give some pointers to the Minister of what they want to see in the revised policy. Obviously he has already lodged it. We have been waiting for over 3 years, but he has now lodged that, but I hope very much it will not be just for everybody else to go to work and write some amendments. I hope very much that the department are going to consider some of the things, some of the points that have been made in this debate. I have to say, the Constable of Trinity for me made the best point because he was the only one that considered the moral issue of the gift. The gift was given to us so that we could research renewable energy. The department, I am afraid, have set about using it as a money-making tool and that is it. I have not seen any evidence coming from them for the renewable energy research. I may be wrong, but I very much look forward to it. When States Members consider propositions, for me I always tend to look at the purpose of something. Why is a proposition being brought forward? In this case we look at a proposition, a revised proposition, to deal with a gift, the gift of the foreshore to us. The Minister, when he has been in charge of administering this gift, as I have said, so far he has used it to pursue Islanders for alleged encroachments. Until I get a map I will continue referring to them as alleged encroachments. Is it to create a promenade around the Island, which obviously is a nice thought? That boat sailed some years ago, I think, when the 60 or so property owners received land in front of their property. Indeed, the department continue to oversee the disposal of areas of the foreshore. One such case is currently happening in my Parish, where they refuse to act or take a stand.

[12:00]

I have written to the Minister on 3 different occasions and have so far not received a response. Is the purpose to get a bit of extra cash into the States coffers, £10,000 for a set of steps? Put to one side for a moment the officers' time, conveyancing clerks and law officers needed to extract these moneys. Is the Minister satisfied that his approach is truly in the spirit of the gift that was actually bestowed to us, as I say, by the Crown for renewable energy research or is the purpose to give the Minister better protection and access to maintain our sea defences? If the Minister needs an enhanced sea defence policy, then why does he not bring it? If he needs a joint planning obligation agreement to help him maintain the seawall, let him bring it, or is the purpose to stop further encroachments to the foreshore? The Minister claimed that his department put their heads in their hands and say: "Oh no,

not another encroachment” but if he needs a collaboration, an interest in planning decisions over the foreshore and wants to stop the encroachments happening in the first place, then why does he not bring something forward so that he has an interest in the planning application process? The Island needs a renewable energy policy to uphold the purpose of the gift in the first place, so let him bring it. As I said earlier, I find the Minister’s lack of response to the legal position raised in Appendix 4 of my report rather concerning. The Attorney General spoke about the fiefs and what he considers to be the case, but we have no definitive judgment on the law governing foreshore titles and it remains highly controversial. I do wonder if the Minister foresees his actions could provoke any future claim from the 5 current fiefs with engaged Seigneurs. We need to protect the public’s lands, but we need to do it in an open, transparent and fair manner. Now, I do not know how my Proposition stands now. I will go through the points that I have, but what I was asking for in (a) was we have a revised policy brought forward to this Assembly and for the Minister to stop charging people until such time as the policy has been approved.

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

Deputy, I am sorry to interrupt, but obviously the Proposition has been amended. I wonder if it would help if the Greffier read out the as amended proposition so that everyone knew precisely what the current position was.

**The Deputy of Grouville:**

Yes, thank you.

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

Thank you. Can I ask the Greffier to do that?

**The Assistant Greffier of the States:**

The Proposition reads as follows. the States are asked to decide whether they are of opinion - (a) that no further land transactions should take place between the Public and third parties in respect of strips or parcels of reclaimed foreshore until a revised foreshore encroachment policy has been debated; (b) that such policy should be brought forward for debate by the Assembly by January 2021; (c) that upon a revised policy being agreed by the Assembly, the Minister for Infrastructure should reconsider Finding 8.15 of the States of Jersey Complaints Board’s report (R.71/2018) in respect of refunding the difference (if any) between the considerations paid under the 2 respective land transactions and the considerations that would have been paid had the new policy been in place at the time; and (d) to request that the Department for Infrastructure publishes by the end of Quarter 1 of 2021, a map of all public accesses, footpaths and rights of way to the foreshore.

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

That is the Proposition now being debated and which will be voted on at the end of your speech, Deputy. Back to you.

**The Deputy of Grouville:**

Basically we have got the policy, we have a revised policy to be debated, we have got a moratorium, it seems, on all land transactions until such time it has been debated. Yes, I think we have made progress. Not all my points were accepted and obviously on certain elements of them I will be making amendments to the revised policy because I think a map setting out the borders is essential, otherwise how on earth do we know what the amendments are? I think we have made progress. I make my Proposition.

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

Thank you very much. We then move to the vote on the Proposition as amended and ...

**Deputy R.J. Ward of St. Helier:**

Can I just ask, is it in parts or all together?

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

Nobody has talked about in parts and the Deputy has not mentioned it either, so I assume she would want the proposition voted on as one package.

**The Deputy of Grouville:**

Yes, Sir.

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

Thank you. That has been confirmed, so one vote on the Proposition as amended in its entirety. The Greffier, when he is ready, will put the link in the chat channel for that. The link is available. I ask all Members to cast their votes and those who are having link difficulties to vote in the chat while the vote is open. I think all Members have had an opportunity to cast their votes, so it is last orders on voting, if anybody wishes to cast their votes. I will therefore ask the Greffier to close the voting. The Proposition as amended has been adopted:

<b>POUR: 29</b>		<b>CONTRE: 13</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Senator S.Y. Mézec		
Senator T.A. Vallois		Connétable of St. Clement		
Senator K.L. Moore		Connétable of St. Brelade		
Senator S.W. Pallett		Connétable of St. Peter		
Connétable of St. Helier		Connétable of St. Mary		
Connétable of St. Lawrence		Connétable of St. Martin		
Connétable of St. Saviour		Deputy K.C. Lewis (S)		
Connétable of Grouville		Deputy G.J. Truscott (B)		
Connétable of St. John		Deputy G.C.U. Guida (L)		
Connétable of Trinity		Deputy of Trinity		
Connétable of St. Ouen		Deputy S.M. Ahier (H)		
Deputy J.A. Martin (H)		Deputy R.J. Ward (H)		
Deputy of Grouville		Deputy C.S. Alves (H)		
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy J.H. Perchard (S)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**The Assistant Greffier of the States:**

Members voting contre: Deputy Ahier, Constable of St. Clement, Constable of St. Mary, Deputy Guida, the Constable of St. Brelade, the Constable of St. Martin, Deputy Truscott, the Deputy of



Trinity, Deputy Alves, Deputy Lewis, Senator Mézec, Deputy Ward and the Constable of St. Peter. Those voting pour: the Constable of Grouville, Deputy Labey, Senator Farnham, Deputy Higgins, the Deputy of St. Martin, Deputy Le Hegarat, Deputy Maçon, Deputy Morel, the Deputy of St. Peter, the Constable of Trinity, Deputy Young, Senator Pallett, Deputy Martin, the Constable of St. Ouen, Senator Vallois, Deputy Gardiner, the Constable of St. John, Deputy Ash, Senator Moore, the Deputy of Grouville, Deputy Pamplin, the Deputy of St. John, the Deputy of St. Mary, Deputy Wickenden, the Deputy of St. Ouen, the Constable of St. Lawrence, the Constable of St. Helier and Deputy Perchard.

**The Connétable of St. Saviour:**

This is the Constable of St. Saviour. I had to vote in the chat and I voted pour.

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

Thank you very much.

**2. States meetings in 2021: move to a 3-week cycle (P.106/2020) - as amended**

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

We now come to the final Proposition, which is entitled States meetings in 2021: move to a 3-week cycle lodged by the Privileges and Procedures Committee; that is P.106. Before we start, Deputy Labey, do you wish for this Proposition to be read as amended by the 2 Amendments that have been lodged?

**Deputy R. Labey of St. Helier:**

Yes, please, Sir.

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

Deputy Gardiner and Deputy Maçon, are you content for that to be the case?

**Deputy I. Gardiner:**

Yes, Sir.

**Deputy J.M. Maçon:**

Yes, Sir.

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

Does any Member object to that course of action? I do not see or hear any objections so I will ask the Greffier to read the Proposition as amended by both amendments.

**The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion - (a) to agree that meetings of the Assembly in 2021 should follow a 3-weekly cycle, on a trial basis, in accordance with the schedule of dates contained within Appendix (a) of this Proposition; (b) to request the Privileges and Procedures Committee to bring forward amendments to the Standing Orders of the States of Jersey for the duration of the trial with the purpose of: (i) ensuring that, in addition to a period of 30-minutes Oral Questions Without Notice to Ministers at each meeting, there is also a 15-minute period of Oral Questions Without Notice to the Chief Minister; and (ii) providing an additional 20 minutes of Oral Questions with notice at each meeting; (c) to request the Privileges and Procedures Committee to bring forward amendments to Standing Orders of the States of Jersey to establish a procedure during the trial whereby Written Questions may be submitted outside of States meetings, ensuring that the procedure allows States Members either the same or a greater opportunity to submit Written Questions than exists at present; (d) to request that, having monitored the impact of the trial, the

Privileges and Procedures Committee bring forward, for debate by the Assembly before September 2021, any proposals to permanently alter the frequency of future States meetings.

## **2.1 Deputy R. Labey (Chair, Privileges and Procedures Committee):**

Deputy Young's debate yesterday neatly informs this one, I think. When 2 or more Members meet together privately, very often the subject for discussion is what is wrong with our system. Now that is out in the open, I think that Deputy Young has done the Assembly a great service. Even though he did not win his debate, it was a fascinating debate and one that had to be had. I said this in a radio interview on this Proposition 4 weeks ago while I was on holiday and I did an interview with Radio Jersey. I said the bigger picture here is that fundamental flaws with our democratic system, with our system of government, are going unchecked because we are all occupied to the max with the existing commitments. I just want to inform the Assembly that I will put Senator Vallois' idea of a Standing Committee to look at the issues that were discussed yesterday to P.P.C. (Privileges and Procedures) and I have invited the Senator to attend our next meeting, which is on 5th October. I will also pledge to engage with Deputy Morel, who made a similar suggestion, and Deputy Young and anyone else if they want to be included in this. A Standing Committee of P.P.C. has to be chaired, I think, by a member of P.P.C., but we can co-opt Members who are not on P.P.C. on to that Standing Committee. We will put that in train, but of course it is another committee and space will have to be found for it in the current system. The Greffe keeps a chart of all the meetings going on and all the commitments and all those are blocked out in green on their calendars. I have got copies of them here because I was looking at finding ways to do these films I want to do about what Members do behind the scenes. It is a sea of green, it is absolutely packed, jam-packed, and that is what this Proposition is all about, finding more time and space to work. I just went away on holiday the last 2 weeks of the recess. Before that I was able to meet with my subcommittee, Deputy Alves and the Deputy Greffier, 9 times. We got so much more accomplished because we could concentrate on the job in hand without having to dash hither and thither and it just proved to me, I think, that trying to find a bit more space for us to work in and time manage better could be of benefit to all. That is what this is about. I do not work harder than anyone else in this Assembly but I do work sometimes above and beyond the call of duty, and sometimes those weeks in between sittings can be crazy for me. I agree with Deputy Young, he said this yesterday, that in this Assembly some of the best initiatives are coming from Scrutiny and their reports - and I have just read a brilliant one, probably the best one I have ever read by the Education Panel on the retention of teachers - and also initiatives, some of the best coming from private Members.

[12:15]

So we have to ask: is the balance right between what is available, the might of resources and people and time that is available to the Executive as compared with what is available in terms of time and space and other resources to Scrutiny and private Members when they are putting their propositions in? Of course this P.P.C., with the Greffe, has brought in more resources and staff to assist with administration and research for Members, and that is already getting positive results. Arguments against this Proposition include that it is not a genuine trial, once it starts, we will never be able to stop it. That is wrong and I will tell you why it is wrong, I will tell Members why it is wrong, because very many people, Members who have spoken to me and said they would support this Proposition when we last discussed it, said that they would only support it on the basis that it was a trial programme; that it was on a trial basis. So those Members are willing to go for the trial but want to be convinced before committing to this permanently. I think Scrutiny and private Members will feel the benefit of this. If they do not - if, for example, Scrutiny find that there is no improvement in access to Ministers and officers when they want it or late cancellations continue at pace - if Scrutiny and private Members do not feel the benefit of this experiment, when I bring it back - as I have pledged to bring it back before the summer recess - they are not going to vote for it to continue. There is no point. Part of this is a plea to Members. Let us not be set in our ways, let us be open,

knowing that we have problems with our system. Let us be open to ways of fixing it. We do not have to change Standing Orders to bring this in. Obviously I want Members' consent and I would not dream of doing it without it, but it is a trial and it is a genuine trial. The fact that this does not result in the Assembly sitting for fewer days is very useful for public reassurance, very useful. Yes, there were the predictable comments on Facebook and Twitter when this Proposition was first lodged, saying things like: "Oh well, if the States Members are going to be doing less work, they should be paid less." Members might have seen, I went on to Facebook and followed one particular thread on politics Jersey and answered all those points. By the end, it petered out. The last comment was from a man saying: "We do not understand what States Members do. You have got to accept that if they think this is a good idea, then it is a good idea." I went on to Radio Jersey, as I say, for 13 minutes one morning while I was still on holiday and I also FaceTimed Gary Burgess with CTV and that went into a report. From then, I have not had the backlash that was predicted or I have not seen it. Yes, people are generally concerned and they talk to us about it, but once you do them the courtesy of explaining it ... I had a woman ring me. She was quite irate, and this is why I take issue with some of the comments that were made in Deputy Young's debate yesterday, that the public are not interested in the minutia of government workings. Some absolutely are. This particular woman, she was fierce but fantastic, and she railed against the way that we are working, a lot of the lines that were discussed yesterday; very much so. She was angry about this Proposition and my answer to her was: "Look, what you identify has been happening for years. How are we going to change it if we do not change the way we do things? It is going to be left to run." So we made friends by the end of it. She did come over to my way of thinking and she agreed at the next meeting she is going to stand for the next election, she is going to stand for the States, so a result. I do think we can explain this to people very sensibly and they do take the point that we are not going to be sitting for fewer days. It is something of a red herring, obviously, because the truth of the matter is the Assembly will sit for as many days as it needs to get through the business before it. The reduction in Question Time, so we will have 2 less during this trial. That is a valid concern. I understand it, I have always acknowledged it and I have always said that we need to put mitigation in place for that. The 2 helpful amendments from Deputy Gardiner and Deputy Maçon both do that. I will not go into that now because I do not want to drone on for too long, but I will leave them to speak to those amendments and those ideas when they speak in this debate, hopefully. Members may want more mitigation in terms of questions. I think we should talk about that, try and reach a consensus and I will bring back a proposition to this Assembly on that. It provides an opportunity, this experiment, to be radical, to try new things. The one thing I do not agree with is on a Tuesday after 3.00 p.m. poor Deputy Tadier had to start his Proposition. What chance did he get of having it debated by 5.30 p.m.? Very little. So I think we should finish questions on the Tuesday morning, but why do we not do questions with notice, orals, on the Tuesday morning? Why do we not do questions to the Chief Minister and other Ministers without notice on the Wednesday morning so that we have got a better chance of fitting in our debates and we start Public Business earlier? Because the practice of leaving a debate overnight ... and Deputy Young had this at the previous sitting where we overnighted, we let it go overnight and the only thing that was left for that debate was Deputy Young summing up, which he had to do at 9.45 a.m. It does not feel right to me. I think we should be as flexible as possible and try and time manage as possible so that does not happen. I think the 4-day sittings will help this. We should not be afraid to stop at 4.30 p.m. if we think we will not get a debate in in the next hour and start it the next morning. We should be flexible about that. Deputy Doublet is our conscience on family friendly practices and I am trying very hard to do that as well and to meet that. I pledge to continue to do that to the Deputy. I think the 4-day sittings, once we get it into the mindset that we will be sitting for 4 days, will assist with this. I cannot promise it. I cannot prove it, I say to the Deputy, but all I can say is we will not know until we try. We will not know until we try, so let us give it a try. I do not doubt Question Time is a vital part of what we do in the Assembly; I do not underestimate its importance at all. Neither do I overexaggerate its importance. I think back to the last Assembly and how many questions were there about the hospital, 100, 200, 300, 400, 500, more? I do not recall

any of those changing government policy. I do not think the previous Minister for Health and Social Services changed tack because of any of those questions. What changed government policy on the hospital in Gloucester Street was P.90/2018 and then P.5/2019, both private Members' propositions, both mine, and to bring them I had to do an awful lot of work. I am not complaining, it is what I am paid to do. It was days and days of meetings with people, of researching, of immersing myself in a subject I was not particularly au fait with so that I could stand with confidence before the Assembly and make my points and answer theirs. So it was an awful lot of work. I just feel that Members bringing private Members' propositions are going to benefit from larger gaps between sittings and a more concentrated week when we have the sittings. Regardless of being chairman of P.P.C., as I say, I try my best to work my hardest and I think I am fairly productive and I think I am entitled to bring this to the Assembly. I would just say that I am many things, but I am no Government patsy. I am passionate about this because when I discovered the former Greffier's paper on this, made 10 years ago to a subcommittee of the P.P.C., it was like Jim Hawkins discovering the map to Treasure Island. It completely resonated with me and I feel on that treadmill sometimes. If other Members feel on that treadmill sometimes, then they will vote for this. If we are alone, if we are in the minority, it will not go through. We will not fall out. This is for Members to make a decision on. I am going to just finish with this point, and this was touched on yesterday in the debate too in a way. We, because of our system, because of our commitments, perhaps because we do not have a party political system, we do not do, in the States Assembly, and as far as I can see have never done - which is something many legislatures and Parliaments have built into their parliamentary calendar - is we do not caucus. Maybe caucus is the wrong word because we are not a party political setup here, but we do not get together, elected representatives, say the unsayable, think the unthinkable, come up with ideas. Some of those caucuses, which are essential to other democracies, they are not just party political ones. Often many of them are issue-led, foreign trade, water sports, whatever. They are issue-led and they are bipartisan or tripartisan. In fact, what Deputy Morel was suggesting we do with the issue of our machinery of government he was bang on right, and maybe the Standing Committee is the way, maybe a caucus is the way. In the 3 months before this comes into force in January, let us look at ways to see if we can build these things into our parliamentary calendar so there are set times for not just that, but other things too and help us know where we are. I did not want to talk too long and I will close for now. I just want to say this: look, being busy is not enough. We are all busy, but it is not enough. Being busy is not an identity, being busy does not define our intelligence, it does not prove our perseverance, it does not portray our ambition. At the end of the day, or in our case at the end of a term of office, you can put in 10,000 hours but the bottom line is outcomes and results. Let us try and get off the treadmill for a period of time, see how it works and see what the outcomes and results are. I move the Proposition.

**The Bailiff:**

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

**Deputy G.C. Guida:**

I was a little bit quick off the mark. I should have trusted the Deputy a little bit more in covering ...

**The Bailiff:**

I am sorry, Deputy, could I pause? I did not spot that Deputy Ward was seeking a point of clarification from the chair of P.P.C.

**Deputy R.J. Ward:**

It was just a point made and I may have misheard it about written questions having no impact. I just wanted some clarification on the chair of P.P.C.'s view on written questions. I think it is very important to have that because of the change that has been accepted for this amendment. It was not clear as to the importance the chair of P.P.C. was giving to those written questions or whether he

thinks they are not important and could be lost. I may be wrong there, but I am sure the Deputy knows that I am asking in the best possible way.

**The Bailiff:**

Are you able to provide that clarification, Chair?

**Deputy R. Labey:**

Yes, I am grateful too. I did not say that written questions have no impact. I think written questions are a really effective tool. I have used them a lot. What I like to do is often ask the Written Question, get the answer to that and that forms the basis for my Oral Question with or without notice. Members may remember that when I first mooted this, I suggested that part of the mitigation for losing a couple of Question Times was to divorce Written Questions from the Order Paper so that they could be asked at any time. In what I am envisaging with the 2-week gap between sittings is that you can put in your Written Question after the previous sitting, maybe on the Monday, get your answer by the Tuesday or Wednesday and still meet the deadline for Oral Questions with notice on the Thursday. I think that could be very, very useful. I do not downplay the Written Questions, Oral Questions. All questions are a vital part of what this Assembly does. My point was they do not often change government policy. For that, you have to start bringing Propositions.

**Deputy R.J. Ward:**

Sorry, just a further clarification then, if possible.

**The Bailiff:**

If it is a point of clarification, of course.

**Deputy R.J. Ward:**

Of clarification. In accepting the amendment to Written Questions, would the trial also include a change and, if so, how will we know about that change? Because it is not in the document and I think it needs to be clarified before we move forward as to the impact on that acceptance of the Amendment on the overall process that we will go through, because it is not there.

[12:30]

**Deputy R. Labey:**

I am happy to answer that too. If the Proposition is accepted as amended, from the trial period, January to July, Written Questions will be divorced from the Order Paper. We need to sort out the detail, but they can be asked at any time officially and you will get an official answer and it will be published, so we need to set that up. Deputy Maçon's proposition on questions increases by 20 minutes the time for Oral Questions with notice. What I am saying to you, Deputy Ward, and to the Assembly is if you still want more measures, we should have that discussion before January and I will bring that to the Assembly. If you want extra mitigation in terms of questions, I am open to everything. We should think outside the box and we will have those discussions and I will bring the proposition to the Assembly if further mitigation, more question times are required.

**2.1.1 Deputy G.C. Guida:**

I am quite glad for that interruption because I was going to repeat much of what Deputy Labey has said in terms of this being exactly the same amount of work as we have now. There will be fewer sittings, there will be exactly as many days, and I am quite happy to try the 3-days trial. On Written Questions, I think the Amendment is a very good idea as well and I would like to comfort the Members of the Assembly who are not on the Executive that the Written Questions, as much as Oral Questions, do have a very strong effect on Ministers. They tend to make us dig into places that we are not necessarily aware of and we read the answers and question them if we are not happy about

them. So they are just as valuable as Oral Questions and I am quite happy if we streamline the process so that they do not need to happen at sittings but can happen in between. So I will be supporting that. It is a trial. It is exactly the same amount of work for us and I hope that the public will realise that the Assembly is about 10 per cent of our workload, not much more. We will be working exactly as hard in a slightly different way, and it is a trial, so I am very, very happy to support this.

### **2.1.2 Deputy I. Gardiner:**

We were elected to do our job as States Members and I would like to emphasise that as a States Member for me we have 3 major parts in my opinion of the work. We have Assembly meetings, we have Scrutiny work or Government work, it depends what you are on, and we have constituency work. Holding Government to account is extremely important. From my perspective, holding Government to account at the States Assembly is as important as Scrutiny work, and Scrutiny work is a major democratic tool for us to hold Government to account. I think that during the Scrutiny work we can ask questions that will drill down that we are not always able to ask at the Assembly. If we like, we can call Ministers once a month and hold Ministers to account and hold public hearings so that public can be engaged. I brought an amendment and I thank the chair of P.P.C. for accepting my Amendment. Basically my Amendment asked to establish a procedure during the trial that Members will be able to submit Written Questions and get answers outside of States meetings to ensure that we all have the same amount or even greater opportunity, and I would welcome greater opportunity, to submit our Written Questions and to get answers. It was important for me to put this Amendment because there has been discussion that it will happen but if they are debating it today and they are voting for this today, we know for sure it will happen. I thank Deputy Ward because he raised the question about the importance of Written Questions and I think that Written Questions cannot be underestimated. They can be used as a tool to obtain information on any topic from Ministers and also hold their office. Questions can be raised on a variety of reasons from providing clarity on policies or procedures to establishing insight of work that is carried out by States departments, to provide information for forthcoming debate and to assist with constituency issues. Sometimes I would be happy to get an answer to the questions that are raised today and not wait another 2 weeks, so this will allow us to put questions and to get answers quicker. Everyone is seeking ways to improve the efficiency of the Government, of the States Members, and it is extremely important for any business - and we are a business - to plan ahead. I think that this week just shows us how it is impossible to plan ahead because we needed to come for public hearings, which are important to hold Government to account, and if in our heads we have one week fully dedicated to work at the States Assembly and another 2 weeks fully dedicated to work at Scrutiny and at the Government, we will have enough time to work with our constituencies. My parishioners do need me and maybe it is just the case—in my case I do not think so but our District, Districts 3 and 4, St. Helier, is the biggest District on the Island. This change would be better for me at the present workload. It would enable me to set meetings with more certainty, it would enable me to develop a proposition, to meet my constituency more, to have discussions with them and to gather their views, and to dedicate the time to Scrutiny. I understand that other Members' views might be different and I know that they are different, so let it be the will of the Assembly which way we go. It is a trial. I personally do not think it would have an impact on accountability or on democracy or the way our democracy works. It will invest more time in Scrutiny work and more time to work with our parishioners, and we have full weeks, not fewer days, even more days in the Assembly. I personally will be voting for this Proposition.

### **2.1.3 Deputy K.G. Pamplin of St. Saviour:**

I am against this trial Proposition for many reasons. I just want to begin by saying I understand why the chair of P.P.C. and P.P.C. have been looking at it and have brought it to the Assembly. However, there are many factors in this. It does look simple at the outset but there are various Standing Order rules in terms of the scheduling of meetings and also other areas that need to be taken into

consideration. I want to start by looking at the schedule for 2020 that we already had. To remind Members, in 2020 we did not have our first sitting of the Assembly until 21st January and there is a Standing Order reason behind why we cannot start earlier in January. From memory, that was 3 weeks already into the first month of the year and 5 weeks since our last States Assembly meeting. The following month in February, because of the half term in February, we had another 3-week gap because of that half term, and let me remind Members that in February the virus that we now know is COVID-19 had started to disrupt lives with gathering pace and situations were changing very, very rapidly. Also in this time we had a very significant situation for this Island in the collapse of Flybe. If you take the virus out of the situation for a moment, if it had not occurred in March and to cover the Easter, there was going to be a 4-week gap between States sittings. In the month of May in 2020 there was only one States Assembly meeting, minus the ceremonial Liberation Day meeting. Then we would have had 3 meetings in June and only one in July, again for a Standing Order reason, to allow a then 8-week recess until the next States meeting. Going by the normal schedule, we would have had 2 States meetings in September, 2 States meetings in October, 2 States meetings in November, one meeting in December. The only reason we are having an extra one is by the request of the Government so we could have the debate on the Government Plan. There would have then been in theory another 5 weeks before we met in 2021. Already we have been trialling and having a system that does allow time periods of around 3 to 4-week gaps. Then, of course, the recess and then, of course, our break over Christmas recess. To bring the situation in 2020 back into the equation, with the coronavirus, we then obviously had to change how this Parliament held the Executive branch of this States Assembly to account with some of the biggest changes to civil liberties that needed amendments and Scrutiny in fast time to allow them to be debated in this Assembly to match the debates that were going on in a very nervous Island. For the very first time in a long time the public of this Island were watching us ever more so closely because of the impact of the coronavirus that was happening to all of us. We were the symbol of how democracy should be done in the world. I had great pleasure yesterday during lunch to speak to the C.P.A. (Commonwealth Parliamentary Association) 64th British Islands and Mediterranean Region Conference where I spoke about the ability, how this Parliament, this States Assembly, ensured democracy continued. It caused us great stress and great pressure on us, and let us not forget our staff in Government and all the officers there, the Scrutiny and the Greffier staff, but we all met that challenge. Then suddenly we had this moment where this Assembly could make decisions very quickly. The turning around of the constitution allowing us to meet in a virtual setting proved how fast we can evolve and how we can make this Assembly more efficient to meet the demands of the public of this Island who want us to debate the matters that impact and improve their lives, to hold the Executive to account and to fit in, as Deputy Gardiner said, the other pressures of that job, the job that we do. For me, I am the vice-chairman of the Health and Social Services Scrutiny Panel. We have had a huge couple of years with the mental health work that we did, the Future Hospital, then of course the Future Care Model, which is a huge piece of work for us. Then I am also on the Economy Scrutiny Panel, which I did take a break from because I was also the chairman of the Liberation 75 Working Party. I am also a member of the Bailiff's Consultants Panel where we had a busy period advising certain roles in that succession. I am also the vice-chairman of the Care of Children in Jersey Review Panel, alongside Robert Ward and many other Members, the Diversity Forum and other parts of this job. I equally also attend nearly all our Parish Assemblies and I have a high turnover engagement with my constituents and my Parish. I have made it work, plus also made sure my presence is felt in this Assembly, not always but speaking and reading and researching the debates. I have managed to do that, plus be a single father to 2 children in a very complicated year personally and also the constraints of the Assembly. But I believe this Assembly has been better this year at holding people to account and showing itself. It is all up to us as individuals how we want to present, how we go about our job to our constituents, to our voters, to this Island. Members have many ways of doing that with surgeries virtually now as well as in person, social media, doing our own gatherings, the thing that Deputy Labey mentioned about caucusing and coming together.

There is 8 weeks in the summer already there for us to do certain things. There are, as I described, weeks in the calendars during half term where there are already 3-week gaps, or between December and January there is 5 weeks where we can do certain things like that. Lastly, my point is I understand it is a trial and we have to do these certain things, but for me fundamentally the timing of this does not feel right. We have proven how nimble, how creative, how in tune, how in step, how we can push the boundaries of democracy for the Island who have seen us work and started to engage with us in a much better way. On the Executive side, I applaud where the Government have been improving their communication with Islanders more and more, so using social media. The Greffier side who have done an extraordinary job over the last few years in reaching out and doing new initiatives. The C.P.A. is trying to do that as well. How will it look suddenly to an Island who have seen us meeting more regularly, visibly, virtually? We have all these new exciting tools to improve democracy and how that could be visual to support all arms of this Assembly's work, that suddenly we extend 3-week breaks into the mix next year, where we have suddenly gone from this to that. I understand Deputy Labey's argument about how we could be more efficient but the perception of that, I just think after the year we have had and the unknown future of the winter because of the virus, because of the Government Plan that is coming our way, the hospital, the migration policy and all the other big pieces of work, it is not the time. Let us work on this together because again we did not have much of a consultation. I know P.P.C. do that on our behalf. We had one team meeting to discuss it, which we voted for in private which led to the Proposition. There are many aspects I think we all want to get involved with and be part of it to improve the whole thing. We should all have more of a say on that. For that reason and all the reasons I just explained, this is not the right time and I urge other Members to vote this away and let us come back at it another day.

**The Bailiff:**

Now is the clear time for someone to propose the adjournment if they wish to do so.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Bailiff:**

Very well, thank you. The adjournment is proposed and the Assembly stands adjourned until 2.15 p.m.

[12:45]

**LUNCHEON ADJOURNMENT**

[14:16]

**Deputy K.G. Pamplin:**

It was just brought to my attention by those watching the debate that when I was listing my choices and responsibilities as a States Member there was a perception that I was complaining about the workload, which was not the point I was trying to make, so it is just to clarify that. I find the structure that we work in, and including my workload and my family life, is not a problem at all. In fact, it works very well for me, so I just wanted to make that point to be clarified.

**2.1.4 Deputy K.F. Morel of St. Lawrence:**

How is everybody today? Confused, on top of their game or jaded, slightly disengaged, perhaps a little tired after lunch? Indeed, are Members wishing that this debate would just come to an end? If it is the latter, we can certainly expect more of that and feeling like this more often if indeed this proposition is passed because we will have more full weeks of debate, Monday to Friday, back to back, non-stop, listening to ourselves droning on, and that, I believe, is something that does not help the quality of discourse in this Assembly or the quality of discourse heard by the public of Jersey. Yesterday we heard so much about the problems of our divisive system and the enormous issues created by the centralisation of government through what I believe is the poor judgment of the



previous Assembly when it supported P.1/2018. Those issues manifest themselves most clearly in the fact that we can all see that further distance has been put between the Government of Jersey and this Assembly. As I have said before in here, Government is not of its own accord democratic. Democracy has to be imposed on Government and in fact it is the distance that we see today that has resulted in the deterioration of the flow in information between Government and non-Executive Members of the Assembly, something which, incidentally, would be made worse by a party system. The results of all this is a diminishment of accountability, a lessening of the role of democratically elected Members of the Assembly, an enormous strengthening of the role of unelected senior civil servants and the muddling of the roles of Government Ministers that apparently those civil servants are there to serve. In my opinion, democracy in Jersey has been under attack for many years. Indeed, I believe the very identity of our beloved Island community is under attack. By whom you may ask. Well, in my view by a United Kingdom that would like to bring Jersey into line, that no longer values the peculiarity of our culture, our democracy and our proud tradition of self-sufficiency. Without urgent action by this Assembly, Jersey has been set on a course that has seen the public disenfranchised and this Assembly being reduced to the nodding dog status of a U.K. (United Kingdom) city or county council. Members are aware of this and we know this, or I know this because I heard them discussing it yesterday, quite passionately indeed. Yet, it is amid this that I would call a crisis, this taking of power by an unelected Executive, this attempt to reduce the role of this Assembly, that the chair of P.P.C. has taken instruction by the Government to further reduce the role of this Assembly, reducing its role in holding the Government to account and, perhaps more importantly, reducing its role in the eyes of the public who will quite understandably see it as the Assembly retreating into the shadows, allowing the Government to push forward with its agenda, unchallenged and unaccountable. Why will this move further diminish the role of non-Executive Members? Quite simply because it reduces the opportunity for questioning. It reduces opportunities for those Members who are barred from access to Government offices in Broad Street to informally meet and discuss matters with Ministers and Assistant Ministers. Urgent questions? Well, now, they will just have to wait a few weeks. This week with our partial return to the States Chamber, I have been able to speak with the Chief Minister, the Minister for Health and Social Services, the Minister for Home Affairs and the Minister for Infrastructure, nicely, cordially and on a range of matters, all without an agenda. As a result, I have built and, I hope, strengthened relationships. I have learned information about matters that were on my radar and, more importantly, I have learned information about important matters that were not on my radar. These random, informal chats are vital to my role as a Parish Deputy and to my roles in Scrutiny and the Assembly, but for these past months without the physical Assembly such opportunities have been lacking. Yes, I have spoken on the phone with Ministers but phone calls need a reason for that interaction. They are fundamentally different to spontaneous conversations over tea and a biscuit. So this move will reduce my ability to work on behalf of my parishioners but perhaps the most important effect of this proposition will be on the public of Jersey. For Islanders, the States Assembly is the principal forum by which they engage with political discourse in Jersey. They will see the Assembly operating less often and in a less considered manner as fatigue sets in during full weeks of debate. There is no doubt in my mind that the quality of debate and consideration decreases through the course of the week and all of this while the Government propose more legislation, more changes to the way they work. Yet here we are saying: "That is okay. We will ask you a question. We will cram debates in and, therefore, ensure their quality is less." I am deeply concerned about the path of democracy in this Island and the lack of accountability of Government. This move will only increase the ability for the Government to act as they wish away from the eyes of the public, the very people they are meant to serve but who ironically are the very people they want to interact with less.

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

It is with a degree of sadness that I feel I have to speak and I have to address this particular proposal. The previous speaker - and it is rare for me to agree with him but in this case I cannot help but - made

a good speech defending democracy on this Island and I believe, like him, that democracy, not for the same reasons, is under threat from within. I simply cannot understand the motivation of the Member who has brought this proposition, because it ignores the absolute vital nature of the process that we go through in this Chamber. By that I mean it is our prime duty (a) to represent the interests of our electors and (b) to call the Ministers to heel. We must have that capacity and I believe it is bad enough that we do not get our written questions read out at the beginning of a meeting. I do not know why that happened because what it does is denies that information to the people out there saying: “Oh, that topic is now of interest” or whatever. But the fact is that question time, written questions, oral questions, is the starting point for the scrutiny that we conduct and to suggest that we go into a 3-week rota instead of a 2-week rota, I am sorry, means inevitably that the volume of questions and the depth of questions and the quality of questions will be reduced. In my mind, that is inevitable and that is what will happen, and I find that very disheartening. We were told by the proposer: “But you will be able to ask questions at any time out of the schedule. You do not have to wait to ask in the meetings.” I will point out to the proposer that that facility already exists. Every officer in every department, every chief officer in every department is bound to co-operate with Members of the States in terms of giving them information when they ask for it and responding to questions when those questions are asked, and they must do that in a timely manner. So that is no bonus because that facility already exists. Let us take a look for a minute at the question and answer process that we have and how many times do you get a delayed answer. Does the officer say: “I cannot spend time on that” so that you have to push and push and push in order to get an answer? How many times do you get an answer to the questions that you are asking that loosely responds if not quite? It does not answer the question so you have to rephrase your question and ask it again. Imagine doing that just as part of your daily routine of having to follow up on questions, trying to press them: “Have I got an answer to that yet? Has it happened it yet?” Then getting answers that do not clearly relate to the question asked. Under Article 63(7B) of Standing Orders we can now challenge that in the House. If somebody gives you an answer that is not relevant to your question, it is just avoiding the question, then we can go to the Bailiff, the Presiding Officer, and suggest that we ought to get a proper answer, one that at least addresses the question. That is possible now. Imagine a free-for-all at any time with every Member of this House asking questions whenever they felt like it and following up and then asking whether the answers are relevant and popping an email to the Presiding Officer: “Are these questions ... I do not think they are? Are they relevant? Please make a ruling.” That way, I think, lies a lot more work for people and a pretty chaotic scheme of running things, I think. The proposer says: “And any time between now and 1st January you can come to me and we will amend this and we will fiddle with this and we will do that” so we do not know what we are voting for and we will not know what we have got until it arrives on 1st January, and I find that deeply unsatisfactory. The one thing that might get me voting for it and say it is a good idea is if we were to take the cap off the number of written questions we can ask, and oral questions.

[14:30]

Take the cap off altogether, back to the old days when there was no cap on questions. I am reminded of the time when then Deputy Ted Vibert was asking questions of a Minister for Transport. He started his questions just before lunchtime and he had 20 questions. He got through the first 6 and we adjourned for lunch. By the time the Minister came back after lunch, having seen the rest of the 20 questions, he then resigned, a very effective use of questions in order to get people to accept responsibility for what at the time was an awful bus contract but nonetheless effective use. Just briefly, I would like to add to that support for the previous speaker, Deputy Morel, when he said: “How are you feeling today? Feeling a bit jaded, feeling a bit ...” yes, there is no doubt about the fact that for the first 2, 3 days in the States we function better than the fourth day, inevitably. By the time you get to the fourth day after 3 days of debating various topics, I do not know about you but my brain turns to porridge. I just want to get away from the Chamber and go somewhere else and

recover. That is almost inevitable if we have 3-week sessions, then stuff will pile up and we will have more and more 4-day, 5-day sessions in order to get through material. I dread to think what is going to happen in November and December when we are doing the heavy stuff of the new Government Plan if we are on a 3-week schedule and we are doing 4-day sessions, 5-day sessions, we are going into a 6-day, as I have seen in the past, by which time you will vote your granny to be robbed. For those reasons and many others, I believe this is a misguided proposition which does no favours to this Assembly in holding Ministers to account and in making sure that decisions made in this House are transparent and understood by the people who really count, not the people in this Chamber but the people out there whom we are here to represent. I think this is a retrograde and negative move, which will not do us any favours and lead to a deterioration of the standard of debate and questions in this House.

**The Bailiff:**

Thank you very much, Deputy. Deputy Morel has rightly acknowledged a contribution to the Greffier's Christmas Fund because of an electronic machine that went off during the course of his speech.

**2.1.6 Senator S.Y. Mézec:**

I am pleased to follow Deputy Southern. I agreed with everything he said. I will be strongly opposing this proposition. I urge all Members to oppose it as well. I have got 3 main reasons that I want to go through in turn. The first of those is that I do not think that this will lead to better time management for Members of this Assembly. It is currently very rare that our sittings go on for as long as they happen to have done this week. This is quite a rare thing to feel. I do not know about other Members but I feel rubbish right now. Deputy Southern said he feels like his brain turns to porridge at the end of a sitting like this and I feel exactly the same way, and I am sure that there are other Members as well. I do start to worry about the quality of debate, not just now but on other occasions, sometimes when we have sat late into the evening as well. I think it is clear that when we have, I think, a better working balance for being sat in the Assembly, which can be quite an intensive experience having to take in everything that people are saying and scrutinise what others say, then to end up in a situation where on the rarer occasions that we do sit it will be for longer, there will be more crammed into that time. I simply cannot agree that that will be a good use of our time and that will make better quality decisions because we have had more time since the last sitting there. I do not think that there is any evidence to suggest that this would be a better use of our time. There are other Parliaments in small jurisdictions that meet more frequently than we do and they seem to cope perfectly fine with that. The second reason, which some might argue is unimportant but I do not think it is unimportant, is the optics of this. This looks terrible, it makes us look lazy. It makes us look like we are prepared to give up what is under our oath our primary duty as Members to attend these sittings and to take part in their proceedings. It sends a message out there that after what has been a very difficult time for the Island, that we are going to take more time off, that we are not going to be in the Assembly taking part in what is the most important part of our job, which is being sat in that Chamber and making those key decisions. I think that will go down really badly. It will damage people's respect, what little respect there is left for our democratic processes, and I think it is timed so badly as well. But the third and the most important reason for opposing this is about democracy. The fact that the States Assembly is or should be the most important decision-making body in Jersey, elected by the people to make the laws of this Island and, where appropriate, delegate decision-making to other bodies who we then can hold to account in the Assembly, if necessary change things, if necessary throw people out of positions of responsibility if we do not think that they are up to the job. We have every 2 weeks an opportunity to grill Ministers or others holding particular titles, ask them questions, force them to account for the decisions that they are making, push them harder where we think they need to be pushed. Also, to expose things when necessary; that is a really, really important part of question time, where you ask a question that you know the answer to, you just want to make sure that

that answer becomes public so more people can hear about it and, crucially, so the media can report on it as well and there will be fewer opportunities to do that. I say that, as a Minister, who purely out of my own self-interest, I should welcome the opportunity for fewer question times because that means fewer opportunities to hold me to account and allows me to get complacent and allows me to, potentially, get away with things that I should not get away with. But I am not taking that view because I think that democracy has got to come first. It is fundamentally important that Ministers are hauled to a public pace and made to account for those decisions, and there will be fewer opportunities to do that if this proposition is accepted. For those 3 reasons, the fact that I do not think that this will lead to better time management, the fact it looks absolutely terrible to the public out there and the fact that it will provide fewer opportunities for the Assembly to assert its dominance in our wider Government system is, I think, 3 good reasons for voting against this. If the indicative vote was anything to go by, then I will be really, really upset if this goes through because I think it will send out all of the wrong messages and it is a derogation of our duty as elected Members of this Assembly, which is our first duty before any other role we may hold, including as Government Ministers. I hope Members will reject the proposition for those 3 reasons.

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

The proposer in making the case for this change linked his proposal to the change to the 3-weekly cycle. He linked it with the debate we had yesterday. I am grateful for the kind remarks he made about myself bringing that forward, even though it was clearly far from successful in its outcome. But, nonetheless, it has certainly indicated that there is a very, very clear consensus that changes are necessary to improve the way that Government works and to strengthen our democracy and particularly to enable Members to be more effective. He spoke about having a caucusing and spending time to talk together, and I said he was making a logical case that somehow or other this change would give us the space to be able to do those things. I am sorry to disappoint Deputy Labey but I would prefer the efforts of the P.P.C. to go, which I really hope they do, with following up the agenda of change and the work that has been done previously on those matters because I do not think that the change now being proposed is the right one. There are many other options on the table, which I want to see progressed. It is the wrong change. I myself feel very, very accountable and, of course, the 2-weekly Assembly, I work, as I said, full-time and I am happy to do that, although there are times that I find it tiring. Frankly, I would be honest, after 5 days working on a computer screen, concentrating non-stop, my attention span does wane at times and that is something which I do not think is good. We have seen how sometimes decisions can be made in the late hours, sometimes kind of rushed decisions that we might learn to regret. Like, I have to say, yesterday went through a procedural accident, we seem to have ended up making it more difficult for people to stand for election from our broader community. But, nonetheless, that is the sort of thing that can happen if we lose concentration. I am absolutely not in favour of this change. I want to see, as I say, the other solutions pursued because we do need to engage or find ways in which Members can engage more with Government, as Deputy Morel said. I hope and I look forward to Deputy Morel and P.P.C. inviting him in to work and I was pleased with those comments, so I thank Deputy Labey. But, as I was told yesterday, and I think the answer is the same, it is change being proposed now but this is not the answer; it is the wrong change. But I do like the amendments that are brought by Deputy Maçon and Deputy Gardiner. I assume the debate is on the amended propositions, I hope we get an opportunity to vote for the individual items. If we do that I shall not be supporting the original elements from the proposer to reduce the frequency of States meetings. For all the reasons as well, I support entirely what other speakers have said. I voted against it in the poll and I feel that it is definitely the situation. We have to find other ways of making the system work, more improvements and strengthen our democracy.

### **2.1.8 Deputy M.R. Le Hegarat of St. Helier:**

As a member of P.P.C. I raised these concerns at the time that we discussed this matter and I will not be supporting this 3-week proposition. Our obligations when we got sworn in and elected to this Assembly was to be in this Assembly and it is the only time that someone accounts for us as to whether we are here or not. In normal circumstances, of course, if we were not here, unless we are ill or had a valid reason, we would be *défaut*. We are in circumstances now where we can be marked as not present, even though we may not have such a valid reason. My concern is this and this is not something I believe that someone has brought up before, if I do not have to be here for 3 weeks, where could I be on the other 2? I could, potentially, be out of the Island on holiday if I do not have a high workload.

[14:45]

I am fully aware that most of us do, however, that is an opportunity that some people may take, and I am not suggesting for one minute that that would be the case. But I feel that we, as elected Members, need to be accessible to our constituents and the parishioners, the people that we represent. I do feel that by moving to 3 weeks there are too many loopholes for me. I am not sure that this is family-friendly either. As a parent of a relatively youngish child, it is always difficult to be able to manage your time. I know some people will think that 3 weeks means that you have more opportunity to manage that time. I, however, am not convinced. We have had a very hefty week this week and, as many people have said, they felt jaded and tired. Throw into that mix a young family as well and also maybe elderly relatives; we all have other commitments. Also, when we are in the States and things are busy there is always the question, are we prepared to work beyond the 5.30 p.m.? I believe that if we move to the 3-week principle that there is that opportunity that we will be in this position on a more regular basis because we will have less time in that week to do our business. We will not have less legislation to do and I know that somebody says we have got the same amount of days, et cetera, et cetera. As I say, I am not convinced about the arguments. I know someone has also said that this is a trial. I always feel that, yes, you can try something out but, for me, I am not prepared to trial it out or I am not prepared to vote for it to be trialled out because I believe that there will be then, potentially, the idea that this is the best thing ever and this may get pushed through. For me, I will not vote for it. I do not want a trial of it and I want to remain with the 2 week.

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

It is good to follow Deputy Le Hegarat because I did want to bring people back to the idea that it is a proposal for a trial. If we do not try it, to Senator Mézec, there will not be no evidence that it works and we can organise our time. I am amazed at the jaded young Members I have just heard speak. Are you feeling tired? It has been a long week. Sorry, get real, we work from 9.30 a.m. and we have an hour and a half for lunch and we finish at 5.30 p.m. We can leave our desk any time we like and those working from home making a cup of tea anytime you like. But let us get back to when we were normally working in the Assembly. We are very, very lucky. But, yes, I am feeling a bit tired this week because everything is rolled over. I have had to have a com... in after work on Tuesday, did not finish until 8.00 p.m. I had to fit my Social Security meeting in at lunchtime yesterday and another com... in lunchtime today and probably to sign off again after and cancel a public face-to-face H.A.W.A.G. (Housing and Work Advisory Group) meeting, which really people want to come in; it is about their businesses, had to cancel. I want this trial. It was mooted 10 years ago. It is sensible. No one is going on holiday for 2 weeks, Deputy Le Hegarat. You will be doing more scrutiny, good scrutiny. You are the chair of my Scrutiny Panel. I would like to see you more. I would like to see absolutely looking into more legislation. You will have time to do it because you will not be so jaded, you will not be running over. It is not less days. Holding us to account, there will be the extra questions. Deputy Labey has said we can work this around. But this is a trial starting in January. If it all goes totally petanque, we do not do it any longer than that. But I am very, very annoyed. We present that we cannot literally suffer 4 days together in that Assembly because we are feeling ... I think Deputy Southern said his brain is gone to porridge. Porridge; perhaps he might

want to try some extra Scottish oats or something. I really cannot believe some of the statements I heard today and we are doing this, we do not want to go to the trial because we are concerned about the public, we are concerned that they cannot hear us every 2 weeks because every 3 weeks we would be too tired to do the job they elected us for. It is a trial, please let it go ahead. It makes sense to try it. I do not absolutely know that it will work. I think personally I know I have got to block out that week, it is a States week. Going back to Deputy Le Hegarat, when I started as a single mum I had a 5 and 6 year-old. We did not have a finish time every other week. It was very hard to get that late night covered by childminders. But, literally, if I knew I had a week and that was where I had to be because, as you say, this is where we should be, our first duty is in the Assembly, I would cover that off. I think it would be more family-friendly but that is for another day. It is a trial; go with it, let us see, we will all see each other for longer. We know where we are, better scrutiny, better accountability for Ministers. Because all of Reform's protesting today is they are telling the public that that is where they hold Ministers to account in question time. Sometimes there are but, as Deputy Mézec says, they already know the answer, so then when you are sitting opposite the Minister in a Scrutiny hearing that is when you really drill down; all open, all public and all recorded. I will leave it there but I really think people ought to man up and realise it does not matter being tired on a Friday. We work very few hours in the eyes of the public, so do not moan about your job. Do not say it cannot possibly be done, when people are doing 12-hour shifts 8.00 a.m. until 8.00 p.m. 6 days a week out there.

#### **2.1.10 Connétable J. Le Bailly of St. Mary:**

It is not very often that I agree totally with Deputy Southern. When originally asked about this by Deputy Labey, he persuaded me that this trial was a good thing, so I voted yes on his opinion vote. Then having really thought about it I changed my mind. Surely being in the States every 2 weeks keeps us more accountable to the electorate. Many of us have other meetings to attend to and I feel that the 2-week cycle that we have now allows me to do that. I have made a U-turn, I shall not be voting for the change to a 3-week cycle. I think it will work far better as it is.

#### **2.1.11 Deputy L.B.E. Ash:**

I am against this move but not because I believe there is some great conspiracy against democracy, in fact I feel the only blow against democracy recently inflicted was struck by the Assembly itself when it voted against a fairer and undoubtedly much more democratic electoral system. I am not voting against it because I feel that the civil servants, who do a great job and face considerable criticism from this Chamber, are staging a *coup d'état*. No, I will vote against it because I do not believe it works. I think it will make things worse. The obvious concerns I have are, principally, we are going to have way more questions stored up because the longer time goes on without questions being answered it goes longer and longer and longer. We are going to have way more questions to be asked. We will have propositions stacked up. If you have then got to put your proposition off for 3 weeks rather than 2, which some very generous Members occasionally do, people are going to be more reluctant to do that. Again, that is another downside to it. We have also heard it really does not matter about the public perception, what is the public perception and how they perceive it, it is about us. Yesterday we had a debate about this; we had people saying that it really does matter. We had a wailing and a gnashing of teeth about political involvement and engaging the public, only the next day to say their perception does not really matter. Of course it matters and you do get it all the time, so you are off now for the summer, are you? Why would they not think that? Because that is roughly the way things are portrayed, that we just sit every 2 weeks. If we move to 3, well God knows what they will think. Finally, one of the main reasons, that also we hear a lot of Backbenchers being marginalised, whereas in my opinion they should be as involved as possible. It can only be a good thing, as we have seen particularly from Deputy Ward, who has brought many propositions, will we be giving them more opportunity to be heard or less if they are heard every 2 weeks or every 3? To marginally misquote our American friends, you do the maths.

### **2.1.12 Connétable K. Shenton-Stone of St. Martin:**

It must be a long week because I find myself agreeing with Deputy Ash, which must be a first. I would just like to say, and Deputy Martin pointed out that this idea was first mooted 10 years ago, not all ideas are good ideas. Just because this idea was suggested 10 years ago does not mean it needs to be resurrected today. It is a bad idea. It is another step in the direction of less accountability and less democracy. I will not be voting for it and I urge other Members not to support it.

### **2.1.13 The Connétable of St. Brelade:**

I do not wish to repeat what others have said and which I agree with but picking up on a couple of points made by them. I would emphasise the point for P.P.C. that long sittings in the Chamber are unattractive to most Members, purely for reasons of attention to detail, rather than not having a wish to be here and fulfilling our jobs as elected to do so. I would suggest that in the event that sittings run towards the end of the week concentration wanes, as has been mentioned by others once again. I feel that some propositions are just not given the depth of attention they deserve. I understand, albeit I was not here, that P.1/2017 fell into this category and now we are paying the price, as alluded to by Deputy Young earlier this week. I believe that better management of the Order Paper by P.P.C. and Government would help, together with perhaps control of one or 2 filibustering Members to improve the situation.

### **2.1.14 Deputy R.J. Ward:**

It is indeed a very interesting debate and to get a shout out from Deputy Ash, it is not often that it happens for me. There are a few things that I think we really need to look at with regards this proposition. It looks to solve a problem but the problem is not being clearly defined. There is one aspect of the problem that has not been addressed and absolutely needs to be addressed and that is about the equity of resourcing for those of us in the Assembly. Non-Executive Members, as I will call us, do not have the resources in any shape or form to perform the role in the same way as Ministers do. I know that Ministers are busy. I absolutely accept that they have busy timetables and I have a great deal of respect. I would say, for example, the Minister for Health and Social Services at the moment must be having an incredibly difficult time with everything that is going on, and we absolutely accept that. But we also, as Deputies, are working on so many different areas. Scrutiny is vital, we know that Scrutiny is vital. I chair 2 panels, I am involved in ... I have lost count of how many others, and we try to fit these in. But we do that because it is the right thing to do. But we do it without really many resources at all. Scrutiny resources are only just increasing and the Greffe are doing a phenomenal job with minimal funds in order to provide resources so that we have research behind us, some sort of backup for the work that we are doing. I think it is an absolutely vital part of this Assembly for Members to bring propositions in their own right. Otherwise we have a machinery of government and it is referred to as a machinery of government, which is just like a sausage machine producing sometimes ill-thought through policies, which are then brought to the Assembly for rubber stamping. That has not happened in this Assembly and I think that is where the conflict has come from. In terms of our democracy and the way we are working it with 49 equal Members, those Members also have to have the facility to impact in the same way and we are not doing that. What concerns me is that this is, again, the right disease but the wrong medicine. The 3-week timetable will not solve the issue of resource and support for Members who want to develop their roles, develop their professional nature in which they undertake them and have the support to do it. That, I think, will be forgotten if we think we are solving a problem, even as a trial. If you are going to trial something you need to have very clear outcomes of its success, otherwise you absolutely do not know whether it is going to be a success. When we come back to the Assembly at the end of the trial and say: "What was it judged on?" We will not know; that is one of the huge problems that we have.

[15:00]

There is no detail and I think on this occasion it is really important to have that detail. Deputy Southern makes a very good point about written questions. I looked it up, and I am sure that Ministers and officers really find it an inconvenience, but I have submitted 152 written questions; that is done in order to develop my knowledge base of different areas of Government beyond my Scrutiny Panel and I will come back to that in a moment. So that I, in developing propositions, in developing questions and in developing understanding of the way that our Government works, can have a full set of information and data. I have had to ask all of those questions. There is a point there; that means that information is not coming forward because there is an inequity of information as well. Therefore, we have an important role to play, as Non-Executive Members, in the democratic process. It is a purely logical deduction from the information that we have. There is also not any consideration of the lodging of propositions, and Deputy Ash made a very good point about delaying propositions, which I had not thought of. Perhaps if we were in a 3-week sitting today and we were faced with Deputy Ash's proposition, absolutely right, it would not have delayed it for another 3 weeks. Other things would not have been delayed; the one about G.P. (general practitioner) opening times could not have been delayed for 3 weeks, therefore, we would have had an incredibly crammed timetable. As for Deputy Martin, I think you are being very disingenuous there in terms of that interpretation. Sorry. The interpretation I think is wrong. It is wrong because it is a simplified interpretation. Even the phrase "man up" comes from a time, which we have moved on from. Deputies that have been elected and those Deputies that are stepping up to the plate now have a very, very busy role in the Assembly. It is not simply about the hours that we are there, it is about the quality of the decision-making while we are there. If you look back through the history of this Assembly, it has not made some good decisions. I am sure if you did the work you would find that probably there is a correlation between how long you go into the sitting and how poor the decision-making process is. That would be an interesting piece of work to undertake. So I think that what we need to do is not to take on this change now. If we want to look at change we need to do 2 things first. We have to fully resource the Members of the Executive so they can fully undertake their role. Then we can analyse what their timetables are, what they can do. We need to have greater clarity from Government and we also need to have greater clarity on where the decision-making process from Government is coming from and where the drivers are. When those things are clear to us, then we can come back to the Assembly and look at the structure of our sittings and the structure of our processes. At the moment we are not in that place and we cannot do it. I ask people to reject this position and let us look at the resource issues first.

**The Bailiff:**

Thank you, Deputy, you pulled yourself up for the use of the word "disingenuous" so I did not need to pull you up.

**Deputy R.J. Ward:**

Yes, apologies, Sir, I did not mean it, it just slipped out.

**The Bailiff:**

No, I understand and accept that. Deputy Higgins is after a point of clarification. Deputy Higgins, your point of clarification from Deputy Ward?

**Deputy M.R. Higgins:**

Yes, I believe Deputy Ward made a mistake almost at the last when he was speaking. He was asking for extra resources for the Executive. I think he meant Non-Executive, so can he clarify?

**Deputy R.J. Ward:**

I am very happy to clarify that. Deputy Higgins is absolutely correct. That is exactly what I meant. Thank you, Deputy Higgins, you know what I mean, absolutely.



### **2.1.15 Deputy R.E. Huelin of St. Peter:**

Once again we have these wonderful debates about opinion and I have mentioned this in the Assembly before and I quoted the gentleman called Jim Barksdale who says: "If we have data, let us look at data. If all we have are opinions, let us go with mine." Except this one is slightly different because we do have the data and the chairman of P.P.C. has told to us quite clearly, by extending to a 3-week cycle, we will still sit in this Assembly for the same number of days every single year. With the great amendments brought by Deputy Maçon and Deputy Gardiner, we have addressed the shortage of the time for questions, both written and oral. I think these complement P.P.C.'s proposition ideally. However, what are we here to do? Yes, we are here, it is our responsibility, as Deputy Le Hagarat says, to sit in this Assembly and be seen to conduct our business. However, it is also our responsibility to deliver better outcomes, not only for ourselves, but on behalf of the people we represent. So I do not know if anybody has noticed, but I got a new job a couple of weeks ago and since then my diary has been absolutely chocka-block; meetings put in there for me. I am reacting, my diary is reacting, not being proactive. If anybody is jaded at the end of this week, I fully understand it. It is not because we have been debating for 4 days, and we can discuss that at another time, but I am jaded because I have been working from 8.00 a.m. in the morning until 10.00 p.m. every night this week and I cannot wait for the weekend, except that is probably going to be pretty busy as well. What we have, if you read any handbook, and the Harvard Business School is one of them, you talk about management, the management ideals and how you should operate. Yes, they talk about the clichés of time management and delegation and expertise. But one of the things they always talk about in all senior managers is giving yourself the time to think and the time to strategize. That basically means to be proactive and not reactive. We have a duty on behalf of the people we represent to take the time out to be proactive to try to solve the problems and the challenges that they face. Whether that is behind the scenes or bringing that to the Assembly, we have that duty to carve out the time to do that, to do that effectively and efficiently. I feel that we go from one hamster wheel to another at the moment with a diary not in our control. Let us face it, it is a trial and we may be pleasantly surprised.

### **2.1.16 Deputy T. Pointon of St. John:**

This is the first time I have spoken across these 4 days and I have been very happy to sit through and listen to people and listen to their deliberations in relation to various propositions that have come forward. I am aware, as the Deputy of St. Peter is, he describes the people that we represent as the people that we should be in this Assembly for. I am very much aware, along a very different tack to anybody else, that I am not concerned about what we are seen to be doing; I am concerned about what the people we represent can hear from us and the frequency that they can hear from us. Currently there are quite a large number of people who do listen to States Assembly meetings and do listen to and watch Scrutiny public hearings. They are regular people; they know when these meetings are going to be and many wait with eager anticipation to hear what is going to happen in the Assembly every other week. I fear that if we take away that facility for those people, and the ability of our press, the *J.E.P.*, *Bailiwick* and so on, to have a regular publication to reach the people we represent, we are going to further diminish the amount of interest that there is in our political system. That is a very important factor and we need to make sure that we do not diminish the number of exposures that we have to the people we represent. I will finish there.

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

So it is only a trial? That sounds really alluring, does it not? The idea that we need to trial it or trial anything before we know whether it works surely has to be one of the biggest logical fallacies, because it suggests that we cannot use our own rationale to surmise our own experience, especially some of us who have experience of perhaps a decade or beyond, to know what does work and what does not. For example, maybe I can put it to the new Assistant Chief Minister that we should trial a 25 per cent tax rate because, until we have tried the 25 per cent tax rate, we do not know if it is going

to work or not. We do not know if the wealthy will leave or whether they will stay and we will have much more money to spend on public policy spending. Maybe we should trial abolishing 2(1)(e) status because we do not know until we have tried it whether they will all leave or whether actually they will find that they might come to Jersey and pay a fairer amount of tax. We could trial all sorts of things. These are, in essence, political decisions and they have to be informed by political persuasions and also grounded in experience. So I dismiss that idea that this is a trial and we can critique the pros and cons of any proposition that comes to the Assembly. It will be interesting of course to see whether this trial of technology remains in place because I would have been one of the first Members to say it should only be temporary, but it works really well, does it not, this technology, to the point where I have been at several locations in the Island today and dialled into meetings. I am at home now incidentally but earlier I was in St. Brelade in Communicare and I dialled in to a different meeting and then I have also been in the States Assembly and yesterday I was in the Reform Jersey office doing my work there. So for me I think this is one trial that probably needs to be kept in place. Why do I talk about that? Well, it means that, if I go away on States business, for example, it has been a while and I am not someone who does that very often anyway, but there is no reason that I could not dial in to a States Assembly if I was sitting somewhere in a hotel room, wherever in the world. Of course you could argue that currently the Standing Orders say we have to be present in Jersey to take part in debates, but why would you? If a Member is genuinely away on States business and unable to attend in person, why would that person not be able to dial in and participate democratically? It seems that they should be able to do that. So what we have then is a situation whereby we have potentially a 3-week rota instead of a 2-week rota. I will not rehash all the arguments, which I agree with, about this eroding our democracy, which incidentally have come from different sections of the Assembly who you very rarely get all voting together and Scrutiny and ministerial alike. So you could have a situation where, I do not know how many Members in the Assembly have second homes abroad, I do not, some people do not even have one home at home, but there are people who have second homes or third homes abroad. What is wrong with them, if they wanted to go away or perhaps they get stuck in Spain or in London in their London pad and they get stuck because of COVID, we do not know how long this is going to go on. Maybe there is no point in coming back to Jersey, you might as well just stay away all the time and dial in. We could change Standing Orders to allow them to do that. So that is quite attractive, so these are obviously reasons why we might want to support the 3 weeks proposal, because I think it gives Members much more flexibility. We know it is a really hard job that States Members have. They probably deserve to have that extra week just to chill out and to catch up, because of course it is going to be a really busy week. We are currently on a 2-week cycle but already we have been in for the whole week. I completely hear what Deputy Martin said, is that there are other people who feel that they have been working Monday to Friday sat in front of a computer, *et cetera*, and they will find it difficult; and I completely accept that too. But there is a particular strain when it comes to sitting in debates having to constantly be attentive, not knowing when you might need to jump in. There are points of order, there are supplementary questions during question time that you may not have planned that need to be asked. The bottom line is it cannot be avoided that, instead of being able to question Ministers every 2 weeks, we are going to be able to question them every 3 weeks, which is great from my point of view potentially because it means that I can spend more time sitting in meetings, which are private and closed, where I can be making the decisions and directing policy. Oh, wait, yes, that is in a different world of course because even some Assistant Ministers are kept away from the real decision making.

[15:15]

I am quite surprised to hear that Deputy Huelin, now the Assistant Minister, finds that his workload has gone up, because he was already in Broad Street before he became the Assistant Minister, so he should not be in there anymore than he was previously. Of course he had work to do on Scrutiny as well so now he only has his ministerial role to focus on rather than his Scrutiny and his ministerial

role. So the idea that we are all equally busy is not shared, but certainly for my part I really value the point that I know that there generally will be certain days in the week, which I can dedicate to my constituents in person. There is also the possibility of doing it. But what I have realised is that when, for example, I do my drop-in surgery every Monday lunchtime at Communicare and there are times when, if there is a rollover on to the Monday, a heavy Order Paper, business gets pushed to the Monday, I am fortunate I can still make that. But I would also like to try to keep other Fridays free for meeting people in town who maybe cannot come to my surgery on a Monday, for example, because they are working. It is not guaranteed that I will always be able to do that on a Friday. So it is helpful to realise that if somebody phones you up and says: "Can I meet you on Friday on this date?" rather than having to think: "Is that a States week or is it not a States week?" that you know that there is a very good chance you will be free. I think that is going to be more difficult. So, in the round, I will wait to see, but I would hope that all right-thinking democrats in this Assembly would listen to the debate that has been had and I would certainly hope that all Reform Jersey members would roundly vote against this, apart from the 2 amendments, which I think have strong value in their own right. But also other democratic Members in the Assembly should put this firmly where it belongs, in the dustbin.

### **2.1.18 Senator J.A.N. Le Fondré:**

I think I am glad to follow the last speaker because with luck it will at least give a different perspective. I am going to start by commending Deputy Labey for bringing this proposition to the Assembly because it does take bravery sometimes to suggest that we might try to do something different. I just go back to the absolute beginning, where we all were, which is this is a trial. This is saying let us try it. It would be helpful, because there have been all sorts of suggestions and things around what are the reasons for not doing it, it is not now, it is the wrong time, we do not have enough information. I have to say I always remember, since the end of 2005, the number of times I have heard Members standing up and using those examples and other Members standing up and saying those are the classic examples for just not doing something. What I just wanted to say, and I think it is worth reminding Members, and it was circulated by Deputy Labey at the very beginning of these discussions just before the summer recess, was the note that came from the previous Greffier of the States on this subject. I do have the date, it was dated 22nd February 2010. It is worth just quoting from that because for members of the public listening it does give an alternative view. To quote the report, which was a report that went to the States Business Organisation Sub-Group from the Greffier of the States and copied to various other officers. The Greffier of the day said: "The perception I have had during the last few months is that Members and officers have found themselves in what could be described as a treadmill during each parliamentary session. By coincidence, I began preparing this submission during a period, which was prior to the 3-week gap between sittings", and he gives 2 dates. He says: "I found that the last 2 weeks have had a very different feel to them when compared to a normal gap between States sittings. Members and officers have also commented on this to me too. Members normally are on a constant 2-week cycle of one week spent in the States for a 2 or 3-day meeting and the next week catching up with Scrutiny meetings, Council of Ministers meetings, constituent matters, *et cetera*." I am obviously just doing extracts, he then moves on: "I am constantly hearing from many Members that they are so busy that they feel they are neglecting some aspects of their duties and this has led me to consider whether a different cycle of States meetings would give benefit to all." Then he says: "I therefore considered whether a 3-week cycle of meetings would be a possibility." He gives some suggestions, he says: "In addition, the Council of Ministers could meet in the first week, which would mean that matters such as comments and propositions could be presented much earlier before debates than happens at present when the Council meets only 2 or 3 days before the scheduled sitting." I will say, particularly when the volume of work is high, unfortunately we still see that even though we tried to change things: "It is also the case at present that meetings are constrained in the one week between sittings, which can become very congested with numerous Scrutiny hearings, *et cetera*, day after day. I think it is probably also

fair to say that, because of the pressure Members are under at present, there is a temptation to book meetings and make other commitments for the continuation Thursday in a States week, which can then lead to absence from the Assembly and problems maintaining a quorum.” Or, alternatively, as has also been alluded, those meetings just get cancelled and then there is a frantic scramble around to try to reschedule with sometimes very real consequences on very real people who have direct interests in some of the decisions that are meant to be being taken by the relevant body that is meeting. So I think it is just worth emphasising, it is not a Government conspiracy. That was an objective assessment from someone who had watched the system for many, many years. For that basis is one of the reasons certainly that I will be supporting the proposition. The fact it is more days in the Assembly is relevant and I do thank Deputy Martin that it is potentially going to be more family-friendly because it should be more predictable. Certainly, what I found, having seen all sides of this Assembly so far, as far as I can imagine, in my political life is that, whether one is on Scrutiny or whether one is in the ministerial side, there is this treadmill impact. On Scrutiny in the last Assembly you were finished in the States, you were then starting to prepare for your Scrutiny hearings and, depending what was going on, you were also trying to juggle questions, getting those in for the deadlines, and then obviously getting ready for the next States sitting. Although it is different in terms of logistics, it is the similar side, we will finish hopefully this Assembly today and on Monday written questions will start coming in for the next sitting. Oral questions will come in on Thursday. Council of Ministers will have a scheduled sitting on Wednesday and will obviously have others because we are dealing with the Government Plan. The logistics of then trying to fit everything else that goes with the responsibility and privilege of being a Member then has to fit all around. So, for me, we do know, in fact Deputy Labey addressed that around perception; that is an issue. But if we did everything by perception you would not make any difficult decisions at all. One of the lessons I learned almost from day one of going into the Assembly is that we are in the Assembly to make difficult decisions, sometimes with imperfect information because that is the nature of the job. The point I go back to is this is a trial. We can tweak it; we can change it. Within the idea of a 3-week cycle, I commend the amendments by Deputy Maçon and Deputy Gardiner; I think they are very worthwhile. Also it is not just about the Executive, as I have said, I have referred to Scrutiny, but there are also Members, for example, who have said: “Last week I had 3-day Planning Committee sessions.” That therefore reduces their abilities to serve on other bodies, including Scrutiny or to give the right time. I will really just wrap up by concluding with the words of the former Greffier: “Meetings of the Assembly are often quite rightly described as the most important part of the responsibilities of all Members and I am sure that no one would deny that this is in fact the case. I believe it is nevertheless important to recognise that Members have many other very important duties as part of their role and I believe that a 3-week cycle might just assist all Members to find an appropriate balance between meetings of the Assembly and other responsibilities.” Ultimately, this is about serving our electorate better and if that achieves improving the service that we give to the electorate in the round then I think we should be trialling it. We can always determine, if next year it is not working, we certainly do not renew the trial. For that matter, I really do think I would ask Members if they would at least give it a chance and, at the very least, I commend Deputy Labey and the other members of P.P.C. for bringing this forward and I will be voting for it.

### **2.1.19 Deputy G.J. Truscott of St. Brelade:**

I concur with a lot of what the Chief Minister has just said. I was the best part of 40 years in business, 10 years at Channel Television as M.D. (managing director) of one of their subsidiary companies, and I invariably was first in and last to leave. I then went into private business, run a family firm, and the typical week was starting at 7.00 a.m. in the morning and finishing at 7-plus in the evening, and that was for the best part of 20 years. But there is nothing that really can prepare you for the amount of work that a States Member can and does do. I will put it out as a warning to anybody who is thinking of standing at the next election, it is a really, really tough job. But it is very rewarding when it all goes right. We have had an indicative vote already on this and I was supportive and I will

continue to be supportive. It is important that we trial this going forward. 6½ years as a Member, I sit on the Planning Committee, as does Deputy Labey, and last week we had the paperwork, it usually takes a weekend to read it, including the Monday. We then go out on a tour of the Island looking at various planning objections, and then on the Thursday invariably we do an all-day public hearing. This week we had so much on that we sat on the Wednesday as well. There is an awful lot of reading involved and an awful lot of thinking and matching everything up with the Island Plan and Island Planning laws. We then strayed into this week and again a huge amount of reading and it is constant, every day you are switching on. The heart sinks a little bit because there is another proposition coming through or another report that you have to read. It is just relentless; it is non-stop. I just think that we are looking for a bit of a breathing space that I think this proposition will offer, a time to meet with Members, a time to discuss issues with constituents, reading and thinking time, very important. So I am more than happy to give this trial a go and I thank Deputy Labey for bringing this proposition.

#### **2.1.20 Senator T.A. Vallois:**

Listening to the debate so far this afternoon, I just want to say as a Minister I have taken certain offence to some of the assertions made during this debate. I do take my responsibilities seriously and recognise that I have to account to the States who voted me in as a Minister, but also to the public who voted me in as a Senator. I recognise the arguments that Members make about questions and believing that is how you hold Ministers to account. However, I would like to raise a couple of issues that I believe were important to raise that have not been mentioned so far. So the increase in requirements for technical questions and propositions to ensure properly rounded debate with all necessary information in a timely fashion. It is becoming, I would say, slightly a little bit more bureaucratic, but also because there are much higher expectations than I think there have been historically around the detail and the information, and that is only a good thing. But, in order to have the time to enable that appropriate information to come together for those proper informed and focused debates is one of the reasons why I raise this as a potential benefit of at least trying this move to a 3-weekly cycle. I will also raise the argument that has already laid at our desks of leadership. This requires the ability for Ministers to also have the time to hold officers to account and not just blindly allow what has been put before them as sacrosanct. That is extremely important. It has been raised to me by non-Executive Members many times. There is a concern that we just rubberstamp things. I do not believe that to be true but if we are going to ensure that we are doing what we believe is right and what we stood on an election platform for, and not just an election platform in front of the public, but an election platform in front of the States to gain a ministerial role, then our ability to hold our officers to account for what we are putting out in terms of propositions and answers to questions as well, we need to ensure that we are getting that right.

[15:30]

We are managing to do it but sometimes things get in the way and that is life and that is the way things work. There is also the mention, I have to make, is that there are extra requirements being made of us in terms of the requirements now for what I believe are extremely important, is the Children's Rights Impact Assessments, which have not been as forthcoming as they should have been. There may be more ability for us to do that properly if we were to trial it within this trial of the 3-weekly sessions and have a proper children's rights impact assessment and not something that may just look like we are doing a children's rights impact assessment, because that is fundamentally important. I will also raise the issue of staff well-being and there is this assumption that all Ministers have equal access to resources. I do not believe that to be the case. We have seen historically, and it has been reported in the Independent Care Inquiry, that focus on certain portfolios has meant other areas have been neglected. I certainly do not want to be in that position. I do not want to go into that position. But I would like to see whether we would have the ability to improve and do better on these areas and giving the staff the time, not just in terms of delivering on our policies that we debate and approve in the Assembly and by Ministers, but to ensure that we are accounting for the various

different requirements that we have in place and the operational issues that we are regularly questioned on, which I think is equally important. I just have to refer to other speeches and my absolute belief in the importance of Scrutiny's role. We have an opportunity to increase and dig deeper into policy matters and hopefully create more delivery for the public, creating outcomes that the public expect. These hearings are, in the main, public and give the opportunity for the media to continue to cover accountability of the Government by the non-Executive. But this should not be an argument about Exec versus non-Exec or non-Exec versus Exec. I am really disappointed that Members feel this to be the case. I do not know whether this trial will make a difference to those things I have mentioned but, if it does not, then we return to the current status. I felt it important to speak, to explain my thinking around why I believe we should at least try something instead of being pigeonholed as someone who is against democracy. Because, quite clearly, I am not, and I do not want people to think that I am against democracy.

### **2.1.21 Deputy C.S. Alves of St. Helier:**

I have listened intently to the debate and I think that what this boils down to is 3 main areas, number one being the perception of the public and the awareness of what our roles are and what work we undertake. The second one is a lack of resources, specifically for Backbenchers, which a few Members touched on. The third one is Members' capacity. So I just want to touch on a little bit of each of those areas. During the hustings, I spoke very passionately about how I did not think it was right that we do not have a level of political education to a sufficient level in schools so that people come out of school knowing exactly what our political system is like and the makeup of it and how it works. As a result, I have set up the Education and Political Engagement Sub-Committee. Unfortunately, we have only met once because COVID hit, but we have also had difficulty finding a time that is suitable for everyone because Members are stretched. On that committee, I do have a mixture of people from the Executive and Backbenchers. So just picking up on that lack of awareness from the public, I was a bit disappointed. In my opinion, I do not think we get enough publicity of what happens in between debates about exactly what we are doing. So, for example, the Health and Social Security Scrutiny Panel had a hearing in August with the Minister for Social Security but yet there was very little coverage of this and people assume that during August Members are not doing anything. So this is something that fundamentally needs to be addressed. One comment that was made is that there are other Parliaments around the world that sit more frequently than we do and that are potentially smaller than us. From what I have seen and read; these normally have a system where not all Members have to attend their sittings. So, if for example you look at the Westminster model, I am sure many people from this Chamber have been to Westminster and obviously there are many members of the public that watch it on the T.V. (television). You will see that there might be a debate going on but there are also Scrutiny hearings going on at the same time. In our current system here we cannot do that. That is not physically possible. With regards to resources, I would strongly recommend that Members read the C.P.A. recommended benchmarks for democratic legislatures. In that document it sets out benchmarks that we would be working towards. One of those things it mentions in there is constituency offices. Deputy Gardiner and I completed a course recently that was put on by the C.P.A. organisation, and at the moment I believe Deputy Pamplin and Deputy Ward are currently undertaking this course, and we looked at these benchmarks. The constituency offices was something that really touched me, that resonated with me, that I thought that is something that we do not have because we do not have those resources. It has been mentioned a few times in this debate that we often end up delaying seeing our constituents who, by the way, are the reason we are here, because without their votes we would not be here. It is as simple as that. We often delay seeing them because we do not have those resources, we do not have a constituency office with staff who can help us with stuff, with constituency issues. For example, this week I have already had to delay seeing 3 constituents, which means that I will probably have to meet them over the weekend in order to get some paperwork from them, in order to follow up with some issues that they have had. So that is something that really needs to be addressed. Behind every proposition, there are hours and

hours of work and I would like to see more propositions from Backbenchers because I am of the opinion that questions are brilliant, they do get a lot of information, but they do just scratch at the surface. Real change, real impact, comes from propositions and Scrutiny reports. I know myself that I have ideas for propositions but I just do not have the capacity or the time to necessarily look into doing them and to look into the real impact of where they would fit in and to therefore bring them forward. I have to give credit to the Greffier Department because they have started this new role, which is researchers, which is very useful. But even then finding a time to meet with these researchers is often difficult. I think back to the very first Scrutiny report I was involved in, which was the Mental Health Report, which, in my opinion, and I am sure in the opinion of many, was a very thorough and much needed Scrutiny review and report. But that review took 9 months and that is a massive proportion of our time. I would like to think that, if we had a bit more time between our sittings, we could have produced that report a lot quicker. So saying that having less-frequent sittings is going to impact the quality of debates, they might not be as frequent, but we need to think about the quality of our output and the quality of what we are doing behind the scenes. So I find myself in a difficult position here because I am going to be not voting with the rest of the Members of my party. I am going to be voting in favour of this. It has been mentioned before that it is just a trial and I would agree with Deputy Tadier when he says we should trial more things. Absolutely, yes, we should, because how do we get data if we cannot trial these things? But I would like to say that I hope, during this time, the time is used as an opportunity to improve things like resources and the awareness, the perception of the public, making them aware of exactly what it is that we do as Members. Because just sitting in this Assembly and debating is not the only thing we do. I am sure many of you are aware that I do not often contribute to debates but I can assure you that I am working very hard behind the scenes, although that may not be portrayed in the media or publicly as much as it should be. So, if these couple of things are not addressed with regard to resources and awareness, when this comes back in September I will not vote in favour of it, but at the moment I will be voting in favour and I would ask Members to consider the points that I have raised and consider supporting this.

#### **2.1.22 Senator L.J. Farnham:**

I too find this extraordinarily difficult. I remember when I first heard about the idea, I was extremely surprised. I thought immediately that it was not a good idea, the optics of it were appalling. But then I have listened to the arguments and thought about the potential benefits. The problem we have is that we have got ourselves into a culture of meetings. In my opinion, we have far too many groups in Government, subgroups, subcommittees, committees, and it is just putting too much pressure on us to meet, which is causing the logjam between sittings. In all of my time in the States I have never known anything like it, the workload we are having to deal with in the current term of office. But of course we are in extraordinarily challenging circumstances.

[15:45]

The logistics of the proposition sound good but, if anything, it does only highlight that we need to better manage our current flow of business. This is certainly more convenient for some Members of the Assembly. But will it speed up decision-making or will it make us more efficient or effective? Will it assist us in engaging and working closer and keeping the public interest in the work we do in the Assembly? I am not sure it will. Also, when blended with lodging periods and the legislative programme, will it cause delays in legislation? These are other important considerations. I think about how other businesses, not that I am saying the States Assembly is a business, but doctors, dentists, supermarkets, drycleaners, if those businesses started to say: "We are going to open less frequently but for longer hours" I am not sure what that would do to their business, to their footfall, to the engagement with their customers. The same goes for the courts. I know the courts work in a different way, but every Member will have heard of the saying: "Justice delayed is justice denied." I suppose the same applies to democracy. But I will wait for the summing-up. For me, the saving

grace could be the fact that this is a trial period and these things are probably worth trying because if we do what we have always done we will get what we have always got. Although I think the problem has been of our own making by allowing a culture of too many meetings to overtake us. So I will await the summing-up with a great deal of interest, and I am likely to support this on the grounds that it is a trial period but I would do so somewhat reluctantly.

### **2.1.23 Deputy J.M. Maçon:**

A lot has been said either way and I do take Members' concerns about the frequency of sittings and what that might mean and I take that very seriously, and I brought some amendments to try to improve what was going forward and I think that would help. The only other point, which I do not think we have touched on, which I just want to add into the debate, and again I refer back to the Clothier report, 1999/2000, where it was saying: "States Members need to have time to concentrate on the strategic matters of the States. At the moment they are too involved in the nitty-gritty of the micromanaging of departments. They need to be able to pull back from that, look at the vision of things, look at how strategically things are being developed." We all know, with the cycle of the States as it is going, how often do we get to do that? How often is that done? The failure is still there. So, again, with this trial, if we just shift the deckchairs around a little bit, it might just give a bit more breathing space in order for States Members, whether that be on Scrutiny or on the ministerial side, juggling their constituency requirements, the committee requirements, the Assembly requirements, it just gives us all a little bit more time and breathing space. I would quite like to do some more constituency involvement because when these things get churned out, we get a proposition, you are still finishing off what you were trying to do last week, and then you would like to take something more to your constituents to say: "What do you think about this?" Again, that is all time and, as Deputy Alves pointed out, it is also about resources and how you resource and support Members. Under this P.P.C. they have been providing more resource. It is very different. When I first joined in 2008, hardly anything, and we are slowly making improvements because it is always difficult for Members to put the rallying cry out for resource when you are up against a nurse or a teacher or something else like that. But, at the end of the day, as Members have said either side of this debate, it is about the people we serve. How can we better serve those people in order to get the result that they need? It is not just the immediate things that we need to worry about, it is also about the long-term strategic things, which we need to improve our processes on, and I think we should try it. That is why I will be supporting this proposition.

### **2.1.24 Deputy M.R. Higgins:**

I must say, it has been a very good debate and, whether the proposition is successful or not, it should certainly have helped dispel with members of the public, if they are listening, any thought that we only work every few weeks for a few days. Most States Members, if not all, are spending hours and hours a week, during the week, into the evenings, and weekends as well. However, there are a number of other comments that I do want to make. I agree totally with Deputy Tadier, who says that sitting for days and listening intently is tiring. It is. I have been through many debates in the States since I have been in the Assembly, as have others, and as the sessions get longer and we start getting into evening sessions, it gets harder and harder to keep up your attention span. I agree with Deputy Southern, at the end of those type of sessions you feel almost brain dead. It takes days to recover from them. I also feel that, if Members think that we have been busy this week, as we get closer to Christmas and we get our new Government Plan, our population policy, our Future Hospital discussions and everything else, we are going to be working harder and harder than ever and probably doing full weeks plus evenings, and it is going to get even more difficult. One of the things that annoys me about that is the fact that, in the past, I have seen some Members slope off before the end of the debates. Some of them, when I say "slope off" it is not really appropriate because they have maybe young children, they may be a single parent and they have responsibilities there as well. But others get to the point, I have heard it said: "I am not staying for this; I am going." That is not good



enough. The quality of the debate goes down and so does the decision-making. We have made some appalling decisions in this States over the years with these long sessions. My fear is that, if we do move to a 3-week cycle, it will get even worse in that respect and we are doing a disservice to the public if we do so. Also, in fact even this week, I know the Chief Minister, for example, when he said that the volume of work and it is difficult for them to get papers out for the meetings. Maybe that is the case, but I have to tell him I am still very angry with getting a comments paper 11.00 p.m. the night before my proposition was to be debated and I had to work through the night. So this week, not only have I worked 4 days in the States sitting listening to what is going on, but I have also been working through the night to try to answer questions because they brought in papers late. That was the worst example I have ever seen; it was so late. But this is a habit on the part of the Government. They had better get their act together because we will find more and more of their propositions will be voted down in that case. I would also just address a point that Deputy Alves said, and she was talking about Scrutiny. I think Scrutiny is absolutely vital. The only problem with Scrutiny is we can only pick a few topics at a time to review. She mentioned it was 9 months for their Mental Health Policy Report, brilliant report, really long overdue, but the problem is what else went by the way when Scrutiny were not looking at that? Even the panels that I am on at the moment, we are struggling to try to get through what we have to get through and there are other issues we should be bringing forward. So the Assembly is the only opportunity where Members have to address other issues that are not being dealt with in the depth that Scrutiny does. If Members could not raise those issues, then an awful lot of injustices would go overlooked in the Island. A lot of people would be denied the attention to the problems that they are experiencing if we were not there to say what we have to say. I also happen to agree with the fact that we do not have the resources. I am really pleased, I must say, with the new Greffe staff that we have. It is great to have some people trying to help you and assist you with your propositions. Long overdue. But I also believe it needs to go further. I do agree that Non-Executive Members, Backbenchers, must have more resources. We have a very one-sided system at the moment and we have to address it, simple as that. Because it was mentioned, for example, I cannot remember who said it, it may have been Deputy Maçon, about policy. We should be spending more time on strategic issues, policy. The truth of the matter is why did we get involved in the nitty-gritty? Because the policies are not working or the way they are being implemented is not working. We have too many Ministers who just accept what their officers tell them and are not critical enough. So, going back to that, yes, more resources, fully support it. Whether this is the right idea, personally I am not convinced. I will just mention one other thing too, I can remember in my first term attending a Commonwealth Parliamentary Association conference in Westminster. We were meeting parliamentarians from all over the world and one of the things I told them was I gave them the statistics for how many propositions had been brought forward by Backbenchers on policies and how many were brought by the Government. Believe it or not, the majority came from Backbenchers. They were amazed and they thought how important it was. So I do believe that Backbenchers have an important role to play and we need to be resourced to be able to do it. So I shall leave it at that and just say that I shall be opposing this because, although there are some good features in it and they are attractive, overall I am afraid I cannot support it.

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

I will not speak for long. When the chairman of P.P.C. first mooted this idea to States Members, I thought about it for a while and then responded that I would support it. I did that with a caveat and I raised a number of issues, many of which have been already brought up by States Members today. One in particular I thought was worthy of mention was the fact that if we had a couple of short States weeks, when we are on a 3-week cycle, we lose a larger number of days that we could be sitting and over a quite short period of time. We could move from a situation where we have more days potentially to sit to a situation where we have less days potentially to sit and that is problematic. One of the reasons I wanted to support the chairman was because I think trying things out is a good idea and the time in this session is about right, 12 months for next year and going shortly after that into

an election. So from that point of view it works inasmuch as, if it is not going to work, we can move it back. But the other reason I wanted to support the Deputy is because, in my first term of office, I chaired a Scrutiny Panel, vice-chaired another, I was vice-president of the Chairmen's Committee and I did a lot of Scrutiny work one week and States work the next. In my second term of office, as those Members who were there will know, I was the Minister for Planning and Environment and ran the department myself and I worked very hard. But it really was almost a continuous belt of work coming through with one week in the States and all the other time in the department with very little work for constituency and Parish. So I think this is a good idea and I would urge everybody to think quite hard about this. This extra week, okay, we will have to do more work in that third week in the States sitting, we still will have a week, whether you are a Minister or a scrutineer, Scrutiny work or ministerial work. But it will give us a few weeks extra to sit back and do other stuff and to do more maybe work on our own as individuals, to do more constituency work and things like that. We do not have that many weeks where we have fortnightly gaps and this was pointed out at the beginning of the debate, with half-term holidays, with holidays for Christmas, Easter, and the summer. There are not that many gaps where it is only a fortnight, so the difference is not all that great. I would urge Members to give it a try. It won't be for long and if it doesn't work we'll never try it again.

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

I am pleased to follow the previous speaker. So many speeches have been about creating a seeming divide between Government Members and Non-Executive Members. I do not see this question in that way at all.

[16:00]

It is not the case that, if this proposition is adopted as a trial, Government will start getting away with even more dastardly deeds; that Members will not be able to hold Government to account and there will be less opportunity to ask questions. No, let us look at this as we are because we are parliamentarians, we are all elected as equals to this Parliament and this is about ensuring the best way of running our Parliament so that it responds to the needs of the Island. In this Parliament, we are either Ministers or scrutineers or Executive Members or non-Executive Members, but we all have a role. At the beginning of each States following an election, we elect each other to ministerial positions or Scrutiny positions of Planning Committee, all sorts of other roles. Each one of us has an interest in ensuring that the people we elect to those roles, i.e. all of us, can fulfil those roles in the most effective way we can. This is proposed as a trial to see if there is another way, which might be better. I do not know, but I would like to trial it because there is a sense very often that the 2-week routine becomes a treadmill. We need that third week in many cases to be able to consider more carefully some of the things that are going on to be able to grapple with the reading list, to be able to meet the people that we need to meet, and it could lead to better scrutiny, to better Government, to us being more effective as a Parliament. I agree that each side of the Parliament, whether it is Scrutiny or Government, should be properly resourced and supported. That is part of it. But also part of it is thinking about the way we timetable our work. It has been said that Ministers will not face the same opportunities for questioning. The Standing Orders that come forward will deal with that. I support Deputy Maçon's and Deputy Gardiner's amendments, which are around questioning. I would not want there to be any less time to be questioned. I was a questioner in the last Assembly. It is tough sometimes having to face questions with notice, but it is absolutely right that Ministers do. But I also need to be fully prepared and not be feeling that I am constantly rushing from meeting to meeting on a treadmill, which does not always happen I agree, but sometimes we do. I am just wondering if that extra third week would give us that opportunity without detracting from the powers that States Members have to question and the effectiveness of what we do. It is after all a trial period that is proposed and I would support that trial. I would like to see how it works because my only interest is in being more effective for the people of the Island. So, because of that, I will support this proposition.

### **2.1.27 Deputy J.H. Perchard:**

Part of the problem I have with this proposition is that it does identify the correct issue, but I do not think this is the right solution. I know it has been alluded to a lot already today, but the issue of Members' resources is a real one and is a very problematic one, particularly for Backbenchers, because there is a disproportionate allocation of resource between the Executive side of Government and the Backbenchers. But also there is a deeper problem that I have tried to address in different ways since being elected, and that is one of culture and professionalism. I do not mean professionalism in the sense of any individual person's professionalism; I mean professionalism in the sense of the industry that is politics. When I was first elected, I requested a copy of the briefing guidelines, I wanted to understand when Members would receive readings prior to briefings, how long briefings were due to last, and their overall structure. I was pretty astounded to discover that there were no such thing as briefing guidelines and so I promptly wrote a draft that said let us not do death by PowerPoint anymore, let us have reading at least 24 hours in advance and let us make sure presentations last no more than half an hour, 10-minute PowerPoint, 20-minute questions, and that is how I think briefs should run. That was taken up by the Scrutiny Liaison Committee, I think it was redrafted by them, some changes and improvements were made, and that is what we then strove to do. But that is just one very small example of a lack of professional structure that I have encountered and tried to address as a Backbencher because those things, for me, are the real problem when it comes to our efficiency and effectiveness. Obviously, the way the Government functions and the Executive functions will have its own set of processes and procedures, but because of the inevitable interaction between Government and Backbenchers it is important that we establish some sort of shared guidelines and professional structures between us that we both adhere to. Because the problem with the guidelines I drafted were that Scrutiny approved them but then they effectively were not approved by the Government side. So we still quite often get briefings where we do not get the reading in advance or the PowerPoint lasts an hour and you have just been talked at and talked at. Or you are given 3 PowerPoints back to back but you are not given an opportunity to ask questions on the first PowerPoint at the end of the first one; you have to wait 3 hours for it to come up. That lack of professionalism, in terms of structure, not the people, but in terms of structure in the way in which we run things, is infuriating at times because those things are really easy to change. A lot of them are common sense and I am sure, if you sat down with any Member and said: "What common sense stuff could we do to improve efficiency and effectiveness, especially when there is that crossover time between Backbenchers and Government?" I am sure every single one of us would be able to tell you because it is quite obvious when you stop and think about it. But the problem I have with this kind of proposition is that those day-to-day business-as-usual processes that could be improved do not really get addressed. If anything, they are given more room to breathe and continue. That for me is a worry. I would much rather audit our processes and update all the business-as-usual interactions we have so that we become a more professionally run system. It is the same with Scrutiny from a kind of roles and responsibilities perspective. So again we do not have a kind of agreement that everyone should be on a panel, for example. So of course I completely sympathise when scrutineers talk about the fact that their workload is insane and the reviews take a long time. But not all Members are contributing the same amount when it comes to panels or committees or forums. It does not have to be a Scrutiny Panel because obviously there are people on other things like P.P.C. and the Planning Committee, which are not Scrutiny, but they are still essential. But I guess what I am really saying is, because of the way our system works, there is not any kind of sense of duty. We all feel a sense of duty as politicians to represent the people, but there is not a kind of professional structural sense of duty of: "This is my role, I am a Backbencher, I have a duty to serve on Scrutiny and I have a duty to carry out case work." We kind of all muddle through and we have slightly different perspectives on that and muddle through that. I think, again, that is an area where we probably could come to an agreed position but it seems a lot more complicated to tackle that because then you are talking about saying to people: "You have to join at least one panel. You cannot just be

a Backbencher who is a Deputy and not be on any panels.” I would be in favour of having rules about that that we agreed upon. Again, the 3-week cycle, it does not address that for me and what I am worried about, as with any trial that does not address the core issues, is we might do the trial and, if the vote is such today that the trial is approved, it is likely that those people will support the continuation of it. Then we are stuck with something new that may or may not be desirable but does not address the core issues at all. So, for me, it is quite problematic to start a trial like this without having identified what all the issues are to start with. If we had an audit of the processes and professional structures that we are lacking and worked from it in that way, you start with what you want to achieve first, so what are the problems and what do we want to achieve? We want to fix all those problems. Okay, so what is the solution? Not: “I am aware of a range of issues, I do not know if I have a big picture or not of all the problems, but here is just a suggestion to try to just deal with some of the issues.” I do not think that is the logical way around things. So, for me, in summary, if the trial does get approved today, then I have some suggestions I would like to put forward to the Scrutiny Liaison Committee, but also to Government in terms of better working between us. Because one of the risks of the 3-week trial is that we do not get more time, or even the same amount of time, to engage with Ministers. Because meetings get cancelled all the time and we have had a standing appointment with a certain department, and of course things come up, but we have had meetings cancelled at the last minute, which again is talking about this professionalisation. You cannot just cancel meetings half an hour before they are due or even 12 hours before they are due; I just do not think that is good planning. If there is an efficiency problem in Government, which would be the biggest irony, sort it out. Let us all sort it out. Scrutiny has certainly got efficiencies we could sort out. But we cannot be functioning at a level that would not be acceptable in a private professional sector. We have to be at least as good as that. So those are the changes I would like to see. So, as I was trying to say, if this is approved, then I think what needs to happen in this trial period is that Members need to be asked, we need to pull together a list of the things we want to change and fix, and then start thinking about solutions and trialling out the solutions in the 3-week period. Because a 3-week period alone is not going to do anything for those problems, but if we take that as an opportunity to address those problems, that would be pleasing. But, having said that, because I am not convinced that is all part of this, I am not inclined to support it. But, if it does pass, then I would expect my feedback to be sought and welcomingly received and acted upon during that trial period.

**The Bailiff:**

Does any other Member wish to speak on the proposition? If no other Member wishes to speak then I close the debate and call upon Deputy Labey to respond.

**2.1.28 Deputy R. Labey:**

Deputy Perchard took the words right out of my mouth, the ones I was writing down here, just at the end there, which was to say: “Work with me on this”, because this is the only thing that is on the table. If you remember, and I am addressing Deputy Perchard’s comments now, I issued a challenge to the Executive when I proposed this proposition earlier today. It was this: that if the cancellations are going to continue, officers and Ministers cancelling their Scrutiny appointments, and if they are not going to make themselves more available than what happens now, then this trial will very definitely finish when it finishes and it will not continue. That is part of the deal here. That is part of the deal, because this is to make Scrutiny’s life easier and better and give them better space. The Executive has to play their part with that. Again, Deputy Perchard said: “If people are going to vote for it today, they are going to vote for it in July.” I do not believe that because Members have said to me - I think the Deputy of St. Martin is one of them: “I am only voting for this on the basis that it is a trial, on a trial basis.” So it is not the case that if you vote for it now it is a given that you will vote for it again when I bring it back for the States to reassess in June or July, absolutely not. I would say to Deputy Perchard, good luck with that audit, I cannot see it ever happening if we carry on as

we are. Work with me up until January when this starts because I am very interested in Deputy Perchard's ideas, we all know she is an extremely bright cookie.

[16:15]

So work with me on this and, not just until January when it starts, but from January onwards, let us keep it ongoing. Let us try to do that audit on the hoof with the space that this trial will allow. I knew this was going to be a difficult debate because it splits the Assembly; the Assembly is divided. I think that it is fair to say that on P.P.C. we did not reach unanimous agreement on it. My computer went off when Deputy Le Hegarat was speaking but I know her opposition to it and I must say I really pay tribute to my P.P.C. committee members; they are fantastic. Even when they do not agree with me, they agree that I should take something to the States and I am so grateful to have all of them; they are a fantastic sounding board. So I knew it was going to be a difficult one. I would like to thank everybody who has spoken, for and against, and I mean that very sincerely. Deputy Morel, Senator Mézec, Deputy Southern, the irony of course of saying: "Look, by Friday afternoons, we are all going to be frazzled, and it is going to be dreadful", is that I honestly believe you gave 3 of the best, most focused, and powerful speeches that I have heard from the 3 of you. That is on the Friday afternoon, I am looking at my clock. I am not trying to be funny or sarcastic, I honestly believe that. There was nothing wrong with those contributions; they were extremely good and they will carry weight. They carry weight with me because I am onside with Deputy Morel on his massive problems with the operation of the machinery of government and how we are operating. Senator Mézec's speech yesterday I thought was revelatory, brilliantly delivered, and putting his fingers on things that we should all be extremely worried about. But there is an understanding, there is an agreement there that we have a big problem. But there is disagreement, is there not, on how to solve that problem. Deputy Southern and Senator Mézec think that a full party-political system will go a long way to completely solving that problem. Deputy Morel does not believe that at all. I am in the middle. So it is about how we tackle those problems that were identified yesterday publicly and the ones we have been speaking about privately for so long. It is just ironic too that Deputy Young says: "These 4-day sittings, we are all going to be tired." Look at the mistake that was made by the Assembly in this sitting when we made it more difficult for people to stand for election when the proposition was about making it easier for people to stand for election. That was in the first debate. That was the first debate of this 4-day sitting when that occurred. I do believe it was a mistake. I do not think people meant to do it. This is just my theory and I think that is probably down to, and we have all been there, something of a lack of preparation and something happening really fast, we were not quite on it, and I think the Assembly made a genuine error. Part of this proposition to put more space between sittings is so that we are better prepared. You cannot be too prepared. I am finding I am going into Assembly meetings unprepared and I am having to catch up on things that are coming up later during the Assembly. I do not want to be in that position and it is just because sometimes it will have happened after I have had Planning and a busy week and I have not done my homework. Hands up, I admit to that. If we are better prepared, we will deliver better debates, and we will ask better questions and follow them up with better questions. The Assembly is not the only opportunity to ask questions. The Scrutiny function and the grilling they give, and that is public, is also equally important. This is designed to give that process more air and more time. That is what it is about. Just for Deputy Young's benefit, I said I would follow up on the suggestion of the standing committee, *et cetera*, and I will do that. I made that pledge. As for the amendments in terms of the questions and just voting on that, I do not think that works. Those pertain to if we do the 3-week cycle so we are not going to take that separately but that will be a guarantee, they will be in there if the Assembly votes for this, and I have said I will still take a look with consultation with all Members about whether there is not more mitigation, more questions. I like the idea of putting in half an hour of questions without notice to any Minister on a Friday morning at 9.45 a.m. or when the roll call was done. Would that not be an interesting session after 3 days of debate? Where do we go now? But I am just trying to think out of the box and I am prepared to continue that process. Deputy

Southern, we do not have to wait until 1st January to find out what surprises this has in store, we get it all sorted out now, exactly if we want to put in more questions, we get that all sorted now so that we know what we are going for. Deputy Ash, I did not say public perception does not matter, my computer ducked out so I do not know who did say public perception does not matter. Public perception matters a great deal. I have been in P.R. (public relations) a long time and I am fully aware of it. I do take issue with Senator Mézec saying: “This just looks so bad; it looks so bad.” No, it does not. Because, when you tell people we are not sitting for fewer days, we are scheduled to sit for more, that answers their question in terms of our workload in the Assembly. It does not look bad once it is explained and I have seen the threads on Facebook fizzling out once that has been explained. The questions I am getting from an interviewer on CTV or Radio Jersey, once that is explained we change to a different thing. They take a different tack. That is that question answered. We are not doing less work. The point has to be made that our work does not start and end when we are sitting in the Assembly. Our work is continuous and through recesses. Sometimes they are the most productive times that we work, as I said in my proposal speech. We are diminished in the eyes of the public severely. It is something that we should be very worried about because of the hospital saga, it is a perfect illustration, especially if this Assembly votes for the People’s Park as the site. It is a perfect illustration of an administration going around in circles and taking a decade to do it. We are diminished in the eyes of the public because they do not understand the OneGov project. It has not been explained to them properly. They do not think that we are in charge; that this OneGov project has happened via the Chief Executive, and I am absolutely fed up with seeing criticism of that person not go challenged. When somebody rings me up to complain about the chief executive, I say: “Do not blame Mr. Parker, blame us. Mr. Parker is doing the work that we have asked him to do. If you have a problem with it, it is our fault. It is us, the elected representatives. It is quite wrong the personal attacks he has had because it is us that carry the can for it. So they do not understand OneGov, they do not like it, they do not understand why they cannot drive up to Planning with their plans and now they have to go to La Mott Street, *et cetera, et cetera*. That is what is diminishing in the eyes of the public, not when we reorganise our schedule and maybe for the benefit of our work. States decisions being ignored diminishes our reputation in the eyes of the public. I will not go on and on except to say this, privately we spend all this time identifying what is wrong with our system. Yesterday it was all laid bare for everyone to see and hear. Here is a chance, one opportunity, just to trial something that might start to go some way to answering all those problems and those things that diminish us in the eyes of our public. I am acutely aware that in May or June 2022 the election is coming up and time is going to fly by and if we have not made inroads into addressing the real things that diminish this Assembly in the eyes of the public, rightly we are in trouble. I am, and have said so from my first weeks in this Assembly in 2018, one of my principal worries is the sovereignty of the Assembly, the power of the Assembly, the authority of the Assembly being eroded. Because I have been on the end of decisions that have gone with me in the States and not been enacted. But it is not just that; it is not just that. It is the perception that we are not in control. That is a big thing and we have to tackle it. So here is a chance, it is a risk, we will feel it. I know that Deputy Ward made a good point about how do we measure it. We will know. We will feel it if it is wrong and we will change it or we will try something better. But it does throw up opportunities, Deputy Perchard, it does throw up opportunities to start fixing times for certain things, time managing, making us more efficient, and it is an ongoing thing. I will work with everybody to make it as good as possible and experiment as useful as possible. It might be that we come to July and we change it a little bit, maybe we have to have more. The Assembly will do the work and find the time to do the work in the Assembly that it needs to do. Look at what we have done with the COVID thing. Look how we responded. We sat when we had to. Now is the best time to do that because the public have seen that we will sit for as long as we need to get the work done. I maintain the proposition, I think it should be taken in one vote, and I ask for the *appel*.

**The Bailiff:**

It is entirely a matter for you as to how it is taken, so it will be taken as one vote. The vote is on the adoption of the proposition P.106 as amended by the amendments of Deputy Gardiner and Deputy Maçon. I ask the Greffier to put a voting link in. The link is there. I open voting and ask Members to vote in the normal way. If there is any difficulty with using the link, of course Members can vote in the chat and they will be taken into account subsequently. Very well, if Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The proposition has been adopted:

<b>POUR: 26</b>		<b>CONTRE: 20</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Senator I.J. Gorst		
Senator J.A.N. Le Fondré		Senator K.L. Moore		
Senator T.A. Vallois		Senator S.W. Pallett		
Connétable of St. Helier		Senator S.Y. Mézec		
Connétable of St. Clement		Connétable of St. Brelade		
Connétable of St. Lawrence		Connétable of St. Peter		
Connétable of Grouville		Connétable of St. Mary		
Connétable of St. John		Connétable of St. Martin		
Connétable of Trinity		Deputy G.P. Southern (H)		
Connétable of St. Ouen		Deputy M. Tadier (B)		
Deputy J.A. Martin (H)		Deputy M.R. Higgins (H)		
Deputy of Grouville		Deputy of St. Mary		
Deputy K.C. Lewis (S)		Deputy J.H. Young (B)		
Deputy J.M. Maçon (S)		Deputy L.B.E. Ash (C)		
Deputy S.J. Pinel (C)		Deputy K.F. Morel (L)		
Deputy of St. Martin		Deputy M.R. Le Hegarat (H)		
Deputy of St. Ouen		Deputy S.M. Ahier (H)		
Deputy R. Labey (H)		Deputy J.H. Perchard (S)		
Deputy S.M. Wickenden (H)		Deputy R.J. Ward (H)		
Deputy G.J. Truscott (B)		Deputy K.G. Pamplin (S)		
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy C.S. Alves (H)				
Deputy I. Gardiner (H)				

### **The Greffier of the States:**

Those Members voting *pour*: the Connétable of Grouville, the Deputy of St. Martin, the Constable of St. Clement, the Constable of Trinity, Deputy Lewis, Deputy Labey, Senator Le Fondré, Deputy Guida, Deputy Pinel, the Deputy of Grouville, Deputy Alves, Senator Farnham, Deputy Gardiner, Deputy of Trinity, Senator Vallois, Deputy Truscott, Deputy of St. Peter, the Connétable of St. Helier, Deputy Martin, the Deputy of St. Ouen, Deputy Maxon, the Connétable of St. Lawrence, the Connétable of St. John, the Deputy of St. John, Deputy Wickenden.

[16:30]

Those Members voting *contre* in the link: Deputy Ward, Deputy Perchard, Deputy Morel, Deputy Tadier, Senator Moore, the Constable of St. Martin, Senator Gorst, the Constable of St. Peter, Deputy Ahier, Deputy Le Hegarat, Senator Pallett, Senator Mézec, Deputy Ash, Deputy Southern, Deputy Young, the Constable of St. Mary, the Constable of St. Brelade, Deputy Pamplin, and Deputy Higgins. In the chat we also had the Deputy of St. Mary voted *contre*, the Constable of St. Ouen voted *pour*.

### **ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**The Bailiff:**

Thank you very much, Greffier. That concludes the public business for this meeting. I invite the chair of P.P.C. to propose the arrangements for future meetings.

**3. Deputy R. Labey (Chair, Privileges and Procedures Committee):**

You will recall at this time at the last sitting we had a discussion about the e-petition “Write off income tax liability for prior year if moved to current year basis”. The petition got 5,640 signatures. I was persuaded by the Minister for Treasury and Resources the Draft Income Tax (Amendment No. 46), which has now been lodged and will be up for debate on 5th November, I think, because it was about P.Y.B. (prior year basis) and C.Y.B. (current year basis) ... I took her point that the subject of the e-petition would be covered as part of that main debate. If you remember, I made the proposition that we take it and we give consideration to the e-petition in that debate. We did not have time to consider this and Members wanted more time. I said let us pick this up in 2 weeks’ time, which I am doing now. In the meantime, I have advised Members there is the choice of considering it during Draft Tax (Amendment No. 46) or we could have a dedicated in-committee debate for it - I am suggesting 2 hours to start off with - in the sitting of 6th October, which will be 3 or 4 weeks before the Draft Income Tax is debated. What I suggest is that I make that proposition that I did last time - I make it neutrally - and if that does not pass then I make the proposition that we hold an in-committee debate on 6th October.

**The Bailiff:**

The first proposition then is that the matter is wrapped into the debate brought by the Minister for Treasury and Resources?

**Deputy R. Labey:**

Yes, and I think we should hear from the Minister for Treasury and Resources.

**The Bailiff:**

That will be a matter for the Minister for Treasury and Resources but is that proposition seconded?  
[Seconded]

**3.1 Senator K.L. Moore:**

I would like to speak against this proposition from the chair of P.P.C. simply because now that the Minister has lodged her proposition it does not propose any suggestion to reclaim the tax for 2019. I have conferred with the bringer of the petition, who is in agreement that given the lack of solution provided by the Minister for Treasury and Resources that the Assembly should debate the motion of the petition separately so that those public voices can be heard and the discussion can be had. Because the proposition, as lodged by the Minister, does not give any grounds to debate on the matter of the petition itself.

**3.1.1 Deputy R.J. Ward:**

I also would like to oppose this proposition of taking them together. After all of the discussions that we have had in the last few days, after the decision we have just made, I think we do need to give time on huge changes like this on taxation to have an in-committee debate, air all of the issues, go away, look at the decisions that may be made rather than having an immediate vote after what could be a very divisive debate. The in-committee debates we have had so far have been very constructive with everyone able to air views, air opinions without the pressure of that vote at the end. I think that is a sensible way forward on this taxation policy. It just means moving it down a little bit to the next sitting in order to have a separate debate and a vote. I think it is the best way to do it and I cannot agree to this. It is again rushing things through this Assembly and we must oppose that. So we have the time to do it, and I think we can do it.



### **The Bailiff:**

Does anyone else wish to speak on this proposition, which is to deal with the in-committee debate at the same time, in effect?

### **3.1.2 Deputy S.J. Pinel of St. Clement:**

Because of this States sitting running on we were unable to present to the Scrutiny Panel, chaired by Senator Moore, on the details of all this, this afternoon. We were just trying to save time on not having an in-committee debate when the actual debate on the proposition was only going to be 3 or 4 weeks later. So that was the reasoning behind trying to merge the 2 together, as opposed to discussing the situation at length over 2 separate sittings. It has been well-publicised, in answer to Senator Moore's question, how we have planned that the repayments can be put forward. It has been publicised everywhere. So I do not think there is anything hidden in there and if it is that the Assembly wish for an in-committee debate then I have no problem with that. It was just purely to save time as the in-committee debate and the proposition will be very close to each other. That was the reasoning.

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

It seems that we are primarily motivated by wanting to save time now but the whole point of an in-committee debate is that although you do not have a vote it should provide an opportunity for all Members, but particularly the Government, to take heed of what has been said in a considered way. What will normally happen in an in-committee debate on any given subject is that there will also be a number of officers that are listening in the background who compile notes so that they can feed back what has been said to inform policy decisions. If this is done at the same sitting that cannot take place. It will take a little while for that to be done. With the best will in the world, I do not think even the Minister for Treasury and Resources can necessarily compute all the competing perhaps different views that will be put forward in such a debate and feed them into the interrelated proposition. If the States wants to save time we do not have to have an in-committee debate, we can just say let us not bother having one. There is no compulsion about having a debate based on a petition, although I think that would be a dangerous precedent to set. So maybe let us do things properly. I will leave it there but I think that is a good reason for having separate debates.

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

This is frightening. We are about to embark on a major policy change, which affects two-thirds of all income tax payers, and we are doing that in a rush, it seems to me. This is just without precedent. This is important, significant. We have to have the time to study the implications to make sure that we are comfortable with what is going to result. If we owe anything to our electorate out there it is at least to treat this seriously. We cannot run these 2 debates together and say let us get on with it. We have to have time to study the pros and cons.

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

I think there is an enormous amount of misunderstanding in the general public about what this really means to them and I just think, quite simply, this is an opportunity to spend 2 hours to alleviate potentially a lot of people's fears and use it as a, if nothing else, communications exercise. But also to share those concerns back to the officers who can subsequently get the message out there. Something we must do but it must be done with the full support of the public. Without a doubt, the Minister for Treasury and Resources said she is supportive of it so let us just go straight to in-committee debate.

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

I am in favour of the in-committee debate. I have been reading the websites and obviously there is nothing on the States Assembly website that I can see that details these petitions but I found the email

and I see that the Minister for Treasury and Resources has already made a response, which says: “The Minister does not support this petition *et cetera, et cetera*” and I think we do need to have an open debate about it. I think to shortcut that process, given the fact hardly any petitions get to 5,000, we will be seen as short-changing the public so I would not support combining the 2.

**The Bailiff:**

Senator Vallois, you are asking for a ruling in connection with voting. Do you wish that to be ruled at the end of this debate before the vote? Is it a vote on this matter that you are asking about?

**Senator T.A. Vallois:**

No, it is not in regards to this matter. I will allow this matter to relieve. I just wanted to advance your notification in the chat.

**The Bailiff:**

Thank you very much. In which case the next to speak is the Deputy of St. John.

**3.1.7 The Deputy of St. John:**

It is just a brief speech. It is just that we set up a system of email petitions and the public in Jersey have responded to that with a belief that if they have 1,000 petitioners of a petition they will get a response from a Minister and that if they have 5,000 responses on a petition they will get a debate at least in-committee. The fact that these people have had to work much harder than those in the United Kingdom, for example, where the threshold for a ministerial review and for an Assembly debate is much lower than it is here in Jersey, I think deserves the promise to them that we should honour our commitment to hold a debate specifically in-committee on those 5,000 signatures. I finish my contribution there.

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

I simply wish to echo the views put forward by the Deputy of St. Peter. My email box shows clearly that a large number of constituents are confused as to what is proposed. I think simply to clear the air and inform them that this in-committee debate is necessary without the threat of an immediate vote, so I am very much in favour of the in-committee debate taking place independently.

**3.1.9 Senator J.A.N. Le Fondré:**

It is just an observation and we are very much in the hands of the Assembly. As the Minister for Treasury and Resources has just suggested that if so many Members feel they wish to have an in-committee debate first that is fine. Can I just make one observation in relation to Deputy Labey’s alternative proposition, is whether he would consider making it on 20th October because the Government Plan will have been lodged by then? That is important in the context of the in-committee debate because it is the context of the measures that are being put in place and the context of the Government Plan. That is the only plea I would make. Other than that I shall be watching the Assembly vote with interest.

**The Bailiff:**

Does any other Member wish to speak on this proposition? If no other Member wishes to speak then I close the debate on it and call on the chair of P.P.C. to respond.

**3.1.10 Deputy R. Labey:**

I just take the Chief Minister’s request first. Yes, I have no problem with moving the in-committee debate that I was proposing for 5th October to 20th October, that is fine.

[16:45]

We are honour bound to have a debate on this e-petition that has got over the threshold. I absolutely believe that. So that is why I have given the Assembly 2 options. It is very clear what the mood of the Assembly is going to be. But I guess we have to go through with this vote, as I proposed it.

**The Bailiff:**

The Greffier will shortly put a link into the chat. **[Aside]** A vote *pour* would mean that the issue raised on the petition will be debated at the same time as the proposition put forward by the Minister for Treasury and Resources. A vote *contre* would indicate a desire for a separate in-committee debate. I ask the Greffier to open the voting and Members to cast their votes.

**Deputy I. Gardiner:**

Sorry, Sir, I had a problem with my connection. Again, if I would like to have 2 separate debates do I vote *pour* or *contre*? Can you please clarify, I am sorry?

**The Bailiff:**

If you vote *pour* for this proposition you are voting for the debates to be combined. If you vote *contre* then you are voting for a separate in-committee debate. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The proposition has been defeated:

<b>POUR: 9</b>		<b>CONTRE: 31</b>		<b>ABSTAIN: 0</b>
Senator J.A.N. Le Fondré		Senator L.J. Farnham		
Connétable of St. Helier		Senator T.A. Vallois		
Connétable of St. Clement		Senator K.L. Moore		
Connétable of Trinity		Senator S.W. Pallett		
Connétable of St. Ouen		Senator S.Y. Mézec		
Deputy J.A. Martin (H)		Connétable of St. Lawrence		
Deputy K.C. Lewis (S)		Connétable of St. Brelade		
Deputy S.J. Pinel (C)		Connétable of Grouville		
Deputy L.B.E. Ash (C)		Connétable of St. John		
		Connétable of St. Peter		
		Connétable of St. Martin		
		Deputy G.P. Southern (H)		
		Deputy of Grouville		
		Deputy M. Tadier (B)		
		Deputy M.R. Higgins (H)		
		Deputy J.M. Maçon (S)		
		Deputy of St. Martin		
		Deputy R. Labey (H)		
		Deputy of St. Mary		
		Deputy G.J. Truscott (B)		
		Deputy J.H. Young (B)		
		Deputy K.F. Morel (L)		
		Deputy G.C.U. Guida (L)		
		Deputy of St. Peter		
		Deputy of St. John		
		Deputy M.R. Le Hegarat (H)		
		Deputy S.M. Ahier (H)		
		Deputy J.H. Perchard (S)		
		Deputy R.J. Ward (H)		
		Deputy C.S. Alves (H)		
		Deputy I. Gardiner (H)		

Chair of P.P.C., do you propose the in-committee debate separately on a specific date?

**Deputy M.R. Higgins:**

Can we have the 8 first please?

**The Assistant Greffier of the States:**

Members voting *pour* in the link: Deputy Lewis, Senator Le Fondré, the Connétable of St. Helier, the Connétable of St. Clement, Deputy Ash, Deputy Martin, the Connétable of Trinity, Deputy Pinel. In the chat the Deputy of St. Ouen voted *pour*.

**The Bailiff:**

Chair of P.P.C., do we propose or are you proposing a specific date for the in-committee debate?

**3.2 Deputy R. Labey:**

I am proposing that it occurs in the sitting beginning on 20th October.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak on that particular proposition?

**Deputy M. Tadier:**

Can I seek clarification first? Is this going to be on the same sitting that it is taken? So we have 2 separate debates but on the same sitting?

**The Bailiff:**

No, Deputy my understanding is that it is a separate sitting. If I am wrong about that the chair of P.P.C. will of course correct me.

**3.2.1 Senator K.L. Moore:**

I was just a bit slow to do my maths but I imagine that that would leave insufficient time to make the appropriate amendments if they were to arise out of the debate, which does pose a slight issue. That is all, I am afraid, that I have to say.

**The Bailiff:**

I imagine in those circumstances obviously if it is necessary the Assembly might need to shorten the lodging period for any amendment but the point is understood.

**Senator K.L. Moore:**

That is helpful, thank you.

**The Bailiff:**

Does any other Member wish to speak?

**Deputy R. Labey:**

I just need to go with future business with you.

**The Bailiff:**

Yes, Chair, but it is first a matter of the Assembly deciding whether this can be taken on the week that you propose, then we will finalise future business. I call upon you to respond as no one else wishes to speak.

**3.2.2 Deputy R. Labey:**

I thought your suggestion of the Assembly giving some leeway to any amendments that might arise out of the in-committee debate was a very good one, and I think we should all bear that in mind. I think that is the way forward.

**The Bailiff:**

Then I ask the Greffier to post a vote into the chat. A vote *pour* is for the in-committee debate to take place in the week commencing 20th October, as suggested by the chair of P.P.C. A vote *contre* means that it will have to take place at a different time. I ask the Greffier to open the voting and record their votes in the normal way. **[Aside]** If Members will bear with us for just a moment. **[Aside]** If Members would register their votes now because it now appears to be fully functional. The voting is open. If it does not come through on the link then it will be counted in the chat. If Members have had the opportunity of casting their votes I ask the Greffier to close the voting and anyone who has not obviously voted in the link will have voted in the chat. I believe there to be a clear outcome, which is now posted, which is:

<b>POUR: 34</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Deputy M. Tadier (B)		
Senator J.A.N. Le Fondré		Deputy R.J. Ward (H)		
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Martin				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R. Labey (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy C.S. Alves (H)				
Deputy I. Gardiner (H)				

**The Assistant Greffier of the States:**

Those voting *contre* in the link: Deputy Ward and Deputy Tadier. There are no *contres* in the chat.

**The Bailiff:**

Chair of P.P.C., what about the future future business?

### **3.3 Deputy R. Labey:**

These propositions have been added to the 3rd November sitting and do not appear on the Consolidated Order Paper: Draft Social Security (Amendment) (Jersey) Regulations, P.113; Jersey Care Model, P.114; Draft Statistics and Census, P.115; Draft Census (Appointed Day) Act, P.116; Our Hospital: alternative site selection proposals, P.117; Draft Income Tax, P.118; Immigration Act: extension to Jersey by Order in Council, P.119; Migration and population data, P.120; Draft Data Protection (Amendment of Law) (Jersey) Regulations 202- also lodged today for 17th November. It has come to my attention that the Deputy of St. John may want to bring P.117 forward and perhaps we can ask him to confirm that now.

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

If the Chair of P.P.C. could repeat his question.

#### **Deputy R. Labey:**

It was whether you wanted to bring P.117, which is down for debate on 3rd November, if you wanted to bring it forward or ask the Assembly to bring it forward?

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

I have asked the Greffe if it can be debated on 20th October.

#### **Deputy R. Labey:**

We will put it down for the 20th. I have not done the math, if you need to seek the leave of the Assembly to suspend Standing Orders to take it, but we will put it down for the 20th October sitting. I propose Public Business.

#### **3.3.1 Senator L.J. Farnham:**

I just wanted to let Members know that it is still the intention to lodge the preferred site for the new hospital on 6th October for debate in November. I will be writing to all Members over the weekend with an update and attaching some important documents to help guide that timeline. I just thought it would be helpful for Members to know that.

#### **3.3.2 Connétable L. Norman of St. Clement:**

I had a letter today from the chairman of the Home Affairs Scrutiny Panel asking if I would defer projet 97, that is the Deployment of use of Energy Conductive Devices by the States of Jersey Police from 20th October to 3rd November, and always willing to co-operate with our Scrutiny Panel I am pleased to do that, if the States are content.

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

The Chair of P.P.C. read out a long list of new items and I am trying to follow the Order Paper and obviously most of them are not there. Could the Chairman just clarify again? I apologise for this. Just remind me which are the extra ones that are not listed in the Order Paper and what dates we are being asked now to approve them to be discussed please?

#### **The Bailiff:**

Also, Chair of P.P.C., if you could confirm or do not agree with the Connétable of St. Clement's desire to push back the debate on this proposition.

#### **Deputy R. Labey:**

Yes, absolutely no problem with the Constable of St. Clement. I will go through the list again of these propositions, which have been added to the sitting of 3rd November: Draft Social Security, P.113; Jersey Care Model, P.114; Draft Statistics and Census, P.115; Draft Census (Appointed Day) Act, P.116.

[17:00]

Our Hospital: alternative site selection, P.117, but that has now been moved to 20th October; Draft Income Tax (Amendment No. 46), P.118; Immigration Act: extension to Jersey by Order in Council, P.119; Migration and Population Data, P.120; and Draft Data Protection, that was down for debate on 17th November.

**The Bailiff:**

Senator Vallois, did you need this clarified before the vote is on future business or something immediately afterwards?

**Senator T.A. Vallois:**

I was not sure whether we were still finalising the business. I thought we were clarifying where we were with regards to the business, so I do apologise, if I can follow on from that.

**The Bailiff:**

Let us finalise future business first. Unless any Members indicate in the chat that they wish to speak I will take it that the chair of P.P.C.'s proposition for the arrangement of future business is accepted.

**3.3.3 Deputy M.R. Higgins:**

Just a very brief one. Some of the propositions that are coming forward are quite meaty. Can the chairman give us an indication of the amount of days we are going to be working on some of these please?

**The Bailiff:**

Does any other Member wish to speak on this or shall I call upon the chair to respond? Chair, are you able to assist the Deputy?

**3.3.4 Deputy R. Labey:**

I wonder if I might assist the Deputy, and I will email all States Members, if I can do that in an email I will have had time to have a look at it all.

**The Bailiff:**

May I assume that Members accept the proposal for future business as a move by the Chair of P.P.C.? No one is giving any contra indications either in the Assembly or in the chat therefore the Assembly adopts the arrangements for future business as moved for by the Chair of P.P.C. Senator Vallois, you had a point of order or a ruling that you wish from the Chair prior to us finishing?

**Senator T.A. Vallois:**

I apologise for doing this right at the end on a Friday afternoon. I just want to seek clarification or a ruling from yourself around ... I know we are sitting in unusual times and we have a hybrid sitting but in terms of voting and debating on propositions, what is the position of being on-Island in order to do that as a States Member? Does the same ruling apply as if it was normal times?

**The Bailiff:**

Yes, in my view, unless the Assembly changes the rules, the rules are, as they currently are, that the remote communication is a remote communication from within the Island and one can see a number of practical reasons why that might be the case. But if you wish a different system to be considered, that is certainly something that can be discussed as to practicalities with the States Greffe.

**Senator T.A. Vallois:**

I am grateful for that, Sir. I am aware that somebody may have been off-Island who voted today so I just wanted to clarify that position. So if we are, as an Assembly, considering these times that we

are in, that it is sufficient to do so then maybe it is something the Chair of P.P.C. can take up and consider.

**The Bailiff:**

That is a matter to be raised with the Chair of P.P.C. I think outside the parameters of the meeting. Point of order raised, Deputy Tadier.

**Deputy M. Tadier:**

I certainly did not know what Senator Vallois has just revealed and that seems to be something that needs to be dealt with at this sitting by a ruling of the Chair. If somebody has voted who was not here they technically cannot have participated in any debate or any vote, and they should not have been recognised. We need to know who that person is and how it might have affected the course of a vote or a debate. It is entirely possible that person may have spoken during a debate and convinced people to vote one way or the other, which would be completely improper.

**The Bailiff:**

I certainly understand the point, Deputy, but I think it is a matter that the Chair has no knowledge of at all - I do not suppose the Chair of P.P.C. has any knowledge of it- and it is a matter, I think, to be investigated outside the parameters of the meeting and if consequences flow from it, they clearly cannot flow from it today or be put right today. So therefore I think it is a matter that should be considered and looked at outside the parameters of the meeting.

**Deputy R. Labey:**

I am happy to do that. I have not had prior knowledge of this. I did not know anything about it.

**The Bailiff:**

Then I think that is the appropriate way going forward. I have one more matter before the meeting is closed. Many Members will have come across Vicky Hinault, who has worked as the communications officer in the Greffe for the last few months, who has done a tremendous amount of work on the Greffe's social media and she was also instrumental in setting up meetings using Microsoft Teams. She has led the technical work over the summer to enable the States to sit with some Members present in the Chamber and others using Teams. She is moving on to new projects shortly and this is the last States sitting where she will be in the Greffe, and I am sure Members will join me in wishing her very well for the future. **[Approbation]** That concludes all matters currently before the Assembly. The meeting is closed and the States will reconvene on 6th October at 9.30 a.m.

**ADJOURNMENT**

[17:06]



## Appendix B

**Article 32 of the “Drainage (Jersey) Law, 2005”****32 Control of development**

- (1) When considering an application under Article 6 of the Island Planning (Jersey) Law 1964<sup>[11]</sup> for permission to develop land, the Minister for the Environment shall with a view to –
  - (a) the prevention of damage to any facilities specified in paragraph (2);
  - (b) the prevention of the obstruction of those facilities; and
  - (c) the limitation of flooding of any kind, take into account the effect of the development on those facilities.<sup>[12]</sup>
- (2) The facilities to which this paragraph refers are –
  - (a) public sewers;
  - (b) public sewage disposal works;
  - (c) public outfalls;
  - (d) watercourses; and
  - (e) flood defence works.

**Article 16 of the “Planning and Building (Jersey) Law 2002”****16 Development of concern to the Minister for Infrastructure<sup>[60]</sup>**

- (1) This Article applies in respect of an application for planning permission for development that falls within an area of responsibility or concern of the Minister for Infrastructure.<sup>[61]</sup>
- (2) Where this Article applies, the application shall be referred to the Minister for Infrastructure for comment, and any comment made by that Minister in respect of any of the matters specified in paragraph (4) shall be taken into account in the determination of the application.<sup>[62]</sup>
- (3) <sup>[63]</sup>
- (4) Those matters are –
  - (a) the sufficiency of any sewerage or drainage system, flood defence work or water course that may be affected by the development, the prevention of damage to it, and any hindrance to its repair or maintenance;
  - (b) the limitation of damage by surface water that could be caused by the development;
  - (c) the effect of the development on water quality (including sea water quality).

## Appendix C

**TRANSACTIONS COMPLETED OR NEGOTIATED PRIOR TO 12th JUNE 2015 (Date of Gift to the Public)**

1. **Foreshore property 1 - £845.** Sale by the Crown of a strip of land measuring 845 sq. ft. co-extensive with the wall of protection or dike erected by the Public of the Island on the beach, to the South of and adjoining the property "Seagate" belonging to the Purchaser... joining by the South to the North face of the wall of protection or dike erected by the Public of the Island on the beach as aforesaid. The land to the West and East of that sold was retained by the Crown.

It is quite clear from the contract that the land conveyed forms part of the Foreshore, as in the *A La Charge* section, the land is described as forming part of the lands "won" below the old Spring high tide once the wall of protection had been built on the beach.

Contract passed 15/12/1978.

2. **Foreshore property 2 – £65,000** plus costs in respect of encroachments onto the seawall. Contract passed 12/09/2003. In broad terms, this equated to around £4,000 per apartment at that time.
3. **Foreshore property 3 –** Sale of land to North of the seawall. **£10,000** plus fees. Contract passed 30/04/2004.
4. **Foreshore property 4 –** Sale of land to North of the seawall. **£10,000** plus fees. Contract passed 13/08/2004.
5. **Foreshore property 5 – £10,000** consideration re grant of rights plus costs. Contract provides for **£120,000** if "Approved Scheme" implemented and **£230,000** if "Alternative Scheme" carried out.  
Contract passed 20/07/2007.

In the end it seems that only some of the consideration was paid due to not all the encroachments taking place.

6. **Foreshore property 6 –** an encroachment onto land behind the 'Seymour to Le Hurel Seawall' had taken place in conjunction with the redevelopment of the site. The matter was brought to JPH's attention by Deputy of Grouville. JPH caused the developer to **remove** the encroachment.
7. **Foreshore property 7 –** an encroachment onto land behind the Seawall had taken place in conjunction with the redevelopment of the site (plus numerous other encroachments). JPH caused the developer to **remove** the encroachment.
8. **Foreshore property 8 –** Sale of land to owner was negotiated at £90,000 in respect of encroachments onto the seawall. A contract, however, has not to date been passed.

**TRANSACTIONS COMPLETED POST 12th JUNE 2015**

1. **Foreshore property A1- £19,500** plus costs agreed in respect of encroaching balconies, steps onto the beach and rights.

Contract passed 03/06/2016.

2. **Foreshore property A2 – £28,250** plus costs re sale, cession and transfer of rights in respects of encroachments onto the seawall and the land behind forming part of the Foreshore.

Contract passed 09/12/2016

3. **Foreshore property A3 – £22,500** plus costs re sale, cession and transfer of rights in respects of encroachments onto the seawall and the land behind forming part of the Foreshore.

Contract passed 30/06/2017

4. **Foreshore property A4 - £15,000** plus costs re grant rights for certain proposed walls, floors and associated components to adjoin the rear face of the Public's Ouaisne Bay Seawall in connection with the approved redevelopment of La Cotte.

Contract passed 10/05/2019