

Event: Water Resources Law Public Hearing

Date: 26 July 2004

Chairman: Senator Jean Le Maistre

Panel Members: Senator Edward Vibert
Deputy Gerard Baudains
Deputy Philip Rondel
Deputy F.J. Hill
Deputy Robert Duhamel (pm only)

Adviser: Dr S Sutton

Witnesses: Senator P. Ozouf, President Environment and Public Services
Committee
Mr. C. Newton, Director of Environment
Mr. G. Jackson, Assistant Director - Environmental Protection
T. Williams, Environmental Lawyer
Mr. G. Le Lay, Jersey Framers Union
Mr. H. Clark, RJA&HS
Mr. H. Baudains, Jersey Landowners Association
Mr. R. De Gruchy, Jersey Landowners Association
Mr. G. Langlois, Water Diviner
Mr. L. de la Haye, Well Driller

TRANSCRIPT OF EVIDENCE PROVIDED TO THE VIBERT SCRUTINY PANEL
HEARING DATED 26th JULY 2004
ENVIRONMENT AND PUBLIC SERVICES COMMITTEE

WITNESSES Senator P. Ozouf, President Environment and Public Services Committee
 Mr. C. Newton, Director of Environment
 Mr. G. Jackson, Assistant Director - Environmental Protection
 Mr T. Williams, Environmental Lawyer

CONTENTS

1. Introduction

PART ONE - INTRODUCTORY PROVISIONS

- 2. Definition of groundwater**
- 3. Discreet source of supply**

PART TWO - ADMINISTRATION

- 4. Redistribution and augmentation (Article 4(1)(b))**
- 5. Right to draw from a Spring (Article 12 (1)(a) and (b))**
- 6. Application of Restrictions**
- 7. Issuing of licences on basis of existing use**
- 8. Difficulty in applying restrictions fairly**
- 9. Gauging flow characteristics of streams**
- 10. Monitoring and protecting neighbouring wells and bores**
- 11. Impact of new boreholes on existing neighbouring boreholes**
- 12. Derogation of borehole by neighbouring commercial use**
- 13. Access to documents and records - Data protection implications (Article 34**
- 14. Cost principle - three types charging Article 5(c) and Article 25**
- 15. No charge for Water Hauliers**
- 16. Cost recovery principle - user pays (Article 5(c))**
- 17. Regulatory activities (Article 7) - Committee in a conflicting role as user and regulator?**
- 18. Regulation position in United Kingdom**
- 19. Regulation position in France**

20. Issue of Independent regulator - possible environmental regulatory body
21. Water regulation in France
22. Transfer of functions (Schedule 4)
23. Cost of implementing the Law - means of scrutiny
24. Will the principle of user-pays continue to apply? Does the Committee accept that there is a conflict?
25. Interim arrangements (Schedule 4)

PART THREE- PROTECTION OF WATER RESOURCES

26. Licence Exemption for domestic users - under 3 cubic metres per day - Article 12(1) (b).
27. How would exemption limit for domestic users be monitored?
28. United Kingdom threshold of 20 cubic metres
29. Basis for 3 cubic metres limit in Jersey?
30. 10% of boreholes in the Island to be licensed
31. Comparative figures for water stress
32. Three cubic metres - a best estimate
33. What constitutes Commercial use?
34. Domestic consumption level
35. Power of government to intervene
36. Shared Domestic use of boreholes - addition of Article 12(1)(c) as a result of consultation and inclusion of swimming pools
37. Possible Different exemption limits
38. Basis for three cubic metres
39. Lack of knowledge of number of boreholes in the Island
40. Three cubic metres an estimated figure
41. Law is to provide information currently lacking
42. Quality of water under the Law (Article 16(1)(b))
43. Monitoring of abstraction
44. Issue of Licences on basis of research in interim period
45. Right of appeal - article 17(4),
46. How the estimate for the number of boreholes is reached

- 47 No requirement for a licence for short term processes - 12(1)(g)
- 48 Census figures for boreholes
- 49. What is the intention with springs?
- 50 Conditions of licences - Article 18
- 51 Cost of meters and keeping of records - Article 18(i) & (j) - justified for exceptional events which only occur every 25 years?
- 52 How does information on abstraction benefit the Island?
- 53 Springs - clarification
- 54 Efficient use of water Article 18 (k) & (m)
- 55 Do same standards of efficiency apply to mains water users as well as boreholes?
- 56 Does a borehole user get a 'free' supply of water?
- 57 Encouraging use of meters for all domestic users
- 58. Costs of boreholes - maintenance and treatment
- 59 Jersey New Waterworks Company as an abstractor - required to be efficient
- 60 Suspension of licence - Article 22 - what is an emergency?

PART FOUR DROUGHT MEASURES

- 61 Application to any specified part of the Island [Article 26.3b]
- 62 Comparison to Emergency Powers (Jersey) Law 1990
- 63 Application to any specified class of persons - Article 26(3)(d)

PART FIVE ENFORCEMENT

- 64 Issuing of warrants - Article 32

PART SIX OTHER PROVISIONS

- 65 Appeals
- 66 Table setting out forces for the Law
- 67 Notification to public of changes to the Law - Article 8
- 68 Concluding remarks - Additional evidence on water stress

1. Introduction

SENATOR LE MAISTRE: Good morning. For the benefit of the tape, as well as members appearing in front of the shadow scrutiny panels, I have to read the paper which you've had before you last time. I don't think there's anybody new this time, but I still have to do it for the record.

"Shadow scrutiny panels have been established by the States to create ...

Now, first of all, I welcome you to the hearing this morning. We have an apology from Deputy Duhamel, who is presently in Guernsey. He will be returning later on and could be joining us later. Dr Sutton, you know obviously, is with us as well this morning.

Now, what we are proposing is that we deal with the law specifically today and that we would propose that it would be taken in parts, so that there is a logical progression through the law. I'd like to start by asking --

DEPUTY HILL: I don't know who the gentleman is to my right, sir.

SENATOR LE MAISTRE: Sorry.

DEPUTY HILL: I wasn't here last week.

SENATOR LE MAISTRE: Deputy Hill was not here, so maybe you'd introduce your members, sir.

SENATOR OZOUF: I'm grateful, first of all, you allowing me to at least be with one person on each side. I'm Environment and Public Services President, for the record. Director of Environment Chris Newton, Terry Williams, our long-standing advisor to successive Public Services committees on water resources. I don't know whether you want to add any particular remarks of your particular expertise.

TERRY WILLIAMS: I don't think so, no.

SENATOR OZOUF: And the other gentlemen are familiar to you.

SENATOR LE MAISTRE: Could you just name them?

SENATOR OZOUF: Gerry Jackson and we've got David Hull from the Law Drafting Department.

PART ONE - INTRODUCTORY PROVISIONS

SENATOR LE MAISTRE: Right. Thank you very much. So, could I ask members of the panel if they have any questions on Part 1, which is the introductory provisions?

SENATOR VIBERT: I have one, if I may. The explanatory note at the top of Part 1 reads, "The draft law seeks to provide" and it goes on about the protection bit and then it sort of appears to be a dramatic change in the reason for the law. I wondered if the President could explain why that is.

SENATOR OZOUF: I think -- I know that we ought to get on to the law. I think, if I may say so respectfully, Senator, we did deal with the whole of the fundamentals of the law in some considerable depth last week. I don't know whether or not, Chairman, you want to suggest that we defer that question, pending perhaps the opportunity for Senator Vibert to have sight and sound of the tape last week. We have dealt quite substantially with some of the background and I, for one, am wanting to get on with the --

SENATOR LE MAISTRE: Furthermore, we have suggested that we would actually probably like to submit written questions, which will absolutely clarify the reasoning behind the law.

SENATOR OZOUF: Okay. That's not because I don't want to answer the question. It's just that we spent -- I'm here another time in order to deal with --

SENATOR VIBERT: (overspeaking) that I'm happy.

SENATOR OZOUF: Yes. Okay.

SENATOR LE MAISTRE: Okay, thank you. Deputy Rondel?

2. Definition of groundwater (article 1)

DEPUTY RONDEL: Yes, on Part 1,

"Groundwater means water below the surface of the ground and saturation (inaudible) and in direct contact with the ground or soil"

That particular one, we did cover it last week. The answer I believe I received was somewhat different. Could you please give me more detail on that particular -- in the introduction of Part 1 on page 3, please?

TERRY WILLIAMS: Sir, Deputy Rondel is quite right. We did touch upon this last time. But before I give the substantive answer to the Deputy's question, may I just explain to the panel the source of this definition? This is derived from relevant EU directives relating to the environment and water in general. It is specifically

adopted by the Groundwater Regulations of 1998 in the UK and, indeed, by other legislation in the UK.

So, it is not a tailor-made definition, in the sense that it's been in any way devised by the law draftsmen in Jersey.

Now, what I said last time you will recall, Deputy, was that in answer to a question by Deputy Duhamel, was that if this panel were mindful to make any comments vis-à-vis this particular definition, then I think I'm right in saying - I spoke with the instructing team on this - we would be very happy to revisit this definition in the light of your observations and, of course, to advise the promoting committee accordingly. What I would not wish to be drawn on now is any idea that this definition needs in any way to be changed.

Finally, I think, I ought to say that certainly the intention behind the definition was that it would cover all waters below the ground, whatever the depth may be. That was the clear intention. If that has not been achieved or the panel feel it hasn't been achieved, then I would invite you to comment accordingly and we will revisit it. But I have to say to you that my gut reaction to this - if I can use that phrase - is this is a very well established definition in a lot of environmental legislation. So, I would have to be persuaded that it needed to be changed. I don't think I can usefully (overspeaking).

DEPUTY RONDEL: Okay. Could I just come in on the back of that, if I may, Mr Chairman?

In any dispute in a court of law, could this be broken down to mean exactly what it says or, contrary to your definition just now, all groundwater below the surface?

TERRY WILLIAMS: Clearly, sir, as I'm sure the Deputy appreciates, in any dispute before the court, it would be for the judge to rule accordingly, having received the evidence from the parties before him. I can't pre-empt what the ruling of the court would be, of course, but certainly the intention was that it would cover all groundwater, whatever depth it may be.

3. Discreet source of supply

DEPUTY HILL: I would just ask you a question. Could you add to that? Would that include rainwater collected as a result of falling from the sky, going to one's drain, one's septic tank? There are a number of people in Jersey who still have no other

means of water, apart from rainwater, which they store in their septic tanks - no, not septic tanks - their tanks, sorry.

TERRY WILLIAMS: No. A septic tank --

SENATOR LE MAISTRE: I think the term was tight tank.

TERRY WILLIAMS: I think in the UK that's called a cesspool. I'm familiar with the term, of course, in Jersey. No, the answer would be that would not be a (inaudible). That's a slightly different question, if I may say so, to the one that Deputy Rondel put to me.

SENATOR LE MAISTRE: Would that come within the description of 'discreet source of supply'?

TERRY WILLIAMS: It could well do so, yes, sir, as being one as excluded, yes.

CHRIS NEWTON: Can I just interject? We need to be careful that we're not confusing definitions here. The groundwater definition is a freestanding definition. Where it talks about 'discreet sources of supply', that isn't talking about just groundwater. That's defining 'discreet sources of supply', so it would include -- for instance, an ornamental pond in somebody's garden would be a discreet source of supply, as in having no connection to any other aquifer.

SENATOR LE MAISTRE: Sorry. Well, it brings me to that question of discreet source of supply, for the avoidance of doubt. Water that is collected, surface water, in a pond for irrigation purposes, let's say, would fall outside or would be captured by the law?

CHRIS NEWTON: I think to answer that you'd need to think about how that pond or reservoir came to be full of water. If it came to be full of water by the simple expedient of laying out a polythene cover so the rain collected in it, then that would be a discreet source of supply.

If, however, the pond was created by damming a stream, that would be caught by the parts of the law that deal with impoundment. If it was created by pumping water out of a stream or out of a borehole into said reservoir, that would also be caught by the law.

SENATOR LE MAISTRE: but it could be the runoff from roofs in an area where there's, you know, quite a lot of surface --

CHRIS NEWTON: Yes, that would be a great idea and would be a discreet source of supply.

DEPUTY RONDEL: So, seawater being turned into fresh water, i.e. desalination, would be a discreet source of supply?

CHRIS NEWTON: It would not be caught by the ruling on abstraction.

DEPUTY RONDEL: But nor would a discreet source of (inaudible) rainwater, would it, if it fell onto the greenhouses? So, neither of them would fall under discreet --

CHRIS NEWTON: If it's a simple question of having a collecting system that collects rainwater and then using the rainwater, it would not be caught by the provisions of this law.

TERRY WILLIAMS: **A self-contained unit, sir, containing water, which is not connected with the resource in general is a discreet water, and therefore is outside the law.**

SENATOR LE MAISTRE: It's an interesting point because I can give an example, which is a concrete example - forgive the term - where when a school was constructed - I was a member of the Education Committee at the time - and there was a plan to provide rainwater under the school as a supply, the waterworks company of the day said that they would then not connect the school up with an ordinary supply if they had their own. Now, it's an interesting thought as to how they could actually do that and, presumably, that would bring them into conflict with this kind of provision.

TERRY WILLIAMS: Not if - as I understand it, sir, the explanation you've given - if the unit in which the water is contained is sealed --

SENATOR LE MAISTRE: A private source?

TERRY WILLIAMS: Yes. Then, that would not be caught by the law, sir.

PART TWO - ADMINISTRATION

SENATOR LE MAISTRE: Okay. Are there any other questions on Part 1? We move to Part 2, administration. Does any member wish to ask any questions?

4. Redistribution and augmentation (Article 4(1)(b))

DEPUTY BAUDAINS: I have one or two questions I'd like clarified if possible (inaudible)

administration, Article 4(1)(a) Protection of Water Resources in Jersey. Actually, Part (b). Can you advise me what the committee means by redistribution and augmenting of those resources? My understanding --

SENATOR LE MAISTRE: Could you tell us exactly where that is, please? We have to see it.

DEPUTY BAUDAINS: Article 4(1)(b), redistributing and augmenting. I'm not sure whether I understand what they're really seeking to achieve by that. Does it mean if somebody's stream is a bit low, then you're going to have to use your borehole to top it up? I really do want to understand it.

CHRIS NEWTON: There are two expressions there, 'redistribution' and 'augmentation'. **Augmentation of a stream flow** would be, for instance, setting a residual flow in a stream such that if somebody wanted to put an impoundment across a stream, a barrier, that there would be a requirement to allow a certain amount of water to flow down that stream, irrespective of the person's need upstream. So, it's basically a requirement that allows the protection of the rights of downstream users and the rights of the flora and fauna within that stream. That's the augmentation.

Redistribution basically anticipates that there may be occasions when, if you like, the current pattern or a future pattern of resource use is seen to be less than optimal. So, it basically allows, through the issuing and variation of licences, for different patterns of resource use to be applied in the future.

So, for instance, it may be seen as appropriate to restrict how much water could be taken out of a stream flowing into a water company reservoir, so as to ensure that the water company reservoir is full and we don't suffer through droughts and a shortage of rainfall in the summer.

DEPUTY BAUDAINS: Basically, what you're -- putting it very simply, you're talking about balancing the resources.

CHRIS NEWTON: Between different users, yes.

5. Right to draw from a Spring (Article 12 (1)(a) and (b))

SENATOR LE MAISTRE: When we come to it, perhaps - I'm trying to remember where it is - there's also a question which we raised last time, which was to do with where a

spring actually rises, where the rights of the individual are to draw from that spring. And what is being suggested here is that those rights would be changed.

CHRIS NEWTON: Not so much changed. It's the power to intervene if necessary.

SENATOR LE MAISTRE: It's that at the moment that power does not exist, is what is being told to us.

CHRIS NEWTON: That's right.

SENATOR LE MAISTRE: by the legal advice, and therefore that power to draw water, ability to draw water, would be potentially interfered with.

CHRIS NEWTON: Potentially, yes.

TERRY WILLIAMS: Above the threshold limit, sir, as you appreciate, of three cubic metres a day.

SENATOR LE MAISTRE: I was not aware - but this is interesting - that the right to draw from a stream which was the result of a spring would be limited in the same way as drawing from a well would be limited. Maybe you could tell us where that is contained in the law.

TERRY WILLIAMS: Yes, in Article 12, sir.

SENATOR LE MAISTRE: Right. And that would -- sorry, I had interpreted that as being from a well or borehole, but it actually captures also the -- it's quite important, isn't it?

TERRY WILLIAMS: The distinction, if I can assist the panel, sir, is that in 12(1)(a), there is an exemption for surface water abstraction up to three cubic metres a day. And groundwater is covered by 12(1)(b). The only difference between (a) and (b) is that (b) requires registration with the committee and the rationale behind that, sir, as I understand it, is that the groundwater is sensitive in Jersey and so it is considered as a policy to be appropriate.

SENATOR LE MAISTRE: It can perhaps raise the issue of the rights of individuals, human rights, to access the water. I think that is yet to be determined.

TERRY WILLIAMS: Of course, sir. Of course. As you will recall, sir, I was here. I was privileged to hear the Solicitor General give the advice. She answered a question which you put to her, that the vetting procedure would take its course.

6. Application of Restrictions

DEPUTY BAUDAINS: Still on the generality of 4(1)(b), (b) is on (inaudible) and Mr Newton I think has provided me with answers to the next question I had, which was I wondered if, when there are restrictions or if there are restrictions, whether that would apply generally or different restrictions would apply to different types of use or different class of people. Clearly, that would, in order to create the redistribution that you spoke about a moment ago.

My concern that flows from that is how is that actually going to be calculated? Who is going to decide and on what information basis?

7. Issuing of licences on basis of existing use

CHRIS NEWTON: I think you'll understand that one of the issues that we've grappled with over these sessions is the relative scarcity of high quality information on the available water resource. The intention, clearly, is to improve upon that, partly through requirements of the law such as the registration of boreholes and the allocation of licences.

The way it's anticipated the law would work is that in the initial phase, licences will be issued predominantly on the basis of existing use. So, if somebody demonstrates an existing use of a particular source at a particular quantity, then that is the initial licence that they will get. What we will be able --

SENATOR LE MAISTRE: For a five-year period, yes?

CHRIS NEWTON: For the interim period. What we will be doing over that period, as well as issuing them with a licence for that quantity, is carrying out a review of the impact of those uses and abstractions on the source of supply.

So, if over that period it becomes clear that there are problems within that catchment area - if I can use that expression - then you would look at the end of the interim period to put in place a more robust system of resource distribution, such that all the users were taken account of. That would be done through the expert hydrological advice we will have, as and when we recruit the person who will be necessary to administer the law, as is mentioned elsewhere in the report.

8. Difficulty in applying restrictions fairly

DEPUTY BAUDAINS: If I may follow on from that, it did occur to me that it's an almost impossible task to do fairly because if a stream is running low, exactly how much do you -- obviously, restricting the flow is going to maybe affect a farmer further up who can no longer irrigate his field or something. Deciding the exact amount is not going to be an easy matter and, possibly with boreholes, would be even more difficult. I'm just concerned that, could we have some information on this.

CHRIS NEWTON: I would accept it's not easy. However, it's a subject that's been the -- has been sort of dealt with in practice for the last 40 years in the UK, since the introduction of the Water Resources Law in 1963 and it's a subject on which there's a fair bit of expertise available.

Things like setting minimum flows in streams are subject to fairly well established criteria, in that you would look at, for instance, the lowest summer flow over a period of years and you would set a limit such that that was maintained, for instance.

9. Gauging flow characteristics of streams

SENATOR LE MAISTRE: Would that entail actually taking measurements of all the streams in the island over the 12-month period? How would that be achieved?

CHRIS NEWTON: Well, it would be important to know what the flow characteristics of the stream were like, yes.

SENATOR LE MAISTRE: So, you wouldn't be able to do that without actually monitoring the streams, presumably, on full 12-month cycle.

CHRIS NEWTON: The normal approach is to do what would be technically called the gauging of those systems.

10. Monitoring and protecting neighbouring wells and bores

SENATOR LE MAISTRE: Can I just pick up on the point that Deputy Baudains asked in terms of understanding the resource implications and so on?

As I understand it, there are examples in the island of neighbouring wells having

different depths to achieve the same rate of supply. How would that be dealt with in terms of the regulation and protection? Clearly, they don't have to be very far apart. I know of some which are only about 50 metres apart, and yet go to very different depths, one at 110 feet, for example, the other one at 158 feet.

CHRIS NEWTON: I guess the simple presumption of the law is, firstly, supplies that are drawing less than three cubic metres a day will not be affected. They're not caught by the law at all.

If they're drawing more than three cubic metres per day, then the first test would be: is that causing anybody any problems in that neighbourhood? So if, for instance, there are six neighbouring boreholes and they're all drawing more than three cubic metres a day and everybody's happy with the situation, nobody feels they're being hard done to, the water table isn't being depleted, then there would be no reason to intervene and change the licence conditions.

Where we might have a problem is if you've got six people who were in balance and then a seventh person has arrived, sunk an even bigger shaft, put an even bigger pump in. And it's pulled down the water table such that all his neighbours can't get hold of the water anymore, in which case you would want to intervene and set a licence condition such that the take of water was equitably distributed amongst all the users in that vicinity and not just taken by one major user.

SENATOR LE MAISTRE: Thank you. Your answers implies that the water table is set for any given area and it would be likely to affect all users in that area to the same extent. Do you envisage the possibility where a deeper borehole may have no water and a shallower borehole does have water?

CHRIS NEWTON: It's possible for all sorts of reasons, technical reasons to do with the nature of the borehole itself, whether the borehole is silted up, whether the pump is efficient, etc, etc. I mean it's not just a simple matter of levels and, of course, the water table will rise and fall with the annual rainfall that's experienced as well.

11. Impact of new boreholes on existing neighbouring boreholes

SENATOR VIBERT: On the example that you raised about the seventh borehole, as an example, are you aware of this ever happening in Jersey? Have any examples ever been reported to the committee or to anyone of anybody ever doing that and it having that effect?

CHRIS NEWTON: I've heard of it anecdotally but my personal presence in Jersey hasn't been long enough to have picked up specific examples.

SENATOR VIBERT: Is there any record of it at all in the department?

CHRIS NEWTON: Can we take advice? Gerry Jackson will deal with that.

GERRY JACKSON: There is some anecdotal evidence that boreholes have dried, but I can't recall a specific incident of a borehole being reported to Water Resources as a complaint. There have been anecdotal evidence, when we've spoken to people.

SENATOR LE MAISTRE: Has there been any discussion with those responsible for drilling wells on this particular issue?

GERRY JACKSON: We have spoken to the well drillers, but we've found it quite difficult to get their records. They're reticent to give records so, again, the law would allow us to get that information, if necessary.

Just one other point, if I could, Mr Chairman. It is possible we've also come across situations where there are shallow bores you can draw water from and the deeper bores that are quite close don't. There are -- I'm not a hydrologist but I understand there are **perch aquifers** in Jersey, so there are different levels of water that can be drawn.

SENATOR LE MAISTRE: Okay. Thank you. That answers the question. Are there any other questions?

12. Derogation of borehole by neighbouring commercial use

DEPUTY HILL: Maybe I could ask Mr Jackson to come back just on that aspect of our seventh borehole. It might well have come through a commercial use. You have an area where people are living. I don't think we're getting quite so much now, but it could have been. But it's anecdotal whereby the greenhouses may bore a hole where they use it for commercial use and that may well take -- would that be some part of the anecdotal evidence you've had? Would that have been an

occasion when that might have arisen? I'm trying to think where it could have happened.

GERRY JACKSON: I think one example we had was -- I can't remember exactly which hotel but I think it was a commercial hotel in St Brelades Bay and the house next door had been derogated. We had some anecdotal evidence of that.

DEPUTY HILL: That was really the only occasion it would have occurred. Under normal circumstances, when people were in their own home, you'd go to a certain depth because that is the sort of depth of the area. It would normally be through commercial?

GERRY JACKSON: Yes, sir.

13. Access to documents and records - Data protection implications (Article 34

DEPUTY BAUDAINS: Could I just come in there for clarification from what Mr Jackson said? The law would allow access to the well driller's records and that, so people could get possibly a fuller understanding. More knowledge, clearly, is better than less knowledge. I am wondering how data protection would come into that. Is it an obstacle?

SENATOR OZOUF: If I may answer, I was the rapporteur for the new Data Protection Bill, so I know data protection fairly well.

I'm sure that the microphone can pick me up from where that is. If there is a volume there, I'm quite clear to this -- is that satisfactory? You don't have to move it? Right, okay. That's good. I don't want to be interrupted every time.

The Data Protection Law requires the data to be collected and for you to declare the reason why you are actually going to be giving -- the person asking for the data needs to know exactly what purpose you're doing it. So, as far as the law is going to be enacted going forward, then obviously data which is collected under this new law is going to be fully data protection compliant. I am not clear about information that would be information that is collected by borehole drillers today and going backwards.

TERRY WILLIAMS: Can I amplify the answer given by the President, sir? I am actually familiar

with the Data Protection Law in Jersey because when we drafted the Drainage Law, I had to look at it.

I can say confidently to the panel that the Data Protection Law in Jersey, as it does in the UK, provides an exemption in respect of where there are statutory requirements. I'm paraphrasing, of course, but if I invite the panel to look **at Article 34** of this law, you will see in there that there is specific provision to enable the committee to obtain documentation and information from - and I would say *inter alia* - well drillers.

So, to summarise and answer Deputy Baudains' question fairly and squarely, because this law provides specifically for the collection of data, it falls within the exception to the rule in the Data Protection Law. So I don't see a problem, sir.

DEPUTY RONDEL: Can I come in on that? We're talking about historical information also. You're confirming that also, with this 34?

TERRY WILLIAMS: Yes.

DEPUTY RONDEL: I'm talking historical, something that might go back 30 or 40 years, not just yesterday.

TERRY WILLIAMS: Yes. May I answer that again fairly and squarely because I'm very anxious to answer these questions firmly?

Article 34 bites in relation to documentation and information which is in the possession of the person at the time when it is requested. So, it doesn't matter how old the information is if you've still got it. But what you can't, of course, be required to do is to dig out information that has been destroyed because that would be quite impossible. It only relates to information in your possession at the time when the notice is served. Does that answer your question?

DEPUTY RONDEL: Yes, thank you very much.

14. Cost principle - three types charging Article 5(c) and Article 25

SENATOR LE MAISTRE: May I ask, under Part 2(5) Operating Considerations, under (c), there is the mention of the cost principle by which,
"The costs are managed of regulating the abstraction and impounding water are borne by the persons who abstract or impound it"

Would this actually include those who would be registered for -- is it the intention for

those to include those who are registered for domestic purposes, in other words, under the three cubic metres per day?

TERRY WILLIAMS: No, sir. I think, to answer your question, I would need to invite the panel to look at **Article 25**. Article 25, as you can see, sir, creates three categories of charges, which the committee can impose by order.

The first category is A and that is the cost of processing an application. It's not forced to do this, but it will have the power to do so. Category B is in respect of those who hold a licence. It could be, for example, an annual charge for having a licence. And the third category, which is coming to the answer to your question, sir, is that you will see that C relates to one category only in relation to Article 12 and that is the issuing of consents. What, in effect, 25(1)(c) is relating to, sir, is 12(1)(g). I'm sorry to throw these numbers at you.

SENATOR LE MAISTRE: No, no. I think that's very helpful.

TERRY WILLIAMS: Thank you.

15. No charge for Water Hauliers

DEPUTY RONDEL: On that, Chair, if I might, where a haulier is removing large quantities of water to take to a household, i.e. to fill up a storage tank at time of drought or after two or three weeks from the rainwater systems, how is that covered under your charges?

TERRY WILLIAMS: There is no provision for charging in those circumstances. The charges relate, sir, Deputy Rondel, only to those who apply for a licence, those who hold a licence or those who obtain a test pumping consent under 12(1)(g). There is no provision to charge anyone else.

DEPUTY RONDEL: So, a haulier - that's his business, going round filling up rainwater systems at certain times of the year - who will be removing more than three cubic metres a day and delivering then, shall we say, several thousand gallons a time to a particular property, the law will not apply to them?

CHRIS NEWTON: Sorry, you're giving me two separate -- let's just be clear. Where is he picking this water up from?

DEPUTY RONDEL: Through the water board(?), I presume, or -- yes, it would have to be a good

portable supply, so --

DEPUTY BAUDAINS: As far as I'm aware, the water hauliers use waterworks company water, which I presume is metered and (inaudible).

CHRIS NEWTON: This deals with water in the wild, if you like. This doesn't deal with water that's already in water company ownership and in their pipes. If they get it out of a tap, to put it simply, then they're not caught by the law.

SENATOR OZOUF: Okay. Deputy Rondel, I think you were trying to identify whether or not the function of the delivery would attract a charge, as opposed to where he got it from.

DEPUTY RONDEL: Both, actually.

SENATOR OZOUF: Right, okay. So, we're clear on the answer?

TERRY WILLIAMS: I could assist Deputy Rondel by referring to **Article 3(3), which specifically excludes water in mains or pipes**. Thank you.

16. Cost recovery principle - user pays (Article 5(c))

SENATOR VIBERT: Chairman, I wonder if I could ask a question on Article 5, which is the cost principle. According to Article 5, it says that people who abstract or impound water will be responsible for the costs of the regulation and management of the activities.

Does that mean that if it is discovered that the cost and management of that rises, then the amount is going to be split between the number of people who are actually drawing the water under the law? In other words, is it a user pay principle, where whatever happens to the cost - over which the user has no control - they will continue to pay higher prices as the costs rise? In other words, you wish it to be a self-funding principle?

CHRIS NEWTON: That's essentially right. It's a cost recovery principle. The costs of running the system are passed on to those people within the system, but that would be subject to the normal strictures of the committee process, which would ensure that costs are kept to the minimum required to administer the law.

17 Regulatory activities (Article 7) - Committee in a conflicting role as user and regulator?

SENATOR LE MAISTRE: May I ask, under 7, we have -- I think it's probably the first occasion, I may be incorrect there, which refers to the regulatory activities of the committee.

CHRIS NEWTON: Sorry, I've lost track.

SENATOR LE MAISTRE: Article 7, under 1. It's really probably a political question, but is the committee comfortable in being a user as well as a regulator, in that one has been seeking to separate activities which could be in conflict? So, really, it's a question of is the committee comfortable in being - because it's the first time it comes, as far I've picked it up - the regulator as well as the user?

SENATOR OZOUF: The committee is conflicted in a number of respects. When I appear before you dealing with the subject of waste management, I'm conflicted there on the one side with the operating side of the Public Services Department in running an incinerator. On the other side, we've got the Environmental Department.

We deal with conflict by having a clear set of responsibilities for the different departments within the committee's responsibility and also within the reorganisation of the committee's management structure, as you may have been made aware of things recently. We are putting in place a separate reporting line for the Director of the Environment through straight to the committee, as opposed to other areas of the operational side of the committee. So, I'm not sure. Obviously, the committee's together for certainly the next 18 months and we're dealing with that on a short-term basis in a variety of ways, one of which I've just given to you. In the longer term, I'm not sure. I can't think of any particular conflicts that would continue to be in place, as far as water resources are concerned, but that same Chinese wall principle will be applied.

18. Regulation position in United Kingdom

SENATOR LE MAISTRE: May I ask whether we have a similar situation applying in the United Kingdom, whether is the regulator separate in terms of this law in the UK or is the regulator also a user?

TERRY WILLIAMS: Well, I'm happy to deal with this question, sir, because like Mr Newton I'm formerly with the regulator in the UK.

The position, sir, in the UK was that from 1974 through to 1989, the regulatory and

operational role were carried out by the same body. They were called water authorities, using the principle that the President has just enumerated with the Chinese walls. But I'm sure you know, sir, as a result of the privatisation programme which went through the Westminster Parliament in 1989, the regulatory and operational functions were separated. Since then, there has been a separate regulatory body, the one for which I was the Chief Solicitor, the National Rivers Authority, which subsequently became the Environment Agency.

DEPUTY RONDEL: How would it be dealt with in Europe, i.e. France and Germany or one or two other (inaudible)?

TERRY WILLIAMS: I don't know, unfortunately. I can't answer that question. I think it is important. Obviously, I would be happy to --

DEPUTY RONDEL: The reason I put that is a lot of Jersey law is based on French law, Norman law, and therefore it would be interesting - well, more than interesting; it would be very useful - to know what happens in France.

19. Regulation position in France

SENATOR OZOUF: Well, raising the issue of our links with customary French law may be interesting. I think it's important to note that we went our own separate way from approximately 1204 and I don't know whether or not the world had separate focuses on regulatory and operational activities back then. French law has obviously developed in its own way, quite apart from Norman customary law, since they codified their statutory arrangements.

20. Issue of Independent regulator - possible environmental regulatory body

I think probably what I would say is that there is there is a debate to be had about the independence of the regulator. I know that there is a debate currently going on in Jersey and a disliking of things that are now commonly known as quangos. Having been a political individual responsible for the setting up of another regulatory authority, namely the JCRA, I'm quite familiar with the reasons why these things were set up.

The reason why the JCRA was set up was actually for good reason: in order to set up

an expert body that had its focus on regulation, in this case for the regulatory matters to do with telecoms, postal and competition matters. It had the virtue of actually not having a political interference. Of course, one needs to put in appropriate standards of corporate governance, etc, but the principle of actually having a professionally qualified, independent regulatory authority is absolutely the best practice that governments should attempt to be putting in place.

There is a case for putting in place a JCRA-style body for environmental regulation, of which water could potentially come into that. That's the first time I'm actually saying this, but I think there is a case to be had for ensuring, from a statutory point of view, that we do have a properly independent environmental regulator, which could be covering a number of responsibilities, including water.

I don't know whether, Chris, you want to add anything else on that.

CHRIS NEWTON: Yes, I could. I think one of the issues with any sort of regulatory framework is that, however you cut the cake or divide the responsibilities, you're often left with some element of self-regulation. So, even in the UK, as Mr Williams has described, the bulk of what was being regulated went out with the water companies. But some operations, for instance, of the Environment Agency, are in themselves regulatable activities. So it will effectively regulate itself to take water out of a river into a fish pass(?) or for navigation purposes or for things of that sort.

The issue is whether you've got a proper either internal or externally created, robust system that ensures that the internal applicant's treated the same as the external applicant. And the law does allow for it and it does anticipate that there will be a system of certification as opposed to licensing for those in-house activities.

21. Water regulation in France

DEPUTY RONDEL: In one of the comments you have made, you gave us a lot of what you would like to see with the JCRA, etc. That wasn't my question. My question was what happens in Europe? You said you didn't know. That's fine.

But given that France -- we're looking at best practice, not only from the UK. We're looking at best practice for Jersey in the future. Therefore, France, having had the growing pains since 1945 until even recently of putting all their water - purifying their water systems, shall we say - and putting everything in place, I would have thought would have been an ideal place to also be looking. And given the Solicitor General's comments the other day on French law, and you were present, you may have taken something on board actually in what she said.

TERRY WILLIAMS: Well, I noted myself, sir, that in squarely answering Deputy Rondel's question, I have of course provided this panel with a note on the position in the French law vis-à-vis water resources law. If I can invite the panel -- I don't think you need to look at it as I can't expand on it. That's what I meant. At page 14 of the annex to the submission that we filed with the Scrutiny Office on 30 June, there is a three-page note which I prepared in anticipation of Deputy Rondel's observations on the position in France.

What I can't unfortunately do though, sir, is to answer any detailed questions because I'm not au fait with it myself. This is research work that has been done. That's different. I can't speak with direct knowledge.

But may I just finish this issue off from my point of view? Mr Newton intimated that there is provision in this law to deal with the regulatory and operational functions. I would remind the panel, if I may, of Schedule 4 to the bill, which of course does create an interim scheme while the committee's performing both its operational and regulatory functions, which, as we've heard from the President, is anticipated as an interim situation. We have put in place - or Lord Ruxford(?) has put in place - certain safeguards there during that interim period.

22. Transfer of functions (Schedule 4)

SENATOR VIBERT: I wonder if I could pursue this particular matter because, on page 4 in the third paragraph and at (d) --

SENATOR OZOUF: Are you on the law here?

SENATOR VIBERT: On the law, Part 2.

SENATOR OZOUF: So, you're basically on the summary?

SENATOR VIBERT: Still on the summary. You actually do raise this in what you said, the fact that you do recognise the difficulty of being the regulator and, in effect, and operator. And you do claim and say there that you're going to facilitate the transfer of function to some other body, so it's not a surprise to be told that. It is there in black and white.

The President has actually raised that it may well be along the lines of the Jersey Competition Regulatory Authority. So far, the Regulatory Authority has been a fairly costly item for people within the industry. If we go down to Article 5 and go back to the cost principle, which has already been enunciated, does that mean that in fact the cost of this new body is going to be borne by people who are abstracting or impounding water?

SENATOR OZOUF: Let me be quite clear. The law sets out, as Mr Williams has clearly suggested, the interim arrangement. There is a -- on the "Introduction of Ministerial Government", according to page 70 of 2002, a Planning and Environment Committee will separate from the Public Services Department where a fused committee for the period of time until Ministerial Government. And therefore, the law draftsman, with the very helpful advice of individuals such as Mr Williams, has put in place the transitional arrangements for that.

I made the additional comment about the potential for an overall environmental regulator as purely a longer-term objective and something that perhaps my committee will consider in the next 18 months, almost as a further position on from where we are in this law. This law clearly sets out the arrangement of putting in place the regulator, being the Environment and Public Services Committee and the future Environment Ministry as it is.

23. Cost of implementing the Law - means of scrutiny

I'm not sure that the work -- the costs -- we've already given information about the costs of operating the new law and they are set out. We can discuss them again, if you wish. I think that we are dealing with a much smaller quantum of costs

compared to, for example, telecoms regulatory matters. This law is estimated to cost a total operational costs of £120,000 a year. Telecom's a multimillion-pound business, estimated cost £750,000 to £1 million. We're dealing with something really quite a lot smaller here.

Of course, it would also be needing to just state that any charges that are proposed by the committee and, indeed, decided on by the committee, those charges are to be made by order and those orders laid before the States and up to any individual State's member in order to make a proposition to rescind that order if they're not happy with them. So, there is a number of levels of scrutiny in terms of the actual costs, in order being -- budgetary allocations for department being the first one, and State's members being able to clip or amend budgets for allocations of individual departments. And, in second order, the actual ability to rescind and to seek the States to actually rescind an order, and that is quite apart from individual State's members' ability to question the President on his budget allocations and his committee's budget allocations. So, quite a lot of scrutiny on the subject of cost.

SENATOR VIBERT: But you have (inaudible), haven't you, the conflict that will exist unless you do split it?

SENATOR OZOUF: Conflict. First of all, the committee's conflict in water is - or the interim committee, the full Environment and Public Service committee's - conflicts are less than in some of our other areas --

24 Will the principle of user-pays continue to apply? Does the Committee accept that there is a conflict?

SENATOR VIBERT: If you accept the fact, by saying what you've said here, that there is going to be a conflict and you are saying to the public that there is going to be another body to carry out the regulatory function, the question I'm asking you is will the principle of user-pays continue to apply? That's the only question I want the answer to.

SENATOR OZOUF: Well, there are two questions there. Will the question of user-pays apply

now and into the future? Yes, the law is constructed in a way that it is user-pays charges for the areas that are relevant, the ones that Mr Williams explained some time ago, and yes, the committee does accept that there is a conflict, as is there conflicts in many committees and departments of the States.

We're a small place. The Health Committee alone is conflicted, for example, with being an operator and funder of healthcare services. There are conflicts all over our administration. We are a small place and we need to deal with those conflicts and put the appropriate professionals in place to deal with those conflicts and the appropriate reporting lines to make sure that decisions are properly made. Indeed, my committee I think has a proud record of ensuring that those conflicts are resolved appropriately where they exist. I cite, as evidence number one, a situation whereby one arm of the committee is prosecuting another arm of the committee - well, indeed not another arm of the committee - but appropriate levels of standards are applied to the committee activities, as it would be applied to third parties.

So, me having to attend as President of Environment and Public Services under the Water Pollution Law, with the advice and that having been catalysed from the advice of the Water Department and the other side of its department, shows that there is in fact similar standards and appropriate separation and Chinese walls.

SENATOR VIBERT: So the answer is yes and yes?

SENATOR OZOUF: Yes and yes.

25 Interim arrangements (Schedule 4)

TERRY WILLIAMS: May I answer Senator Vibert's question in this way, sir? Whilst the interim arrangements are continuing, then those interim arrangements are covered by Schedule 4. When those interim arrangements come to an end, then you can in effect delete Schedule 4 of the law and the law in all other respects will stand.

It's a device created by the law draftsman to avoid further primary legislation. Schedule 4 is an interim arrangement, a self-contained schedule, and when the regulator/operator roles are separated, then Schedule 4 falls away.

SENATOR OZOUF: I understand that. Thank you.

SENATOR LE MAISTRE: Just to clarify that, when the roles between Public Services are split from Environment, can we be clear that the regulatory and operational will actually be that clearly defined?

SENATOR OZOUF: Well, the Public Services Department will continue with its Public Services Committee, if it's still called that, if it's still that, will be in one area of departmental/ministerial responsibility with one minister, and there will be another minister who will be responsible for the Environment and Planning Department, with another area which the regulator will sit.

So, the appropriate separation will be made and the only conflict -- I'm just trying to think of where there will be a conflict in the Environment Department. Maybe if Mr Newton has a borehole up at the States' farm, then he'll be conflicted then. But I'm sure we can deal with that, sir.

SENATOR LE MAISTRE: Providing that they're not -- that they're understood conflicts. That's a fairly obvious one. But providing they are not significant operational issues left with Environment. Of course, that would to a large extent resolve --

SENATOR OZOUF: And if there are any, we will deal with them, as all the other conflicts.

PART THREE- PROTECTION OF WATER RESOURCES

SENATOR LE MAISTRE: Okay. Are there any other questions under Part 2? We can move to Part 3? A member wishing to ask questions on Part 3?

26 Licence Exemption for domestic users - under 3 cubic metres per day - Article 12(1) (b).

DEPUTY BAUDAINS: Yes, I had ... I seek some clarification here on Article 12(1)(a) and (b). This is where people using less than three cubic metres a day are not caught by the need to be metered and all that, but they have to be registered. What I am concerned with about this is how is proposed to monitor those who are registered but not licensed, to ensure that they're not exceeding this dispensation? And also, why was the limit of three cubic metres chosen when I believe in the UK it was much higher?

TERRY WILLIAMS: Before Mr Newton answers the substance of this question, may just I correct

you, if you don't mind, Deputy Baudains?

The requirement to register only applies to (b). It does not apply to (a). I'm sure if you look at it you will appreciate that.

DEPUTY BAUDAINS: That's right. I'm sorry. I did say I was, did I not, that I was addressing (a) and (b). I'm sorry if I didn't. They fundamentally hang together.

TERRY WILLIAMS: Okay. Thank you.

SENATOR LE MAISTRE: Again, are we clear there that persons extracting not exceeding three cubic metres will have to notify rather than register?

TERRY WILLIAMS: No, sir. In relation to (a), there is no requirement for the abstractor to do anything. In relation to (b), the reason I gave earlier, i.e. the sensitivity of groundwater in Jersey, there is a requirement to register. And the question of registration is dealt with further in the article. I think it's 12(3). It deals with the orders which the committee can make in relation to the mechanics of registration.

SENATOR OZOUF: Perhaps I can deal with the issue of the three cubic metres and Mr Newton can go into greater depth from a political point of view. I'm told that the original limit was set at two cubic metres a day by previous committees. This was, following consultation, raised in fact up to three cubic metres a day, following some helpful consultation received.

I would need to point out to the scrutiny panel that this three cubic metres, whilst it is higher than that of the UK - I understand the UK figure is 20 cubic metres per day - is itself not an insignificant amount of water. Three cubic metres a day is about the water that is used for 15 people, so covers -- and in fact, setting at that level takes out the vast majority of all the domestic borehole abstractors in the island.

Also, it needs to be pointed out - and no doubt the panel will be aware - that this three cubic metres is not actually set in absolute tablets of stone. It can be altered, based upon new information by the States, by regulation, so that we don't end up in a very long-winded -- if the States did want to change that, it can be changed, without reference to the Privy Council. The law gives us powers to do that by regulation. Basically, the committee believes that this three cubic metres

gives the right balance between appropriate light-touch administration of the law and - importantly - the protection of the island's water resources.

I don't know whether, Mr Newton, you want to add anything.

27. How would exemption limit for domestic users be monitored?

DEPUTY BAUDAINS: Could I just come back to the first part of my question? Obviously, as the President has said there, there will be a large numbers of people who have to register their boreholes but because it's domestic use less than three cubic metres, they are not required to have meters or anything like that. How do you monitor it to make sure they're not using more...?

CHRIS NEWTON: **My view on that is it might sound naïve but essentially you would trust people to make an appropriate application and you would reinforce that by occasional audits of a handful of people each year just to make sure that what they say - what they've said on their registration form - is, in fact, reality. I think to go beyond that is getting a bit heavy-handed.**

28 United Kingdom threshold of 20 cubic metres

DEPUTY RONDEL: To clarify something the President said, did you say the UK had (inaudible) to extract 20 cubic metres per day?

SENATOR OZOUF: I did, yes.

DEPUTY RONDEL: Thank you.

TERRY WILLIAMS: Forgive me, Senator, but I think we must deal with this 20 whilst we're on it, if you don't mind. It's a general statement to say it's 20 in the UK. First of all, historically the position has been that there have been two figures. There have been 5 cubic metres and there have been 20. But the important thing is that the law has been changed in the UK since then. It was changed by the Water Act of 2003 which is only starting to come into play now, this year, 1 April onwards. And under the new law the Secretary of State can alter what is known as the threshold and there is no way that the threshold is going to remain as a tablet of stone of 20 any more. It has been recognised by the regulator, the environment agency,

that 20 is inappropriate in certain parts of the UK. It needs to be lower. In other parts of the UK, Northumberland for example, it can be higher.

So they are introducing a mechanism in the UK now, the Secretary of State, by statutory instrument which is the equivalent of your orders in this country -- sorry the regulation, sorry, in Jersey - to be able to play tunes(?) on the 20. So, it's not tablet of stone stuff, 20.

29 Basis for 3 cubic metres limit in Jersey?

SENATOR VIBERT: In which case can you explain to me why it is that the UK could do possibly between 10 and 20 and it can be done, as you say, by regulation, why did Jersey choose 3, which is so much incredibly lower? And on what basis do you have any evidence that it's going to protect anything with regards to the water table in Jersey?

CHRIS NEWTON: **Actually, what we've set out to do is to have effectively a de minimis condition. We've tried to find a level at which we have appropriate powers of intervention and appropriate knowledge of water resources that basically recognises the fact that water on Jersey is a scarce resource. The amount of water that falls as rain shared out amongst the population is very limited. And it's our belief that two cubic metres a day, subsequently up to three, is an appropriate balance between the need to have some regulatory control and the administrative inconvenience to people of having controls at lower levels than that.**

SENATOR VIBERT: The difference that you're putting forward is vast compared to the United Kingdom.

CHRIS NEWTON: I think Mr Williams has already explained that we're not -- you're not comparing like with like there. It's not a question of 3 and 20. The UK situation anticipates in certain places of high water stress that the de minimis level would be less than 20.

SENATOR VIBERT: The question I ask is what are you actually protecting by making it 3?

30 10% of boreholes in the Island to be licensed

SENATOR OZOUF: Well, in terms of volume of boreholes in the island we have no precise figures but we've got estimates that there are approximately 4,000 to 5,000 boreholes in the island. But the bringing into a de minimus of three cubic metres would narrow the amount of boreholes that would be needing to be registered - licensed, I'm sorry - to approximately 400. So, it's going to be approximately 10% of boreholes in the island.

But that perhaps looks at it from the other side of the telescope. We would represent, and the committee would suggest, that there is -- we are -- and we've got some figures to tell you about later when perhaps we can make some concluding remarks about exactly what our level of water stress is in Jersey compared to other places. And we have got figures which show that we are very high up on the list. I'll talk to you about that later.

31 Comparative figures for water stress

SENATOR VIBERT: Are these the figures we've already received or are they new figures?

SENATOR OZOUF: I think they're figures that we've been -- that we want to tell you just today about.

SENATOR VIBERT: Are they figures we've already received?

SENATOR OZOUF: No. No, they're not.

SENATOR VIBERT: So they are new figures (overspeaking)?

SENATOR OZOUF: But they're a further -- there is a further figure which is interesting and I think quite relevant to the whole subject of the island's situation of -- the island's water situation compared to other places. And indeed it does suggest it's a further clarification of the situation that Jersey is a relatively high stressed place in terms of water. That thinking, therefore, translates through into a putting in place of a lower - but we would suggest to you still an absolutely reasonable three cubic metres of water -- of a borehole -- which would require state knowledge about.

SENATOR VIBERT: I have to say this is probably the crucial question, isn't it? Which is that if you had figures for us that shows that the water table in Jersey is under stress, we should have had this information quite a long time ago when we got the

(overspeaking)?

SENATOR OZOUF: Senator, we've already had a good go at this at the meeting of which you were last there and no doubt you'll have had some meetings on the committee and know about the situation of water stress in the island.

SENATOR VIBERT: Yes.

SENATOR OZOUF: The whole law is predicated on the basis that we want to put in place a statutory law in order to protect all of the things that are in the preamble to the law. You are not perhaps wrong in highlighting the three cubic metres as a very significant part of the law. The three cubic metres I explained to you again, we think that that covers approximately 10% of boreholes in the island. And three cubic metres is still a very large abstraction, being a borehole that would, for example, be the --

SENATOR VIBERT: Not by UK standards.

SENATOR OZOUF: But to make the comparison, Mr Williams has already explained to you that the comparison of a 3 versus 20 is inappropriate. Mr Williams has explained to you that that figure is already under review and different figures are appropriate for different places.

32. Three cubic metres - a best estimate

SENATOR VIBERT: Is there anywhere in the UK you expect it to be 3?

TERRY WILLIAMS: I am guessing, sir, but I would imagine the answer is very unlikely because, of course, it's a balance. You have to strike a balance between having too low a figure, which introduces bureaucracy, and having a figure which protects the resource. I mean, this is the issue.

SENATOR VIBERT: That's exactly the issue. That's the whole point. That's why I'm spending so much time on it. It's crucial.

TERRY WILLIAMS: Yes, you're right to do so. **But I think ultimately, with respect, sir, it is to a certain extent a case of sticking the pin because that is why we've incorporated the mechanism in the law for this figure to be reviewed by regulations of the states. No one, I don't think, could suggest this side of the table in terms of -- either this figure is absolutely 100% correct. It's the**

best estimate, as I understand it, the people who are promoting this bill are able to make.

If, in the light of operational experience, it is found that this figure is too low, or is too high, then it will be open to the states by regulations without primary legislation to change it.

33 What constitutes Commercial use?

SENATOR LE MAISTRE: May I just ask, following on from that, whether there is any view in the department as to what constitutes a commercial use, as opposed to a domestic use? Because clearly there must be a difference of those who abstract water for other than domestic purposes. At what point is that normally triggered? Is it 10, 20 or 50 cubic metres (overspeaking)?

SENATOR OZOUF: Well, I mean, for commercial use we don't have a lot of industrial activities in Jersey so therefore commercial use could be somebody drawing water for a kettle for feeding their staff teas and coffees. I mean, that's a silly example but, I mean, there is -- if you think about the figure of 15 individuals, an average person consumes, if they're living in a house, I'm advised, 200 litres of water per day. This is a de minimus limit which covers 15 people. So, in terms of commercial then perhaps, yes, we are putting in place a small guesthouse with maybe 15 people that would kick in at that sort of level.

CHRIS NEWTON: If they were on bore.

SENATOR OZOUF: If they were on bore.

CHRIS NEWTON: Which they may not be.

SENATOR OZOUF: Absolutely. So I would have thought the three cubic metres is -- I'm comfortable in that being the sort of --

CHRIS NEWTON: **Where we're coming from is we need a process that allows for the proper management and regulation and redistribution of resource. So where we started off from is capturing within the envelope of control those 10% of users who, by the definition we've just kicked around, will probably be commercial users, who are caught within the envelope of what we're able to regulate in future.**

If that proves to be either too little or too much the capacity is there to vary but we do

need a starting position where we've got something to play with.

34. Domestic consumption level

SENATOR LE MAISTRE: Has there been any discussion, liaison, with the waterworks company as to what they consider to be a domestic consumption? Because many of their customers are not metered, obviously. They must have some idea in terms of planning as to what they regard to be the domestic consumption per unit.

CHRIS NEWTON: Well, they would have domestic -- they would probably regard a household of two adults and two children as an average domestic property so that would give you something like 800 litres a day.

SENATOR LE MAISTRE: But it's not established is it in a cubic metre?

SENATOR OZOUF: For me the water company is obviously an important consultee -- has been an important consultee in this bill.

SENATOR LE MAISTRE: Is that high or is it low is really what I'm getting to. From their point of view it probably is -- you will be saying it's high --

SENATOR OZOUF: I think increasingly it is going to be the Environment and Public Services Committee and its successor that is going to be the organisation which basically decides on what is important and what isn't. The water company is itself going to be regulated, if I have anything to do with it, in a more detailed way and I think we've got a real issue with water and from a planning point of view all sorts of things. We've got to raise our standard in terms of water management.

35. Power of government to intervene

SENATOR LE MAISTRE: Deputy Rondel?

DEPUTY RONDEL: If one may, I go back about ten minutes ago, Mr Newton. You said you'd find a level of power of intervention. Can you clarify that because to me that comes across as if it's a big brother approach or jobs for the boys? Can you please clarify what you meant by that?

CHRIS NEWTON: Well, the expression I use - I would stand by it - is the power of government to intervene as it feels appropriate to organise the proper use and distribution of a scarce resource. I don't find that particularly big brother-ish.

What we have done is gone out of our way to set the level of intervention, the envelope of control, to such a degree that the vast majority - 90% of private domestic borehole users - are exempted from that, which doesn't particularly sound like big brother to me.

36 Shared Domestic use of boreholes - addition of Article 12(1)(c) as a result of consultation and inclusion of swimming pools

DEPUTY BAUDAINS: I'm glad to hear it's being watered down. Could I focus on article 12(c)? Could you clarify it for me please? This is where the sharers to ground water which is excluded only for domestic purposes. But in the interpretation, in part 1 of the interpretation, we don't have a definition of domestic. What I was wondering is does that include the swimming pools and garden watering, etc, or would that require the user to have a licence? And if I could tag on a second part, what is the position if the some of the sharers are domestic and others are not?

TERRY WILLIAMS: I'll endeavour to deal with these questions. May I first of all say, sir, that this was introduced at the eleventh hour, this paragraph C, and was in direct response to a comment made by Deputy Baudains in -- during the consultation process? There was a very useful observation made by the Deputy on the bill and the instructing team did consider it and we amended the bill accordingly. And it caters, of course for the fact that -- and I must admit I wasn't aware of this situation --

DEPUTY BAUDAINS: So, it's still in development basically, is it?

TERRY WILLIAMS: Pardon?

DEPUTY BAUDAINS: The thinking behind this is still in development, you are suggesting?

TERRY WILLIAMS: No, no, sir. No. What I was endeavouring to explain was that we didn't have a paragraph C in the original bill before we went out to consultation. During the consultation process you and one other person raised the question of shared boreholes. And as a result paragraph C was introduced into the bill. It caters for the situation where there is more than one household dependent on the one borehole.

Now, answering your question on what is domestic, the team took the view -- I mean

obviously discussed this carefully with the law draughtsman -- that it would not be appropriate or necessary to have a definition of domestic purposes, for two reasons. It's a term which I would suggest is well understood in the English language and, secondly, to answer very specifically your question, it would indeed include the use of swimming pools.

37. Possible Different exemption limits

SENATOR VIBERT: I want to go back to this three cubic metres again. Have any figures been done if you were to make it six cubic metres, how many boreholes would be exempted?

CHRIS NEWTON: I would just draw your attention to the fact that, as yet, we have no detailed information on boreholes in the island because there's no requirement to register.

SENATOR VIBERT: But you are able to say that three cubic metres is the appropriate number?

SENATOR OZOUF: Well, we think so. We have no precise information. It's an estimate basically.

38 Basis for three cubic metres

SENATOR LE MAISTRE: On what is it based, the estimate?

CHRIS NEWTON: Well, it's based on the research that's been done since we've been doing research through BGS on water use in the island. It's based on those boreholes that are known to us.

SENATOR VIBERT: So, if you can make an estimate on that isn't it possible to make an estimate in the same way on --

CHRIS NEWTON: It probably would be, with notice, yes.

SENATOR VIBERT: You have no figures from that?

CHRIS NEWTON: No. Because we haven't been asked that question before.

SENATOR VIBERT: Is it possible to get that information, eventually?

CHRIS NEWTON: It would be possible to make an estimate.

SENATOR VIBERT: Yes. I think that would be helpful.

SENATOR OZOUF: Clearly, the important point is that we give the estimate of the amount of boreholes that are likely to be affected by this purely for information, but it's not - the decision on the amount of boreholes that are or aren't covered isn't the deciding factor. It's whether or not it's the -- the actual potential yield of the boreholes which we're concerned about.

And you mention six cubic metres. That would be a very substantial amount of water in our line and context. It would be the use of 30 individuals. That's a guesthouse. That's a small hotel.

SENATOR VIBERT: (overspeaking) in the UK.

SENATOR OZOUF: Yes, but for all of the reasons we stand by the three cubic metres as being the appropriate de minimus level, given the island circumstances in terms of its water situation.

39 Lack of knowledge of number of boreholes in the Island

SENATOR VIBERT: So, you're saying with confidence -- just so that I get this straight in my head -- you're saying with confidence you don't know the number of boreholes, right?

SENATOR OZOUF: Because we haven't a law.

SENATOR VIBERT: Because you haven't got a law, right?

SENATOR OZOUF: Uh huh.

40 Three cubic metres an estimated figure

SENATOR VIBERT: So you don't really know whether the three cubic metres is the right amount. You stuck a pin in and decided on three cubic metres and you are basing the whole of the section in the law on that assumption.

SENATOR OZOUF: Senator Vibert --

SENATOR VIBERT: Is that an accurate (overspeaking)?

SENATOR OZOUF: No, Senator Vibert, that would be an absolutely inaccurate summary of where we are. You can stick pins in --

SENATOR VIBERT: Well, with respect to you I'm actually quoting 'sticking the pin'. It wasn't my

phrase. It was used by Mr. Williams

SENATOR OZOUF: But it was -- it was Mr Williams's phrase. And the --

SENATOR VIBERT: Are you saying that's not true?

SENATOR OZOUF: No. The -- Mr Williams, you paraphrased and you took out of context. You can, of course -- we need to perhaps explain. You can either put a pin in with your eyes shut or you can put a pin in with your eyes open. And, if I may suggest, we have put the pin in at three cubic metres with our eyes absolutely open having regard to all of the island situation.

And I am comfortable that there has been -- this is an inherited position but I am comfortable that the committee has taken account of what is reasonable in the circumstances and what is an appropriate balance between administration and protection. And we show to you that we have listened to what an appropriate -- where the pin should be put in by actually raising the de minimis level from 2 to 3.

SENATOR VIBERT: But the point is you have still made a guesstimate and that may, in your view, be accurate using all the information you have available.

SENATOR OZOUF: Well, do we think --

SENATOR VIBERT: Can you just listen to my question, please? You have actually made a guesstimate based on all the information you currently have available. You've made your professional assessment with your professional advisers and you've arrived at three cubic metres. Now, is that an accurate position?

41. Law is to provide information currently lacking

SENATOR OZOUF: We think that three cubic metres is the appropriate de minimus level in order -- which provides the balance between administration and protection that we're trying to do within the law. And we may well be wrong in terms of the amount of boreholes, because we don't know - because we don't have any statutory mechanism to find out how many boreholes and what their abstraction rates are and all the rest of it. Obviously, two or three years down the road, having got this information, having got the data, having the law being bedded down, there may well be an assessment that that is either too high or too low. But it's only

with the introduction of the law that one will be able to. And the information yielded from that that will enable one actually to be able to update that thinking.

But as far as an appropriate figure is concerned, we stand by it and we think it's the right one.

SENATOR VIBERT: So basically, based on what you are saying, this law is really to provide you with the information that you don't have?

SENATOR OZOUF: And again, Senator, unfortunately you weren't here for the last sitting where I --

SENATOR VIBERT: I can read the transcripts, Senator, so please don't keep saying that.

SENATOR OZOUF: Well, you keep asking me questions which we've already covered. That's the difficulty.

42 Quality of water under the Law (Article 16(1)(b))

SENATOR LE MAISTRE: Deputy Rondel?

DEPUTY RONDEL: Yes, I've one or two little concerns, Mr President. When are you extracting the water to three cubic metres per day, quality of water, because in quite a number of areas -- as you are aware, my background is plumbing, drains and so on so therefore I have a little knowledge when it comes to abstracting water. But the quality of the water has obviously got to be potable therefore there are an awful lot of wells which are contaminated. There's nothing wrong with the water to be used for irrigation purposes or watering the gardens or topping up swimming pools, etc, but for (background noise) there is a big difference. How is that covered within your law please?

TERRY WILLIAMS: May I answer this question because there is a very simple answer to this? The answer is in article 16(1)(b).

DEPUTY RONDEL: Can you enlarge on that for me please?

TERRY WILLIAMS: Well, as you've intimated, Deputy, when someone applies for a licence there are many factors which the committee must take into consideration. And one of the factors will be the question -- an important factor -- the question of the quality that's available. And that is covered by 16(1)(b).

You'll also see, sir, that in article -- I think it's 4(2) from memory -- we have a linkage to

the water quality objectives. Yes, I did get that right. In 4(2) there's a linkage between this law and the water pollution law and the water quality objectives which are set under that law. So these two laws should be seen as a suite of laws which complement each other. And the question of quality in that context is very important.

CHRIS NEWTON: May I just add to that and possibly simplify the answer? **The answer is fundamentally any abstraction of water, be it potable quality or non-potable quality, is caught by the law.** What Mr Williams is setting out is that in deciding on licence conditions the committee might take a different view of water that is potable and water that isn't potable. You may be more minded to allow somebody to use more of a source that is less valuable than would otherwise be the case.

SENATOR VIBERT: That's actually caught under 16, isn't it, and has to be taken into account?

CHRIS NEWTON: Yes.

43 Monitoring of abstraction

DEPUTY BAUDAINS: Could I focus on article 16 because I made a note for myself here under 1(b), the quantity and quality of water that's available to be abstracted as Mr Williams has just told us and under (f) any effect the granting of the application or the proposal will have or is likely to have on the flow level and volume of water, etc? Article 18, conditions of licence, again under (c) we have the quantity of water that may be abstracted and under (d) the rate at which it may be abstracted.

What concerns me is surely this is an impossible task for any person or group of people to do if it's to get a certain amount of subjectivity here. How is it going to be accurate and fair? I can see all sorts of arguments and objections from people coming out of this and I wonder, can the job be done?

CHRIS NEWTON: It's a similar question to the one you posed earlier, Deputy, which I answered by saying it can be done; there is history of it being done in other administrations, and it's a question of having the right calibre of technical staff to be able to do it.

What the law sets out to be able to do, though, is to be sensitive to local circumstance

such that we would, for instance, probably be more relaxed about an abstraction from a stream in winter when it's filling hard to, say, fill up an irrigation reservoir. We'd be more relaxed about that than we would be in summer when it's not flowing very hard and water is scarce. So that gives us the power to have a different approach at different times of year, for instance.

44 Issue of Licences on basis of research in interim period

DEPUTY BAUDAINS: I mean, what I was driving at here is not in any way am I questioning the abilities of the officers doing this but the possible lack of complete information on the subject (overspeaking)

CHRIS NEWTON: Well, again, the answer is that we use this five year period of effectively deemed licences to do sufficient research to be able to be as accurate and fair as we can be when we come to issue licences at the end of that period.

SENATOR LE MAISTRE: The point, I think, perhaps being asked is it's not a precise science to that extent because rainfall is not absolutely consistent year on year and temperatures are not constant year on year. Therefore there are a number of variables in order to be able to arrive at these conclusions.

CHRIS NEWTON: If I was being pedantic I would say it is a precise science but there's a high degree of variation.

45. Right of appeal - article 17(4),

DEPUTY BAUDAINS: Just, sort of, going over a bit further on that same subject we come to article 17 (4), the right of appeal, and according to article 4(?) there this is an appeal to the Royal Court. What I would like to know is does the committee envisage any other type of appeal for the people who may feel they've been unfairly treated, considering the fact that not everyone can afford the luxury of the Royal Court?

SENATOR OZOUF: There is a bigger debate that is currently going on. Certainly my committee is considering a number of issues concerning the Royal Court versus alternative places to appeal. And certainly my own view is that we should be working with the Royal Court in order to make it fast, efficient and affordable. And certainly wearing the planning hat we're working very well with the Royal Court in order to

find ways to maintain -- I personally believe that as a small jurisdiction we have one-stop-shop court, which deals with the resolution of all sorts of matters and hears all sorts of appeals, and long may that continue.

The alternative is setting up expensive, bureaucratic organisations in order to make decisions which do ultimately cost taxpayers money. I think that the Royal Court can be and should be regarded as an efficient resolver of issues. And I haven't had discussions with the Royal Court about the particular additional responsibilities that are given to them in this law but I'm confident that we will find an appropriate -- and that they will find an appropriate way of dealing with these issues.

DEPUTY BAUDAINS: I mean, I'm just concerned that the smaller complaints that may occur - not a substantial user but some little old lady that's had a borehole for that last 40 years and she doesn't see why she should have to use less or something. There must surely be a light touch availability to those sort of people.

SENATOR OZOUF: Okay, well, I mean, obviously the little old lady will need to be abstracting fairly significant amounts of water if she's really to be deemed to be having problems under this law. She'll be having 15 lodgers or more or running a little (overspeaking) plant or something. She'll be a little old lady doing quite a lot of things with her more than three cubic metres --

MALE SPEAKER: Could be the animal sanctuary, in fairness.

SENATOR OZOUF: Well, but that's hardly likely to be a little old --

DEPUTY BAUDAINS: It may a farmer and they're not exactly blessed with a lot of money these days.

SENATOR OZOUF: Well, I am confident -- I want to continue, certainly from a political point of view, to focus the appeals mechanism with the Royal Court. The Royal Court -- I'm having some useful discussions with them in relation to how they deal with appeals on some other matters. Certainly the Royal Court does set already in place different hearings and different methods of dealing with small financial transactions and big ones. I'm not sure that there is a requirement to separate out big water matters with little water matters and appropriately differently setting up a different court. The Petty Debts Court deals with administration of less than £10,000; the Royal Court deals with things of over £10,000. I'm not

immediately aware of any particular separation that's required in water matters. But if there are, we will work with the Royal Court to find alternate appropriate ways.

DEPUTY BAUDAINS: Would there, for instance, be a possibility of appealing to the committee itself to, say, ask them to look again at the --

SENATOR OZOUF: Well, the committee has a proud record of receiving -- of allowing re-considerations on matters, certainly in planning matters, which stop short of a full appeal. Obviously aggrieved parties under human rights law must have access to a properly independent tribunal which doesn't consist of the same individuals that are dealing with that. But the committee will, of course -- is, of course, sensitive and alert to receiving new information and to re-considering its decisions as appropriate.

46 How the estimate for the number of boreholes is reached

DEPUTY HILL: I wanted to clarify the situation about this -- This 5,000, where do you get this figure from?

CHRIS NEWTON: Right-- how do we arrive at our estimate of how many people are on boreholes? The simple answer is by knowing how many households there are in the island; subtracting from that the number of people who are supplied by Jersey New Waterworks Company. So we assume that the rest do use water and they must get it from somewhere other than the mains water supply. So they probably get it from boreholes. That's a simple mathematical total number of households less, you know --

DEPUTY HILL: Some still rely, of course, only on rainwater so that they could be --

CHRIS NEWTON: So, as I say, it's a broad approximation.

47 No requirement for a licence for short term processes - 12(1)(g)

DEPUTY RONDEL: Yes, on the 18 - 18(d) the rate of water that may be abstracted, can you explain to me in -- Mr Williams, I think, to answer this -- where in this law can I find if, for instance, I have to clean a well and, in fact, I have to extract continually 4,000 or 5,000 gallons per hour whilst you're actually carrying out this work. Do you need a licence to do this? Although it will only be a short-

term thing, obviously over a day or so, would a licence be required and where do I find it in the law?

TERRY WILLIAMS: Right, sir. Well I start off with by inviting you obviously to look to 12(1)(b) which is the groundwater exemption of the three cubic metres a day. But I'm assuming that your example is directed at the situation where the quantity is more than three cubic metres a day?

DEPUTY RONDEL: Correct.

TERRY WILLIAMS: Yes, right. Well, in that case the only provision which may apply to the circumstances that you've described would be 12(1)(g) whereby if someone was doing something for the purposes of ascertaining flows, levels, and that sort of thing - if it falls within the ambit of that exemption then the person obtaining(?) the consent, Deputy Rondel, would not require a licence.

DEPUTY RONDEL: Right.

SENATOR LE MAISTRE: I've one minor -- there's reference to emergencies here which I was going to ask about later. But if we take, for example, a household which would want to power-wash its house. Are we assuming therefore that it would need a written consent of a committee to do that? Because clearly that could well exceed the three cubic metres a day.

CHRIS NEWTON: Well, I mean, I would say that's a question of judgement and if you felt the owner of that property was abusing the basic exemption by saying, "I'm power-washing my house on Monday and I'm filling my swimming pool on Tuesday and I'm feeding the 5,000 on Thursday" you would form a picture that they were generally consistently using more than their licensed or registered quantity.

SENATOR LE MAISTRE: I am asking the question --

CHRIS NEWTON: On a one-off basis, personally my view would be if they -- if it was truly a one-off then it would not be a matter of significance and we --

SENATOR LE MAISTRE: May I ask if that is actually the legal situation rather than the view of an officer?

TERRY WILLIAMS: No, the -- I think in direct answer to your question, sir, my answer to the panel would be that the exemptions are set out in article 12 and therefore for someone to be exempt from the requirement to obtain a licence he or she would have to fall within one of those categories.

SENATOR LE MAISTRE: So any activity falling out of that category would require a licence or at least written consent?

TERRY WILLIAMS: Correct. If, of course, it amounted to an abstraction from a source of -

SENATOR LE MAISTRE: Greater source, yes.

48 Census figures for boreholes

SENATOR OZOUF: Just going back on the number of boreholes, I wasn't here when you were just answering that and you wanted some information about boreholes. I think I'm correct in recalling - and certainly you, Chairman, will know this better than I do - was there not a census question on whether or not households had boreholes?

SENATOR LE MAISTRE: There has been in the past. A question in the past, yes.

SENATOR OZOUF: So, in fact, I don't know whether the committee's actually -- the scrutiny panel has reviewed that but certainly I'm -- we didn't do it in the -- I don't think we did it in the last census because that information over a number of years had been appropriately collected. So that may be interesting view to confirm.

SENATOR LE MAISTRE: I think that was a question used in the 1990 --

SENATOR OZOUF: The 1996 census?

DEPUTY BAUDAINS: We are due to interview a well driller later on this afternoon so hopefully we may get some more information.

SENATOR LE MAISTRE: Yes, but I think that's a useful comment that we could well review the figures which the statistics contained in the 1991 census.

SENATOR OZOUF: 1996 would be the last one that water, I think -- a borehole was actually question --

SENATOR LE MAISTRE: Yes, but 1991 or the previous one was at the time that the island was experiencing some form of drought.

SENATOR OZOUF: Yes. The reason why I'm saying that is that then if you've got the 1996 figures updated with the well-driller's information since then, you would have a very good -- not necessarily a good idea of the scale of them but certainly numbers that may well be an additional --

SENATOR VIBERT: Particularly if you put that alongside the method that was used, which was

looking at all the people registered - the waterworks users against the number of households.

SENATOR OZOUF: And indeed, actually looking at the difference between 1990, if there was any concern, as there was at that time, for water then you can look at the evolution if you want.

SENATOR LE MAISTRE: May I ask Dr Sutton if there are any questions at this stage.

49. What is the intention with springs?

DR SUTTON: One question. I understand from listening to the Solicitor General that the question of springs is particularly sensitive. But springs are also perhaps the environmentally most sensitive component of the whole, sort of, water supportive ecological system. And there is no reference to them that I can find at any point in the bill. What is the intention with springs?

TERRY WILLIAMS: Well, springs, Dr Sutton, would fall depending on the facts either into ground water or into surface water. And that is the position in England, the only exception being in Northumberland where they have a special order there which incorporates the springs into ground water. The position in England, generally speaking, is the law is silent on springs and therefore it's a question of fact in each case, whether or not springs bore into ground water or bore into surface water.

The only relevance of that distinction is in relation to article 12, because 12(1)(a) is an exemption without registration. So if it's a spring without -- if it's a spring which bores into surface water as a fact then there would be no need for registration. If it's a spring as a fact which falls into ground water then registration of (inaudible) would be required.

50 Conditions of licences - Article 18

SENATOR LE MAISTRE: Are there any further questions in this part? One of the questions I wanted to ask was the conditions of licences. They're quite extensive in terms of the information that will be required under 18. And the question that I would like to ask is: is the committee confident that the assessment on resources is likely to be sufficient to actually implement all these many, many requirements?

CHRIS NEWTON: I think the key word is 18(1) may relate to the following matters. It's giving the flexibility to take account of any or all of those circumstances.

SENATOR LE MAISTRE: But they're quite formidable, some of them.

CHRIS NEWTON: But I think they relate -- and it comes back to this point about dealing with appeals. It relates to the sort of information that an individual would probably want to put forward, to be able to say, "Well, look. I understand what you say but I only want to do it in winter" or, "I only want to do it at this time of year. I only want to do this. I only want to do that". This provides the basic flexibility to be able to take account of an individual's circumstances and the local circumstances relating to that source. It's not a sort of, "You must tick all these boxes every time you issue a licence" but it's allowing you to have the flexibility to have a licence that is the best accommodation of an individual's needs and protecting the island's resources at the same time.

SENATOR LE MAISTRE: Deputy Baudains.

51 Cost of meters and keeping of records - Article 18(i) & (j) - justified for exceptional events which only occur every 25 years?

DEPUTY BAUDAINS: Thank you. Whilst we're on article 18(1) provision or maintenance of approved meters, I believe -- I'm not aware of the cost but I believe that, depending on the volume they have to meter, they can be fairly expensive. I'm wondering if the committee can advise us exactly what sort of cost is envisaged here.

And then we come on to (j) require the keeping of records and the terms. I am concerned that this could be expensive and onerous on those people who will require a licence under this law. And I have made enquiries and been advised that the need to actually implement the law, because there are water shortages, may only occur once every 25 years. Is it right that we should be putting this sort of burden on businesses when, as I say, the need to actually implement parts of the law on the strict usage because there may be shortages may only occur once every 25 years?

CHRIS NEWTON: I think to answer your question in reverse order of the points you made. The 25-year return period you've probably heard quoted in respect of a drought

situation and clearly there are specific provisions in the law that deal with droughts. **However, the requirement to have a proper managed use of the resource is, in my view, an ongoing situation. It's not an every 25 years. It's an every year situation.**

I don't think the provisions of (i) and (j) are particularly burdensome and they actually return to your own point that you made earlier which is how will we know what people are actually doing? How will we know if they said they were going to take 5 cubic metres and are actually taking 10? Well, one of the ways we'll know is either by requiring them to have a meter, if a meter is appropriate, or to keep records. And they might keep records, for instance, if they were using a portable, diesel pump. So you'd want a record of how often; how many hours was it run for; on which particular days. So you could calculate from that the amounts taken.

I think it's just proportionate to having enough knowledge to make sure that the licensed person is actually operating within the licence conditions.

52 How does information on abstraction benefit the Island?

DEPUTY BAUDAINS: I don't want to obviously return to previous matters that we discussed at the previous hearing but it does seem to me that we -- whilst clearly the more knowledge we have, the better. And I do still question the usefulness of having data relating to the amount of water that is being abstracted when we're not -- it's part of an equation where the other parts of the equation are not known and are unlikely to be known, the amount of fresh water leaking out to the sea from the beaches and things like that. Actually, calculating water data is not easy.

We will know the number of boreholes. We will know how much they are abstracting.

But I'm not quite sure how that actually benefits -- whether it actually benefits us greatly. As I say, that takes us back to a previous argument we may not want to go over again.

53 Springs - clarification

TERRY WILLIAMS: Mr Chairman, may I interject and refer to the question that Dr Sutton put to

me earlier? You recall that the premise on which Dr Sutton put the question to me was that the Solicitor General had identified springs as being in some sort of sensitive or special category. I've been reminded by Mr Hull, who was also present when the Solicitor General gave her evidence to the panel -- I do, of course, appreciate you will have a transcript of that evidence. That is certainly not our understanding of the evidence that she gave. I think it is important that that is corrected. I do not accept Dr Sutton's summary of the Solicitor General's evidence to the panel in relation to springs. I have dealt with the substance of this question.

DEPUTY BAUDAINS: A point of clarification. Does the question of springs arise from earlier correspondence from the Attorney General, I wonder?

DR SUTTON: I wasn't aware that I had (overspeaking) at all. My remark was the Attorney General had discussed the matter. But your answer answers my question.

TERRY WILLIAMS: Thank you.

MALE SPEAKER: I'm happy to accept that, sir.

SENATOR LE MAISTRE: Mr Hull.

DAVID HULL: Mr President, my understanding of what the Solicitor General was saying was that the law relating to springs differs from the law relating to other sources of water. I did not understand her to say that there's something sensitive about springs in a non-legal sense, as it were.

SENATOR LE MAISTRE: I mean, correct me if I'm wrong, but I got the impression that what she was saying is that the person has a right to all of the water that rises on their land currently.

DAVID HULL: That was my understanding too, Mr President.

SENATOR OZOUF: In relation to springs, yes.

SENATOR LE MAISTRE: That's right.

DEPUTY BAUDAINS: Sorry, to interrupt there. The correspondence from the principal legal adviser, who gave this information was that the spring water or the (inaudible) where water rises on land, the landowner has the first right to make use of it. His right is quite unfettered I think that was the point that possibly Dr Sutton was referring to.

SENATOR LE MAISTRE: Yes. Could we please move on because I'm conscious of the time.

SENATOR OZOUF: Yes. Can I just confirm what time you -- it's just that I'm more than happy to be here a bit longer if that's helpful to you.

SENATOR LE MAISTRE: We had allocated mid-day but I think we could continue and try to complete if we can.

SENATOR OZOUF: What time are we going to try and aim to complete?

SENATOR LE MAISTRE: 12.30pm.

SENATOR OZOUF: Right. Okay. I'm afraid about 12.25pm is the best I can offer you.

SENATOR LE MAISTRE: Well, give or take a minute.

SENATOR OZOUF: Well, I'm going to have to leave by 12.25pm.

SENATOR LE MAISTRE: Are there any further questions on this section?

54 Efficient use of water Article 18 (k) & (m)

DEPUTY BAUDAINS: I just have one on article 18, looking at (k) and (m) for the purposes to which water is abstracted is or may be used. And under (m) the efficient or effective use of water that is abstracted.

Well, clearly, pumping and treating water for commercial use is not free. It can be expensive. I think of laundries and such places and in agricultural terms setting up pumping equipment and laying out pipe and everything. That costs time and money. So surely users are unlikely to be inefficient or waste water. So I'm clearly wondering the rationale behind these two conditions.

CHRIS NEWTON: Well, if I can comment as somebody who has, sort of, spent a lifetime working with people who use water, the evidence is that they are frequently incredibly wasteful and incredibly ignorant of simple measures that will save them a lot of money. I mean, some of the research -- early research projects we did, particularly with industrial users, we went into a large factory and found a one-inch hosepipe running full bore. And it was on the basis that the worker would occasionally want to pick up the hosepipe and swill something off. But he didn't think to put a tap on the end of it. There was a tap 100 metres back at the hosepipe and they were quite happy to leave it running all day for the occasional swilling-off job that they did with it. That, unfortunately, in many fields, in water

and in energy, is the case. People just do not take simple measures to be more efficient with the resources that they use.

And I do think that these purposes of the law do give the committee power to take a view on, on the use to which the water is being put and how efficiently it's being used.

TERRY WILLIAMS: May I answer that, Mr Chairman? During the consultation process on the bill this was an issue that was raised by Deputy Duhamel who felt very strongly, as I understood his letter, that there should be proper measures vis-à-vis conservation and efficient use of water.

And secondly, may I answer that this is a provision which is to be found in the equivalent legislation in the UK.

SENATOR LE MAISTRE: May I ask under article 22 --

55 Do same standards of efficiency apply to mains water users as well as boreholes?

SENATOR VIBERT: Sorry, before you leave that, Chairman, on that same basis, does that mean that you're going to require inspectors going round inspecting various uses of water of people on boreholes? Because all the examples you gave could equally apply to people on mains water.

CHRIS NEWTON: That's true. And one would hope that the water company will similarly take a view of the proper use of a scarce resource.

SENATOR VIBERT: There is, in fact, very little control over the use of water in Jersey.

CHRIS NEWTON: Absolutely.

SENATOR VIBERT: And this seems to be that you're putting that onus on the overall user despite the fact that waterworks company customers can use water indiscriminately.

CHRIS NEWTON: Where this usually comes to be resolved is in dealing with the application. Somebody makes an application for a licence. They say, "We need [for the sake of argument] ten metre cubes per day". You say, as the regulator, "Well, what are you going to do with it?" And they say, "We're going to use it for purpose X". And you say, "That's interesting because other people using it for purpose X seem to manage to do it with eight cubic metres per day". Sorry, this is a bit hypothetical but ...

So, it's a way of arguing and arbitrating around an applicant's demands. So you're taking into account what they're doing with it and how efficiently they're using it.

SENATOR LE MAISTRE: It is true, of course, that they -- tell me if I'm wrong -- what is being proposed that the users of well and borehole water will be regulated in a greater way than current customers of waterworks who are not on meters.

56 Does a borehole user get a 'free' supply of water?

SENATOR OZOUF: Well, that may be the case on a simple analysis but, of course, there is a big difference between the two types of user. The user of a borehole is effectively getting a free supply. The commercial user --

SENATOR VIBERT: No.

SENATOR LE MAISTRE: Could you just qualify that?

SENATOR VIBERT: He's not paying for his water --

SENATOR OZOUF: They're not paying for his water. Whereas the commercial user --

SENATOR VIBERT: They are paying to provide (overspeaking)

SENATOR LE MAISTRE: Is that an assumption that there is no cost in providing that?

SENATOR OZOUF: No, of course not. But, of course, the fundamental difference is that the person getting their water from Jersey New Waterworks Company is paying for it. And if they're a commercial user they're likely to be on a meter. Therefore there is a higher level of a -- there is a much higher level of concern at the fundamentals of economics as about the allocation of scarce resources.

SENATOR LE MAISTRE: I will qualify my question by saying that the regulation of users of wells and boreholes will be far greater than the users of water through the waterworks where they are not metered.

SENATOR OZOUF: But the Jersey New Waterworks Company has policies in place where it requires most of its commercial users - so I am advised - to have meters. Indeed, the vast majority of the commercial users, I think, if you are in fact under the Jersey New Waterworks' definitions a commercial user, you must have a meter. Clearly the Environment and Public Services Committee wants to see all people connected up to the Jersey New Waterworks system with meters and we're wanting to encourage Jersey Water to roll out metering because it's one

of the best ways in order to implement -- and implement water conservation policies. If you pay for it, you care about it.

57 Encouraging use of meters for all domestic user

SENATOR VIBERT: Are you prepared to bring legislation into effect to do that?

SENATOR OZOUF: A matter slightly outside of the remit of this particular law.

SENATOR VIBERT: No. Because you are bringing in legislation to make more borehole users comply.

SENATOR OZOUF: What I can tell you is that my committee is, I think, almost unanimous in the view that we are going to be focusing very much on water and water management issues in the -- for the duration of this committee's life. And this covering both (a) an encouragement - I haven't got news to tell the scrutiny panel today on what that encouragement may well be for Jersey water but certainly we want to see a much greater speed of implementing water meters for domestic households. It is only by -- when you pay for it you care for it in a much greater degree than when it's free.

DEPUTY BAUDAINS: Can I just come back to that --

MALE SPEAKER: Interesting point.

SENATOR OZOUF: Thank you.

58. Costs of boreholes - maintenance and treatment

DEPUTY BAUDAINS: -- that last point because when you say that the water is free, I take it that you are discounting the fact that the cost of the bore in the first place, which is fairly substantial, its maintenance, the cost of the electricity to operate the pump and quite often treatment processes required to the water afterwards. Has all that been taken into account? Because it obviously has to be applied -- the borehole owner has to apply that too and it would work out as a cost per cubic metre.

SENATOR OZOUF: Well, having -- speaking -- addressing the scrutiny panel with personal experience as opposed to political experience, and having calculated the

marginal cost of the cost of running a borehole versus connecting up to Jersey New Waterworks, it's absolutely -- it's absolutely clear that the marginal cost of running a borehole versus connecting up to Jersey New Waterworks Company - which itself actually is quite expensive if you're connecting up many -- the Jersey New Waterworks Company actually provides a cost recovery on user pays principles when they're connecting up a property. So there's some cost in terms of sinking a borehole versus actually putting a pipe down a road or across a field with all of their appropriate levels of safeguards to ensure that the water isn't intercepted are sometimes not that dissimilar.

In fact, I could show the scrutiny panel two assessments that I've made on personal property about whether or not I should connect them up or whether they should be sinking a borehole. But the marginal cost is the one I was dealing with.

SENATOR VIBERT: You wouldn't wish to withdraw the fact that you reckon it's free?

SENATOR OZOUF: The marginal cost of --

SENATOR VIBERT: No, that's not the question I asked.

SENATOR OZOUF: It's quite clear, Senator, of the point that I was trying to make. There is a difference in terms of whether or not you're connected up to the Jersey New Waterworks.

SENATOR VIBERT: I accept that. I accept what you're saying on that. But you said it was free. Now do you want to withdraw that?

SENATOR OZOUF: It's free in terms of -- it's free in terms of actually the -- I think you well understand what I was alluding to. The cost of -- the actual commodity is free in its purchase. It's not tariffed. And so I stand by the fact that if you're not getting your water from the Jersey New Waterworks it's likely to be tariff-free as opposed to actually costing.

But, of course, there are costs; electricity, sump costs and all the rest of it. But the point is clearly (overspeaking)

59 Jersey New Waterworks Company as an abstractor - required to be efficient

CHRIS NEWTON: Just trying to deal with -- you made this point about the different levels of control that would apply to a borehole abstract as opposed to somebody on

mains water. I think the other factor to bring into play there is, of course, that the water company itself will at some point in the cycle be an abstractor. And the water company itself in making those abstractions will be subject to the full provisions of 18. And the committee may be minded to exercise controls through the licence conditions to ensure that the water company is using its water in an efficient way.

So, for instance, the experience in the UK would be to put pressure on -- downward pressure on usage, abstractions by water companies, by saying, "How much leakage have you got in your mains? If you're leaking away 18% of the water you're taking out of the rivers, we don't think that's a very good thing. We're not going to allow you to take any more water out the rivers. Heal thyself. Go away and fix your pipes so you're not leaking what you've already taken". So I think there is some circularity in that argument.

SENATOR VIBERT: Could you use that also as the same argument that by not metering the water that's been used, that could be an inappropriate use?

CHRIS NEWTON: I would say that that is the sort of pressure that can and should be put on the supplier of domestic water.

60 Suspension of licence - Article 22 - what is an emergency?

SENATOR LE MAISTRE: If I could move on to article 22, there is a question that arises. Where it appears to the committee on reasonable grounds that it is necessary or expedient to suspend a licence because of an emergency. What could we deduce would be the subject of an emergency in this case?

TERRY WILLIAMS: Well, may I first of all start, sir, by answering this question by confirming that of course there is no definition of emergency that I'm aware of, quite deliberately, because it will depend on each case, circumstances will change. But to give you an example, sir, one would be dealing with a pollution incident. If it was necessary to deal with a pollution incident, then there may be a suspension of the operation of a licence under Article 22. I emphasise of course it is only for period of 14 days, and of course is subject to appeal anyway. Now, if I can just expand on that, sir, because I can imagine that some members may feel, "Well, how on earth could an appeal be processed in that time?"

Well, all courts, of course - including the courts in Jersey - are geared to dealing with what's called interlocutory applications by way of an appeal, which is an emergency appeal to determine an emergency matter, so there are mechanisms in place, sir, to enable such appeals to be considered by the court, notwithstanding the fact that we're only talking about 14 days. I hope that answers your question.

SENATOR LE MAISTRE: Well, I mean, that is one example of an emergency, because of pollution, obviously. Are there any other examples that can be quoted? Surely there must be experience in the UK where emergencies have occurred which require the suspension of a licence?

CHRIS NEWTON: I can give examples, for instance, of where river flows have become critically low and you have possibly quite valuable stocks - this is a UK example - quite valuable stocks of migratory fish, such as salmon and sea trout, in the lower pools of a river, which are suffering because of the lack of flow and the temperature regime getting hotter and hotter day by day, that it has been necessary to vary the extraction licence of the water company upstream, such that sufficient flow is left to get down to those fish to stop them perishing.

SENATOR LE MAISTRE: I appreciate that. I was rather looking for examples which would be applicable to Jersey. We don't have a lot of salmon in Jersey.

TERRY WILLIAMS: Well, let me give the examples which I hope will be applicable. The suspension of a spray irrigation licence; if there is an acute problem in a particular catchment on a part of the island, then if it's seen as a very short term situation, then there would be -- this mechanism would enable the Regulator to serve the required notice to suspend the operation of that licence, either in whole or in part. I mean, for example, in the UK, I'm very familiar with the suspension of spray irrigation licences, and the way it's done is that there may be alternative days for the operation of a licence between particular groups of farmers, for example. You may be told you can only operate either between certain hours of the day or on alternate days. You can actually play tunes on this as to how it would actually operate in practice, depending in the circumstances, but I hope that is an example which --

SENATOR LE MAISTRE: I think that's very helpful, thank you

DEPUTY BAUDAINS: What you're referring to is basically - a spreading of resources at the moment across a number of extractors to lessen the stress on the pool?

TERRY WILLIAMS: That is correct, yes.

SENATOR LE MAISTRE: Any other questions? If not, we move onto Part 4, and the first question which arises under 26 that I have here is,

PART FOUR DROUGHT MEASURES

61 Application to any specified part of the Island [Article 26.3b]

"A drought order may be expressed so as to apply generally throughout Jersey or to any specified part of Jersey"

Now, I know that we have interesting variations in climate between St Ouen and St Clements, but it's never been brought to my attention that actually a drought may occur in one part of the island and not the other. So, could perhaps you explain the reasoning for that requirement?

CHRIS NEWTON: Well, partly because it does at least allow you to anticipate that there may be occasions when you would want to have something other than a whole island drought order, and the particular example I could think of would be to do with the stocks in particular reservoirs if, for some reason, the stock in one reservoir is unusually low, possibly due to extractions upstream of that, rather than the rainfall that it's experienced, and it may be necessary and desirable to put in place drought orders relating to that, the catchment feeding that reservoir, rather than the whole island.

SENATOR LE MAISTRE: Okay. Maybe I have the wrong information. Now, my understanding is that the Waterworks Company moves its water stocks around the reservoirs in any case, and I'm not aware - but perhaps I am wrong - that there have been issues in the past over one reservoir over another, because of the movement of stocks.

CHRIS NEWTON: Yes. Well, I mean, no, that's true, but you could also take the point of view that it's not particularly resource efficient to use energy to pump water from A to B when you could actually have a more simple mechanism.

SENATOR LE MAISTRE: But is that a proper drought situation which has an effect on streams in one part of the island compared to another?

CHRIS NEWTON: Well, I mean, I was basically trying to give you an example of where you might need something other than a whole island order. I mean, if your contention is correct - and I have no particular wish to prolong the debate - if your contention is correct, then possibly 3(b) won't get used very often. The fact that it's there allows the Committee to take something other than a whole island view if, for some reason, there's a sensible reason for so doing.

SENATOR LE MAISTRE: I just got the impression that this was lifted out of UK legislation which referred to the United Kingdom or any part of United Kingdom.

62 Comparison to Emergency Powers (Jersey) Law 1990

TERRY WILLIAMS: Well, yes, sir. But that's -- it wouldn't be a complete answer. It is lifted from the United Kingdom, but I would suggest, sir, that it equally applies to Jersey, because I am looking at the emergency powers that the law have in Jersey, the emergency powers, Jersey Law 1990, and I am looking at Article 82, sir, and you have the very same provision in that law as well, so I think there is -- there has been in the past.

SENATOR LE MAISTRE: But it's not relating to emergencies in the island --

TERRY WILLIAMS: Of course, yes.

SENATOR LE MAISTRE: -- or part of the island.

TERRY WILLIAMS: Yes, indeed, so -- but the restrictions that can be imposed -- I don't want to digress too far, sir, but the restrictions that can be imposed by the Emergency Council under the 1990 law can relate to a part of or to the whole of the island, and since that provision equally deals with water, I would suggest, sir, that it is fairly comparable to what we have in the bill. But I leave it there.

SENATOR LE MAISTRE: Well, I've never been aware of a drought at St Martin and not at St Ouen.

TERRY WILLIAMS: No, I take your point.

SENATOR LE MAISTRE: That really is the point I was making.

63 Application to any specified class of persons - Article 26(3)(d)

SENATOR VIBERT: Can I raise a question on item 26(3)(d), the reason for -- let's say that it would apply any specified class of persons.

TERRY WILLIAMS: Again, sir, I think that is precedented. I've just seen it now, I think it's in --

SENATOR OZOUF: It's also on Part 5, by the way.

SENATOR VIBERT: I'm assuming that Part 4 has been done.

TERRY WILLIAMS: Yes, there are restrictions which the panel may be aware of in the Water Jersey law of 1972. I am looking at Article 16(a), which is one of the amendments, I think, which has been made at some stage post 1972, and we have in 16(a)(3), sir,

"That order may be made under this Article may be expressed by generally or in relation to a different class of persons or (inaudible) persons with any class"

So, I think it's not a big deal, but it's a provision which is to be found in equivalent legislation.

DEPUTY RONDEL: Can you tell me what it means?

TERRY WILLIAMS: I think we must ask Mr Hull that, sir.

DEPUTY RONDEL: The definition of what a class of person means, what does different classes of person mean?

DAVID HULL: Mr Chairman, it's not (several inaudible words) that, it's simply intended to mean a particular description of person, you might be talking about farmers, might be talking about -- sorry, I've gone dry.

SENATOR OZOUF: Hoteliers.

DAVID HULL: I can't think of any other example, but --

SENATOR OZOUF: Hoteliers (several inaudible words)

DAVID HULL: Yes, yes. But as far as a term (several inaudible words) it's just meant to mean a particular category or description of persons.

SENATOR OZOUF: To be defined.

DAVID HULL: In the order, yes.

SENATOR LE MAISTRE: I'm assuming that Part 4 has actually been dealt with, because we've moved on to Part 5. But before we do that, clearly, are there any other questions on Part 4? If not, on Part 5?

PART FIVE ENFORCEMENT

64 Issuing of warrants - Article 32

DEPUTY RONDEL: Warrants. Could you give me, under any other law within Jersey, where the magistrate or sous- magistrat would be a person who would issue a warrant?

TERRY WILLIAMS: Well, the immediate example, I think, Deputy Rondel, would be the pollution law. And Mr Jackson is more familiar with it than I am, but I think I'm right in saying that, yes, sir.

DEPUTY RONDEL: So, that's a departure from the -- all other laws within the island, i.e. because that one obviously slipped through, I'm surprised that we've introduced a magistrate or sous-magistrat to issue warrants.

TERRY WILLIAMS: Without reference to Mr Hull, I can't assist any further on that, I'm sorry.

DAVID HULL: Mr Chairman, this is intended to follow the current practice on saying who can issue a warrant. I will double-check it. I'm sure it does, but it's not intended to be innovative, it's intended to follow the standard form that we now use in legislation, and I'll make sure that it doesn't (overspeaking)

SENATOR LE MAISTRE: Could you come back to us on that?

DAVID HULL: Yes, indeed.

SENATOR LE MAISTRE: That would be helpful, thank you very much,

DAVID HULL: Because if there's an expansion of powers going into other areas, we need to know how that is coming about, because -- well, it is of concern. May I explain that there is certain (inaudible) provisions, of course, in every bill, draft law, and provisions like this relating to enforcement are discussed with the law officers. This should accord with the standard form that's been used for some time, I think, in fact. But I will check and make sure and report back to you.

PART SIX OTHER PROVISIONS

65 Appeals - Article 40

SENATOR LE MAISTRE: Thank you very much. Are there any other questions on Part 5? If not,

we move to Part 6. Any questions on Part 6? I'm presuming rather that these Articles tend to be similar to other laws that we have in terms of appeals and so on.

DEPUTY RONDEL: Can I say on 40, appeals, and I think it was raised earlier - I'm sure it was raised earlier - I have a concern that going through the court procedures for appeals, i.e. to the Royal Court, there is, for the ordinary little man in the street, considerable expense. Therefore - and I believe you did answer it earlier, Mr President - but can you confirm that you will be looking at alternative ways of putting in place an appeal procedure?

SENATOR OZOUF: Well, I don't think I am going to put in place alternative ways. I think that it's appropriate for the court. We will discuss with the court who receives the -- who is the appellant body. I am perfectly happy if the Scrutiny Panel wishes to suggest that the Committee should be confirming and discussing ways in which appeals should be taken on a lower level, an appropriate way that the court is -- but the court is --

DEPUTY RONDEL: For minor matters.

SENATOR OZOUF: For minor matters, Yes. But my experience with the Court is they are extremely alert to the different ways in which different appeals need to be held, and I'm happy to have a proper conversation with them if the Scrutiny Panel thinks it might be useful.

SENATOR LE MAISTRE: Thank you very much, that's very useful.

DEPUTY HILL: Could I just come in on that one, Mr Chairman? I think it would be to fair to say again, under any other appeal, if you wish to appeal against a decision of the Committee it is possible to go to Administrative Appeal.

SENATOR OZOUF: That's further -- absolutely, that's a very important point.

SENATOR OZOUF: Yes.

TERRY WILLIAMS: May I just say, from -- whilst it doesn't deal with -- particularly with appeals, from an operational point of view, the licence to termination won't sort of be handed down like a judgement from above. This will be a process of discussion between the applicant and the Regulator, and there will be opportunity in that dialogue for the applicant to raise all sorts of issues and the Regulator to hear them, so hopefully appeals will be far less because of that approach.

66 Table setting out forces for the Law

MALE SPEAKER: May I return to your question, sir, about the force of the provisions? I think it -- I don't know if it's (several inaudible words) but I did, for my own benefit, prepare a table which, with the Scrutiny Officer, I'm very happy to circulate to members, which in fact sets out the various forces for this law, and what you will see - if you're happy for me to table it, sir - is that it is very substantially based on the water pollution law in terms of these -- what I would call procedural provisions. Would you like to receive those?

SENATOR OZOUF: That would be, I'm sure, very useful, and I was rather assuming that was probable.

67 Notification to public of changes to the Law - Article 8

DEPUTY RONDEL: Could I come in on back of what you've just said, Mr Williams? Historically, when the water pollution law was adopted by the States, there were certain provisos that the public would be - I'm trying to get it round in my head correctly - but the public would be notified in any changes to the law, or to the regulations, by way of an article in the press, i.e. a gazette notice, and I believe I am correct in saying that this has been changed, or was attempted to be changed, so that that gazette notice would no longer be required.

Would this also -- could these regulations also be altered in such a way by the Committee so the public, in fact, don't actually know what is actually going on, because in the first 6 months to 12 months, we had a number of gazette notices going out about the water pollution law, and in fact, I don't recall having seen one for a long time.

TERRY WILLIAMS: Well, I think Deputy Rondel, sir, is referring to Article 8 of the bill, which is the provision dealing with notification in the Jersey Gazette. I understand exactly, Deputy Rondel's point here. When the water pollution law was originally enacted by the States, it provided for all applications for discharge permits to be placed in the Jersey Gazette. After two years of operational experience of that law, sir, it was found that that was proving to be very, very time consuming and

expensive, as I understand it, from those instructing me, and as a result, the legislation was changed by the States - you may recall that - and the amendment was such that if the Committee was satisfied there was no appreciable adverse effect, it was unnecessary to advertise. Now, this particular bill, sir, follows the water pollution law as amended by the States, okay? Thank you.

68 Concluding remarks - Additional evidence on water stress

SENATOR LE MAISTRE: I am conscious that the time is progressing and that you had earlier on stated that you wanted to present evidence to the Scrutiny Panel on the question of stress, and it seems to me that it would be useful to have that before you leave.

SENATOR OZOUF: Okay. What I wanted to do -- well, I'm pleased that we've had an opportunity. I mean, I'm not sure we're going to have an opportunity of -- I'm going to have with the instructing team an opportunity to sit with you again. We've obviously doubled up on the time originally given. I'm pleased to have done that, and indeed, overrun as well. So, I've got a few concluding remarks in which I want to say a couple of things. Is it appropriate for me to do that now?

SENATOR LE MAISTRE: Yes, indeed, yes. Sure.

SENATOR OZOUF: Okay. Well, in summary, and I think I would say that the firm position of my Committee is that this law is urgently required. I point out to the Scrutiny Panel that there are - and we've rehearsed at our first meeting, and covered some additional matters today - there is a dual need for this law, both on technical and on policy grounds. I think it's fair to say that I and my team don't think that we perhaps made our position absolutely clear last Monday on the issue of the justification of this law, and if you wish to table -- if you wish to put us written questions, then we'll happily attempt to answer those in written form.

But I would take this opportunity of highlighting the fundamentals of the reasons for this law, the technical need for the law. We would say to you, in 1992, there was data submitted and accepted by the Riley(?) Committee, not only from BGS, but

also from highly qualified Jersey-based geologists, that there was a need for this law. The conclusions of those were - and of, indeed, Riley - were endorsed by the states, way back in P78 of 1992.

Since that time, since 1992, further annual reports by BGS containing a wealth of additional information have been made available to the States and my Committee, but by definition, of course, this is limited information, because we don't have, actually, all of the powers within the laws, hence we need powers in order to get information. Dr Peach and Jersey New Waterworks Company have met with your Scrutiny Panel. They are experts in the area, we would say, and they've explained to the panel that our water resources in Jersey are under stress. They're under stress because of increasing demands for water, both in changes for our population, and indeed, our rising population in recent years.

They've explained to you the issue of shortage of rainfall, and they've particularly alerted to you issues of population density, and I would say that if the Scrutiny Panel was not particularly persuaded - I hope they would be - by what Dr Peach and Jersey New Waterworks have said, then surely the Committee would be alert to the situation that Jersey New Waterworks do have, in fact, a desalination plant. This is expensive to operate, why else, if there wasn't stress in Jersey's water situation, would a company, a private sector company, be investing very significant resources in having a desalination plant and working it and having to use it at very considerable cost, from time to time?

We would believe, and the advisors that you've spoken to would say that our water supplies in Jersey are vulnerable. They're vulnerable because of saline intrusions at St Ouen's Bay, up to 5% of Jersey New Waterworks supplies; they are vulnerable for pollution, due to particularly nitrates, which is something that will have -- a number of people before you will have spoken about; also vulnerable because of over-exploitation, because there isn't actually any sort of statutory arrangements in place to protect vulnerable resources.

The Committee believes that a proper management of the island's water resources are required. I believe that the States will want to ensure that we have proper measures in place to safeguard Jersey's finite and precious water resources,

both for the benefit of the present, but also future generations. I believe the States and we need to be able to take anticipatory steps to prevent its over-exploitation, and at the same time, cater for sustainable development, something which Mr Newton has advised you, and indeed, my Committee on.

We need to protect existing extractors their right, both public and private, and indeed, a key element of this law is contained within the protection of the -- of providing protection for existing extractors. We need to deal with drought situations. We need to safeguard the environment, including the flora, fauna and habitats, and the importance of that is highlighted both in the preamble to the law and the issues that Senator Vibert unfortunately couldn't share with us when we met first.

We do need to address, as the States of Jersey, the issues of climate change, and generally, the ever-increasing demands for water which we have seen, and we expect to continue to exceed. Jersey is, of course, not bound to follow other countries, but I'm sure that the States, and indeed, perhaps, I hope you will be aware of the fact that over 120 countries worldwide have already put in place water management legislation. It's, most importantly, perhaps, for the panel, relevant to say that the States, as an overall policy, has agreed to implement appropriate EU environmental measures.

We believe that there is a very strong case for this law. Indeed, we would say that the case for this law is overwhelming, and I mentioned to you earlier that I would give you perhaps one figure which may be of interest to you in actually summarising and, indeed, justifying the issue that we believe that Jersey's water is indeed vulnerable and under stress. We have a table to show you about a statistic which is actually the annual renewable fresh water per person along some 149 countries in the world, based upon 1990 figures, and we've recalculated this figure for Jersey, and we would give you evidence to suggest that Jersey would indeed be eleventh in the world in a league of countries with water resources at risk, alongside Yemen, and I don't know whether or not, Mr Newton, you want to perhaps just explain a little further this interesting statistic which we think is important?

CHRIS NEWTON: Yes. I mean, it's a very simply arrived at figure. We researched it in response to the questions that you posed at the last meeting. Essentially, what it takes account of is the area of land, the amount of rain that falls on it, and the number of people that there are to consume it. It makes some allowance for water that basically evaporates off and isn't 'get at-able', and on that simple calculation, Jersey is quite a small place, it's got sort of reasonably average rainfall, but quite a lot of people to use that available resource. So, our figure comes out something like 444 cubic metres per person per annum, and that's - as the President has just described - falls in between places like Jordan and Yemen in terms of available fresh water per person. And clearly, the way we deal with that relates to the whole management of the water system, that's why we have reservoirs, etc, etc. But on a basic statistic of how much water is there per person on the island, it's abundantly clear that we are in a very water scarce situation.

SENATOR OZOUF: **This figure isn't necessarily new information in terms of the quantity of water available. It does, however, perhaps for the first time, in a fairly stark and simple way - an internationally acceptable way - show where Jersey's water situation does -- how Jersey's water situation does compare to other places, and we thought that that was fairly useful,** perhaps in -- we didn't think we'd got our point across, I think it's fair to say, last week.

But in actually offering you this statistic as a comparable figure, we hope that that actually does summarise and does actually clarify the fact that we do believe that there is an absolutely overwhelming case for water management legislation in Jersey. I think that I certainly enjoyed standing before, or sitting before you, and attempting to answer questions.

I've hopefully not been able -- whilst I haven't been able to answer all the questions myself, hopefully the people around me have done, and we're very much looking forward to actually receiving your report. It is said that the Environment and Public Services doesn't -- or I've been suggested to me in the last week we don't welcome scrutiny.

We absolutely do welcome scrutiny and we do very much look forward to reading the report that you will be compiling, and we wait with considerable interest to what your conclusions will be. This is probably the last time that we will sit before you, but if you do have any written questions, we will attempt to turn them around as soon as possible in order that you can complete your work.

SENATOR LE MAISTRE: Thank you very much, President, for those concluding remarks, and I'm sure greatly appreciated, and we now note that the time is past 12.30pm, and conclude business for the day. We will certainly consider the possibility of written questions. Okay.

MR OZOUF: Thank you very much.

(adjournment)