

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 16th MAY 2012

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[9:30]

**The Roll was called and the Greffier of the States led the Assembly in Prayer.**

## **STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY**

### **The Bailiff:**

The first matter for the Assembly I think is a statement which was deferred from yesterday to be made by the Minister for Social Security regarding the costs of long-term care, so I invite the Minister to make the statement.

### **1. The Minister for Social Security - statement regarding meeting the costs of long-term care**

#### **1.1 Senator F. du H. Le Gresley (The Minister for Social Security):**

In July 2011 I was one of 49 States Members who unanimously approved a new long-term care law. The debate on the law was a culmination of a comprehensive consultation programme, including the publication of Green and White Papers, considerable public support, and pressure from the Health, Social Security, and Housing Scrutiny Panel of the day. The principles of the law were clear: to collect money from both working age and pensioner contributors to be paid into a new ring-fenced fund and to use that money to help adults of all ages to pay for long-term care. In particular, to encourage the growth of care services in the community, the new benefit will be available to people receiving care in their own homes, as well as those living in a care home. Experts predict that between 2010 and 2040 there will be a 95 per cent increase in the number of residents aged over 65. The costs of long-term care will continue to rise over the next 40 years. As politicians we have a duty to put in place long-term policies that will benefit not just the current generation but will also stand up to scrutiny by the next generation. Towards the end of November 2011 I became the Minister responsible for this new law. I asked my officers to thoroughly review all aspects of the law and its proposed implementation. In particular I believe that it is vital that any new scheme that requires contributions from members of the public should be based on firm financial principles and be sustainable into the future. This point was raised by a number of Members in the States debate and the plan was always that further analysis was to be carried out on the financial aspects of the scheme. Over the last few months my understanding of the detail surrounding the provision of long-term care has deepened. I have been a member of the Ministerial oversight group looking at the Health and Social Services White Paper, *Caring For Each Other, Caring For Ourselves*. I remain a firm believer in the aims of the proposed law, however, it is vital that when this new law is implemented the benefit it provides for older people is balanced against the costs it imposes on younger people. The impact must be fair both across generations and between rich and poorer Islanders. In order to ensure that we have the best scheme for Jersey and that we work out all the details in advance, I have asked my officers to aim for implementation during 2014 rather than 2013. This timescale will also allow my department to work closely with the Income Tax Department to fully explore the possibility of contributions being collected using existing income tax methods in order to streamline administration and to allow contributions to be collected from both earned and unearned income. While the detail of the new long-term care scheme is being finalised the existing arrangements for funding long-term care will continue. At the end of March this year my department was supporting 547 individuals with their care costs. I would urge anyone worried about meeting the cost of care fees to contact the Income Support Residential Care Team at the department. Thank you.

#### **1.1.1 Senator A. Breckon:**

The Minister has said in his statement, final paragraph: “While the detail of the new long-term care scheme is being finalised the existing arrangements for funding long-term care will continue. At

the end of March this year my department was supporting 547 individuals with their costs.” Can he tell this Assembly how much money it will cost the department by delaying this nearly 2 years.

**Senator F. du H. Le Gresley:**

The budget for residential care under income support for 2012 is £17.7 million.

**1.1.2 Connétable P.J. Rondel of St. John:**

Given that the Minister is mentioning ring-fenced funds, are they going to be ring-fenced as well as those which recently have been raided by £12 million over the last 2 years? Will the Minister confirm that these will be properly ring-fenced and that the Treasury or Health or any other department will not be able to get their hands on the money at any time in the future?

**Senator F. du H. Le Gresley:**

A ring-fenced fund means a ring-fenced fund in my opinion and this money will be available for payments for long-term care, both in care homes and people who need care in their own homes.

**The Connétable of St. John:**

A supplementary on that?

**The Bailiff:**

Well I think we only have 10 minutes and a number ...

**The Connétable of St. John:**

Well it does follow straight on to that.

**The Bailiff:**

I think we will move on. You can come back if we have time.

**1.1.3 Deputy G.P. Southern of St. Helier:**

Whereas most people in the Island trust the Social Security Department to maintain the ring-fence around contributions, mixing up with the tax collecting system would seem to suggest to many that this money may end up in general taxation reserves. Will the Minister consider carefully the advantages of using the social security system and not joining in with general tax collection?

**Senator F. du H. Le Gresley:**

The answer to the Deputy’s question - and this is something I am sure he would support - is that by using the tax system the collection of the contributions will be far more progressive than using the Social Security method of collecting contributions because it will be based on all income and there is a strong possibility that we will use the current income tax thresholds to exempt certain groups, low income groups and pensioners, from paying the contribution. But the contribution will be kept completely separately and the money paid across to the Social Security Department for the new long-term care fund.

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

The Minister in his statement mentions: “In the last few months my understanding of the details surrounding the provision of long-term care has deepened.” I would ask the Minister, will he allow the background papers - not policy papers but the background papers - giving the information that is increasing his understanding? Will he release it to States Members so we can increase our understanding of it?

**Senator F. du H. Le Gresley:**

In answer to the Deputy's question there are no papers other than the research that was done for the Health and Social Services White Paper by KPMG. Those are the documents I am referring to when I talk in terms of my understanding of the fact that we will be rolling-out more care in the community, and particularly end-of-life care which has been trialled by the family nursing and home care. This is another service that would be able to be funded through the new long-term care benefit.

**1.1.5 Deputy M.R. Higgins:**

Will the Minister give us the specific references in those documents that concerned him and provide us with the information?

**Senator F. du H. Le Gresley:**

I am always happy to refer Members to stuff that I have read but I will have to read the whole document again to comply with that request.

**1.1.6 Deputy J.G. Reed of St. Ouen:**

First of all I am extremely disappointed that the Minister informs that there will be a delay in the implementation of the new law that was agreed last year. Furthermore, I am equally concerned that the Minister is now choosing to look at a different sort of fund to support the delivery of the law when decisions were already made and large consultations took place which identified that the contributions through the social security mechanism would be the most appropriate way forward to cover all areas, including pensioners. Can the Minister explain whether or not he is proposing to review the current law as it stands which identifies the source of funding and how long-term care should be provided?

**Senator F. du H. Le Gresley:**

The law made it quite clear that it was an enabling law in that regulations would have to be brought back to the States as to how the collections of contributions would be made, *et cetera*, so all of these things were to come back to the States and will come back to the States in regulations. I would just express surprise that the Deputy, who is very quick to pick up on Minister's not planning for the future and looking at costs, this is exactly what I am doing and I would have thought he would welcome that.

[9:45]

**1.1.7 Deputy R.G. Le Hérissier of St. Saviour:**

Would the Minister explain whether this new principle he has introduced of moving away from a simple insurance system to one of differential contributions is going to be applied across the social security system, and how did Guernsey introduce this in such a simple, quick way several years ago and we have stalled it for nearly 10 years?

**Senator F. du H. Le Gresley:**

There are a lot of questions there. As I know you wish me to be, I will be brief. Yes, the Deputy is correct, Guernsey started their scheme in 2003. I have to point out that Guernsey's scheme does not cover care provided by the States of Guernsey in their own homes, nor does it cover care in your own private home. Our scheme will be far more comprehensive and I still maintain that it is correct that we should look at how we collect this money because - in reference to the previous speaker's question - how would we collect a contribution from a pensioner when we have no idea of their income. We would have to use the tax system and, therefore, that is why this is the way forward.

**1.1.8 Deputy T.M. Pitman of St. Helier:**

My concern is much as the last speaker. I think what the danger is here is we forget underneath this all is people and with the huge difference in suffering in people who have maybe sacrificed all their lives and some people who have not sacrificed. We thought this was going to come in and my real concern is with what the Senator said about "aim for 2014". What assurances can he give that we are going to have a firm date?

**Senator F. du H. Le Gresley:**

I do not like delay and I would have liked to have achieved this next year but it is important - as I keep stressing - that we get this right and I am sure the Deputy would not want to place a burden on low income people at the current time when their hours and their rates of pay are reducing to impose effectively a new contribution to pay for long-term care at a time when they are struggling. Now, that is not the only reason but because I want to, if possible, exempt those on low incomes - this is the right way forward. This is the best way to make sure we have a fair system and that the first recipients also pay significant amounts towards the care which they will be the first beneficiaries of.

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

It is really along the same lines, Guernsey have been doing it for 10 years. We did a Scrutiny Report with Professor Forder, who I know has been advising the department, in 2006 and the line that this must balance against the cost of those imposed on younger people and older people and rich and poor; what we have not got at the moment is a pot of any sort and this was promised last year, this year and next year, now again it is due in 2014. If anybody thinks the problem is not already out there, I cannot understand. There is only about 3 or 4 ways to skin this cat and the Minister has been advised by a very, very high professional how to do it. Now, why are they still stalling? I am Assistant Minister, I sit on the oversight group and I ...

**The Bailiff:**

Ask your question, Deputy.

**Deputy J.A. Martin:**

Okay, and I did not know about this.

**Senator F. du H. Le Gresley:**

At the risk of repeating myself, we are not stalling. We are making sure that we create a system that will stand up to scrutiny from not just people who will be the first beneficiaries but our future generations who will look back and say this Assembly did not make the right decisions because we did not look into it carefully. I should also remind Members that we now have an upper earnings limit of £150,000 and it would be my intention that these contributions would be collected up to the upper earnings limit. This is something new that came in this year and so, therefore, we have to take all these things into consideration.

**Deputy J.A. Martin:**

A supplementary ...

**The Bailiff:**

I am sorry, Deputy, time has run out.

**The Connétable of St. John:**

Could I ask the review committee of Government to look at question time so it is meaningful because if we cannot get supplementaries on something like this it is absolutely ludicrous. We are all wasting our time.

**The Bailiff:**

Just to be clear, Deputy, the difficulty is with 10 minutes one has to strike a balance between supplementaries and Members who wish to ask questions.

**PUBLIC BUSINESS - resumption****2. Draft Connétables (Miscellaneous Provisions) (Jersey) Law 201- (P.36/2012)****The Bailiff:**

Very well, now we return to Public Business and the next matter is the Connétables (Miscellaneous Provisions) (Jersey) Law - P.36/2012 - lodged by the Comité des Connétables. I will ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Connétable (Miscellaneous Provisions) (Jersey) Law. A law to repeal the policing functions of the Connétables to empower a Procureur du Bien Public to deputise for a Connétable in certain circumstances, to remove certain other functions from the Connétables and to make ancillary and consequential amendments. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**2.1 Connétable J.L.S. Gallichan of Trinity (Chairman, Comité des Connétables):**

It is almost 14 years to the day since the States approved the principles which will be enacted if this draft law is approved and receives Royal Assent. Only 6 Members of this Assembly were in the Chamber when the in principle decision was made. Senator Bailhache was the Bailiff and presided on the day and only 5 of the current Members took part in the debate. For those who may wish to know who they are: the Connétable of St. Clement who was then Senator Norman; Deputy Breckon who is now Senator Breckon; Deputy Duhamel who has not changed, he is still a Deputy. [Laughter] Deputies Philip Rondel and Simon Crowcroft who are now Connétables of St. John and St. Helier respectively. So a brief outline on the background. In 1994 the Defence Committee proposed an independent review of policing services in Jersey. The reasons for that review as set out in report were that the provision of independent review body for total policing of the provision has not been reviewed since 1950 and the increase in the resident population, demographic changes and the trend towards more sophisticated crime meant it was an appropriate time to seek to balance the expectations of the community with the level of service provided by the States of Jersey Police, Honorary Police, and other agencies with law enforcement responsibilities. The review body was chaired by Sir Cecil Clothier and the terms of reference were a full and thorough review of the policing system in Jersey, including the powers of the police to combat crime and the protection afforded by the law to the individual citizen, together with the level of service provided. The review body reported in July 1996 and the report became known as Clothier 1. The States would form a working party to consider some of the key issues in more detail. This working party reported in 1997. The States then in 1998 approved a proposition of the Defence Committee which included the following recommendations made by the working party: establishing by law the office of Chef de Police for each Parish to have charge of Honorary Police within the Parish and the Connétables shall cease to fulfil an operational policing role but retain overall responsibility for the effective and efficient policing of their Parish; the merging of the Centeniers Association and the Association of Vingteniers and Constables Officers; that the senior Procureur du Bien Public in the Parish should be empowered by law to deputise for the Connétable in the event of the latter's incapacity or absence from the Island. The proposals put forward by the working party were an evolution of the recommendations of Clothier 1 and were considered to apply to the Island and would maintain the honorary system. It is interesting to note that the 1998 proposition also

approved the establishment by law of the Police Authority. The Draft States of Jersey Police Law, which we have just debated, finally brings that to fruition. So why have we had to wait for nearly 14 years and what has happened in the meantime? Since the review body's report in 1996 the Connétables have chosen not to undertake any actual operational policing. Although all the Connétables who were then in office have since retired, the policy has consistently been restated by those subsequently elected Connétable. The Connétable remains head of the Parish and this includes the Honorary Police. Operational policing is the responsibility of the Parish's Honorary Police led by the Chef de Police but the Connétable remains responsible for policy. A shadow Comité des Chef was formed in 2002, consideration was given to the method of an appointment of a Chef de Police, the Honorary Police (Jersey) Regulations 2005 were approved so enacted the following part of the 1998 States decision, the procedure for appointing a Chef de Police for the Parish, establishing a Comité des Chef in law, and merging the Centeniers Association and the Association of Vingteniers and Constables Officers. Extensive research has been taken by the Law Officers' Department to identify all legislation which will have to be amended to remove the policing powers of the Connétables. The Comité des Connétables has repeatedly inquired when legislation could be approved to complete the States decision, for example, to empower the senior Procureur du Bien Public to act in the Connétables' absence. But this can only be done if the Connétables operational policing powers are removed. Meanwhile we have continued to debate the composition of this Assembly and whether the Connétables should remain in the States. The rationale which came out of Clothier 1 for the Connétables to relinquish operational policing is to remove the political policemen so that the States is a true democracy. Thus, if the States decide that the Connétables should no longer be Members of the Assembly then there is no reason to remove the operational policing powers. The Assembly has had a number of debates about its composition and to date has rejected the removal of the Connétables. An Electoral Commission is about to be formed to undertake a further review, but the proposed law for the States of Jersey Police means that we can no longer wait to bring forward proposed change to the Connétables policing role. The Minister for Home Affairs earlier explained that new States law means that the current 1974 Police Law will relate solely to the Honorary Police. To ensure both laws meet with Privy Council approval we must now grasp the nettle and amend the law so the Connétable is no longer a policeman and this means we can empower the senior Procureur du Bien Public to deputise for the Connétable. After many years of waiting to progress the States decision, the Comité des Connétables was presented with a draft law in June 2011 which would remove the Connétables' policing powers and provide for the senior Procureur du Bien Public to deputise in the Connétables' absence. It did come rather out of the blue and not surprisingly there were some concerns about the earlier drafts. The Comité des Connétables has since then consulted extensively with the Comité des Chef de Police and also with all the Procureurs du Bien Public about the provisions in the draft law. In working out the detail we have had to identify those duties which are operational policing nature and those which are not. Operational policing matters will be undertaken by the Honorary Police, led by the Chef de Police. The Connétables will remain responsible for the non-operational matters and in the Connétable's absence the senior Procureur du Bien Public will deputise. As may be expected, there are some areas that at first glance may involve operational policing but in practice are administrative by nature. The reverse is also true in other areas. Several examples are given in the Comité's report on page 12. A good example would be that of the Parish by-roads where the Connétables and the Roads Committee have specific powers to close roads, for example, resurfacing. But the Chef de Police also has powers to close a road for operational policing reasons. Another example would be that of the revocation of driving licences where the responsibility rests with the Connétable but he or she may well take advice from the Chef de Police if there have been complaints or reports of erratic or dangerous driving. The Connétables, Chef de Police and Procureur du Bien Public will obviously work closely together to ensure the Parish is efficiently administered for the benefit of the parishioners. What has become

evident to the Comité des Connétables is that the approval of this draft law is not the final step in this progress. Aside from the subordinate legislation which has to come back to this Assembly for approval, the Comité intends to review the current structures within the Parish and Honorary Police to ensure that it contains all the necessary checks and balances. This is essential if the structure envisaged and approved by the States since 1988 has evolved piece by piece over the last 14 years with different parts being introduced at different times.

[10:00]

The Comité must review that structure to ensure it is cohesive and where necessary it must fine-tune the structure to ensure it delivers a robust model for the future. At this stage I do not wish to go into details which are contained in the Articles so I hope this explains the law, the original decision made by the Assembly in 1998 and the past have all been enacted. This draft law enacts the final part of that decision. I propose the preamble.

### **The Bailiff:**

Is the principle seconded? [**Seconded**] Does any Member wish to speak on the principles?

#### **2.1.1 The Connétable of St. John:**

Having worked under 5 Bailiffs: Sir Robert Le Masurier, Sir Frank Ereat, Sir Peter Crill, Sir Philip Bailhache, and yourself; and 9 Connétables since the end of the 1960s when I first joined the honorary system, there have been big changes in the way that the position of Constable and the honorary system have moved. I was heavily involved in the 1974 Police Law, setting in place the one we changed yesterday, along with Don Filleul, John Le Sueur and Roger Sebire, and Brian Ahier and others. But my biggest concern is that we are seeing the creep from the Parishes to the centre. I will name just a few, not in any particular order. Obviously the 1974 Police Law, then we moved driving licences to the centre and the database processing centre, which, in fact, if an error is made in one of the Parishes and somebody picks it up on a Friday at 5.00 p.m., we cannot get that altered until the Monday when that centre opens. Likewise, we have a gun register which is in part administered by the Parish and part by the States of Jersey Police, which I do not have a big problem with at all because it works well. We have seen a big move to the Island-wide rating system plus the electoral system and obviously welfare having now been administered by the centre from Social Security. The latter is not working as well as it is supposed to and I have seen people in St. John's sleeping rough in the bus shelter through lack of support from Social Security and that really worries me. More recently, to my amazement only 2 weeks ago at the Committee of Constables, the Chairman of the Chef de Police attended with the President of the Honorary Police Association to give us an update of how things were going and also to inform the Connétables that a new charging system along with the States Police is to be set up and is being trialled to Nelson House in Nelson Street and it came as a shock to myself and my colleagues who were present at that meeting that no member of the Connétables Committee had been invited to sit on this reform group. But the bigger picture was that the Island-wide charging system would be rolled-out across all Parishes if it worked and that is a concern. I have to ask who is running things. Have we officer groups being set up to undermine the Parish system and if so who are the brains behind this particular group? Moving on, I accept that this has come about in a big part by the electronic age, but not all; and it is concerning to me that we are moving too much from the Parishes to the centre. That, along with data protection, where one cannot share information with one another or one department and another without a person's consent and we have to jump through hoops to help people within the Parishes because Social Security are not permitted to pass information back as to people who are in need. There is little left under direct Parish control; probably dog licences and Parish Rates Committee and several other small areas which at the moment do not come under the centre. To go down the road of removing further powers of the Constable will open the door for

the Parish system to be moved to the centre at the stroke of a pen or more likely the press of a button. At a time when some Members in this Chamber would like to see the Constables out of the States, this law and adopting it today is playing straight into their hands. It will further break down the historic Parish system and open the door for districts or wards and I do not believe the Island requires this just to please the few in this Chamber who would like to see the Constables lose this particular power. I say: "If it ain't broke, don't fix it." We do this at our peril. The Island has in the recent past been sold a pup by the former President of P. and R. (Policy and Resources) with Clothier. Let us not compound our problems. The Parish system has worked well for hundreds of years. Let us not at this uncertain time in world affairs dismantle further the honorary system which is the backbone of our Island. I applaud all that our forefathers have done for our Island over generations and let us not cast asunder to please the minority to the cost of the majority. All this came out of Clothier, a totally flawed system of government because it had not been adopted in its full capacity. I can trace my ancestors back to 1204 as leaders in this Island on my mother's side. You just have to look at the Bailiff's Panel down below and you will see a de Carteret having been in office as Bailiff of this Island at least once in every 100 years. I would not worry about the Rondel bit about it. [Laughter] I would not worry about that. Rondel is on his feet today trying to save something historical which has worked well. I say again: "If it ain't broke, don't fix it." Let me remind you the Parishes have lost their driving licences, pictorial register, the rates system in the big part, welfare, the gun register in part, all to the centre, along with a big part of our policing powers over the last 50 years, which I do not have a problem with because we have to move forward. But what I am seeing now in a small Parish like St. John with very little crime - the odd accident here and there - I am now seeing uniformed police walking or cycling around my Parish in 2s, which is okay but we have Honorary Police within our Parish who keep an eye on things. I see uniformed officers walking into our licensed establishments when the only people in there on a Wednesday night may be the Connétable, the Chef de Police [Laughter] and a couple of duty officers coming off duty having a refreshment; because our pubs at 9.00 p.m. at night are generally empty because they are used solely, basically, as places for having a meal because our pubs have become little restaurants. So really the manpower in blue should be used to better effect in other parts of the Island. I do not say we do not have a problem but we do not have discos anymore. In St. John we used to have those and we could always use the support of our uniformed colleagues but really I just wonder if, with the pressures on the police, on our border forces, the manpower could not be used somewhere else. I am not having a go at the States Police - they do a good job - but I thought I had to raise that. I spoke to the Minister for Home Affairs yesterday on that particular issue. I urge Members to vote against this. Remember, this is part of Clothier, a report brought to this House by the former president of P. and R. and I well remember him saying of the debate on Clothier at the time: "Accept this in principle and we will put the meat on the bones later." Well, we all know that that never happened. The Senator decided to jump ship instead of finishing the job he had started and to make things worse, the same ex-politician wanted to sit on the new Government Electoral Commission. I am so pleased that he was not chosen as part of that review team. I say let this proposition rest in a pending a tray until after the Island have had their say as to government reform by way of a referendum or whatever Senator Bailhache's committee brings forward. If the Island votes to keep the Constables in the States that is the time to remove this particular power - in 2 years' time, 18 months' time, whenever that debate happens - but until then I would strongly recommend that we do not go down the road of removing that power today because I believe yet again it is another nail in the coffin of the honorary system as we know it and I do not want to see our Island being controlled from the centre any further. I cannot support this proposition.

### **2.1.2 Senator P.F.C. Ozouf:**

Without wanting to prolong this debate I found that contribution by the Constable of St. John utterly depressing. There are a couple of certainties in life; one is taxes, the other one is change. Change does not need to be negative. It would be easy to be negative, to think back of the Parish system in the 1910s where it was very difficult for *un fils français et catholique* to be elected to the Parish system. It would be wrong to think that life has not changed. I would encourage the Constables to think positively, freed from the shackles of policing powers, freed from the accusations that they should not be in this Assembly, to identify what their Parishes can do in a future Jersey. **[Approbation]** I am reading a book at the moment about megatrends: *The World in 2050*. It is very clear that local communities are going to be even more important in the future than they are today. They are going to matter and the Parish system is going to be at the heart of our local communities. There are fantastic opportunities for the Parishes. We are working with Parishes to deliver housing projects, we are delivering a new Health White Paper; there are huge opportunities for health care as we deal with an increasing older society. There are massive opportunities for community groups, youth groups, *et cetera*, in Parishes. I would ask the Constable, he is the Constable that has inherited what I think is the only Parish Plan. I thought that was fantastic. I thought it was great that a Parish had a plan, an integrated plan about what they were going to do with their communities. Those are the things that the Constables should be focusing on rather than trying to hold on to a world which is wrong. No Member of this Assembly should have a policing power. That is what this is about. I urge the Constable of St. John to be positive, to be optimistic, to be future-thinking rather than negative and backward-looking. **[Approbation]**

### **2.1.3 Connétable J.M. Refault of St. Peter:**

It is rather unusual to find myself between 2 stools - the stool of the Constable here and the stool of the Minister for Treasury and Resources there. I think, as most of my colleague Connétables know, I have had some significant reservations with regard to the Draft Connétables (Miscellaneous Provisions) Law and some of the Members also know of my concerns with regard to that. The Connétable of St. John alluded to one of the things that raised my concerns, and that is what I call the unforeseen consequences. The unforeseen consequence which he alluded to was the meeting that we had 2 weeks ago with the Chairman of the Comité des Chefs advising us of work that they had done outside of the knowledge of the Comité des Connétables. I think for me that raised a concern that there may well be - and I am not talking about the Chairman of the Comité des Chefs in person here, I am talking about the principle - one or 2 people who would like to see the Honorary Police to go into a direction which they could effectively do when there is not that strong link back to the Connétables which would adversely affect the long-term viability of the Honorary Police as we know it.

[10:15]

If we just go back for a moment - say a generation and a half - most of the Centeniers at that time were landed or they were farmers. They had the ability to direct what they did during their day. They could choose to go and do policing or not. If you look at the Centenier of today; they are generally employees. Their employers would allow them or not to go and do policing work. It is making it more and more difficult if we try to professionalise - I will come back to this word "professionalism" - the Honorary Police service to the point they become a pseudo States Police Force albeit in an honorary capacity. It would make it far more difficult for us to get the ordinary man to come and volunteer to work in the Honorary Police because they cannot make that level of commitment. Coming back to the word "professionalism"; there are 2 ways to look at professionalism. The way which I thoroughly and undeniably support is that the Honorary Police must be professional in everything that it does but it does not have to be a professional policeman to do that. I think this is what people need to just reflect on professionalism; what do we mean by

professionalism? Fortunately yesterday morning I had what I suppose one could call a pastoral conversation with the Attorney General - and I thank you very much for that - and it helped to solve some of my fears about the unforeseen consequences. It is really quite simple in that what we did yesterday in changing the 1974 Jersey Police Force Law and now renaming it under the Honorary Police Law 1974 ... all we did yesterday; we took the States Police element out of it. We left in it exactly what we have got today, what we had yesterday with regard to the Honorary Police. There is no change with the relationships now with Parishes and the Honorary Police as a result of the work we have done yesterday. That now will continue in perpetuity or until such time as we change it again. So the relationship now today, whatever we decide today will be the same as it was yesterday. What we are doing today with this proposition is merely agreeing to release our operational policing powers and say to the Honorary Police: "That is for you now. You get on and do that. We have sat back now for a number of years and we have allowed you to do the ... now you have the Authority to do that on your own." It does not change the relationship between them coming back and talking to us as Connétables about how they are doing things and it does not change the relationship that allows us to say to them: "I would like you to look at the policing priorities which I consider important for this Parish at this time." That is still there as passed in 1974, now the Honorary Police (Jersey) Law. This change today will only give them that power as a result of them taking on that extra duty, that we will release them from the requirement for them to deputise on behalf of the Connétable and ask the Procureurs to do that on their behalf effectively. So what we are doing today is a simple change in the internal arrangements within the Parish. My pastoral counselling I had yesterday reinforced for me that what we did yesterday has maintained the link between the Parish and the Honorary Police which we had yesterday, will still be here tomorrow and in the future. I think the Comité des Connétables - and I am equally as guilty and I challenge them - have sat on their hands a little bit in the run up to this and we have not looked in depth about how do we ensure the working relationship between the Comité des Chefs and the Comité des Connétables and there is a piece of work that needs to be done there. Perhaps through the Honorary Police working party being re-energised and brought back into place again, and I know the Chairman of the Comité des Connétables has suggested that may be a way forward for us to do. I was trying to think of an analogy earlier on this morning and I came down to the analogy: "Let us not create a fine piece of furniture where we have to destroy the tree to do it." That is really a message which I am sending out to everybody that be careful when we are creating this fine piece of furniture or this new model that we have that we are fully aware of the potential consequences and we look for those unforeseen consequences before we depart down different routes. Yesterday I was not going to support this proposition. I totally support the principle of the Connétables releasing their policing powers; I was concerned about the unforeseen consequences. Today I will support the proposition.

#### **2.1.4 Senator S.C. Ferguson:**

The Constable of St. Peter has mentioned a number of things about the Honorary Police. I cannot let the occasion go without responding to some of them. He talks about the fact that nowadays the main employer is effectively the finance industry. The Honorary Police and I some years ago organised a breakfast briefing for the finance industry to explain that the qualities needed for Honorary Policing are those which the industry requires for management. So we were trying to get them to consider encouraging their staff to join the Honorary Police for free management training. I am glad to say that some of the finance industry companies are encouraging their employees to become members of the Honorary Police; not as many as I would like to see but certainly some. I do agree with the Constable of St. John regarding centralisation. I know we cannot believe everything we see in the press but it appears that the amount of fraud in social security appears to be growing after centralisation, or maybe it is just that there is more being found. Certainly it was very difficult for people to defraud the system when it was run through the Parishes; the

Connétables used to be very much more up to the mark. But the reason this Island has operated successfully is because it is worked locally. There is a saying that all politics is local politics and I am concerned that through ignorance we may well be losing the local connection. With regard to the Connétable of St. John's mention of seeing the uniformed police around, I would refer to Sir Robert Peel who said that the test of efficiency is not the visibility of police but a lack of crime and disorder. I have received a number of representations from the public regarding this proposition. I quote from the messages I have received. "Given that the office of Chef de Police is now firmly established and it is proposed that the Chef relinquishes certain duties, will the Connétables be allocating part of their salaries to the Chefs in light of their reduced responsibilities?" "Have the Connétables consulted with their parishioners regarding this proposition?" This particular individual says that: "My understanding is that the Chefs and Procureurs have been consulted but not the Parish". There was a duty of Connétables - I do not know whether it was ever written and it has been neglected of late - but they have the power to call Parish Assemblies to discuss significant matters so that they know the thoughts of their parishioners when they come in to the States and why have they not been doing this? My constituent goes on to say: "What are the costs regarding the numerous legislation changes?" Again, having the Connétables as an arbiter in contentious parochial policing matters is a tremendous asset and will be lost with the adoption of this proposition. In my other email I think most people have received which says: "I urge you to think carefully before further eroding the parochial system that has served us so well for so long and along with honorary service has been at the heart of making Jersey a special place. Decisions such as taking welfare from the Parish resulting in a centralised benefits culture irrespective of the current economic crisis, where at the same time Connétables cannot find out about cases of need in their Parish not being addressed by the system, have been shown to be ill-advised. I would be grateful for the Connétables to answer these queries because the thinking members of the public - and I think these are fairly representative comments - are concerned that we are throwing out our heritage." The very reference by the Connétable in his opening speech to "changing the structure"; I got the impression that this was changing the structure of the Honorary Police. Exactly what does the Comité des Connétables have in mind over this and I will wait to hear the rest of the debate.

**Senator F. du H. Le Gresley:**

Could I just have a point of clarification from the last speaker? The Senator made reference to income support and Parish welfare. Would she just agree with me that income support combine 14 benefits, only one of which was Parish welfare?

**The Bailiff:**

It does not sound like a point of clarification. It sounds like a debating point to me.

**2.1.5 Deputy M. Tadier of St. Brelade:**

I have 2 questions. The first one is slightly whimsical; who wrote the song "What a difference a day makes, 24 little hours"? I am sure that Constable Refault, were he in the Assembly, would be able to tell me because clearly this proposition has been put forward not by Senator Ozouf or by the Chief Minister or anyone else; it has been put forward by the Comité des Connétables. We have already heard a speech from the Constable of St. John who said that this is a nail in the coffin of the honorary system. We have the Constable of St. Peter who, presumably had read this document before last night and had time to not only necessarily read it and digest it but I would presume have some input into that document. Until the day before the debate or on the debate, because it could have been debated yesterday and should have been, he was not going to support this proposition. One imagines that a phone call comes last night and says: "Constable, also Assistant Minister Refault - you are not just a Constable, you are also an Assistant Minister for 2 different departments - we need you to support this because it is imperative that this goes through because

otherwise we have the proposition yesterday which did go through which not everyone was happy with and it would look silly, would it not, if the proposition that the Comité des Connétables are lodging and debating today is not going to go through.” That would just be a complete nonsense for Jersey politics. It would embarrass the Parish system because it would show that the Constables cannot get at their own proposition and support it. If the Council of Ministers were to lodge a proposition in the Assembly and let us imagine Senator Ozouf says: “Well I was not going to support the Council of Ministers yesterday but I will do it today.” It does not send out a very coherent and strong message. **[Laughter]** What conclusion does one draw from that? You do not necessarily draw any direct conclusions; what it does suggest is that certainly this does not have the full support of the Comité des Connétables or certainly there were reservations among them. So I invite the Chairman to answer this perhaps before I continue with my speech although he can do it in summing up if he prefers; how many of the Constables support this proposition? There must have been a vote at some point. There must have at least been discussions before today when this was brought to say which of the Members do support the ...

**The Bailiff:**

Deputy, this is not question time; you can ask the question and the Connétable will reply when he replies.

**Deputy M. Tadier:**

I understand but I also understand it is customary, if Members choose to, to give way and I am happy to give way at any point to the **[Laughter]** Constable of Trinity.

**The Bailiff:**

Do not answer now, Connétable, you answer at the end. The way we do things is people make speeches, not ask questions.

**Deputy M. Tadier:**

I understand that. I also recognise that it is important to make informed decisions, to have informed debate, so that is why I am simply saying that I will give way to any Member who can give information that would usefully direct a debate. Moving on, I think first of all let us deal with one of the points of Senator Ferguson who in a past life, as she said yesterday, has been a member of the Honorary Police. The point, of course, about salaries is a spurious one because the Connétables are not remunerated for their Parish duties. It is an honorary position; they get remunerated for their position in the States which is quite right. Any States Member should be paid for their job as a States Member; that is my opinion. I do not think we are delegating any of the States duties to a Chef de Police or to a Procureur du Bien Public and I would be very surprised in fact if those in those positions were asking to be remunerated. Certainly that would be a departure from Parish traditions. I did agree with much of Senator Ozouf’s speech and it is probably 3 things we have agreed on over the last couple of days which is not necessarily worrying but certainly perhaps unusual.

[10:30]

His speech was remarkable in the sense that it was very progressive, it talked about the need for reforms and in many ways it could have been a speech rather than to do with the removal of notional policing powers, to do with the removal of the positions, the separation of the political role from the role of the Connétable. It would be interesting to know whether he would make such a speech if ever that debate does come back to the States. I think the point is that reform is needed. For some Members it would suggest that this document does not go far enough. I think the comments of the Constable of St. Peter were welcome in the sense that if one is a proponent of the Parish system or even if one has reservations about some aspects of the honorary system in the

Parishes, which I think some members of the public do, and at this point it is worth noting that similar to the subject of reform, the public do not necessarily share all the same passions that we States Members – politicians - in Jersey do. There will be members of the public, the vast majority, who do not know what we are talking about today and do not really care; they have got other priorities. There will be members of the public, I am sure that the ones that Senator Ferguson spoke to probably live in very close proximity to the Parish Hall of St. Brelade and they have very strong opinions and know the intricacies and differences between a Procureur du Bien Public and the Chef de Police and a Centenier, a Vingtenier and all the rest of it, but most of the members of the public do not and I would suggest that there are those who do not care at all. There are those who love the Parish system and there are those who have, from their experience, some contempt of the Parish system. There are some people who receive a driving fine, perhaps, or they would expect to receive a fine. They may have come over here on a (j) category, they get stopped for speeding for doing 50 miles an hour, they get out their wallet and say: “How much do I owe you” and are told: “No, you have got to go to a Parish Hall Inquiry in St. Helier”, which is not at the Parish Hall anymore. You have to wait in a room for 3 hours with people that you do not know, not knowing when you are going to be called. Of course at that point you are innocent until proven guilty and you find this thing very bizarre. So of course there are reforms that could be made and I would hope that anyone, even the Constables in a supervisory role, will be mindful of improving any system of justice. I am not going to carry on for very long. I think this document, from my position, needs to be supported simply for internal consistency. We are trying to reform. It is a way to protect the Parish system. What I would say the conundrum for all of us is how do you maintain a strong and healthy Parish system, how do you maintain the individuality of those Parishes while ensuring that standards are consistently applied across the board. That is the challenge I think for all of us for the Comité de Connétables. That is indeed why I brought the proposition in the last session to do with a handbook. Now I understand that something is going to be produced online, that is purely to make sure that if people are mobile, whether you are new to Jersey, whether you are moving between St. Helier and St. Ouen, and even States Members seem to move out of St. Helier to the country Parishes, they need to know what they can expect when they go to their different Parishes in terms of their Parish Hall systems, whether or not it is to do with the administration of justice. So that was the idea there. I think it is not an unsolvable conundrum. I think what it requires is more working together. It may well be in the future that we need to, rather than having 13 different police forces, we may need 2. We may need the ...

**The Bailiff:**

Deputy, you are going to come back to this proposition, are you, which is whether the Constables reduce their policing power.

**Deputy M. Tadier:**

What I will do is I will context it by addressing parts in the report. If we turn to page 5 of the report, 2.6 we are told that in the modern context there is a parallel - albeit not an exact one - between the role of the Connétable within the Parish as described by Le Quesne, *et cetera*, and the function of the Minister for Home Affairs in relation to the States of Jersey Police Force. My initial thoughts when reading that, it is okay, that may be true but there are not 12 Ministers for Home Affairs and there are not 12 police forces that the Minister for Home Affairs has to administer. So that is one key difference there. I am saying, of course this is going to be complicated when you have 2 systems running in parallel; there are going to be considerations that need to be made. My point in response to this part of the report is that this is one of the areas which already has seen some progress. There was a point in the past where Honorary Police Officers from different Parishes could not have jurisdiction outside their own Parishes. That has now been changed because presumably it has been recognised that it is helpful to have that overlap and that inter-

agency communication. I would see a point though where it does not matter where you live in the Island, that you can be called up to go and serve somewhere else because we know that St. Helier, for example, is having a lot more difficulty in recruiting Honorary Police servants than perhaps other Parishes where the tradition is a lot more entrenched and a lot stronger. I said that the powers do not necessarily go far enough because we are looking solely at policing powers, which I think need to be removed. My question is will it still be possible for a Constable to carry a warrant card if we are removing the notional powers? This is where I disagree in principle with 1.3. The Constable of St. Mary is grimacing but yesterday one of the Articles that was passed was to do with impersonating a police officer. Now, if one is not a police officer, one has had all one's power removed, what possible use can one have for carrying a warrant card which identifies one as an Honorary Police Officer? I think certainly that is not good protocol and you may be opening yourself up to breaking the law, in fact, by impersonating a police officer. So when we see 1.3 of the report on page 4 which says: "Irrespective of Clothier" of course the Constables have long accepted that they should not, in practice, perform an active operational police role. My experience from the written questions and the oral questions that I have asked over the last 3 years is that that is not completely consistent, is it? We had a position only 2 years back where 6 of the Connétables carried warrant cards. Why would they carry a warrant card? Because they are not known in the Parish? That is complete nonsense. We now have an I.D. (identification) card for States Members which I have just received with not a very good photo incidentally ... a piece of advice, do not use the photograph from 5 years ago which is on your driving licence because it will not necessarily help you be identified among your parishioners. So let us just emphasise it one last time; I would be very disappointed if any States Members were carrying a police warrant card because obviously that would be directly contradictory to that statement there. The last point I will make here is that we need also to look at the executive powers of the Connétables. I will be quite honest here, I do not have a problem with a Connétable being head of the police force. I do not have a problem with them being a police person who is elected in their own Parish. I do not have a problem with the Connétable issuing gun licences, dog licences, and certainly, if there was a demand for it, the issue about them issuing income support. That has been a moot point; it is not something I would support under the current system but there was an argument in the past that they knew their parishioners and the Parish system is one of the truest forms of grass roots democracy. They elect their own officials for their community and then they make decisions in a local way and not in some kind of bureaucratic centralised way. That is completely to be applauded. But of course any system is only as good as the weakest link that it has. So all that notwithstanding, that is fine, I am quite happy for that role of the Constables to be in place. That is what strengthens the role of the Constable but the ultimate contradiction is that you cannot have that and be a States Member. That is the problem in this day and age. This is why we are enforcing this 13 years down the line and we will be back here in another 5 or 10 years' time to say: "Why is it that the Connétables can sit here a year ago and decide on Sunday Trading laws" and then one Constable, for example, can say: "Well I think Waitrose should be able to open in St. Brelade" and then Waitrose, let us say hypothetically in St. Clement is not given the right to open. That does not seem like a very consistent approach to take and there is an inherent conflict there but if the ...

**The Bailiff:**

You are wandering a long way from the subject again. [Laughter]

**Deputy M. Tadier:**

The reason I am saying this is because one of the reasons one might want to reject this proposition is that it does not go far enough. My point is that at the moment I am hesitating because I am thinking, is it worth supporting this proposition on the basis that it is a step in the right direction, it is some kind of slow evolution or is it worth rejecting because it does not do the whole job? It is

complete nonsense. There are very many reasons for not supporting this proposition. One of my reservations - and I am sure it is the reservation of other Members - is that this does not go far enough because until we have a system either where the Constables remain in the States; fine, let them remain in the States but their position would have to be so far removed in the Parishes from what it is now to weaken the Parish system or we have a system whereby we enforce and affirm the age-old rights of the Connétables in the Parishes but they can no longer be a *de facto* Member of the States Assembly. They can be voted into the States Assembly perhaps by their own parishioners if they want to be. I will leave it at that. Simply to say that there are good reasons to accept **[Approbation]** ... I think that was to do with the fact that I am finishing rather than necessarily the content and quality of my speech although I hope it were both. To sum up, the point is I am saying there are good reasons to accept this proposition as a slow, imperfect progress. There are very good reasons to reject this proposition in the sense that it does not do what is written on the tin. There is no consistent way forward, there are perhaps unintended consequences which have not been fully thought through and I would hope that one day we would be able to sit down and put our differences aside rather than saying: "This lot here are anti-Constable, this lot here are pro-Constable", because there are a lot more nuances in the system. I am a proud Jersey man, I am a proud democrat first and foremost and I am also very keen to make sure that the Parish structure and all that is good in the Parish structure is preserved and that the relevant changes that need to be made are also made. So I think hopefully that has given Members something to reflect on, even if it has confused other Members.

#### **The Connétable of St. Peter:**

I am not sure if the Deputy, the last speaker, realises this proposition is about the policing powers of the Connétables, not the overall role of the Connétables.

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

I do understand that and that is why I have put everything in context in my speech.

#### **2.1.6 Deputy G.C.L. Baudains of St. Clement:**

I will not go over the meaning of life and the various other... **[Laughter]** just heard recently. I am generally relaxed about this law. I do, however, have one small concern and that is traditionally the Procureur du Bien Public keeps a watching eye over the Connétables, especially in financial matters. Now if a Connétable was to be indisposed for some time and the senior Procureur was taking over his duties for a considerable period of time, who would be watching the watcher?

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

Previously in this Assembly I have criticised the way in which we amend legislation. A proposition simply stating that we are amending a particular section of a law or regulation is meaningless unless the amendment is reviewed in the context of the rest of the law that we are amending. It is for this reason that I and the former Economic Affairs Scrutiny Panel insisted on marked-up copies of the laws being amended. Not only do we not have marked-up copies of the legislation that is being amended, a number of the laws being amended are written in French; the law of the 1853, 1797, 1864 and so on. I have had a look at these on the Legal Information Board. I have not got a clue what they say. As someone who does not speak French or read French, I have no idea of the consequences of the amendments that we are making and I think it is bad law if States Members are sitting here going through debating things for which they have not got a clue about possible unintended consequences, to quote the Constable of St. Peter. Therefore, I will not be supporting this legislation. If I do not understand its context and what it is about I will not support it.

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

So soon, so soon. This proposition today goes hand-in-hand with yesterday's and yesterday's was indeed an opportunity lost for full, in-depth and proper reform for policing on the Island. As the rapporteur today presented this document, he talked about Clothier 1 and Clothier 1 reforming the way we conduct our policing on the Island, talking about training, emphasising regulation and accountability, increasing the professionalism; not to make them professional, not to pay them but the professionalism with which the honorary act. Here we are having missed that opportunity yesterday to bring in a single, over-arching authority and we talk about centralisation of power. Good grief. We are a population of 100,000; how central can we get? We are only 100,000; the size of a small town in the U.K. (United Kingdom) and we are talking about centralising power. I do not believe that argument for a minute. If we cannot conduct business in a proper manner on behalf of 100,000 then we should not be trying to put up a wheel stall. So an opportunity lost yesterday and I think an opportunity lost today.

[10:45]

We had a previous speaker talking about there are lots of reasons to support this particular proposition, there are lots of reasons not to support it. I want to just point to one, because it seems to me I am picking up a tone of "we have a problem in the reform of the States in that we have 3 types of States Member, one of whom, the Constables, wear 2 hats." Technically they are policemen and also they are lawmakers in this Chamber and at some stage in the last 13 years perhaps somebody has come along to the Comité and said: "You have got a choice. You either give up one or you give up the other; what is it to be?" Right, we will give up police powers because we desperately want to stay in the States, even though we get elected as leader of a Parish and not necessarily for our powers of oratory or other skills that we have more appropriate to this particular Chamber. Given that choice, I am looking at this proposition saying: "Right, I think I will vote against this, because I do not want them to give up their police powers; they can have it as long as they get out of this Chamber." **[Laughter]** But no, that is not my real reasoning. My real reasoning is that yesterday we wasted an opportunity to have proper reform of the 13 police forces on the Island. Today, equally, we are passing up that chance. This is ducking the issue, I think, and so I will be voting against this the way I voted against the previous proposition because the 2 go together and I cannot support either of them.

### **2.1.9 Deputy J.M. Le Bailly of St. Mary:**

I am very honoured, proud and privileged to have served with St. Mary's Honorary Police. I get very annoyed when someone criticises and maligns the system, especially when they have neither served nor taken the trouble to understand the workings. Our Parish Hall Inquiry system allows a Centenier to settle minor offences, to use discretion when charging before taking people to the Magistrate's Court. That is the strength in our system and that will not and must not ever change. This proposal merely separates policing and politics. The 2 must be seen to be transparent and impartial. This proposal is necessary in order to achieve that. **[Approbation]**

### **2.1.10 Deputy J.A. Hilton of St. Helier:**

Just briefly, there were 2 previous speeches given by the Constable of St. John and Senator Ozouf and I understand exactly where the Constable of St. John was coming from on this proposition, because when I first read the proposition I felt to a certain extent that it could possibly lead to the watering-down of the Constable's position in the Parish, although I accept totally what Senator Ozouf said in that he felt that the Constables were in a good position to strengthen their role in the Parish especially with the future of the community as the heart of the Parish. I think there is an awful lot there that the Connétables in the Parishes can do and achieve in the future so I think that the role can be enhanced and improved. There were just a couple of questions I really wanted to ask. In essence I will be supporting this proposition. There are just a couple of questions and it is

around the criminal record check of the Constables at the current time. I believe the Constables, when they stand for election, do have a criminal record check. I would like clarification whether that process will continue in the future. I know that they are going to be removed from their policing role but will the criminal record check still take place? Also, in view of the enhanced role of the Senior Procureur, could I know whether the Procureurs at the moment who are in very important public positions - and I think it is important for the public that they know exactly who they are voting into these roles - currently have criminal record checks and if they do not, would the Comité des Connétables or the Parishes consider making this mandatory in the future?

### **2.1.11 Connétable S.W. Pallett of St. Brelade:**

I ummed and ahed about whether I was going to say anything today but I am fortunate to see both the President of the Honorary Police Association and the Chairman of the Chefs Committee; I have noticed their heads shaking over the last day and a half and felt it was right that maybe some of the inaccuracies that have been said were put right. The Constable of St. John this morning mentioned decentralisation of duties, which I just totally disagree with. He mentioned many of the things that he considers to be moving in a centralised way. Driving licensing, for example; the Parishes still issue them. Electoral register; that is maintained by the Parishes. I cannot see any centralisation there. The guns are still licensed through the Parish although the States Police, quite rightly, have an input in it and that is right again. At the end of the day, what we are looking at today - and I think the Minister for Treasury and Resources just summed it all up in my mind - is that this is about us just having our policing powers removed and the Procureur deputising in our place should we be incapacitated. It is not about anything else than that and some of the speeches we have had this morning have gone off in all sorts of directions, some of which I really just do not understand. Again, welfare payments were mentioned this morning. They have been centralised. In many ways many people may disagree with that but I was always of the opinion that it was wrong for individuals to go - sometimes it felt like a begging bowl - to a Parish Hall looking for funds. It should be centrally done. Maybe the Parishes should have a little bit more input in it but that is for another day. In terms of the centralisation; from what I have understood from some short conversations with the Chief Minister, he would like the Parishes to have more involvement, not less involvement and that is something that has warmed my heart as, I think, many of the other Constables. Many people have mentioned the fact that we may be dismantling the Parish system. There is nothing in this particular law that is dismantling the Parish system. We are merely removing the Constables' policing powers. Again, the Constable of St. John mentioned interestingly States Police patrolling his Parish. Well, they patrol everybody's Parish; they also patrol my Parish. We do carry out licence checks in St. Brelade on a regular basis. Now maybe they were there for the reasons that they are not being carried out on a regular basis; I am not sure. But they have an Island-wide policing role and rightly they do patrol each and every Parish. What is the issue with that? I have heard a lot mentioned in the last couple of days about the professionalism of the Honorary Police and I have shaken my head time and time again. The fact is all of the Honorary Police are trained. They carry out a foundation course and it is carried out to a high standard. Only one out of I think the last 230 or 240 officers that have come into the Honorary Police Force have not been trained in the foundation course, which is the basic course. I have done it myself. It is a perfect sounding board to get a start in the Honorary Police and to learn how to carry out your duties. That again comes down to what the Honorary Police do. We are not a play police, we are not front line police officers, we carry out more often than not community duties but, yes, we do carry out some duties sometimes in St. Helier and St. Brelade on a Friday night that are a little bit nearer to what the States Police do, but generally speaking we are not front line police. We are not trained to the level that they are and I do not think anybody expects us to be trained to that level. We have a role to play in this Island and I think we carry it out to what I would consider to be a very professional standard. There is though I believe - and I think it has been mentioned

before - some work to do. There do need to be some guidelines and some protocols maybe put into place to improve the working relationship between the Constables and the Chef de Police. There is no doubt that work can be done. It can be done in-house once this law goes through. It does not need to be done prior. There is time later on between now and the law coming in for that to be carried out. It cannot be right and it is not right that a policeman or policewoman sits in this Assembly. You should not be making the laws and then policing them; it is as simple as that. I just want to raise one issue; again it is something that Deputy Tadier of St. Brelade brought out about Waitrose. Waitrose is not a police matter, it is a civil matter.

**The Bailiff:**

It was one of the many matters in the Deputy's speech which seems to have strayed rather far from the subject.

**The Connétable of St. Brelade:**

I totally agree. Just summing up, this is purely about policing powers. This is purely about the Procureur being able to deputise. It has been discussed over and over again. There have been countless meetings, countless consultations between the various groups. I think we are at a position now where I am certainly happy for it to carry forward. I had my doubts at times and I have questioned it like all the other Constables have but I think we have come to the conclusion that now is the right time. I do not want to wait for another 2 years to decide or whenever it is whether we are going to carry on sitting in the States or not. I cannot sit in here with my policing powers; it is as simple as that. I urge Members to make sure that this piece of legislation goes through today.

**[Approbation]**

**2.1.12 Deputy S.G. Luce of St. Martin:**

You do have to feel sorry for the Constables sometimes; most of the time Members complain because they vote *en bloc* but today when they decide to potentially disagree with each other they get criticised again. **[Laughter]** The Constable to me is the head of the Parish. He is the most respected member of the Parish. He is the person looked up to by his parishioners for guidance and for leadership. He is the man entrusted or the person entrusted by his parishioners to make decisions on their behalf and I believe parishioners look for their Constable for leadership as well when it comes to Honorary Police matters. Having said that they cannot be judge, jury and executioner and that has to change. It is good that in practice the proposals that are going through today have been in action for some time and today we make them official. I am relieved to see that the Constables will retain the overall policy when it comes to the Honorary Police and that the Chefs will take over the operational issues but I would have just one question for the Connétable in his summing-up and that would be this. If the decision was taken that the Centeniers in St. Helier were to charge everybody on the Island that went to the court and not the Centeniers from the Parishes, would that be a policy decision or an operational decision? I will be supporting this proposition.

**2.1.13 Senator B.I. Le Marquand:**

What Article 1 does is twofold. It firstly removes the operational policing functions as many other Members have said but it does something else; it also removes the role of prosecutor which technically could still remain with the Connétable. What remains is the supervisory role and that is expressly set out in the law. I believe that this creates a situation which parallels the current relationship of the Minister for Home Affairs to the States of Jersey Police and of the Minister for Home Affairs, in particular, to the Chief Officer of Police. It parallels it in all areas other than the role of the Centenier as a junior prosecutor discharging Parish Hall Inquiries, youth diversionary process over which the Connétables should not have any say because the Centeniers in that area look to the Attorney General for guidance. That was a subject of the very brief paper, which I

produced some time ago. Yesterday I said that further work clearly needed to be done in this area but I also said yesterday, and I say it again, that that work needs to be done irrespective of whether the law that was passed yesterday was passed, and indeed irrespective of whether this law needs to be passed.

[11:00]

There was also the interesting area raised by the Connétable of St. Martin yesterday of co-ordination and clearly work would also need to be done on that so that we do not have 12 quite different policies being set in the 12 different Parishes. What I said yesterday again, was that I envisaged that there would be a united policy being agreed by the Connétables at the meeting of the Connétables but there could still be individual policies agreed at the Parish level if specific areas arose in specific Parishes. The Connétable of St. John, in his speech, mentioned work in progress at officer level in relation to information systems and charging and things of that nature. Now, I am sad to see that this has caused concern to a number of Connétables because they heard of it for the first time at a recent meeting. I want to explain what is happening here. This has been done ultimately under the auspices of a body which I think, and I am looking at the Chair here, is called the Criminal Justice Board. I was looking for confirmation that I have got the right name of the Criminal Justice Board.

**The Bailiff:**

The Chair is entirely neutral in such matters, it is up to Members to ... **[Laughter]** It is not clear to me what you are talking ... **[Laughter]** the matter you are referring to. I admit I did not phrase that very well. **[Laughter]**

**Senator B.I. Le Marquand:**

I was seeking confirmation from you, perhaps I should have sought it from the learned Attorney General, that I have got the right name.

**The Bailiff:**

This seems to me again to be going somewhat off the issue which is whether the Constables should retain their policing powers or not. This seems to me a matter of detail that the Constable raises from outside the Chamber.

**Senator B.I. Le Marquand:**

I am sure you are right, Sir, I wanted to put at rest the minds of any Connétables but I am sure you are right. This is not strictly on point. I hope this is on point. I want to express my wholehearted support for what my colleague, Senator Ozouf, has said and I said exactly the same things yesterday to the Connétable of St. John and that is this. Rather than looking backwards, that the Parishes should be looking forwards. The importance of community life, and particularly of Parish community life, is not going to decline, it is going to increase. There are going to be great opportunities for Parishes to act as focal points for mobilising people and I think that will be particularly the increasing number of fit and active senior citizens, among whom I shall soon be ranked, I hope, to care for others. I understand, in particular, that the Parish of St. Clement has piloted a very good scheme here. **[Approbation]** This is the way forward, I believe, for Parishes to be focal points for community support, networks and things of this nature. I move on rapidly before the Chair cuts me off. I also hope this is not entirely irrelevant. I have noticed the comments of the Connétable of St. John reference the deployment of States Police in the Parishes. The increased operational efficiency of the police has freed-up resources for higher levels of visible policing but I know that the Chief Officer of Police is very keen to work closely with the Honorary Police and I can assure Connétables if they think there is now too much going on in their Parishes, I will be discussing this matter with the Chief Officer so we get the right balance. Finally, the issue

in relation to the senior Procureur standing-in for the Connétables, is the corollary, the flipside of the change in relation to the Connétables. If Connétables will cease to have operational and prosecutorial roles, which, in fact, they have not, of course, exercised for the last 10 years or so, then it is equally logical that the Chefs de Police, as active police and prosecutors, should cease to have civil functions and that is what that Article seeks to achieve.

#### **2.1.14 Connétable D.W. Mezbourian of St. Lawrence:**

I am pleased to say that I will be brief because what I was going to say has been touched upon by a couple of other Members. Firstly, Deputy Tadier made it quite clear that this proposition does not do, as he said, what is written on the tin whereas, in fact, clearly it does because what is written on the tin is the removal of policing powers of the Connétables and what we have not looked at and I would like to refer Members to is what those powers and duties are. They are listed on page 5 of the proposition and they are keeping the peace; powers of search, examination and investigation; arrest and granting of bail; conducting Parish Hall Inquiries and charging suspected offenders and presenting accused persons before the criminal courts. Clearly, it is inappropriate for a Connétable, as a Member of the States, to have those policing powers. I urge Members to support the proposition to remove those powers today. As the Constable of Trinity made clear when he presented the proposition, the recommendations were approved by the House as far back as 1996. He also specified the reasons for the delay in bringing this to the House. It is clearly time that we do implement the decision of the Assembly some 14 years ago. Very briefly also, the Deputy of St. Martin mentioned that the Connétables are criticised when they vote *en bloc* or when they appear to share the same view. Today we have been criticised for having different opinions and it seemed ironic to me that a self-proclaimed democrat chose to criticise democracy within this House. Finally, the Deputy of St. Martin mentioned the high regard that the male Constables are held within and I feel it my duty to remind the House that a quarter of the Connétables are, in fact, female [**Approbation**] and I hope that his words, that he is held in high regard in his Parish, can also be applied to the 3 female Connétables.

#### **2.1.15 Connétable D.J. Murphy of Grouville:**

I also shall be brief because I think this motion needs our support and it does not really need a lot of explanation. The Connétables have not carried out any policing for several years now and we are simply there, in fact, to oversee the position as it stands. We have now been put in a position where we do not have too much power. In fact, what we have now instead of power without responsibility is we have responsibility without power with regard to the policing situation. With regard to the Procureur's position, I have to say *mea culpa*. It was my predecessor who fell seriously ill over a period of 18 months which threw us into a bit of confusion in that at that time, the Chef de Police took over as Constable and it was obviously also inappropriate for him to take over the position of the Procureurs, which is overseeing the Procureurs on a finance and also administration basis. So this is simply putting the whole thing back into context and trying to put it into a manageable position where before it was confused and there was no real law laid down as to how we ran the Parishes in the event of a Constable not being available, being sick. This puts it back into complete perspective and allocates responsibilities as we think they should be allocated.

#### **2.1.16 Connétable A.S. Crowcroft of St. Helier:**

Much has indeed been said and I am grateful to the Constable of St. Brelade in particular who I thought really hit the nail on the head on many occasions. There have, however, been a number of inaccuracies and I want to just lighten the load of the Chair of the Comité by tackling a couple of them. First of all, the Constable of St. John said that the Parish system has worked well for hundreds of years and we should not change it and I would simply argue that the reason it has worked well for hundreds of years is because it has changed regularly. I think Senator Ozouf made

that point very well, that the system has to keep changing if it is to adapt, otherwise it will indeed perish. Senator Ferguson said that we were eroding the Parish system in this proposition if it is approved. I would say the opposite is true. If this is not adopted, we will indeed erode the Parish system. The Senator did, however, make a couple of interesting points. She asked why the Constables had not consulted the parishioners on this matter. It is something which comes up from time to time in the Assembly. The Constables are asked why they have not taken a matter to a Parish Assembly and it is a judgment call for the Constables about whether they feel a matter has generated sufficient concern out there in the public mind to be brought to an Assembly. Perhaps this is something that should have been taken to an Assembly. I hold my hand up on that one because I did not think of doing it. I do not agree with her that the Constable's role as arbiter will be lost. I think that Constables will continue to work closely with their Chefs and that their advice and hopefully expertise will be called upon by their Chefs when there are difficult matters to resolve, not necessarily a legal arbitration, but certainly where they can bring the benefit of a different view and their experience to bear on a situation. Deputy Tadier's speech was apparently in support of the proposition. If that is so, I would hate to hear him speak against a proposition. It included, in his own words, whimsy and I would respectfully remind the Deputy that we do not have time in this Chamber to be whimsical and I think if his speech had been at least half as long as it was, it would have been much better. He did, for example, highlight the problem that we sometimes have in Parish Hall Inquiries when the public are kept waiting and I think that it is unacceptable for someone to be kept waiting, not to know when they are going to be seen. We all hate it when it happens to us in whatever queue we happen to be stuck, and I think that is something we need to look at. However, he also mentioned that St. Helier is having trouble recruiting officers. That is inaccurate. We are getting a steady stream of new officers into the St. Helier Police Force and I believe other Parishes are also seeing a resurgence of interest in joining the Honorary Police. That, of course, has been helped by the fact that the Chief Officer of the States of Jersey Police has gone on record to say that membership of the Honorary Police could be regarded as a prerequisite for joining the States Police, which is certainly a great move forward from previous positions between the 2 forces. I would just like to finish, really, by taking the Constable of St. John to task for what I thought was a below the belt remark when he effectively identified an unsuccessful applicant to the Electoral Commission in his speech. I do not think that is what we are here to do and I think that was unfortunate but, on the whole, I welcome this proposition. Not much has been said about the delegation of duties to the Senior Procureur. That certainly, in the case of St. Helier, is something I, and I expect the Chef de Police, cannot wait to happen.

**The Connétable of St. John:**

Sir, on a point of order, I did not mention any person's name.

**The Bailiff:**

Very well. Now, 2 other Members, if they feel they have something new to add.

**2.1.17 Connétable L. Norman of St. Clement:**

New, I doubt, but I too intend to be repetitive. [Laughter]

**The Bailiff:**

There is a Standing Order which says Members should not be repetitive. [Laughter]

**The Connétable of St. Clement:**

To be honest with you, Sir, I think enough really has been said. [Approbation]

**Senator A.J.H. Maclean:**

The last speaker covered all the ground I wanted to cover. [Laughter] [Approbation]

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

Well, I do hope it is new, Sir, and perhaps I stand more in the fact that if the Constable of St. Brelade had a lot of calls last night, there might have been the honorary people, police or everyone in an honorary position may have been thinking I was knocking them and I am certainly not doing that. I will support this proposition. It just removes the Constables' powers from being policemen. My problem is what Constables understand what their Honorary Police powers are. We had completely 2 different versions from the Constable of St. Brelade and the correct version from the Constable of St. Lawrence, which are very, very important powers. My problem with the whole proposition - and it is probably repetitive of yesterday - is I think the Constables have been so precious that they are not going to come under the new States of Jersey Police Authority because on page 11, it says that the legislative changes made by the law in P.102 will mean that there will be 2 separate laws, one governing Honoraries and the other governing the States.

[11:15]

This is the death knell in the Honorary Police in my opinion now because they do have some very, very important functions. They have the most important functions, the duty to charge. The police do not have this and if any of this is done wrong, I would like them to be under a totally independent authority. So I do not think I have been repetitive. I apologise again to the Honoraries and I wish I had met one today. I dropped my daughter at St. Peter's Airport and I thought I would go to the old St. John. I went to St. Mary, St. Lawrence, back to St. John and come out somewhere near the Christina Hotel and I was nowhere, and I would have loved to have met an Honorary so they could direct me in the right way. As the Constable of Trinity has always said, I should get out of town more **[Laughter]** and I totally agree but I do respect all the work of the Honoraries, especially our very, very hardworking Honoraries in St. Helier.

### **2.1.19 Deputy T.M. Pitman:**

I do not think I will be repetitive. I do respect the Honorary Police. We do not name people here but I probably could name someone who is the face of honorary policing really in Jersey. I have worked with him for many years and I wonder where we would be without him. I think we all know who he is - large bearded gentleman - and he does an excellent job and so do many others. However, my question is if we are now hearing that the Constables are not going to be policemen, certainly in my 3 and a bit years and down the years that I have followed politics, we all seem to have been misled over the years in the States. So are we now saying that those previous Assemblies have all been misled and that the Constables were police all the time and that their place in this House really should not have been recognised? **[Aside]** No, no, you cannot have it both ways, you do argue that, I am sorry. My question is as well, if it is just going to be a supervisory position now over the police force with the Constables, and this is a serious question, when the uniformed police go and do something like a very now infamous raid on another former Member's house, who will those uniformed police liaise with? Will it be the Chef de Police or will it be the supervisory Constable? It is a serious question and I would like that answered and I have to say I do not know which way to vote on this. I do not think it goes far enough. I think people were a bit too hard on Deputy Tadier because he made some valid points. I was quite upset to have my good friend, the Constable of Grouville, who accused me of being anti-Connétables earlier. Anti-Connétables. **[Laughter]** The Connétable must learn humour when it is meant but I was very upset to be accused of being anti-Connétable. I am not anti-Connétable in a personal way either. It is the whole position that needs to be looked at and they need to decide who they are and what they are and perhaps we are finally getting towards that stage where that happens. I think the one problem with what is being done, the one real reason this has been brought forward now, is to try and cement the Constables' place in the States before we have the Electoral Commission. That is the real reason that it is being done. So I think Members should probably vote accordingly to that

reality. I do not think it is going to destroy the Parish system and I would hope the Parish system never does get destroyed. I do not believe the Constables in the current system should be in the States but I am not going to go off down on a big lengthy ramble on that. I think there should be one type of Member and a Constable could be a States Member. That is okay, it is for another day. So I am waiting for the excellent summing up that I know is going to come from my colleague there and that will sway which way I vote but at the moment, I am hovering on the against side.

**The Bailiff:**

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

**2.1.20 The Connétable of Trinity:**

Interesting debate that went everywhere but kept to the main subject. Is it not good to see that we do not all agree as Connétables sometimes and, as I say, we have been tarred for many years saying that we have all got similar views, we all vote the same way. Well, it just proves that we do not. As for the Connétable of St. John, well, this is the meat on the bone. Whether you like it or not, this is the meat on the bone and that is it. I thank Senator Ozouf for his support, the Connétable of St. Peter who did have concerns, and definitely there were no phone calls done last night, I can assure you. That would be an absolute waste of money. [Laughter] Going on to Senator Ferguson, all the Connétables are doing at the moment is effectively finalising the States decision of 1998. There was no need for a Parish Assembly. This was a decision that was taken by the States Assembly which is being rectified at the moment so this is all we are doing. There was no need, we did not have Parish Assemblies, we just consulted with the Chefs de Police and obviously the public trustees. This was completely new to them as well. Deputy Tadier has his views. Just for his information, the Honorary Police book and the Parish book has been completed. I thought he had received one, maybe he has not, maybe I will get it sent by the Secretary. We have organised the parochial running of the Parish and that which you were asking for has been done. Warrant cards, well Deputy Tadier has a problem with warrant cards. That is his problem, not mine. [Laughter]

**Deputy M. Tadier:**

Could I ask the Attorney General afterwards, if the Constable will give way, because I think I have perhaps been slightly unfair on the Connétables because it is really a question I should have addressed to the Attorney General. If we do pass this proposition today, revoking the active policing roles of the Connétables, could there be any justifiable reason for a Connétable having a warrant card and, if so, could the Attorney General explain around that? That perhaps alleviates the problem, perhaps for ever.

**Mr. T.J. Le Cocq Q.C., H.M. Attorney General:**

In my view, the existence of a warrant card, as opposed to some other form of identification, is a document which is capable of saying that the person holding it is able to exercise policing powers. If this legislation is passed, in my view, there should be no warrant cards held by Connétables.

**The Connétable of Trinity:**

I thank the Attorney General for that and I totally agree with him. Deputy Baudains, on the Procureur du Bien Public: obviously it would then go down to the junior Procureur who would keep an eye on financial matters but I think I should bring this forward. In all the years I have been Connétable, it is very, very rare that we have had to call on the Chefs de Police and I would think this would be exactly the same in this case. Over all the years, I am sure it will only be on certain occasions that the Procureur du Bien Public probably will be called in to take these decisions and my knowledge of most Connétables, if something serious is coming up in the Parish, they would not plan a holiday. The only thing that we really could see would be unfortunately if a major

illness were to occur and this would step-in but, in general, I do not see this being used very often. For Deputy Higgins, I am sorry he cannot speak French. Maybe he can go to the Alliance Française. They do lessons every Thursday morning. Deputy Southern: he is not here, but I thank him. I am not too sure he is going against it. I am not going to thank him for support **[Laughter]** but I would just like to bring in to say that the Honorary Police do have training and it is essential. I think any Connétable now who interviews a person to join the Honorary Police it is explained to the person who is about to join the Honorary Police that if he was accepted, there is training and they have to attend that. So we do our best to enforce this into people but you have to realise that this is a voluntary and a non-paid position and it is very, very hard to force people to do things if they are resistant. I thank the Deputy of St. Mary for support. Deputy Hilton: yes, certainly as Connétables, we would have police checks done and now that the Procureur is an elected position, I would expect that also to be carried out but I will make sure that that does get put into statute, that all Procureurs ... it is essential, if you think about it, the Procureur is looking after the finances of the Parish so why should you not have a C.R.O. (Criminal Records Office) check done on the Procureur? I thank the Connétable of St. Brelade and numerous Connétables I think basically for the clarification on certain of the parochial authority and the Honorary Police training. For those who think this has been rushed through, this is draft 31 of the law so it has been looked at in pretty short time since June. This was the final one, draft 31, so I think we have done our best. Support of Senator Le Marquand. Deputy Martin: she is quite correct. There are little laws which, as she said, which I am going to go through the Articles, I wonder if I should go through them. I do not know if I can cope with another hour of this. **[Laughter]** But could I just say on behalf of all the Connétables, I thank the majority of people supporting this. This is common sense and really a thing that should have been done years ago and this just clears up the matter of the Connétable not being a policeman. Just for Deputy Pitman, if the hypothetical thing which you brought up before, I would assume it would be down to the Chef de Police who has the operational policing powers in that Parish to take over command in his own Parish. If I have forgotten anyone, I am sorry, but I ask for the appel.

**The Bailiff:**

Very well. The appel is asked for, then, in relation to the principles of the law. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 45</b>		<b>CONTRE: 5</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		
Senator A. Breckon		Deputy M. Tadier (B)		
Senator S.C. Ferguson		Deputy T.M. Pitman (H)		
Senator A.J.H. Maclean		Deputy M.R. Higgins (H)		
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				

Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Bailiff:**

Senator Ferguson, do you wish this matter to be referred to your Scrutiny Panel?

**Senator S.C. Ferguson:**

No, thank you, Sir.

**The Bailiff:**

Very well. We come then to the individual Articles. How do you wish to take them, Connétable, do you wish to take them *en bloc*?

**2.2 The Connétable of Trinity:**

I am getting a lot of advice on this at the moment. I have got pages but I am quite happy to take them *en bloc* [**Approval**] and if anyone would want me to go through the individual questions, I am quite happy to.

**The Bailiff:**

I think it would be perfectly proper to propose them *en bloc*. Naturally, you must deal with any questions which arise in relation to any Article from any Member.

**The Connétable of Trinity:**

Yes, if I can advise and help, I will.

**The Bailiff:**

Are they seconded? [**Seconded**] Does any Member wish to speak on the individual Articles or the Schedule? Very well, all those in favour of adopting the Articles and the Schedule, kindly show? Those against? They are adopted. Do you propose the Bill in Third Reading, Connétable?

**The Connétable of Trinity:**

Yes.

**The Bailiff:**

Is that seconded? [**Seconded**] Does any Member wish to speak in Third Reading? The appel is called for in relation to the Third Reading of the Bill.

**2.3 The Connétable of Trinity:**

Just before we take the vote, Sir, it seems a lot of work has been done. Could I just thank the Law Officers and the Attorney General for his support throughout and also to say that the Charter of Henry VII in June 1495 reflects the pivotal part played by the Connétables in the Island’s democratic institutions for over 500 years. The role has included policing of the Parishes but since the States decision of 1998, the Connétables have not performed this operational and policing role. This is another milestone in the evolution of the honorary service and the role of Connétable and it gives me great pleasure to propose it in Third Reading. [**Approbation**]

**The Bailiff:**

Very well, the appel is called for, then, in relation to the Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 46</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy T.M. Pitman (H)		
Senator A. Breckon		Deputy M.R. Higgins (H)		
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				

Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Connétable of Trinity:**

Just before, Sir, could I just say I have to attend a funeral in three-quarters of an hour so I will be leaving shortly.

**The Bailiff:**

Very well.

**Senator I.J. Gorst:**

Perhaps I could just beg the indulgence of the Assembly. I shall be asking my Assistant Minister to act as rapporteur for the proposal of the 3 Tax Information Exchange Agreements and I believe also that the Chairman of P.P.C. (Privileges and Procedures Committee) will be asking him to act as rapporteur for the appointment of members to the Electoral Commission. The reason I raise this is because he has another appointment which he needs to attend and therefore I wonder if we could at this point move to the appointment of members of the Electoral Commission, which is P.39/2012; following that the 3 T.I.E.A.s (Tax Information Exchange Agreements); and the only other 2 items remaining are items of the Minister for Economic Development and he is quite satisfied to take those at the end of the sitting.

**3. Electoral Commission: appointment of members (P.39/2012)**

**The Bailiff:**

Very well. Do Members agree to proceed in that way? We will take next Projet 39/2012 - Electoral Commission: appointment of members - lodged by the Privileges and Procedures Committee and I invite the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to refer to their Act dated 7th March 2012 in which they agreed that the Electoral Commission should be comprised of 3 Members of the States, one of whom would be Chairman, together with 3 other persons with appropriate skills and experience who are not Members of the States, appointed by the States on the recommendation of

the Privileges and Procedures Committee following a recruitment process overseen by the Jersey Appointments Commission and to appoint the following persons as members of the Electoral Commission in accordance with the decision of the Assembly: Dr. Jonathan Renouf; Professor Edward Sallis O.B.E. and Mr. Colin Storm.

[11:30]

**The Connétable of St. Helier:**

Sir, could I ask Senator Bailhache to be rapporteur?

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

It gives me great pleasure to propose the nomination of these 3 individuals as members of the Electoral Commission. On 7th March this year, the States agreed to amend the original terms of reference of the Commission so that it became a body composed of 3 States Members and 3 members from outside the States. I appreciate that some Members disagreed with that decision, but I hope that Members will be prepared to accept the democratic will of the majority and move on to the next stage of the process, rather than reopening that decision. The P.P.C. was charged by the States with responsibility for taking the necessary steps to find 3 members of the public, and the proposition also charged the P.P.C. to do this in co-operation or in conjunction with the Appointments Commission. In practice, the entire recruitment process was managed very closely by the chairman of the Appointments Commission, Mr. Alan Merry, together with Mr. Julian Rogers from that Commission, and I would like to pay tribute to both of them for the enormous care which they took in the process. From the very beginning they ensured that rigorous criteria were employed for the short-listing process and at every stage of the process thereafter. They wrote to the Chairman of the P.P.C. at the conclusion to confirm that the standards of the Appointments Commission had been complied with in every respect. Twenty-five people applied for membership of the Commission following an advertisement, and a selection panel was set up under the chairmanship, as I have said, of Mr. Merry, and I was asked to sit on the panel and Senator Ferguson also represented the P.P.C., because the chairman was unavailable on the dates which had been fixed. A number of very specific criteria were used for the short-listing process, and they have all been set out in detail in the report accompanying the proposition. In particular, the appointments board used 3 key criteria. First, the experience of applicants in hearing conflicting evidence and views and coming to a reasoned conclusion; secondly, there was concern to provide a balance to the political experience already on the Electoral Commission through the 3 States Members; and thirdly, no pre-determined views on the issues being looked at by the Commission. It would not be appropriate for me to name any of the unsuccessful candidates, but I think it is fair to say that a number of persons who put their names forward had significant knowledge and experience relating to the issues that the Commission would have to consider, but they were excluded at the short-listing stage because they could not fill one or more of those criteria. After the short-listing process, 9 candidates were short-listed but unfortunately one was unable to attend and 8 applicants were accordingly interviewed by the panel. I believe that we are extremely fortunate to have identified 3 nominees of the calibre of Dr. Renouf, Professor Sallis, and Mr. Storm. Their biographies are set out in the report attached to the proposition and I will not repeat that, save to say that they collectively bring very considerable experience in the fields that they have worked in. In addition, they will bring a completely independent and new perspective to the work of the Commission, with none of them having been involved in any of the issues under investigation in the past. I would like to conclude by thanking all those who put their names forward to join the Electoral Commission, but in particular to thank Dr. Renouf, Professor Sallis, and Mr. Storm for being prepared to give up an enormous amount of time on an entirely voluntary and honorary basis to help the Electoral Commission to complete its important work. I move the proposition.

### **The Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? Yes, the Connétable of St. Lawrence?

#### **3.1.1 The Connétable of St. Lawrence:**

The Senator has said that a prerequisite for appointment was that no expression of pre-determined views had been made by the candidates, and I would like him to explain to us how the candidates were required to prove that, and to confirm what research was undertaken by the Appointments Commission to prove their assertions of having not made their views known beforehand.

#### **3.1.2 Deputy R.G. Le Hérisier:**

I agree with what the Constable of St. Lawrence has said. I think there is this notion that if you are a political virgin, you will be a much better member of the committee, and there is this strange composition where it is embraced in the term: "Balance the political experience", this strange thing where there are people with political experience, some of whom are known - one has not spoken - to have exceptionally strong views, and views that may have been reached by a process of very clear reasoning, but views that may be visceral, they may be just part of their D.N.A. (Deoxyribonucleic acid), so to speak. It gives the impression that the 3 outsiders are somehow going to be honest and wise men - men, unfortunately; not women - who will somehow balance the strong and possibly entrenched views of the States Members. I find that very odd. I find it odd in the sense that by having said that these people must be total political virgins, a lot of good people have possibly been excluded, because those people could have been included under the criteria of ability to hear conflicting views and come to reasoned decisions. Those people, if they had been - as I am sure a lot of the applicants have, from the names I heard - well trained, had they been well experienced in investigative Commissions and bodies they would be absolutely scrupulous in reaching a decision (a) based on the facts, and (b) they would make it very clear in the process, as people do normally in these situations, where their biases lie so that people working with them could bear that in mind as they themselves assess the kind of views these people were putting forward. So I think it is a shame, because I have heard that people who, for example, have worked on other Commissions in the Island and elsewhere: Clothier, maybe Carswell, I do not know. These people have been automatically excluded. But yet, some of these people bring enormous experience; they are people who, if judged, would be shown to be people who can reach rational decisions, who can hold their ends in arguments, and are very professional in assessing evidence. The notion that you have to come to this totally, without any views, and that often extends to any knowledge, if you look at some of the people being proposed; I do not doubt for a moment some of these people will be able to get up to speed very quickly, they will be very insightful people, they will be able to judge arguments and so forth. But I find it very odd that we have people, some of whom have exceptionally strong views, as I said, views that are almost part of their DNA; apparently they need to be balanced out by people who are totally uninvolved with these issues. I would have preferred people who, in public, can argue their case, can be seen to judge evidence properly, and the judgment upon them can be made that way. But sadly, there is a real danger, no matter what reassurances the Chairman gives - and I do not doubt for a moment they are faithfully given - this is being seen in many quarters of the Island as a heavily, heavily biased body, and to talk of the criteria of the Commission does not give the full picture.

#### **3.1.3 Deputy T.M. Pitman:**

I will not speak for long, because I do not think much more needs to be said. I agree entirely with Deputy Le Hérisier. I find it very strange now. Let us be quite honest; I think any need to be a political virgin, as the term was used, went right out of the window when we betrayed the former Deputy of St. Mary's original idea for this proposition. It is an absolute nonsense. It has to be seen

as an absolute nonsense because, with the best will in the world, we have now got 3 members who... well, I do not know one of the members, because again he is not here and he rarely is here, and that is a fact, and yet he is going to sit on an Electoral Commission. But the reality of this is that we have 3 very pro-Connétables and that may be right, that may be wrong. But it has completely undermined what the former Deputy of St. Mary tried to do. Now, I am not going to say anything derogatory about the gentlemen being proposed here. I only know one of them and I am sure they are all excellent people. However, this argument just holds no weight in the way they were selected. I know 3 of the people who were unsuccessful and I have to say, one of them I do not get on with at all, but all 3 that I know live and breathe politics and care about Jersey's democracy. All 3 of them would have been absolutely excellent for this, particularly given the mistake we have made in allowing politicians to sit on it. I do feel it is a great shame that the Chairman says those people were excluded, and I would like him to explain a bit more about why some people were excluded. Was the real reason perhaps that they have different views, that they would bring some balance? Because surely what we need here is balance. I know we had at least one former Senator and Deputy who applied to join. He would have been an excellent member, in my view, with the makeup. As I say, I want to really hammer this home: I cannot see why some of those people were excluded given that we have already got this pro-Constable idea. That may be right, it may be wrong. There is no balance in this. It is, in my view, a complete sham, what we have done, and it is a great disappointment that it has taken us 20 years to get this far, and I really thought there was hope earlier this morning when I heard the Constables wanting to see some of Clothier implemented. I mean, I really wondered what dream I had woken up from. So, out of respect to those people who I do not know, I think I am going to abstain on this. I would just like to point out, it is no disrespect to them; I just think this is a complete and utter sham, and the sooner we perhaps get the U.K. to decide on a proper format, the better.

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

The previous 2 speakers have said much that I was going to say, so I will be very brief. I do think it is crazy. We have set up a Commission where we say that we were recruiting members who have no pre-determined views on the issues to be looked at by the Commission. We already know from election statements and others, and in fact from attendance on P.P.C. meetings and so on, the views of some of the people who are political members of it, and I have no confidence in the fact that they have set views, and I would be so amazed if they came up with an alternative view to the one that they started off with. To exclude others because you were looking for people who have no pre-determined views just makes a mockery of the whole thing. The fact is, as has already been stated, we have one member of this Commission who shows contempt for the House because even on this, voting on who the members are, leaves the Assembly early and does not even come for this debate. If he shows that degree of commitment to the task, well, has he made up his mind already? I think so.

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

Yes, a constituent sent an email round that summed it up very succinctly. It said: "We have got an Electoral Commission which cannot be independent because we have got one member of that chair who is elected with a clear mandate to maintain the presence of the Constables.

[11:45]

We have got a Constable, and we have got a representative who is proud and got elected partly on the basis that he is the son of a Constable." So, it is very simple here; we have got a lot of support for Constables there. Then to say that what we must choose from the rest of the membership is people with no fixed opinion or no deeply-held conviction about how we should go about representing ourselves on this Island, is just, as previous speakers have said, an absolute nonsense.

When Deputy Wimberley was presenting his wish to have an independent Electoral Commission, the key that he said all the way through was “independent”. I said to him that what he was proposing was totally naïve and that it would be sabotaged along the way, if not early on then later on. Sabotaged by the membership, sabotaged with its terms of reference, sabotaged with the question to be asked in any possible referendum, and sabotaged by an intensive campaign to maintain the *status quo* by many people in this House. Now, it seems to me that we are stuck at this first stage: the independence of this Commission is completely spurious. We are doing something to go through the motions to produce the answer that we thought of in the first place. I am convinced that is the process. It is not about these particular individuals; the answer is to try and sabotage, to point out that this process is a farce, is to vote against, today, these members.

### **3.1.6 Connétable S.A. Rennard of St. Saviour:**

I am sorry and I am very new at this. I thought that the Commission and the other 3 people that were chosen were going to listen to what the general public had to say. I may be wrong, but I thought the general public could go to these people, talk to them, give their ideas and their views. To say it is preconceived ideas, some of the Members here say they are people from Clothier. Well, they had the original ideas, so who would want them on the Commission? You cannot have it both ways, my sweethearts, I am sorry. [Approbation]

#### **The Bailiff:**

That may not be a Parliamentary expression. [Laughter]

#### **The Connétable of St. Saviour:**

I know, I am sorry, but I am new. I do appreciate what everybody is saying, but surely the general public were going to be asked their views and they could give their views as to what was going to happen and how they felt about things. If they are not going to be allowed to do that, then it is like Deputy Southern says, it is a *fait accompli*, but it is not. The general public are going to be asked their views. If you are frightened about what the general public say, then I am sorry but I never realised that being a Constable and representing my Parish and basically the Island was going to be such a thorn in the side of so many - I do not know - childish people in the States. [Approbation]

#### **The Bailiff:**

Connétable, I appreciate that was your first speech, but I do not think you should accuse other States Members of being childish people. I am sure you withdraw that assertion.

#### **The Connétable of St. Saviour:**

I withdraw it and I do apologise, but I do still love you all. [Laughter]

### **3.1.7 The Connétable of St. Helier:**

The rapporteur is perfectly able to sum up himself. I just want to comment on a couple of speakers whose opposition to having States Members on the Commission has led them to attack this proposition, which I find very strange. That debate was had, I voted against having States Members on the Commission. I am not standing up today attacking this proposition and saying that it lacks independence or saying that these Members lack independence. Deputy Southern said he would vote against it because the Commission is fatally compromised and lacks independence. That may be the case, but that is nothing to do with the proposition before us today, and I was surprised some of the speeches were allowed because they appeared to be attempts to re-run the previous debate, and I would recommend if Members are so unhappy about the previous debate, they know what to do about it. But the answer is not to come to this proposition and attempt to poison the well, as it were, with their views. They are passionately felt and I respect that, as I say, I voted with them. I perhaps spoke less passionately on the day but I voted with them in favour of

not having States Members on the Commission, but that debate was lost; can we move on? I would remind Members that this whole process was supervised by the Appointments Commission. Would they rather we go back to selecting members for this kind of panel ourselves? I think not. The Appointments Commission does a great job and we are grateful to them for the time they put in. I am certainly looking forward to finding out how these 3 people can savour the whole process, and I think they will. I think they will add a great deal to what some Members regard as a flawed process. Finally, I would say to those Members, let us see what they come up with. Let us not condemn them before they have even had their first meeting. Let us see what they come up with, and there will be plenty of opportunities later down the track to say whether we feel the Electoral Commission has done a good job or not.

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

I hear some groans over there, but this is a democratic debating chamber and one has a right not only to talk about things which are in a proposition, one has a right and a democratic duty to talk around relevant issues, things which should be in a proposition that are not there, otherwise one is failing in one's duty. If one cannot speak for 10 minutes without receiving sarcastic, chastising, and ultimately incorrect comments from other Members, then I think that is unfortunate. I do not mind when people disagree with me, but certainly let us have other people's views listened to. That said, I have taken on board the comments, and I will not be making this speech very long. The argument needs to be put, quite rightly, as the Constable of St. Helier has said, for reasons not to support this proposition. Now, the obvious argument which has been put forward already is to say that, okay, we may not have agreed with States Members being on the Electoral Commission in the first place. That is in the past now, let us get on with this and endorse it. It is not the fault of these individual members of the public, who are independent. They have put their names forward, and that part is absolutely correct. There are 2 issues: firstly, this idea that we have to accept the democratic will of the Assembly, as was voiced by Senator Bailhache only a few moments ago, first of all smacks of double standards if it is to be applied universally because if we were to accept the democratic will of the Assembly, we would not have brought forward a proposition from P.P.C. I am not going to say what I think the dynamics were that led up to that, because it could put me in an invidious position. What I will say is that we should have stuck straight away, if we are going to accept the adage that we accept the democratic will of the Assembly, was that over a year ago we did democratically decide to have an Independent Electoral Commission. That was at the very heart of the review, and that was overturned. So this argument today that we should accept the democratic will does not hold water from the proposer. But nonetheless, there is a more concrete reason why we could, arguably, and I believe should not be passing this proposition today. It is one to do with legitimising it, because if we believe very strongly, and it is almost a 50/50 split (not quite) of Members who are very uneasy about having States Members with very strongly pre-expressed views on that panel, then we are endorsing it by continuing down the road with something which is so inherently flawed, which many of us, if not all of us, believe. There is a very good reason, if not to vote against this because it may send out a negative message to those who quite honourably put their names forward to work on this issue, but we should certainly be abstaining from it. It is a very good skill, not just in politics but in civil society too, to be able to empathise with people, to put yourself in their shoes, to see things as they might see it. This is a psychological tool to try and encourage Members to see it from my perspective: we may not be debating an Electoral Commission today, we might have been deciding to have a Commission on whether the Dean should sit in the States Assembly. Okay, I have got pre-determined views on that and for some reason I manage to convince P.P.C. that I should be chairing this committee. I manage to get a majority on P.P.C. to agree that; somebody proposes: "Why do we not get Deputy Tadier to look at the role of the Dean in the States Assembly?" even though, let us imagine, we have got an independent body to look up to ... perhaps an academic, perhaps somebody who has got

no pre-determined views. So who should I have on that committee with me? Who are the other left-wing atheists or agnostics in the Assembly? Let us have perhaps Deputy Pitman and Deputy Southern. We are going to decide whether or not we want to have the Dean in the Assembly. Or it could be somebody else who is not an atheist but is a secularist. Incidentally, I will certainly listen to other views and if a very strong case is put for keeping the Dean in the Assembly, and if a bolt comes from the blue and I am almost struck down one day on the way to work riding my bike in the Royal Square, I will certainly consider changing my mind if the evidence is compelling. So what we must do now is have 3 people, Bob, Jo and Mary, but they must have no views on religion or on politics, certainly no pre-determined views. They must not have even necessarily thought about it, and if they have thought about it they must not have spoken about it publicly. That is somehow going to balance for the lack of balance which me and my team are bringing to that. The whole thing is a complete nonsense and that is why none of the other States Members in our right minds would support that position. It is exactly the same position; it is just the other side of the fence. It is because it is the left who would be doing that; we could not agree with that. The whole thing is flawed, and I think what Deputy Le Hérisser was getting at essentially relies on the principle of Hegelian Dialectics which, for Members and for those listening, essentially means that if you are going to have a position where one argument is put forward, you have a counterargument which is put forward equally robustly, you have the discussions, you thrash it out, and that is exactly why committee systems and things like P.P.C., *et cetera*, work so well. It is not because everybody agrees, it is because people disagree and then you find consensus and you find a way forward. How on Earth is that going to happen if we have 3 very strong-willed, strong-minded people ... certainly 2 strong-minded people and one person who, when he does come to work, will do what he is told anyway.

**The Bailiff:**

That is an improper imputation on another States Member.

**Deputy M. Tadier:**

I realise that, Sir. I take that back. I think this is a good reason to vote against this, because these 3 people are not the 3 people that we should necessarily have. If they are, they are being used improperly, and I do not feel their expertise will be allowed to shine through and come up with the merit. If it was these 3 people and another 3 people who are members of the public and have put their names forward ... What we have seen is that there has been a surplus of individuals who are interested in the issues of political reform, coming from all different angles, and why could we not have simply had 6 or 7 of those people to thrash out the issues quite out of the hands of States Members? Just to address the issue of the Constable of St. Saviour, I do wish that “sweetheart” could be made a permissible use of language under Standing Orders, because it is such a great thing to hear, rather than perhaps what we are accustomed to hearing, and it is certainly goes in order with the Code of Conduct which talks about treating other Members with courtesy. Just as an aside, if I am ever to be chastised by anyone, let it be the Constable of St. Saviour. I completely take on board what she said: the real issue here is the ‘dynamics of group’ thing. When you are sitting around a committee, you are a member of the public; okay, you may have a position, you may be an academic. When there are 3 politicians there in the group who have got strong opinions or certainly are used to the political cut and thrust, it is very difficult for those individuals, even inadvertently, not to be led. Of course, what we must take on board from the previous speaker and others who have spoken, it is absolutely imperative that the public do make submissions. It is important that the public, either way if they are supportive or reform, what type of reform that they want, is led. We probably need champions in this Assembly, I imagine, who are going to come forward and support different positions so that the debate does happen in civil society. So, in some way this debate is a little bit academic. It is up to the public to make their submissions, and I would

hope that all of us, irrespective of what our views on reform are and who should and should not be in the States, will encourage the public to debate it, because that is the best safeguard that we have about any suggestion that these things may be pre-determined.

**Deputy T.M. Pitman:**

I do not know what the word to use is, but the Deputy did refer to me as an atheist. I would like to point out that I am not an atheist, but in 45 minutes I could probably expand on my spiritual beliefs, if the House so wishes.

[12:00]

**The Bailiff:**

Thank you very much, Deputy. It is not right for one Member to refer to the religious beliefs of another; it is a personal matter. It seems to me that it is not a matter that should be ventilated in the Assembly. Deputy Martin?

**3.1.9 Deputy J.A. Martin:**

I will be brief. As an ex Chief Minister said, we are where we are and even when I was in the committee of P.P.C. and this was presented to me I straight away said: "I am not voting for anybody. It has not gone my way. I do not agree with the whole thing." I do not know anything about these people. I know one of them personally. I think the States Members now who can work with outsiders to present some very good cases and evidence to this Commission have to work even harder and they have to produce the facts because if this comes back, or when it comes back, the Commission will have to be accountable for the decisions they have made. So I think that I would feel slightly hypocritical to vote against something completely - because I voted against all the rest of it but, as I say, we are where we are - working, hopefully, like I did with Deputy Tadier, the ex-Deputy of St. Mary, professors and whoever, looking at the way it is done in different small jurisdictions across the world, that I would bring good evidence to this Commission and it would be for them to rubbish it, basically. Where we have started and where we have got to, for 3 independent people, is the only part I would probably support. I know it is the end of a bad journey but I think I am going to have to support it, but I know I will be coming back with lots of submissions or a submission supported by lots of people. I do not have a view. That will be after consultation.

**3.1.10 Connétable M.P.S. Le Troquer of St. Martin:**

The closeness referred to by Deputy Tadier was a close vote as to whether States Members should have been on the panel. I think the closeness of the vote as suggested, when the Chairman was elected, was not so close.

**The Bailiff:**

Does any other Member wish to speak? Very well, I call upon Senator Bailhache to reply.

**3.1.11 Senator P.M. Bailhache:**

The Constable of St. Lawrence asked what research had been carried out to ascertain whether the proposed members of the Electoral Commission were independent and had no preconceived views. I think it is fair to say that the interviewing panel, having questioned the candidates for appointment, unless there was reason to doubt what they said, accepted that they were telling us the truth. When those persons told us that they had no fixed preconceived views about the issues that the Electoral Commission would have to consider, the Appointments Panel accepted those statements and I think that was the right thing to do. Deputy Le Hérisser suggests that the 3 members of the public whose appointment is under consideration today would have to overcome

the entrenched views of States Members and he asked, rhetorically, how on earth they could do that. I think I said when the debate took place on the appointment of the Chairman that I had no fixed views that were incapable of being moved by evidence and by argument to the contrary, whether relating to the presence of the Connétables in the States or indeed on any other issue. I know that the other 2 States Members of the Commission, the Constable of St. Mary and Deputy Baker, are equally flexible in their approach to the matters that have to be considered. I am sorry that, in a sense, some suggestion was made that Members were not capable of acting independently in this way. Deputy Martin suggested that the Electoral Commission would have to consider the facts, listen to the evidence and reach a conclusion and I think she was absolutely right to express it in that way. At the end of the day, there are 2 constituencies that the recommendations of the Electoral Commission will have to satisfy. The first constituency is the membership of this Assembly. The second constituency is the public as a whole, who will have the opportunity in a referendum of expressing their views on any recommendations of the Commission. I am not going to rise to the suggestions that were made by some Members as to the way in which the Electoral Commission will approach its work. The Electoral Commission will act independently, will be rigorous in its approach to the evidence and will be fair in its approach to anyone who gives evidence to it. There are strong views, strong conflicting views, as to the way forward and somehow the Electoral Commission has to hear those views, give credence to them, but, at the end of the day, reach a reasoned, logical and fair decision as to the recommendations that it should make to this Assembly. So far as the 3 members of the public are concerned, I think that we could have found no finer representatives of the public to play a part in this important process and I hope Members will support their appointment. I renew the proposition.

#### **The Bailiff:**

The appel is called for in relation to the proposition of the Privileges and Procedures Committee. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 40</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 4</b>
Senator P.F. Routier		Deputy G.P. Southern (H)		Deputy R.G. Le Hérisssier (S)
Senator P.F.C. Ozouf		Deputy S. Pitman (H)		Deputy M. Tadier (B)
Senator A. Breckon		Deputy G.C.L. Baudains (C)		Deputy T.M. Pitman (H)
Senator S.C. Ferguson				Deputy M.R. Higgins (H)
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				

Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**4. Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China (P.33/2012)**

**The Bailiff:**

The next matter is projet 33, Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China, lodged by the Chief Minister. I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to ratify the agreement between the Government of Jersey and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income as set out in the appendix to the report of the Chief Minister dated 28th March 2012.

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

As I indicated earlier, I will be asking my Assistant Minister with responsibility for external relations to act as rapporteur.

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

This proposition follows well-trodden territory. The Assembly agreed, in February 2002, to support an O.E.C.D. (Organisation for Economic Co-operation and Development) tax initiative on transparency and information exchange through the negotiation of T.I.E.A.s and a number of those agreements have been negotiated and signed and also ratified by this Assembly. The latest agreement is, in fact, not only a T.I.E.A. but also a double-taxation agreement or, more accurately, it is a double taxation-agreement which includes provisions relating to the exchange of tax information. It was signed by the Chief Minister in accordance with the provisions of the 2005 law and I move the proposition and would be happy to answer any questions.

**The Bailiff:**

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

**4.1.1 Deputy R.G. Le Hérissier:**

I wonder if Senator Bailhache could inform us, when a decision is taken, what will be the role of the Government of China *vis-à-vis* the Special Administrative Region of Hong Kong.

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

It is a general question and I am trying to be constructive here. There have been comments recently made in a national newspaper and then responded to by the Jersey Financial Services Committee by their person in charge. I know Members will probably be aware of the context of this. There have been suggestions that the exact figures that were given about the decline in Jersey Finance's figures and the reasons thereof were not necessarily accurate and there has also been an attempt, I think, for the 2 individuals, who are academics and economics, I think in Denmark but certainly in Scandinavia, to suggest that they were not necessarily up to that research. But putting all that aside, there has been a suggestion that for every T.I.E.A. that we sign - and there has been research done, not necessarily just for Jersey but for jurisdictions such as ours - that the receipts we can expect, deposits in the finance industry, will decline by 3.8 per cent from the country in question from when we sign that. I understand, of course, you cannot necessarily apply that figure across the board. My question to the rapporteur is does he accept, whether the figures themselves are correct or not, that signing a T.I.E.A. does have an impact and whether that impact does decrease the amount of deposits? That particular aspect has not been responded to by Jersey Finance, which I think did a partial job in responding but was perhaps slightly defensive in suggesting that all of the decline had been to do with the economic downturn and not to do with T.I.E.A.s as the research had suggested. If there is a decline in deposits it should be seen as something welcomed from the Chief Minister's Department in the sense that the deposits here, hopefully, would be less sustainable and if people are deterred from depositing in Jersey because we have T.I.E.A.s, presumably that is not the kind of long-term business we want for the Island anyway. Would the rapporteur, on behalf of the Chief Minister, perhaps consider whether it is worth making a statement either now or in the future, politically, rather than leaving it simply to the J.F.S.C. (Jersey Financial Services Committee) to talk about these issues in what I would call perhaps a more constructive way to interpret these figures? That is the question. It is a general one and I will not be making it, of course, for the next proposition.

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

I would like the rapporteur to explain to Members, by referring to the Articles of the Tax Information Exchange Agreement, what steps a foreign tax authority would have to take in order to successfully acquire the information that it wanted on the tax status of one of its nationals in Jersey. Could he tell us about the hurdles that a tax authority needs to overcome in order to successfully get some information out of our tax authority?

#### **4.1.4 Senator P.F.C. Ozouf:**

To respond to Deputy Tadier's point in a wider sense, we cannot nationalise our banks and we cannot require people to do things and to support Jersey. People will be free to use Jersey for all sorts of different reasons and there are global tectonic plates moving in terms of global capital flows which we are being affected by and I think that it is important not to misinterpret some data on deposits and link the issue to do with T.I.E.A.s. What is clear and what he is perhaps right in asking to do is to focus on the areas of the world where good deposits - clean, well-sourced, know-your-customer-compliant deposits - can be attractive to this jurisdiction. The eurozone is in crisis. The U.K. is going to see flat-lining, declining growth. We must focus our attention on the growing areas in the world of which... and it easy. I attended a dinner last night with the chief economist for the States cash managers who painted a picture of pretty difficult economic situations in the U.K. and the eurozone, which we will be affected by.

[12:15]

This means that we must be stepping up, even further, our activities to secure deposits in the areas of the world that are not in crisis. Yes, there is a slowing down of the economy even in China and Hong Kong, but there are growing areas of the world. In the Gulf and Latin America there is good-quality business and this T.I.E.A. and making agreements is about securing our share of that market of legitimate good-quality business.

**The Bailiff:**

Does any other Member wish to speak? Very well, I call upon the rapporteur to reply.

**4.1.5 Senator P.M. Bailhache:**

In response, first of all, to Deputy Le Hérisssier who asked what the role of the Government of China might be, the short answer is none. China has made it clear that when Hong Kong became part of China there was one country but 2 systems and the agreement that we have signed is an agreement with the Hong Kong Special Administrative Region and not with the Republic of China itself. I hope that Senator Ozouf has dealt with the points made by Deputy Tadier but perhaps I would just add on that that the signature of T.I.E.A.s does not seem to me to be a negative matter, at least so far as G20 and European Union and O.E.C.D. countries are concerned, because what the signature of Tax Information Exchange Agreements and Double-Taxation Agreements shows is that Jersey is a transparent jurisdiction, complying with international standards and that it is, broadly speaking, a well-regulated jurisdiction. Now, that is good for the kind of business that the Island wants to attract. So I do not take the view that the signature of a T.I.E.A. has any negative effect upon the functioning of our financial services industry. Deputy Southern asked what steps a foreign jurisdiction would have to take, what hurdles they would have to overcome. I think the answer to that can be quite simply expressed in saying that the foreign jurisdiction has to make a case that the information which it seeks is covered by the Tax Information Exchange Agreement that has been signed. An application has to be made, which has to contain sufficient particulars to make it clear to the tax authorities that the application is one that falls within the terms of the agreement. I might add that when the President of the Finance Commission of the French Senate came to Jersey a few months ago he received a presentation from officials and he expressed, I think, initially, some questions about whether the agreement that the Island had signed with France was effective for the exchange of information. It was pointed out to him that, of the 18 or so applications that had been made at that time, the majority of them had received positive responses and the information had been disclosed. So far as the rest were concerned, they were matters that were still under consideration. The President of the Finance Commission, who is not a man, I think, given to readily accepting things that were not to his previous way of thinking, was persuaded that the agreement was working extremely well. I think that the agreement with the Hong Kong Special Administrative Region is another important one. It is a double-taxation agreement and, for a small number of people who work in both countries, that may be of practical assistance. I move the proposition.

**The Bailiff:**

All those in favour of adopting the proposition kindly show. Those against. The proposition is adopted.

**5. Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of the Italian Republic (P.34/2012)**

**The Bailiff:**

We then move to Projet 34 - Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of the Italian Republic - also lodged by the Chief Minister. I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to ratify the agreement between the Government of Jersey and the Government of the Italian Republic on the exchange of information relating to tax matters as set out in the appendix to the report of the Chief Minister dated 28th March 2012.

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

As I indicated earlier, unfortunately Senator Bailhache now has to make an appointment and, therefore, leave the Assembly. As the Greffier has just said, this is a request for ratification of a T.I.E.A. signed with the Italian Government and is in line with the standard T.I.E.A.s that this Assembly has previously ratified as well and I propose ratification.

**The Bailiff:**

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

**5.1.1 Senator S.C. Ferguson:**

Perhaps the Chief Minister can let us know if there has been a gradual increase in the number of inquiries as the euro crisis has continued. Has he any idea whether that has happened?

**5.1.2 Deputy G.P. Southern:**

I wonder if the Chief Minister would speak further about item 5 on page 3 of the report which suggests that, whereas T.I.E.A.s are often signed, D.T.A.s (Double-Taxation Agreements) are less often the case because Jersey is a zero tax jurisdiction. Could the Minister state the extent to which this particular agreement covers business taxation and the zero rate?

**5.1.3 Senator P.F.C. Ozouf:**

The Deputy knows the answer to the questions as these are Tax Information Exchange Agreements in relation to individuals.

**The Bailiff:**

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

**5.1.4 Senator I.J. Gorst:**

I am not aware, in answer to Senator Ferguson, of whether there has been an increase in requests since the start of the financial crisis other than to say, of course, we have been signing more T.I.E.A.s and ratifying more T.I.E.A.s. So, by extension of that, one might expect that requests have been made from those jurisdictions where we now have information exchange agreements in place. I think that Senator Ozouf has answered the question of Deputy Southern in that regard.

**Deputy G.P. Southern:**

Sir, could I follow up, please, and have a supplementary?

**The Bailiff:**

No, not another question. If you feel that there has not been answer to ...

**Deputy G.P. Southern:**

Can I seek clarification?

**The Bailiff:**

Let us see.

**Deputy G.P. Southern:**

The Minister for Treasury and Resources has said that this agreement applies to individuals but, in fact, in Article 2 it talks about profits tax. In Article 3 it talks about business, it talks about “company”. This clearly refers to business taxation as well at which we are zero-rated. Can the Chief Minister explain further why this is a Double-Tax Agreement and not a T.I.E.A.?

**The Bailiff:**

This is a T.I.E.A., not a Double-Taxation Agreement.

**Deputy G.P. Southern:**

I apologise, Sir. I was thinking of the Chinese one. However, Article 3 in the Italian one does talk about corporate income tax and, therefore, applies to companies. My question is still valid.

**The Bailiff:**

Chief Minister, are you able to assist on this?

**Senator I.J. Gorst:**

It is my understanding it relates to individuals. Individuals may have interest in companies, but I am not sure if the Attorney General wishes to answer more fully.

**The Bailiff:**

Looking at Article 1, it says: “concerns taxes covered by this agreement.” In Article 3 it says: “taxes cover corporate income tax in Italy.” So presumably if a Comptroller of Income Tax in Italy is asked about the tax of an Italian company it is covered.

**The Attorney General:**

Yes, Sir. I think it simply covers the tax by whomever payable. Whether that is an individual person or whether it is a corporate person, it seems to me to be the same thing.

**Deputy G.P. Southern:**

I thank the Attorney General and I did warn him yesterday that I might be asking questions, but he said: “Give me some notice.” I do apologise for not giving him notice.

**The Bailiff:**

The appel is asked for in relation to projet 34, the agreement with the Italian Republic. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 37</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				

Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**6. Ratification of the Agreement for the Exchange of Information Relating to Tax Matters between the Government of Jersey and the Government of the State of Qatar (P.35/2012)**

**The Bailiff:**

Then we come to projet 35, which is a similar agreement - Exchange of Information Agreement between the Government of Jersey and the Government of the State of Qatar - lodged by the Chief Minister. I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to ratify the agreement between the Government of Jersey and the Government of the State of Qatar for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income as set out in the appendix to the report of the Chief Minister dated 28th March 2012.

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

Perhaps I will learn the lesson to not just take over a piece of legislation from the rapporteur. This is a Double-Taxation Agreement, unlike the previous one but similar in form, obviously, to the one signed with Hong Kong and, therefore, hopefully Members will see that it is in line with the other Double-Taxation Agreements that we have already signed and this Assembly has ratified. Therefore, I maintain the ratification.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition? All those in favour of adopting the proposition kindly show. Those against. The proposition is adopted.

## **7. Draft Harbours (Inshore Safety) (Jersey) Law 201- (P.24/2012)**

### **The Bailiff:**

We then come back to the 2 remaining matters: first of all Projet 24 - Draft Harbours (Inshore Safety) (Jersey) Regulations - lodged by the Minister for Economic Development, and I will ask the Greffier to read the citation.

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

Draft Harbours (Inshore Safety) (Jersey) Regulations. The States, in pursuance of Article 4 and 4(a) of the Harbours Administration (Jersey) Law 1961 and Articles 49, 127 and 196 of the Shipping (Jersey) Law 2002, have made the following Regulations.

#### **7.1 Senator A.J.H. Maclean (The Minister for Economic Development):**

The Boat and Surf-Riding (Control) Regulations first came into force over 40 years ago, in 1969. Some of these regulations are rigid, bureaucratic and outdated. At the same time, safety concerns have increased with the growth in boating and water sports. Therefore, today, these regulations replace the Boat and Surf-Riding Regulations. The key changes: first of all, the regulations are reduced in number from the original total of 41 to just 15 and now provide a proportionate and flexible modern safety management tool for the Harbourmaster and his team. In brief, the principal changes mean that it will be possible to designate an area of water for a particular sporting competition. Designation notices will replace regulations such as those applying to the 5-knot speed limit within 200 yards of the shore and the restrictions on personal watercraft at Les Ecrehous. Again, this makes practical safety management much more responsive and much more flexible. It does not, I should hasten to add, reduce safety in any way. Annual surfboard, windsurfer, speedboat and jet-ski registrations will also end. One-off registration will be kept for search and rescue purposes and for all boats that can do more than 12 knots or are over 3 metres in length, except for privately-used rowing boats, kayaks and canoes. Insurance requirements will be more comprehensive and give the public better protection in the event of an accident. We will get rid of the odd situation where, at the moment, only speedboats up to 30 feet in length have to be insured.

[12:30]

Reporting serious accidents will, for the first time, include pleasure craft. Extensive consultation with boat owners and clubs took place from 2008 onwards and, in fact, we delayed this proposition to do some additional consultation at the request of the Constable of St. John. We got some useful feedback. A number of issues were raised surrounding insurance, the type of designations planned and the extent of the new requirement to report incidents. To be most effective, I intend delegating the designation of appropriate sea areas, the issuing of permits and local registration to the Harbourmaster. As now, enforcement will remain the responsibility of his team and no new resources are needed. In conclusion, these regulations will bring much needed simplification, flexibility and improvements to the safe management of water-borne activities. I maintain the principles.

### **The Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak on the principles?

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

I will be brief. I think these regulations are very important and will give very useful new powers, particularly the ability to be able to designate areas for particular uses which at the moment have the potential to conflict with each other and generally inform that boat users behave in a responsible manner and I think that has been clearly set out. There are a couple of issues I want to highlight. I ask myself about complications of enforcement, particularly within the territorial waters of the Island, and I would like to hear that the task that appears to fall upon the Parish of St. Helier under page 4 is realistic and can be coped with because, obviously, we need one point of contact for enforcement since these transgressions may take place, in fact, in many different places in the Island. That is one point I want to raise. The other point I would like to raise, and I have raised this before, is that the new regulations include an appeal provision which is to the Royal Court; that is appeal provisions against the Minister's decision, which, although they are going to be delegated, are the Minister's decisions. Now, my concern about this is this is another administrative Law - and I am sure this will be one of many others we have to pass - and if an appeal is made it will deal with such matters as permits, meeting conditions about boats, areas, times, fitness and crew and so on. I ask myself the question, is it right that on these administrative laws we put all those tasks and burden them on the Royal Court? In other areas of life, I think, in laws, particularly, for example, in Planning, we do have modified procedures to help those appeals become more accessible to ordinary people. But in this case I worry about the issues of equality and access to legal assistance if somebody finds themselves having to appeal. The regulations that we have repeat the test that appeal is made on the grounds of unreasonableness and I ask myself is it not time that we should start to look at having an independent tribunal system of laypeople covering all administrative laws where we can have a "full merits" examination of Ministerial decisions rather than put people through the stress and aggravation of having to go to the Royal Court and all the costs and plethora of it on what is an artificial legal constraint of unreasonableness, particularly as we do not have a complaints board that is able to make a binding decision and we do not have an ombudsman. I think it is a general point of principle. I have raised it before and, frankly, I do not know where to take this issue. Maybe it is a matter that Members can advise me or the Minister in reply can tell me where to take this issue, but I think it is something that should be looked at generally. Having said that, I support these regulations and shall be voting for them.

### **7.1.2 Deputy G.C.L. Baudains:**

I have a couple of queries and I did discuss them with the Minister previously but, no doubt due to his workload, he has not been able to get back to me. On page 4, item 7, Regulation 8 requires insurance of all boats. Maybe I have been wrong but it was my understanding that speedboats were designated as those capable of over 12 knots but 28 feet in length, not 30. But my main concern is, while I applaud the Minister's enthusiasm for cutting bureaucracy - and it is something dear to my own heart - I am concerned that this may have unintended consequences because in this day and age when money is tight I think possibly one of the first casualties for the smaller boat is going to be insurance and, whereas under registration it was possible to check these matters, now it seems to me you might need more officers to check it because really the only way you can do it is spot checks at the water's edge. Of course, the person who has gone out with his car and boat on the back of a trailer is not going to have the documentation with him. It is all going to have to be chased up. I hope the Minister can assure me this is not ultimately going to lead to more bureaucracy instead of less.

### **7.1.3 The Connétable of Grouville:**

There seems to have been an anomaly in the previous law in that if you were water-skiing you could take people off the beach behind your boat and not break the law of the 200-yard limit. I just wonder if this has come into the new law and whether it has been looked at.

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

I am going to support this piece of legislation and I would like to say I happen to agree with the foresight of the people writing it because in the interpretation, for example, they have even got W.I.G. (wing-in-ground) craft, which is neither an aeroplane nor a boat and operates just a few feet above the waves. So there has been some thought gone into this. If I talk from an air display point of view, the fact that the water can be designated for safety so that when the display is taking place boats are not underneath it, which has been a problem in the past. I shall support it and I thank the Minister for bringing forward something that has been looked at rather more carefully than some of the others.

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

I do echo Deputy Baudains' worry about insurance, but I also have got some worries about enforcement. We seem to be putting an awful lot of onus on the Harbourmaster to enforce this and it does say in the report that they are largely reactive rather than proactive. From somebody that swims on a regular basis in the sea in the summer, I have had 2 very near misses with jet-skis and their regulation and ensuring that they abide by the law is something that is very dear to my heart, before there is a serious accident. I just would like the Minister to assure us that the Harbourmaster will be taking sufficient checks to ensure public safety is assured.

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

In a similar theme to the previous speaker, I would just like to ask the Minister if a licensing regime was considered. Not that I support that but in Jersey one needs a licence to ride a motorcycle or drive a car, yet somebody can purchase a very fast vehicle that is capable of doing speeds of 70 and 80 miles an hour in water, purchase it, insure it and go straight out on the sea and use it. Like I say, I am not saying I would support that, but I would like to ask if it was considered.

#### **7.1.7 The Connétable of St. John:**

Just a comment, Sir. I have heard the name Harbourmaster mentioned recently. Could the Minister inform us who the current Harbourmaster is, please?

#### **The Bailiff:**

Does any other Member wish to speak? Very well, I invite the Minister to reply.

#### **7.1.8 Senator A.J.H. Maclean:**

There has been a theme of several concerns around enforcement. Deputy Young raised the point first, in relation to the Parish of St. Helier and their duties in that role. I can say to Members that we have been satisfied through the consultation process and indeed in discussions with the Harbours Department, who have responsibility ultimately, that enforcement can be properly and appropriately undertaken without additional resources. The resources already exist within the department to carry out that function. But we will, of course, as Members would expect, continue to monitor, on an ongoing basis, matters such as this. I think I made, in my opening remarks, a comment about the significant increase in boating activities around the Island and, because of that, there are very many more people on and around the sea, which necessitates appropriate enforcement of the regulations. I do believe that, although we have simplified, through these regulations, the safety management of such matters it does not mean in any shape or form that we have reduced the need and requirement to ensure that they are properly enforced. Deputy Young also raised the point about appeals to the Royal Court. I would hope that in such matters it would never get to the stage that appeals would need to go to the Royal Court. I hope that a fair and reasonable approach would be taken, but, nevertheless, he does raise an interesting point. I cannot give him an answer here, but I will raise it with the Chief Minister and the Council of Ministers and

just see whether it is a point that could be furthered. I think that is probably the first course of action and I am happy to revert to him on the conclusions of those discussions. Deputy Baudains, I apologise for not giving him answers to his previous questions. He, again, is very much along the same lines of enforcement and indeed the need for checks and the costs associated. We do believe that we can manage within resources but, of course, as I have already said, we will have to continue to monitor the requirements in that particular area. The Constable of Grouville raised a point about going off the beach with water-skis and, yes, the new provisions do take into consideration not only that but also, as I think Deputy Higgins pointed out, many other vessels that are more modern and did not exist in 1969 and also practices that are undertaken now that did not exist in those days. Hopefully that, again, creates greater safety than we had previously. The Constable of St. Brelade, again reactive to enforcement. Jet-skis are a concern in many respects. There is a proliferation of jet-skis, the size and speed that they travel at. These regulations, of course, do deal with vessels travelling at more than 12 knots which, of course, these jet-skis do. We will continue to monitor the safety issues surrounding that and I am always keen and I know the department will always be keen to hear from Constables, in particular, who have concerns raised around these particular issues. Senator Farnham, licensing. We are trying to simplify the procedures. We are moving away from annual registration to a one-off registration. That is for safety purposes. No, licensing was not considered. Clearly other smaller craft we do - and it is contained within the regulations - require some form of identification of all vessels, whether that be a telephone number or something similar for identification purposes, and I think that is a sensible and pragmatic way forward. With regard to the final question from the Constable of St. John, I am happy to forward the list of those designated as Harbourmaster. There are a number. There is not a single point of Harbourmaster. A number of Deputies have been through the Royal Court and have the powers to act as Harbourmaster as and when appropriate. Ultimately it is the Group Chief Executive, Doug Bannister, who has the role and responsibility as the Harbourmaster as far as the law is concerned, but he can, as I have just said, delegate those to a number of other Deputies, as was previously the case. I maintain the principles.

**Senator L.J. Farnham:**

Sir, may I ask for brief clarification? I am not sure that the Minister understood my question. I was asking not of licensing as in registration, but a licence such as one requires a licence to drive a car or motorcycle; a licence after training to demonstrate a level of competence for driving some of these very fast craft. I just wondered if the Minister understood that because his answer did not allude to it.

**Senator A.J.H. Maclean:**

I did feel that the Senator was referring to registration. I apologise to him for that. The answer is still the same. No, licensing as such was not considered but indeed I will give consideration to his point. Having said that, I think the system that exists and has existed for some time has worked reasonably satisfactorily and I would hope that we would not need to introduce a licensing and test provision for people wishing to enjoy small vessels at sea.

**The Bailiff:**

All those in favour of adopting the principles kindly show. Those against. The principles are adopted. Deputy of St. Martin, do you wish this matter referred to your Scrutiny Panel. Then so far as the Articles, there are 2 amendments. What I suggest, if you are happy, Minister, is that you propose Regulations 1 to 8. I think the first amendment is at 9, is it not? Are you happy to propose Regulations 1 to 8?

[12:45]

**7.2 Senator A.J.H. Maclean:**

Yes, Sir. I propose them *en bloc*.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on any of Regulations 1 to 8? All those in favour of adopting Regulations 1 to 8 kindly show. Those against. They are adopted. Regulation 9, there is a small amendment lodged by the Minister. I will ask the Greffier to read the amendment and then if Members agree the Minister can propose the regulation as amended.

**The Deputy Greffier of the States:**

Amendment number 1, page 19, Regulation 9. In Regulation 9(5) for the words “level 2” substitute the words “level 3”.

**The Bailiff:**

Do Members agree the Minister should propose the regulation as amended?

**7.3 Senator A.J.H. Maclean:**

Yes, I propose as amended and just comment that this and the following amendment are simply in relation to a clerical error in relation to the level of fines from level 2 to level 3. It is relatively minor and I hope Members will support it.

**The Bailiff:**

Is Regulation 9 seconded? **[Seconded]** Does any Member wish to speak on Regulation 9? All those in favour of adopting Regulation 9 kindly show. Those against? Regulation 9 is adopted. Then Regulation 10, I ask the Greffier to read the amendment.

**The Deputy Greffier of the States:**

Page 19, Regulation 10. In Regulation 10(3) for the words “level 3” substitute the words “level 4”.

**The Bailiff:**

Again then, Minister do you propose Regulation 10 in its amended form?

**7.4 Senator A.J.H. Maclean:**

Yes, I do, Sir, and, again, it is exactly the same clerical error that occurred changing the levels from 3 to 4. I hope that Members accept it.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak on Regulation 10? All those in favour of adopting Regulation 10 kindly show. Those against? Regulation 10 is adopted. Do you then propose Regulations 11 to 15, Minister?

**Senator A.J.H. Maclean:**

Yes, Sir.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on any of those regulations? All those in favour of adopting Regulations 11 to 15 kindly show. Those against? They are adopted. Do you propose the Regulations in Third Reading, Minister?

**Senator A.J.H. Maclean:**

Yes, Sir.

**The Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak in Third Reading? The appel is called for in relation to the adopted regulations in Third Reading and I ask the Greffier to open the voting.

<b>POUR: 43</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf		
Senator A. Breckon		
Senator S.C. Ferguson		
Senator A.J.H. Maclean		
Senator B.I. Le Marquand		
Senator F.du H. Le Gresley		
Senator I.J. Gorst		
Senator L.J. Farnham		
Connétable of St. Helier		
Connétable of Grouville		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. John		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Deputy R.C. Duhamel (S)		
Deputy R.G. Le Hérisssier (S)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy T.M. Pitman (H)		
Deputy E.J. Noel (L)		
Deputy T.A. Vallois (S)		
Deputy M.R. Higgins (H)		
Deputy A.K.F. Green (H)		
Deputy J.M. Maçon (S)		
Deputy G.C.L. Baudains (C)		
Deputy of St. John		
Deputy J.H. Young (B)		
Deputy S.J. Pinel (C)		
Deputy of St. Mary		
Deputy of St. Martin		
Deputy of St. Peter		
Deputy R.J. Rondel (H)		

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

### **The Bailiff:**

That completes public business. We then come to M, Arrangement of Public Business for future meetings and I invite the Chairman of P.P.C. to speak to it.

**8. The Connétable of St. Helier (Chairman, Privileges and Procedures Committee):**

Public business is as set out under M with the addition of P.26 - Tourism Development Fund - being added to the meeting on 10th July, having been referred to Scrutiny. I would also like to ask Members to agree not to take Projet 188 - Open Ballot for Ministers and Chairman - which is listed for 29th May. I sent a note to Deputy Trevor Pitman on this subject and I would just briefly point out that a Sub-Committee of Privileges and Procedures that was opened to all States Members to participate in is reviewing the machinery of government and a suite of reform proposals will be brought forward by P.P.C. before the summer recess. This matter is not time-critical as is the case with the other Back-Bencher's proposition on the Order Paper in relation the ex-gratia payment. So I would urge Members to continue our habit of making sure our sessions are not over-long and only deal with matters which are critical and important to be dealt with at that session and ask Members to agree that we do not take P.188 at the next meeting.

**The Bailiff:**

But you are not suggesting P.46 that is not taken? You mentioned something about an ex-gratia payment.

**The Connétable of St. Helier:**

No, I was using that as an example of a Back-Bencher's proposition which I think is time-critical and needs to be dealt with next meeting.

**The Bailiff:**

I beg your pardon. I am so sorry.

**Deputy M.R. Higgins:**

If I could just as well, I know it is a very long proposition, 66 pages, but I would urge Members to read it. It is very, very important.

**The Bailiff:**

Deputy Pitman, do you wish to say anything in relation to projet 188?

**8.1 Deputy T.M. Pitman:**

Absolutely, Sir. It was lodged so long ago it will fall if it is not discussed. The Chairman did give assurances that proposals would be brought forward when I had to put it back last time. Nothing has been forthcoming. I am on 2 Sub-Committees myself on P.P.C. I think it is very bad practice the way the Chairman is doing this. It should be debated and it can give the House a steer. I think it is an abuse of Members' privilege. It has been lodged a long time. It is an important issue. We only voted for an open vote for Chief Minister shortly before the election. There has been ample time for P.P.C. to do something. They really need to stop ... I do not know if the word "faffing about" is of a parliamentary stage, but they should speed up the things they are doing. I would have been happy but, as I say, 6 months has gone. So I do not want to let this fall.

**The Bailiff:**

Are you pressing the point, Chairman, or not?

**8.1.1 The Connétable of St. Helier:**

Yes, I would correct. It is 5 months, not 6 months and the Sub-Committee has not been going that long and is moving ahead with proposals.

**The Bailiff:**

Are you then proposing that P.188 be deleted from ...

**The Connétable of St. Helier:**

Yes, Sir, because it can be re-lodged if the Sub-Committee does not include it in its recommendations.

**The Bailiff:**

Is that seconded?

**Deputy T.M. Pitman:**

I have never heard of that before.

**Senator A. Breckon:**

Could I ask your view? Procedurally, if it is not debated on 29th May, then does it fall on the time restriction?

**The Bailiff:**

When was it lodged? 5th December. Yes, it will fall. Two strikes.

**Senator A. Breckon:**

I think that then is abusing the privileges to individual Members if it is timed-out in that way and the Member has to re-lodge it.

**Deputy G.P. Southern:**

If I may suggest that the mood on the relevant Sub-Committee is towards open voting.

**8.1.2 Deputy T.M. Pitman:**

Can I respond to what the Chairman said because, really, at the moment P.P.C. are hamstringing a whole area of debate to Members and it just really is an abuse of privilege in my view. It will fall if I do not debate it. If people do not want to support it on the day, well and good. That is fair enough. I hope that is not the message that we would be sending out to the public so soon after the election but it has been lodged 6 months, so I must object to being asked to let it fall.

**Senator P.F.C. Ozouf:**

Sir, can I seek clarification? My understanding of Standing Orders - but I may be incorrect here - is that a Member does have a right to have their proposition listed for a debate and that there was a specific provision in there.

**The Bailiff:**

There is. The States can agree not to, but not more than a certain number of times. I am assuming, since the Greffier is not telling me otherwise, that it has not been put off more than the appropriate number of times which, from memory, is 4.

**Deputy G.C.L. Baudains:**

On a point of order, the subject you were just mentioning, perhaps you could refresh my memory. It used to be the case when I was last in the States that a Member could lodge a proposition and the States could defer it twice. On the third occasion the Member could insist it be debated. Is that still the case?

**The Bailiff:**

I was just reminding myself of the Standing Order. I forget the exact number of times.

**8.1.3 Senator S.C. Ferguson:**

Sir, if I can be of assistance, the Deputy is a member of my Sub-Committee and, unfortunately, I think he was unable to attend when we discussed this particular point. I think he would be quite happy with the results of the point. The results, as Deputy Southern has said, are that we are inclined to go for open voting. So does this not sort the problem out?

**The Bailiff:**

It is a matter for Deputy Pitman. He is entitled to ask the Assembly to debate his proposition. I have found the relevant Standing Order. It is 33.2: "If the States have decided on 3 or more occasions not to debate a proposition and the proposer notifies the Greffier of the meeting at which he or she wishes the debate to take place, no other Member of the States may propose the debate shall not take place at that meeting." In other words, the States can agree to put it off 3 times, but not more. Now, Greffier, has this been put off more than 3 times?

**The Deputy Greffier of the States:**

I would need to check. I think twice.

**The Bailiff:**

In which case, it is a matter for Members. Now, the proposition has been put by the Chairman of P.P.C. that this should be deferred, so it is a matter for Members to vote on. The appel is called for. If you wish to defer it you vote pour ...

**Connétable J. Gallichan of St. Mary:**

I am sorry, Sir, to interrupt. Could I just ask for some clarification from something I have just heard? Deputy Southern and Senator Ferguson both seemed to say that the Machinery of Government Review Panel had made its mind up. I have been asked to give evidence to that panel next week and I was just wondering is there ...

**Senator F. du H. Le Gresley:**

Are you allowing any further speeches?

**The Bailiff:**

What do you wish to say?

**8.1.4 Senator F. du H. Le Gresley:**

I just want to say that I have been a Back-Bencher and I think Deputy Pitman has every right to have his proposition heard. Irrespective of what any panel or P.P.C. or whatever think, he, quite rightly, deferred on a number of occasions because he was asked to. But the time is running out. He has an absolute right to have this debated and I think we should not vote for P.P.C., but support Deputy Pitman.

**8.1.5 Deputy M. Tadier:**

Just to provide some clarification, it is the Internal Procedures Committee that is looking at this, which is chaired by Senator Ferguson. We have reinforced our view that certain areas, such as the votes of no confidence and votes for chairman, need to be looked at, but it does not fall within the Machinery of Government's remit. I would like to ask advice on a point of order on 34 because I know that once something has been not debated within 6 months it falls, which is the case here, and it seems to me that Deputy Pitman, if we were to agree a third time that this would not be debated, is going to be forced into a position of withdrawing it, which is not what he would like to do. How

quickly that could be re-lodged in the same session ... it is only something that has been debated, is it not, that cannot be re-lodged. But if I can just make perhaps a helpful comment to the Chair of the other panel, if we do agree to debate this it sounds like a lot of the work has been done already. Comments could simply be put to that from the panel in advance and that would be one piece of work that would not have to be debated later on. It may be a practical way forward, but I reserve my position and do not try and direct or disagree with the Chairman of P.P.C. on that.

### 8.1.6 Deputy J.A.N. Le Fondré:

As another member of what I will call the Standing Order Review along with Deputy Southern and Senator Ferguson, we have considered the principles behind the open voting and, as far as I am aware, we are fully in favour of the proposition, or certainly the principles of it, that Deputy Pitman is going to bring. I suspect the reason for delay, which is the point I wanted to make, is that we want to complete the review of Standing Orders as a whole and bring back one proposition - and obviously that will have to go through P.P.C. - rather than going through ... if we had looked at 10 Standing Orders and come up with 3 amendments, we do not want to bring back 3 separate debates separately. I think that is the issue. How the Assembly wishes to deal with it, I fully respect the right of the Back-Bencher from that point of view. I have no problem supporting that but, to put it in context, as far as I am aware, the matter has been resolved at the level it needs to be resolved at and would then form part of the overall findings when it goes up to P.P.C. for presentation to this Assembly.

### 8.1.7 The Connétable of St. Helier:

May I be permitted to sum up before we vote? I think it is important to stress, and it has happened before, that a Back-Bencher, of course, has every right to lodge a proposition. If it is not taken, for whatever reason, it can be and often is re-lodged. So the Deputy does have the chance to re-lodge if the Sub-Committee does not bring forward, as I said, a suite of proposals to reform the machinery of Government. I would just say that I am maintaining this because I think we should continue to use our time as best we can in this Assembly and I think there is a danger that we are going to have unnecessary debates on Back-Bencher or even Council of Ministers propositions which should be dealt with and we should really be trying to get a reputation for dealing with business in a concise way.

### The Bailiff:

The matter before the Assembly is whether or not to include Deputy Pitman's proposition in the States business for the relevant day and if you wish to put it off you will vote pour. If you wish to have it debated on that day you will vote contre. The Greffier will now open the voting.

<b>POUR: 16</b>	<b>CONTRE: 21</b>	<b>ABSTAIN: 3</b>
Senator P.F.C. Ozouf	Senator A. Breckon	Connétable of St. Mary
Senator S.C. Ferguson	Senator F. du H. Le Gresley	Deputy J.A.N. Le Fondré (L)
Senator A.J.H. Maclean	Connétable of St. Lawrence	Deputy M. Tadier (B)
Senator B.I. Le Marquand	Connétable of St. Brelade	
Senator I.J. Gorst	Connétable of St. Saviour	
Senator L.J. Farnham	Deputy R.C. Duhamel (S)	
Connétable of St. Helier	Deputy R.G. Le Hérisier (S)	
Connétable of Grouville	Deputy G.P. Southern (H)	
Connétable of St. Clement	Deputy of St. Ouen	
Connétable of St. Ouen	Deputy of Grouville	
Connétable of St. Martin	Deputy S. Pitman (H)	
Deputy of Trinity	Deputy K.C. Lewis (S)	
Deputy S.S.P.A. Power (B)	Deputy T.M. Pitman (H)	
Deputy J.H. Young (B)	Deputy T.A. Vallois (S)	

Deputy S.J. Pinel (C)		Deputy M.R. Higgins (H)		
Deputy of St. Peter		Deputy J.M. Maçon (S)		
		Deputy G.C.L. Baudains (C)		
		Deputy of St. John		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.J. Rondel (H)		

**The Bailiff:**

Therefore, it remains ...

**The Connétable of St. John:**

Sir, I did vote but my lights are still flashing. **[Members: Oh!]**

**The Bailiff:**

Has the Connétable's vote been counted?

**The Deputy Greffier of the States:**

No.

**The Bailiff:**

No, it has not been counted. It is not going to make any difference to the outcome you will be pleased to hear, Connétable.

**The Connétable of St. John:**

It might make a difference to the Deputy of St. Saviour when he puts his records together.

[13:00]

**Deputy J.M. Maçon of St. Saviour:**

Sir, if I can comment, just to make it quite clear to Members of this Assembly, I do not keep the records. I simply draw the attention of the public to them. It is kept by the Greffe. **[Laughter]**

**The Bailiff:**

Does any other Member wish to say anything about the future business?

**8.2 Senator B.I. Le Marquand:**

Sir, I wanted to raise an issue in relation to P.46 and I raise this to try to ensure that we can have a debate next time. In discussions of this at the Council of Ministers I am aware that there is an outstanding issue in relation to a breakdown of a bill for legal fees. That is not included. I just wanted to ensure that that will be provided to Members in advance of this debate.

**Senator I.J. Gorst:**

I can give an undertaking to that effect, yes.

**8.3 Senator P.F.C. Ozouf:**

In relation to P.38, I would ask if that could be listed for 10th July. Members will be aware of ongoing communication that has been reported in the press in relation to the U.K. potentially changing the guidance in relation to Q.R.O.P.S. (Qualifying Recognised Overseas Pension Schemes). We continue seek clarification on such matters and I will revert either with amendments

or revised proposals as soon as possible. I regret that I have to ask for this to be done because there has been a great deal of work done on it.

**The Bailiff:**

That is entirely a matter for you, Minister. You defer that ...

**Senator P.F.C. Ozouf:**

Until 10th July.

**The Bailiff:**

Does any other Member wish to say anything? Are Members happy then to approve the Order Paper as now set out? Very well, thank you very much. That concludes the business of the Assembly. We will reconvene on 29th May.

**ADJOURNMENT**

[13:02]