



**OFFICIAL REPORT**

**OF THE**

**STATES OF DELIBERATION**

**OF THE**

**ISLAND OF GUERNSEY**

**HANSARD**

**Royal Court House, Guernsey, Wednesday, 28th November 2012**

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**The South-East**

Deputies H. J. R. Soulsby, R. W. Sillars, P. A. Luxon,  
M. G. O'Hara, F. W. Quin, M. P. J. Hadley

**The Clerk to the States of Deliberation**

D. J. Robilliard, Esq. (H.M. Deputy Greffier)

**Absent at the Evocation**

Deputy M. J. Fallaize (*indisposé*)

Alderney Representative B. N. Kelly (*absent de l'Île*)

Alderney Representative E. P. Arditti (*absent de l'Île*)

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*The Assembly adjourned at 5.48 p.m.*

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## States of Deliberation

*The States met at 9.30 a.m. in the presence of  
His Excellency Air Marshal Peter Walker, C.B., C.B.E.  
Lieutenant-Governor and Commander-in-Chief of the Bailiwick of Guernsey*

[THE BAILIFF *in the Chair*]

### PRAYERS

*The Deputy Greffier*

### EVOCATION

5     **The Deputy Greffier:** To the Members of the States of the Island of Guernsey, I have the honour to inform you that a meeting of the States of Deliberation will be held at the Royal Court House on Wednesday, 28th November, 2012 at 9.30 a.m. to consider the items submitted in Billets d'État XXIII and XXVII, which have been submitted for debate.

## Billet d'État XXVII

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### SCRUTINY COMMITTEE

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#### **Election of one Member Variation in the Order of Business agreed**

20     **The Bailiff:** Members of the States, the first thing I was going to do was to propose a variation in the order of business today.

25     The second item in Billet XXVII is to elect a new member of the Scrutiny Committee and, as we have heard, the Chair of the Scrutiny Committee, Alderney Representative Arditti, like Alderney Representative Kelly, are both unable to fly into Guernsey this morning because the airport is closed. They were planning to come by boat but, in view of the weather, I am told that it is unlikely, – or, in fact, not just unlikely – they will *not* be arriving today.

30     The Chair of the Scrutiny Committee would prefer to be present when we elect a new Member to that Committee, so what I propose is that we, at the very least, adjourn that matter until tomorrow morning, if we are still sitting tomorrow morning. Hopefully, the airport will re-open tomorrow morning and, if so, they will be able to fly in tomorrow morning. If we manage to conclude the business today, then I suggest, at the end of the day, we will take a decision as to what we do. I know that the wish of the Chair of the Scrutiny Committee would be to defer the election until next month but I will not put that to you at this stage – yes, it will be next month, only in two weeks' time, the December meeting – I will not put that to you at the moment because, if we are still sitting tomorrow morning and they are able to arrive tomorrow, we will deal with it tomorrow.

35     So, for the moment, all I am proposing is that we defer consideration of Article II of Billet XXVII until tomorrow morning, or close of business if we manage to conclude today.

Those in favour; those against.

*Members voted Pour.*

40

**The Bailiff:** Duly deferred.

45

## Statements

**The Bailiff:** I have had notice of two Statements that the Chair of Committees wish to make.

The first was to be a Statement by the Chairman of the States Assembly and Constitution Committee, regarding the introduction of simultaneous electronic voting in the States of Deliberation. Unfortunately, as we have heard, Deputy Fallaize, the Chair, is *indisposé*, the Vice Chair, Deputy Dorey, is conflicted on this matter, as he is also a Member of the Treasury and Resources Department, so Deputy Gillson will be making the Statement on behalf of the Committee.

Deputy Gillson.

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### Report on simultaneous electronic voting

#### Statement on behalf of the Chairman of the States Assembly and Constitution Committee

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**Deputy Gillson:** Thank you, sir.

Thank you for affording me permission to make this Statement on behalf of the States Assembly and Constitution Committee.

In July, after consideration of a Requête signed by Deputy Mrs Lowe and seventeen other Members of the States and following approval of an amendment laid to that Requête by Deputy Fallaize on behalf of the States Assembly and Constitution Committee, the States of Deliberation resolved to direct the States Assembly and Constitution Committee, in consultation with Treasury and Resources Department on aspects relating to capital expenditure, to prepare a balanced and comprehensive Report, setting out arguments for and against simultaneous electronic voting in the States of Deliberation, the costs of different systems of SEV and the practical and procedural effects of establishing SEV.

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In replying to the debate on the Committee's amendment, Deputy Fallaize spoke the following words:

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'Deputy Duquemin asked how long it might take for the Committee to return with a Report. It will take a very short period, a matter of weeks, more than a month but no more than three or four months, for the Committee to put together its Report and it has to be submitted for publication in the Billet and then has to come to the States. I would be very disappointed, if the amendment is approved, if the Committee was not back here in the very *early* months of next year with a comprehensive Report on the subject of Simultaneous Electronic Voting.

80

The Committee has made swift progress examining the many systems of electronic voting and potential advantages, disadvantages and practical effects of all such systems. The Committee is confident that the States Report will present the States with credible options for simultaneous electronic voting and will be presented in such a way that the States can take an informed view about whether it *wishes* to introduce such a system in due course. However, our fulfilling the States Resolution is, to some extent, dependent on the Treasury and Resources Department.

85

With that in mind, on 19th October the Committee wrote to the Department, requesting assistance on aspects of the Report that relate to capital expenditure. On 8th November, the Minister replied to the Committee, his letter including the following

90

'I can confirm that staff of the ICT Section would be able to assist in both the research and implementation of this project. However, due to other commitments at this time, especially in respect of the SAP project, I regret that any staff resource, other than a very high level oversight, cannot be made until the early part of 2013.'

95

The Committee is disappointed to note that the Department cannot work with the Committee sooner but, equally, fully respects that there is a need for the Department to prioritise its finite resources. Indeed, the Committee is grateful for the Minister's commitment to make the necessary resources available in the early months of 2013.

The Committee will be able to submit its States Report shortly after the Department fulfils *its* part of the July States Resolution. However, it now looks likely that the Committee's States Report on Simultaneous Electronic Voting will be submitted *later* in 2013 than originally envisaged and

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the Committee felt it was appropriate to draw that to the attention of the Assembly, in view of what was said during the debate on Deputy Mrs. Lowe's Requête.

Thank you.

**The Bailiff:** Members of States, are there any questions arising from that Statement.  
Deputy Gollop.

**Deputy Gollop:** Bearing in mind Treasury and Resources have put off helping you until the early part of 2013, does it effectively mean that they will be able to commence January or February, effectively meaning there is no significant time delay in their offer?

**The Bailiff:** Deputy Gillson.

**Deputy Gillson:** I do not think there is a significant delay. We expect to be able to come back with a Report during 2013, just not in the early part of 2013.

**The Bailiff:** If there are no further questions – and I see no-one rising – we will move on to the next Statement to be delivered by the Chairman of the Public Accounts Committee, Deputy Soulsby.

**Review of States financial controls relating to fraud  
Statement by the Chairman of the Public Accounts Committee**

**Deputy Soulsby:** I am making this Statement to update Members about the progress of the Public Accounts Committee's review of the States of Guernsey's financial controls relating to fraud.

Having spoken to the Minister of Treasury and Resources Department and the Minister of Home Department, we have agreed that, in the absence of any material changes, we shall alternate the updates we provide to this Assembly between us. Updates will be provided every other month and the next update will be provided by the Home Minister.

In relation to the review of the specific incident of fraud, as I said in my last Statement, this will not be able to start until we are advised that it will not prejudice the ongoing criminal investigation. As I am sure Members will understand, given the current stage of the investigation, this continues to be the case.

With regard to the Police investigation, Members will be aware of the recent arrest carried out by Lincolnshire Police as part of Operation Infinity. The Committee has been advised that there is no further information to report at this time.

In my last Statement, in relation to the *broad* review into the effectiveness of financial controls in place to minimise the risk of fraud, I notified this Assembly that external reviewers are to be appointed and that I would advise who these would be and the timeframe for the review by the end of October 2012. This target was met and the Committee announced that the local practice of Ernst & Young were appointed at a cost not exceeding £25,000.

We also announced that we were expecting completion of their work in December and that the Committee would receive its findings in January. I am pleased to be able to advise this Assembly that Ernst & Young commenced work on 1st November 2012 and are in the process of finalising their fieldwork and on schedule to report to the Committee in January.

It will then be for the Committee to consider the findings of the Ernst & Young report. The Committee then intends to conduct hearings with the appropriate States Departments and publish its findings and recommendations.

Finally, I should like to advise that, whilst all the news coming out of the Public Accounts Committee thus far has been in relation to the fraud review, we have been undertaking a number of workstreams and activities which will be made public over the coming months and, whilst I have advised that we intend to hold a public hearing in relation to the fraud, it is envisaged that this will not be the first, or the last, undertaken by this Committee.

Thank you.

**The Bailiff:** Thank you.  
Any questions arising from that Statement?  
Yes, Deputy St Pier.

165 **Deputy St Pier:** Sir, following the Internal Audit report on the SAP controls, which was produced following the fraud, and pending the outcome of the Public Accounts Committee-led enquiry, does Deputy Soulsby agree that it *may* be appropriate for Treasury and Resources to update the Assembly on its progress on implementing the recommendations of that Internal Audit report and it would be most appropriate to do that following the SAP shared transaction centre going live in the New Year, so perhaps at the end of the first quarter?

170 **The Bailiff:** Deputy Soulsby.

**Deputy Soulsby:** Given that the implementation of the Shared Transaction Service Centre will change, quite fundamentally, financial operations within the States of Guernsey, I would have thought it would be wise if Members were made aware of the changes that his Department has made, in terms of ensuring that controls are robust and fit for purpose.

Of course, the Public Accounts Committee will have the intention of reviewing those changes to ensure that that is the case.

180 **The Bailiff:** Deputy Gollop.

**Deputy Gollop:** How far does the Public Accounts Committee envisage, at this stage – pending, of course, the receipt of the Ernst & Young review – that the hearings into some aspects of this matter will be public because of the potential security or confidentiality of *some*, but not necessarily all, of the issues and findings?

**The Bailiff:** Deputy Soulsby.

190 **Deputy Soulsby:** Clearly, at this stage, I cannot say what will, and what will not, and then, pending the findings of the Ernst & Young report.

As I have stated a number of times, it is our intention to hold public hearings and that is all I can say at this moment.

195 **The Bailiff:** Yes, Deputy Gillson.

**Deputy Gillson:** Sir, my understanding is that, during the past few years, there have been at least three reviews into the control systems in Treasury and Resources. What areas will this new review cover that previous ones did not?

200 **The Bailiff:** Deputy Soulsby, if you can answer that without disclosing anything that might prejudice areas of weakness, or perceived areas of weakness, that might, of course, then disclose potential security issues.

205 **Deputy Soulsby:** I am very aware of that, sir.  
Part of the review is to look at what effect... how the States of Guernsey have implemented previous reports but also looking into the actions of Treasury and Resources Department across the States of Guernsey; what was the state of play *before* the specific incident of fraud; and what was done to ensure that controls are put in place to minimise the risk of such fraud happening in the future.

210 **The Bailiff:** Deputy Gillson again.

**Deputy Gillson:** Sir, one question: without asking the actual name of the account, can the Chairman confirm whether the name of the account into which the monies were fraudulently paid included the word 'Lagan'?

**Deputy Soulsby:** I am not in a position to answer that.

220 **The Bailiff:** Thank you.  
Nobody else wishes to raise any questions?  
No? In that case, we will move on swiftly to Question Time.

## Questions for Oral Answer



**CHIEF MINISTER**

**Civil Partnership legislation  
Priority of Policy Council**

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**The Bailiff:** The first Question is to be asked by Deputy Gollop of the Chief Minister.  
Deputy Gollop.

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**Deputy Gollop:** Thank you, sir.

Bearing in mind recent new legislation voted on by the States of Jersey and recent developments in parts of the United States of America – which I have subsequently found out include Minnesota, Maine, Maryland and Washington – concerning homosexual adult relationships, equality and civil partnerships, when is the Policy Council here proposing to prioritise the local Civil Partnership legislation, which was supported by the States by a reasonable majority, supporting the then Deputy Peter Roffey Requête around 2007. In fact, I am incorrect, it was 2006...

245

**The Chief Minister (Deputy Harwood):** Mr Bailiff, Members of the States the Policy Council has reviewed the priority of work, including the Requête led by the then Deputy Roffey in September 2006 on Civil Partnership.

The Policy Council agree that the prioritisation established by the States, following the debate in the Government Business Plan in July 2007 and following the debate on the States Strategic Plan in October 2009, should remain. These set priorities of work as follows: firstly, the research on the Convention on the Elimination of all forms of Discrimination Against Women, known as CEDAW; secondly, the Disability Strategy; and, thirdly, Civil Partnership.

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The States considered the Policy Council's Report on Maternity and Paternity Provisions and the United Nations Convention on the Elimination of Discrimination against Women in February this year. It resolved to undertake further work on statutory leave and Social Security Department benefits for expectant mothers and parents, thereby improving Guernsey's compliance for CEDAW. Work on the Disability and Inclusion Strategy is already under way and it is anticipated that the States will consider this in the late Spring of 2013. Planning of work relating to Civil Partnership is, therefore, likely to commence in the New Year but the timings and precise details will be dependent on the outcome of the Disability and Inclusion Strategy.

260

**The Bailiff:** Deputy Gollop, you have a supplementary question.

**Deputy Gollop:** Thank you to the Chief Minister and, of course, I am totally behind the Disability Inclusion Strategy work, which is proceeding apace, but I would like to ask a supplementary. Would the Chief Minister envisage that the Civil Partnerships Report will be before this Assembly by the *end* of next year?

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**The Bailiff:** Deputy Harwood.

270

**The Chief Minister:** Sir, I cannot give that *positive* assurance but, certainly, work will be commencing on the Report during the course of 2013. Exactly how *quickly* it can progress I cannot guarantee but, as per the manifesto commitment I made, it is – I regard it as a matter of importance.

**The Bailiff:** Yes, Deputy Bebb.

275

**Deputy Bebb:** Could we not consider that the response actually plays priorities on very real needs within the community, which are arbitrary. There is sufficient resources available, *if* it were so directed, in order to progress *all three* together but that the prioritisation approach that has been taken simply disadvantages certain parts of the community and plays *one* minority off against another.

280

**The Bailiff:** Is this a question or a statement?

**Deputy Bebb:** Does the Minister, therefore, agree that prioritisation is an *inappropriate* means

of response to this type of issue.

285 **The Chief Minister:** Sir, unfortunately given the limited resource – and I can assure Deputy Bebb that I was quite surprised at the limited resource we do have available to deal with these matters – it is necessary to prioritise.

290 The priorities were established by the previous Assembly, during the previous term, and we believe that it is appropriate to stick to those priorities, especially given the fact that work has already commenced on the first two in this priority.

**The Bailiff:** Any supplementaries. If not...  
Yes, Deputy St Pier.

295 **Deputy St Pier:** Does the Chief Minister envisage that the planning for Civil Partnerships will also include consideration of same sex marriages as well, sir?

**The Bailiff:** Deputy Harwood.

300 **The Chief Minister:** I think probably it *should* do but I cannot really speak for that because the issue that was approved by the States, and which the States have directed the progress, relates to Civil Partnership specifically.

305 **The Bailiff:** If there are no more supplementaries, we will move on to the next Question, which is from Deputy Gillson to the Chair of the Public Accounts Committee.  
Deputy Gillson.

310 **PUBLIC ACCOUNTS COMMITTEE**

**Announcement of fraud investigation  
Press Release to Members**

315 **Deputy Gillson:** Sir, could the Chairman of the Public Accounts Committee please explain why the Committee felt it preferable to inform Members of this Assembly that Ernst & Young had been appointed to undertake the investigation into the £2.6 million fraud by copying a *press release* to Members, rather than making a statement to this Assembly, especially considering that the Assembly was in session at the time the press release was circulated to Members?

320 **The Bailiff:** Deputy Soulsby.

325 **Deputy Soulsby:** A press release was circulated to announce the appointment of Ernst & Young to undertake the external review because the Committee considered it was not necessary to request the permission of the Presiding Officer under Rule 8 of the Rules of Procedure to make such a statement.

330 The Committee used the Rule 8 procedure in the September States Meeting, at which I provided a detailed Statement, explaining the scope of the review and the Committee's intention to appoint external reviewers. The media release issued to the Members of the States on 31st October, 2012 sought only to confirm the name of the appointed reviewers, the maximum budget and timeframe from this stage of the review.

335 Given the limited amount of new information to be communicated, the Committee did not consider a formal statement to the States was necessary *in addition* to the circulated release. As you know, the media release was circulated to *all* Deputies on Wednesday, 31st October and was subsequently provided to the media, embargoed until Friday, 2nd November. The release was also uploaded onto the States of Guernsey website on Friday, 2nd November and may be accessed through the Public Accounts Committee website.

340 **The Bailiff:** Any supplementaries in respect of that Question?  
Deputy Gillson?

**Deputy Gillson:** Sir, does the Chairman of PAC accept that transparency and accountability would have been better served, had Members been informed by way of a *Statement*, which would

345 have allowed questions to be asked by Members, rather than the one way communication of a press release?

**The Bailiff:** Deputy Soulsby.

350 **Deputy Soulsby:** Sir, no. We communicated our information and we have not side-stepped any chance of scrutiny here at all.

If a Member has concerns from any press release that is issued by *any* Minister or Chairman, they can return with a Rule 5 or Rule 6 Question. That is a judgement call for them to make and that is what has been done in this instance.

355 **The Bailiff:** Deputy Gillson.

**Deputy Gillson:** Could the Chairman please explain why the Committee thought it appropriate to afford the *media* the opportunity to ask questions on this issue during the lunchtime on Thursday, while not affording Members the same opportunity?

360 **The Bailiff:** Deputy Soulsby.

**Deputy Soulsby:** I will just say what I have said before. We made a judgement call as to how we would issue our information and that is the decision we made.

365 **The Bailiff:** Deputy Gillson, do you wish to move on with your next question? Will you put your microphone on. Thank you.

370

**Independence of fraud investigation  
Details of Ernst & Young contracts with the States**

375 **Deputy Gillson:** Yes, the independence of the review is vital to public confidence. Therefore, could the Chairman please provide the following information:

(a) the nature of any contract Ernst & Young currently have with the States of Guernsey, in particular those with Treasury and Resources, and provide total value;

(b) the nature of any contracts Ernst & Young have had with the States of Guernsey for the past five years, again providing total value;

380 (c) are Ernst & Young in tender or pre-tender stage of contracts with the States of Guernsey – if so, what are they;

(d) are any partners or members of the senior management team of Ernst & Young members of any States Department or Committee Board, members of Boards or any States-owned trading company?

385 And I have put a note, to protect commercial confidentiality providing total value of contracts to the nearest £50,000 would suffice – below £50,000, between £50,000 and £100,000...

**The Bailiff:** Deputy Soulsby.

390 **Deputy Soulsby:** Sir, in response to part (a) of the question, I can confirm that Ernst & Young presently have only two contracts with the States of Guernsey, including the contract with the Public Accounts Committee under which they are carrying out this review. The other contract is for ICT consultancy work and has no bearing on the Committee's review.

395 Further, ahead of PAC's engagement, Ernst & Young reviewed its available records to determine whether potential conflicts may arise out of its performance of the services and no such conflicts were identified. However I should note that, given the very nature, diversity and size of the Ernst & Young organisation and its past and present professional relationships, it does not allow the organisation to be *certain* that each and every possible relationship or potential conflict has come to its attention. But, the Letter of Engagement requires Ernst and Young to *promptly* notify the Committee if additional relevant relationships or potential conflicts come to its attention.

400 In response to part (b), I can inform you that Ernst & Young have reviewed their global billing system and identified three invoices in the last five years. Two invoices related to the ICT consultancy work mentioned above and one relates to a one-off assignment performed under a

405 separate engagement letter for an *independent* States body seeking advice on a tax matter. These invoices amount to less than £50,000 and the work was performed between April 2008 and November 2009.

In response to part (c), I can inform you that the only formal pre-tender Ernst & Young has identified is a submission of a pre-qualification questionnaire entitled 'Professional services to develop and implement a corporate approach to risk management across the States of Guernsey.' The outcome of the submission of this pre-qualification questionnaire is not currently known. Ernst & Young has informed the Committee that it is not aware of other formal tenders. The current contracts have already been detailed.

415 In response to part (d), the Committee has made enquiries of Ernst & Young, who have confirmed that no partners or executive directors are members of any State, Departmental or Committee Board or members of any of the Boards of *any* States-owned trading company. However, for completeness, please note that one partner or executive director of Ernst & Young has confirmed he is a Commissioner and Treasurer of the Guernsey Arts Commission.

420 Finally, I can confirm the Public Accounts Committee is not aware of any possible conflict of interest and it is assured of the independence of Ernst & Young in conducting this review.

**The Bailiff:** Deputy Gillson.

425 **Deputy Gillson:** Just that I am greatly comforted by that advice.

#### CHIEF MINISTER

430

##### Chief Officers of States Departments Accountability and responsibility

435 **The Bailiff:** Let us continue, then, with the next Question from Deputy Laurie Queripel to the Chief Minister.  
Deputy Queripel.

**Deputy Laurie Queripel:** Thank you, sir.  
440 Would the Chief Minister advise the States of Deliberation whether Chief Officers of States Departments are, first and foremost, responsible and accountable to the elected political Members of their Departments or to the Chief Executive of the States of Guernsey.

**The Bailiff:** Deputy Harwood.

445 **The Chief Minister:** Sir, in early 2011 contractual arrangements for Chief Officers were amended, to the effect that the Chief Officers are accountable to the Chief Executive or his delegate, who will act as line manager and the Chief Officer will be responsible to the Department Board on behalf of the Chief Executive for provision of advice and the delivery of services covered by the Department's mandate.

450 Prior to 2011 there had been no formal statement setting out the relationship between Chief Officers and the Chief Executive and Chief Officers and their Departments, such as, on occasions, there was confusion at best and, at worst, conflict in the delivery of corporate initiatives.

455 The negative impact on the organisation and the lack of clear lines of accountability was highlighted as a significant weakness by the Welsh Audit Office in their report on good governance in the States of Guernsey which was published in September 2009. Such weaknesses have also been identified by other independent observers and had been recognised by the previous Policy Council and the Chief Executive.

460 **The Bailiff:** Any supplementaries?  
Deputy Queripel.

**Deputy Laurie Queripel:** Thank you, sir. I thank the Chief Minister for his answer.  
In the event of a difference of opinion between a Chief Executive and the political Members of a Department in respect of a matter which falls within the mandate of that Department, does the  
465 Department's Chief Officer take his directions primarily from the Chief Executive or from the

political Members of the Department?

Thank you, sir.

470 **The Bailiff:** Deputy Harwood.

**The Chief Minister:** In the circumstances outlined by Deputy Laurie Queripel, the procedure would be that the Chief Officer, together with the Minister of that Department, would proceed, first of all, to resolve any dispute with the Chief Executive and, if necessary, with the Chief Minister. At the end of the day, if that was not satisfied then the matter would be referred to the  
475 full Policy Council and, ultimately, the accountability rests with this Assembly.

**The Bailiff:** Any other supplementaries?  
Yes, Deputy Lowe.

480 **Deputy Lowe:** Sir, following the answer that the Chief Minister has just given, does he not accept that we... [8 seconds inaudible due to technical interference] that decision should stay if it is a mandate of that Department or Committee and the Chief Executive will have to recognise and accept that it is their job to do so.

485 **The Bailiff:** Deputy Harwood.

**The Chief Minister:** I think, in my response to Deputy Laurie Queripel's supplementary, I think I already addressed that. It is a matter in which, if any, if there was a conflict, how it would be dealt with.  
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**The Bailiff:** Deputy Lowe.

**Deputy Lowe:** Sorry, sir, I just cannot understand the idea of a conflict. If you listened to the answer to the first question, if it was under the mandate of the Department, therefore the Chief  
495 Officer would be responsible to that Department and there seems to be some muddying of the areas, or some fighting for powers, that the Chief Executive does not actually have.

**The Bailiff:** Is that a question?  
I think you are being asked if you agree, Deputy Harwood.  
500

**The Chief Minister:** With respect, I do not agree.  
We have actually discussed the circumstances in which there might be a dispute. The area of dispute would be if the particular Committee or Department was seen to be acting outside this  
505 mandate. Secondly, if the approach of a Department or Committee was contrary to the strategy of... say if, for example, the States Strategic Plan or in any of the Business Plans that will follow from that, plan. Those are the areas where there might be conflict.

**The Bailiff:** Any further supplementaries?  
Yes, Deputy Bebb.  
510

**Deputy Bebb:** Sorry, I do believe that there is possibility of a conflict between the will of the Policy Council and the will of the Department.

Far be it for me to disagree with the Welsh Audit Office. However, is it not possible that the Minister could consider that the solution put in place is not the only solution, as a 360<sup>0</sup> appraisal  
515 by Members of the Board could also be a solution that would also remove the conflict. Would he agree to investigate such a proposition?

**The Bailiff:** Deputy Harwood.

520 **The Chief Minister:** Sir, I am happy to give that assurance to Deputy Bebb, that I will actually take consideration of the point he has made.

**The Bailiff:** Deputy Gollop.

525 **Deputy Gollop:** Would the Chief Minister also agree that, in examples where there is lack of clarity between resolutions, policies and the perceived view of the Policy Council and a



I thank the Chief Minister for his reply but, personally, I think it would be a good idea to stage at least one Policy Council public surgery as a trial. I think, if it was well publicised, it would be well attended.

**The Bailiff:** Is this a question, Deputy Queripel?

**Deputy Lester Queripel:** Yes, sir.

**The Bailiff:** Right.

**Deputy Lester Queripel:** Is the Chief Minister able to give me an assurance that he will, indeed, put that idea to the Policy Council?

**The Bailiff:** Deputy Harwood.

**The Chief Minister:** Sir, I am happy to give Deputy Lester Queripel that assurance.

**Deputy Lester Queripel:** Thank you, sir.

## TREASURY AND RESOURCES DEPARTMENT

### Civil Service restructuring Approval by Departments' political members

**The Bailiff:** No more supplementaries on that Question, so we have two Questions for the Minister of the Treasury and Resources Department, the first from Deputy Laurie Queripel. Deputy Laurie Queripel.

**Deputy Laurie Queripel:** Thank you, sir.

On September 21st, 2012 States Members were advised by the Chief Executive of the States of Guernsey of restructuring responsibilities within the Civil Services Executive Leadership Team. This was in order to support the Treasury and Resources Department following the resignation of its Chief Officer, Dale Holmes.

As part of the restructuring, Treasury and Resources ceased to have its own dedicated Chief Officer. Would the Treasury and Resources Minister confirm that the aforementioned restructuring was discussed with, and approved by, the political members of each Department prior to the announcement on 21st September?

Thank you, sir.

**The Bailiff:** Deputy St Pier.

**Deputy St Pier:** Sir, I can confirm that the restructuring was not discussed with, or approved by, the Board.

It is not a matter for a political board to approve the way in which the Chief Executive organises the Civil Service leadership. That is a matter for him. It is the Chief Executive's responsibility to ensure that political boards are appropriately served and his officers do so on his behalf.

As Minister, I was fully consulted by the Chief Executive Officer, as was the Chief Minister, as the changes affect the Policy Council and I fully endorsed the approach that the Chief Executive Officer was proposing. Prior to the announcement, I contacted all the Board members, with the exception of Deputy Spruce, who was not available at the time, to inform them of the decision of the Chief Executive.

The subsequent appointments resulting from this followed the excellent procedure for the appointment of Chief Officers.

Thank you.

**The Bailiff:** Any supplementaries?  
Yes, Deputy Laurie Queripel.

650 **Deputy Laurie Queripel:** Thank you, sir.  
I think the T & R Minister for his answer. Whilst I recognise and acknowledge a distinction between the political and the operational, does Deputy St Pier not agree that there is a great public expectation for politicians to exert more control to apply greater oversight and have greater awareness of operational matters? How can this be achieved if operational matters at the highest level are not subject to a Department Board's approval?

655

**The Bailiff:** Deputy St Pier.

**Deputy St Pier:** I think the question has been dealt with, really, in my response to the first question.

660

The organisation for the Civil Service is a matter for the Civil Service and, clearly, if that produces a result which is incapable of supporting political boards, at that point it becomes a political matter which needs to be dealt with by the Board and, ultimately, by this Assembly.

665 **The Bailiff:** Any more supplementaries?  
Deputy Brehaut.

**Deputy Brehaut:** Sorry, sir, I have to lean across Deputy Hadley because my microphone has been 'stolen' and it was me who conducted a vandalism review, of all things! (*Laughter*).

670 Can I just ask, with the reconfiguration – if I can put it that way – or the degree of restructuring that took place following the departure of Mr Dale Holmes, is it not the case that, with the broadening of the role of the Chief Accountant, another appointment has been made, or will be made, at SO7 level to assist the Chief Accountant with duties, following the departure of Mr Dale Holmes.

675 Thank you.

**The Bailiff:** Deputy St Pier.

**Deputy St Pier:** Sir, I am not aware of any such appointment.

680

## TREASURY AND RESOURCES DEPARTMENT

### 685 **Economic Growth** **Jersey diversification strategy**

**The Bailiff:** If there are no more supplementaries, we will move on to the final Question, which is to be asked by Deputy Lester Queripel of the Minister of the Treasury and Resources Department.

690

**Deputy Lester Queripel:** Thank you, sir.  
In July this year, Jersey States introduced an economic-growth-by-diversification strategy – I will fix my teeth in a minute, sir! – which included a £10 million fund for businesses in an attempt to kick-start the economy, attract new investments to the Island and also create jobs. Do Treasury and Resources have any plans to introduce such a scheme here in Guernsey?

695

**The Bailiff:** Deputy St Pier.

700 **Deputy St Pier:** Sir, as I stated in a response to a previous Question from Deputy Lester Queripel, we will be discussing with Commerce and Employment the responses to their Economic Development Strategy process, which will inform policy development in this area and determine whether or not there is a genuine need or demand for some kind of economic development fund, in other words one which seeks to provide investment to meet long term objectives for the economy.

705 Currently, my policy does not favour stimulus measures, given the nature of our economy and nor do I sense, given relatively low unemployment and that our economy is predicted to grow by 1.3% next year, that stimulus measures are particularly or acutely required at the present time. If the economic situation changes, then the Treasury and Resources Board will, of course, discuss that with Commerce and Employment Department at that time and consider asking staff to review the practicalities of more short term measures before making any appropriate recommendations to



710 this Assembly.

**The Bailiff:** Any supplementaries?  
Deputy Trott.

715 **Deputy Trott:** Yes, sir, I just wondered if the Minister of Treasury and Resources was aware as to the reasons why Guernsey's economic performance has been significantly better than our Jersey cousins over an extended period of time? (*Laughter*)

720 **Deputy St Pier:** I am not sure, sir, that is entirely supplementary to the question, (*Laughter*) or it is entirely supplementary to my response to the question!

Nonetheless, I am, of course, delighted to have the opportunity to respond. It is a matter which, of course, is subject to some debate and speculation as to exactly why.

725 I think one of the most often cited reasons is the presence of GST in Jersey's tax system which has extracted approximately £80 million of tax revenue out of the economy each year and that must have had... one assumes that must have had, some kind of dampening effect on their economic performance which, in turn, has been recycled in stimulus measures in some form which, as I say, is not the methodology which we favour here in Guernsey.

730 Another reason that is often cited, of course, is that our financial services industry is perceived to be more diversified than Jersey's.

**The Bailiff:** Deputy Lester Queripel, you have a supplementary, do you?

**Deputy Lester Queripel:** Thank you, sir.

735 I thank the Minister for his response but I am disappointed in the content of the response itself. Bearing in mind that January and February are difficult months – for the majority of businesses, anyway – it is quite possible that, due to the current economic climate, businesses will continue to struggle throughout the year.

740 If that proves to be the case, can the Minister give me an assurance that his Department will treat their forthcoming review as a priority and reconsider introducing an economic growth strategy in an attempt to kick-start the economy.

I ask, sir, because I am only too aware how easy it is for us all to sit here, safe in the knowledge that we all have jobs for the next three-and-a-half years whilst some businesses here in the Island are really struggling.

745 **The Bailiff:** Deputy St Pier.

750 **Deputy St Pier:** Sir, I think we must draw a distinction between natural seasonality – which, of course, occurs throughout the year, and every year, and it is quite possible that will happen as we go into this winter – and whether there is a longer-term trend

and I think it is the Government's the response that I gave earlier, was dealing with Government's response to a longer term trend which suggested that we needed to have an economic stimulus to deal with that event.

755 **The Bailiff:** Yes.

760 **Deputy Luxon:** Sir, would the Treasury and Resources Minister agree with me that, in addition to the Commerce and Employment Department – and, indeed, Treasury and Resources and, indeed, the Policy Council – focusing on economic diversification stimulus for our Island, that that is very important but, indeed, it is the entire Assembly and each Department that must commit to that to make sure that Guernsey is seen to be open for business and opposed to being indifferent or closed to business because, of some of the policies that perhaps do not enable or allow business to flourish, on the basis that our Zero-10 strategy relied on a 2% annual growth and indeed circumstances in terms of global economics have changed since then, this becomes even more important now than ever before? So would the Treasury and Resources Minister agree that it is for the whole Assembly to commit to ensuring that we do achieve economic growth over the coming years?

770 **The Bailiff:** Deputy St Pier.

**Deputy St Pier:** Of course I would agree, yes.

**The Bailiff:** Nobody else is rising.

775 That concludes Question Time, almost exactly on the half hour. We move on, then, to legislation.

## Billet d'État XXIII

780

### COMMERCE AND EMPLOYMENT DEPARTMENT

#### **Maritime Labour Convention The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012, approved**

785

*Article I.*

*The States are asked to decide:*

*Whether, after consideration of the Report dated 11th September, 2012, of the Commerce and Employment Department, they are of the opinion:*

790

*1. To approve the proposals set out in section 3 of this Report.*

*2. To approve the Projet de Loi entitled 'The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012' and to authorize the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.*

795

**The Deputy Greffier:** Article I, Commerce and Employment Department, Maritime Labour Convention, enabling legislation.

**The Bailiff:** The Minister for Commerce and Employment Department, Deputy Stewart, will open the debate.

800

**Deputy Stewart:** Mr Bailiff, fellow Members just to give you a little bit of background on this, the International Labour Organisation's Maritime Labour Convention – the MLC 2006 – provides comprehensive rights and protection at work for the world's more than 1.2 million seafarers. We are sincerely grateful for the Presiding Officer's agreement for this rather unusual step of presenting the draft Projet to the States at the same time as the States Report. This is to assist with the process of being compliant, by August 2013, when the Convention comes into force around the world – and if I can just draw your attention to page 2126, paragraph 1.5, there is actually a typo there: where it says 2012, it is 2013.

805

Amongst other things, the Convention aims to achieve both decent and fair working conditions and contractual conditions for seafarers and secure economic interests in fair competition for quality shipowners. As we know, seafarers are a large workforce. They are deployed around the globe and this can be fairly precarious for them. They work away from their home territory, on vessels with owners in one jurisdiction which may be registered in another jurisdiction, contracted by an employment agency in yet another jurisdiction and plying trade between ports half a world away from their home bases.

810

815

The Convention is regarded as a wholly good thing that tries through international agreement, to apply common standards to this workforce. The MLC has been ratified by 30 nations and that triggered it coming into force this year, which is why we are asking for the Projet and the Report to be heard at the same time. Until 30 nations actually signed up, it did not trigger this treaty. Currently, the ratifying countries represent 60% of the world's gross tonnage of ships, so the request to the States is to approve a broad enabling Projet de Loi which will allow this Island to introduce a substantive and focused piece of legislation, by Ordinance, in due course, to ensure that Guernsey-based maritime employment agencies operate to the international standards set out in the MLC.

820

825

Why should we bother? Well, there are several agencies on the Island employing locally based staff: there is, therefore, a small economic sector to consider here. It is also fair to suggest that, if it stayed outside and tried to cast itself as a loophole, there would be reputational risks for the

Bailiwick. The reality is that local businesses, which place, literally, hundreds of thousands of seafarers on vessels round the world, will probably fade away if we do not take this step.

830 The key point of the Convention is that the owners of boats and shipping lines in Convention countries will be required to use ports and manning agencies from compliant states and have staff on contracts up to Convention standards or they will not be permitted to dock in Convention ports. Conscious of the need to limit the amount of legislation enacted, the proposal today is considered to be the only aspect of the Convention that will be needed to be turned into local law, then saving at least *some* of the Law Officers' time.

835 The advice is that it is likely that the Island will not have to sign the Convention but will be able to comply by taking appropriate administrative steps to prove compliance. This means that we are not tied to any more legislation than is necessary.

840 So the next steps are there is going to be discussions between – there have already been discussions between – C & E and Public Services, Guernsey Harbours and we have consulted with Alderney and Sark, and both Islands support this project. There will be ongoing detailed and *timely* consultation with the manning agencies of the Islands in the coming months, as the Ordinance is prepared. We are already satisfied, though, that a majority of the local manning agencies in the Bailiwick are, firstly, aware of the Convention, and they also support the measures being taken to give effect to Regulation 1.4 and a further States Report will be brought to the Assembly next year, containing proposals for an Ordinance to regulate the maritime manning agencies in the Bailiwick.

Thank you.

850 **The Bailiff:** Any debate?  
Deputy Brehaut.

855 **Deputy Brehaut:** Sorry, sir, I just need to be clear that... I appreciate that this is, as I understand it, regulating the manning agencies, but will the situation still exist that ships that sail only between British ports will still have Ukrainian crew at Ukrainian rates of pay? Will that still be the case, following the approval of this legislation?

**The Bailiff:** Deputy Stewart.

860 Oh, sorry, we are not in Question Time now; we have moved into debate, so you may wish to reserve your comments until the end of the debate!

**Deputy Gollop:** Personally, I would like to see higher wages for some sailors, but one has to bear in mind the economic circumstances we are in and the need for connectivity.

865 My query on this issue – that we reviewed at legislation, of course, and appreciated the presentation – is it is difficult, especially nowadays with the world looking at us, to have specifically targeted legislation just on recruitment agencies in the maritime and nautical fields. Does the Minister envisage, in the fullness of time, a greater degree of regulation over *other* kinds of recruitment and personnel agencies? I do not particularly wish to see that legislation myself – I had a business interest in one a few years ago – but I am aware, I think, Jersey has greater regulations than we have, and the Isle of Man and the UK *significantly* greater regulations. So what is the position of Commerce and Employment, and are they going to investigate whether the whole sector needs wider regulations, or not?

**The Bailiff:** Yes, Deputy Luxon.

875 **Deputy Luxon:** Sir, the PSD Department, through the Harbourmaster's Office, has been involved with the forming of this proposal and is fully supportive, and, indeed, those manning agencies have been informed and are engaged with the process, so we fully support it

880 If I may, in answer to Deputy Brehaut's question, on the Island's leading ferry operator there are 40 Ukraine workers, and of those 40, only 15 are on what one would call below-Minimum Wage payments, but they are fully compliant with international seafaring standards. So, in answer to that question, this particular piece of work would not affect that situation, but that situation is fully compliant.

Thank you, sir.

885 **The Bailiff:** Any further debate? No?  
Deputy Stewart, do you wish to reply?

**Deputy Stewart:** Yes, sir, just to reiterate what the Minister for PSD said, that the Ukrainian workers, for example, if they are paying tax and National Insurance in the UK, they will be subject to their law, and there is a UK employment tribunal case, *Diggins v Condor Marine Crewing Service Ltd*, which has that.

Where this Convention will go is trying to go *some way* to mitigate these problems on merchant ships – also, as we may have seen in the ‘Dispatches’ programme, on cruise ships as well – and I think now 30 countries have signed up to this, this will be enacted next August and, reputationally, I think we need to be seen to part of that.

With reference to Deputy Gollop’s question, sir, the Projet does, in fact, say *all* employment agencies. It may be at some point in the future we would want to do something if there was a problem with employment agencies; however, we do not see any problem at the moment and it is *not* our intention to take any legislation further than what we need for this Maritime Labour Convention.

**The Bailiff:** Thank you.

Members of the States, there are two propositions on page 2145 of Billet XXIII. I will put them to you separately.

The first is to approve the proposals set out in section 3 of this Report.  
Those in favour; those against.

*Members voted Pour.*

**The Bailiff:** I declare them carried.  
The second is to approve the Projet.  
Those in favour; those against.

*Members voted Pour.*

**The Bailiff:** I declare it carried.

#### **The Image Rights (Bailiwick of Guernsey) Ordinance, 2012, approved**

*Article II.*

*The States are asked to decide:*

*Whether they are of the opinion to approve the draft Ordinance entitled ‘The Image Rights (Bailiwick of Guernsey) Ordinance, 2012’ and to direct that the same shall have effect as an Ordinance of the States.*

**The Deputy Greffier:** Article II, the Image Rights (Bailiwick of Guernsey) Ordinance, 2012.

**The Bailiff:** This is at pages 9 to 167 of the Brochure.  
Is there any request for any debate or clarification? No? In that case, we go to the vote.  
Those in favour; those against.

*Members voted Pour.*

**The Bailiff:** I declare it carried.

#### **The Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2012, approved**

*Article III.*

*The States are asked to decide:*

*Whether they are of the opinion to approve the draft Ordinance entitled ‘The Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2012’ and to direct that the same shall have effect as an Ordinance of the States.*

950 **The Deputy Greffier:** Article III, the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2012.

**The Bailiff:** Pages 168 and 169 of the Brochure.

955 Any requests for clarification or debate? No? We go to the vote.  
Those in favour; those against.

*Members voted Pour.*

960 **The Bailiff:** I declare it carried.

**The Data Protection (Bailiwick of Guernsey)  
(Amendment) Ordinance, 2012, approved**

965

*Article IV.*

*The States are asked to decide:*

970 *Whether they are of the opinion to approve the draft Ordinance entitled 'The Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2012' and to direct that the same shall have effect as an Ordinance of the States.*

**The Deputy Greffier:** Article IV, the Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2012.

975 **The Bailiff:** Pages 170 and 171 of the Brochure.  
Any requests for debate or clarification? No? We go to the vote.  
Those in favour; those against.

980 *Members voted Pour.*

**The Bailiff:** I declare it carried.

985 **Statutory Instruments laid before the States**

**The Deputy Greffier:** The following Statutory Instruments are laid before the States: the Social Insurance (Contributions) (Amendment) Regulations, 2012; the Driving Licences and Driving Tests (Fees) Regulations, 2012.

990

**The Bailiff:** I have not received notification of any request for debate, so we move on.

995 **Billet d'État XXVII**

**COMMERCE AND EMPLOYMENT DEPARTMENT**

1000

**New Member  
Deputy Soulsby elected**

*Article I.*

1005 *The States are asked:  
To elect a sitting Member of the States as a member of the Commerce and Employment Department to complete the unexpired portion of the term of office of Deputy M. P. J. Hadley, who has resigned as a member of that Department, namely to serve until May 2016, in accordance with Rule 7 of the Constitution and Operation of States Departments and*

*Committees.*

1010

**The Deputy Greffier:** Billet d'État XXVII, Article I, Commerce and Employment Department, Election of a Member of the Committee.

1015

**The Bailiff:** I will first invite the Minister to propose a candidate.  
Deputy Stewart, do you wish to propose a candidate?

1020

**Deputy Stewart:** On behalf of the Commerce and Employment Board, I would like to nominate Deputy Heidi Soulsby as the Department's new Member. Would the Members like me just give some background?

**The Bailiff:** Not at this stage, no.

**Deputy Stewart:** Thank you, sir.

1025

**The Bailiff:** Do we have a seconder for Deputy Soulsby.

Yes Deputy Brouard, thank you.

Do we have any other nominations?

No? In that case, we go straight to the vote, those in favour of electing Deputy Soulsby to the Commerce and Employment Department?

1030

Those in favour; those against.

*Members voted Pour.*

1035

**The Bailiff:** I declare Deputy Soulsby elected.

#### **PRIAULX LIBRARY COUNCIL**

1040

**New Member**  
**Jurat Le Conte elected**

*Article III.*

*The States are asked:*

1045

*To elect a member of the Priaulx Library Council to fill the vacancy which will arise on 1st January 2013, by reason of the expiration of the term of office of Jurat David Osmond Le Conte, who is eligible for re-election.*

1050

**The Deputy Greffier:** Article III of that Billet, Priaulx Library Council new Member.

**The Bailiff:** Does somebody wish...?

Yes, Deputy Adam.

1055

**Deputy Adam:** Thank you, sir.

The Priaulx Library Council request that they re-elect Jurat David Osmond Le Conte.

**The Bailiff:** Do we have a seconder?

Yes, thank you, Deputy Domaille.

Do we have any other nominations?

1060

No? In that case, we vote on the re-election of Jurat Le Conte as a member of the Priaulx Library Council.

Those in favour; those against.

*Members voted Pour.*

1065

**The Bailiff:** I declare him elected

1070

## Billet d'État XXIII

1075

## POLICY COUNCIL

Heavily Indebted Poor Countries Initiative  
Report approved

- 1080 *Article V.*  
*The States are asked to decide:*  
*Whether, after consideration of the Report dated 1 October 2012, of the Policy Council, they are of the opinion:*
- 1085 1. *To resolve to support the Heavily Indebted Poor Countries Initiative as recommended in the Report.*  
2. *To direct the preparation of such legislation as may be necessary to give effect to their above decision.*

1090 **The Deputy Greffier:** Returning to Billet XXIII, Article V, Policy Council, Heavily Indebted Poor Countries Initiative.

**The Bailiff:** Chief Minister Deputy Harwood will open debate.

1095 **The Chief Minister (Deputy Harwood):** Mr Bailiff, fellow Members, on this occasion I have the privilege of presenting *two* Reports – this and the following one – which I have *great* pleasure in presenting because I think they are very important for this Island.

1100 The first Report deals with the Heavily Indebted Poor Countries Initiative. This is an initiative that was launched in 1996 and it aims to ensure that no poor country faces a debt burden that it cannot manage. It has been embraced by the majority of the international, the multi-national, creditors, including the World Bank, African Bank, IMF, Inter-American Development Bank and the Paris Club Creditors. There is, however, concern that *some* commercial creditors have lagged behind in their efforts and, in particular, there is a group of creditors commonly known as ‘vulture funds’ who have specialised in buying up a debt of some of these poor countries and then trying to use court procedure to enforce the full amount of the debt.

1105 This Report proposes legislation that is designed to limit the capacity of ‘vulture funds’ to enforce payment of relevant debts through the Courts of the Bailiwick and ask that we prepare legislation and we lay it before the States for deliberation. Debt relief is one part of a much larger effort to address the development needs of low-income countries and to make sure that debt sustainability is maintained over time. The current position of eligible, or potentially eligible, countries in the Initiative is set out in the Annexe to the Report.

1110 Whilst many creditors *do* reduce the amount of their debts in accordance with the Initiative, *some* less scrupulous and aggressive creditors, as I have said, have instead sought to recover full face value of debt, plus accumulated interest and any associated charges owed *to* them. In order to confer the full benefit of the HIPC Initiative, and in order to provide and maximise the resource provided through debt relief, it is important, therefore, that steps be taken to ensure the Initiative is not diverted for the purpose of satisfying those aggressive creditors.

1115 The UK enacted its own Debt Relief Developing Countries Act 2010 and that was enacted in order to address the same issue. At the time when they introduced the Act, there was concern over Human Rights issues and it was felt appropriate to introduce a sunset clause into that legislation which meant that, at the end of a year, the matter would have to come back to the Houses of Parliament for reconsideration. The UK Act prevents creditors of HIPC recovering an amount of debt *in excess* of that amount which is consistent with the HIPC initiative and, again, in common parlance, this means, in effect, that there is an imposition of what is commonly called a ‘haircut’.

1120 Compliance with Article 6 of the First Protocol of the European Convention on Human Rights was debated at the time the UK first introduced that legislation. Article 6 is *potentially* engaged because the Act will reduce the enforceability of a judgment, including existing judgments. The same issue and the same matter is considered in relation to *our* initiative in introducing this legislation. The Secretary to the Treasury in the United Kingdom, in 2011, when the States – following this debate on 6th June – endorsed the proposal to proceed with such legislation and announce to the world that they were taking steps which would limit the capacity of ‘vulture

1130 funds' to enforce payment of debts. The UK Treasury fully supported the initiative and, since then, the Policy Council has liaised, at officer level, with HM Treasury and has maintained an ongoing dialogue in relation to the implementation of such legislation.

In August 2011 the Policy Council issued a consultation. No response suggested the enactment of a Law containing provisions similar to those of the UK would have adverse consequences on Guernsey business. On 18th November 2011, Policy Council issued a statement to clarify the position, should any 'vulture fund' be established in Guernsey prior to the introduction of proposed legislation. To date, the courts within *this* Bailiwick have not been used to enforce payment of debts covered by the HIPC initiative. However, this is not an academic or theoretical issue and there has been a case before the Royal Court of Jersey which went to appeal and then went to the Judicial Committee, where attempts were made to enforce legislation which would be contrary to the HIPC Initiative to enforce debt issues.

The concerns raised in the UK Parliament in relation to Human Rights matters have not transpired and it is interesting to note that, in respect of the concerns with regard to Human Rights compliance, it is the UK which will be the State party to the European Convention on Human Rights and, by replicating the provisions in the UK Act, it therefore follows the UK will be likely to defend the position of the Bailiwick in respect of those rights, if they were challenged.

The implementation of legislation equivalent to the Debt Relief Developing Countries Act 2010 would demonstrate Guernsey's shared aims with the HIPC Initiative. In the light of the high profile of the nature of 'vulture funds', there are significant adverse consequences for Guernsey's international reputation unless the issue is addressed in an acceptable manner and within an acceptable and reasonable time frame. The States of Jersey has already enacted legislation, the Isle of Man similarly, the States of Alderney have been consulted and agreed that they would wish to have legislation along the lines proposed in this Report. The General Purposes and Advisory Committee of the Chief Pleas of Sark indicated that they would not wish the legislation to be drafted on their behalf and whilst it would be preferable for any such law to be Bailiwick-wide, nevertheless the Policy Council believes that a law which applies to Guernsey and Alderney should be effective to deter use of the whole Bailiwick as a jurisdiction within which to try to recover debt, contrary to the intention of the HIPC Initiative.

In conclusion, we believe that the principles of good governance are met by this proposal; in particular, the introduction of such legislation will help to meet the objective of the States Strategic Plan for the maintenance and enhancement of Guernsey's standing in the global community.

Accordingly, we recommend the States of Deliberation resolve to support this initiative and to direct the preparation of the appropriate Legislation.

**The Bailiff:** Yes, Deputy Storey.

**Deputy Storey:** Thank you, sir.

First of all, let me say I am fully supportive of this proposed legislation. I think that it is something that we ought to be doing.

Just two points that I would like the Chief Minister to address in his summing up, if he would, sir, and that is, paragraph 20. When I was reading it, it raised a wry smile – mild amusement – in that, in my opinion, the UK has not got a good record, from my point of view, in defending our position with regard to European legislation. I just wondered if he could expand a little on *why* he thinks that the UK is likely to defend our position.

Secondly, sir, what concerns me is the fact that Sark has not wished to be included in this legislation. That seems to me to be an area where this Bailiwick's reputation in the wider world is open to attack and I just wondered if the Chief Minister could explain to this House *why* Sark has decided they do not want to be included and what measures have been used to try to persuade Sark to be included.

Thank you, sir.

**The Bailiff:** Deputy Gollop.

**Deputy Gollop.** Bearing in mind what Deputy Storey has just said, I am aware, obviously, that the Procureur and the Comptroller have a role in Sark in a number of ways and I wonder, if at some point, the Chief Minister and the Policy Council will not have a degree of diplomacy in helping Sark find a degree of harmony in a number of areas in the future because there is a risk that, if Sark's society is perceived by outsiders to be in a difficult place, that could rebound upon us completely unfairly. We need to ensure that we are together as a Bailiwick.



On the other issues, I fully support, I am afraid, the move of the Policy Council. The States of Jersey – I listened to a debate last week – have approved this, in principle, already, as I understand it. I think that, when we consider part of Guernsey's massive success story is on a global level... Some of us who went to the Financial Services Commission conference heard from, I think, Ms. Fiona Crocker, about the extent of fiduciary links around the world, for example, not just in Britain and Europe but, increasingly, in Russia, the Far East, Africa, Latin America. We are delivering new markets in countries like Brazil and other places and, by definition, we want to ensure that our net contribution to the developing world is a positive one, so outlawing products that do not support global development has to be a good move.

**The Bailiff:** Deputy Bebb.

**Deputy Bebb:** Thank you, Mr Bailiff.

I am in a very unenviable position of actually having to oppose this and now I have to try and explain myself. The intentions behind this Report are *very* well meaning and I would wholly recommend that we *do* approach an appropriate response in order to ensure that the Island and the Bailiwick do *not* fall prey to such 'vulture funds'. But, unfortunately, what we have within the Report is a very, very poor report. There is no measure of how countries would qualify or be disqualified from these measures and it is very unfortunate that if Members were to look at page 2153, they will see quite clearly that one of the countries that are currently post-completion point, is Rwanda.

As we know from recent events, Rwanda is currently in breach of international law in supporting M23 rebels within the Democratic Republic of Congo and causing *great distress* by a civil war in that country. At what point can we *recommend* supporting countries that use their financial resources in order to support terrorism? It is unfortunate that this Report, well meaning as it is, provides *no* information as to how countries will qualify, or be disqualified, and it is very difficult to think how we would, therefore, draft legislation in accordance with the request of the Assembly, given that it is such a vague Report.

This will cause problems for the Legislation Committee and for us when considering that legislation because it is so vague that it is likely to be left to various members of St. James Chambers to determine how an earth they would actually draft legislation in compliance with the resolution.

I would have liked to support this and I hope that the Policy Council see my rejection of this particular proposal as a rejection of this *specific* Report. I would sincerely hope that Members will join with me in rejecting this Report but stating quite clearly that we would like to see a similar, but much *better written*, Report back with the Assembly soon so that we can actually give it our full support. But, as I say, at this point in time I *simply cannot* agree to a measure that will give financial security to terrorist assistance.

Thank you.

**The Bailiff:** Is there anyone else who wishes to speak?  
Deputy Trott.

**Deputy Trott:** Very briefly, sir.

I fully support this, as do other Members, but I think there is an important message here, a subliminal message almost and that is that, if you look at the debts of some of these nations... Let us look at... give some examples... Guernsey, as you know, has no external debts and it is one of the reasons why our economic fortunes have been as consistent as they have been. Places like the UK have, as a percentage of GDP, about 70% expressed in debt, Barbados 117%, Greece 160%, and one of the world's very largest economies, Japan, comes in at around 229% of GDP!

The reason I mentioned Barbados in that list is that, in this *very* room, a few years ago, when the CPA hosted a conference, I think it was the Barbadian delegate who told us that over 80% of every Barbadian tax dollar collected went on servicing its country's external debt. That particular Caribbean country got into the mess that it got into through some very bad fiscal management and, whilst I completely accept the comments of Deputy Bebb with regard to terrorism, there has been terrorism of a sort in the way in which some of these countries have managed their fiscal affairs and, *unfortunately*, the market had a way of – if you like – focusing the world's attention on those fiscal mistakes. Initiatives like *this* remove that level of scrutiny – for the right reasons, I accept – but, at the same time, they must not in any way *reward* the ridiculous fiscal behaviour of some of the nations I have mentioned.

**The Bailiff:** Deputy Brehaut.

**Deputy Brehaut:** Thank you.

1255 I thank Deputy Ellis Bebb, sir, for his speech because he does remind us that it is very, very difficult to be even-handed and consistent. If we look at the assistance we give through our Overseas Aid, we give assistance to India and India is a nuclear power, it is at war with its neighbours and it spends money in a way that is less than ideal. But the debt relief –and assisting agencies – does get to the children and families who need it.

1260 I wish we had *more* of a collective oversight of how we behave, as a parliament, and what we do. I was opposed to members of the CPA visiting Sri Lanka. In the last days of the Sri Lankan war, the Sri Lankan government killed many thousands of people and it is well documented that the troops then went on to mutilate the corpses of women and female children. I do not think, personally, that the Commonwealth Parliamentary Association, after such a short period... the conflict had only – in fact has not finished against the Tamils – and yet, as a parliament, we feel we can sanction such behaviour by meeting their parliamentarians. I know it is tangential to the main thrust of this Report but it is not ideal, I agree with Deputy Ellis Bebb. But I think this is certainly a step, at this stage, in the right direction.

Thank you.

1270

**The Bailiff:** Any further debate?

Deputy Le Tocq.

1275 **Deputy Le Tocq:** Sir, this certainly is not perfect but I think it is a good move and particularly because we give both through our Overseas Aid Commission internationally and many, many charities at work in the Island who give to projects in these countries and I think that whilst it is not a solution that resolves *all* the problems, some of which have been mentioned here and there are many more issues that I could think of, I think it is hopefully one of several measures that we can do to stop the sort of behaviour that has been well documented.

1280 There are certainly some countries on this list that I would have other concerns of, as Deputy Brehaut has indicated, for example. However, there are countries there, such as Tanzania, for example, Guinea, Côte d'Ivoire and, hopefully, coming along, Sudan, Somalia, where we have, I think, an opportunity to make a difference, so I shall be supporting this.

1285

**The Bailiff:** I see no-one else rising.

Deputy Harwood, your reply to the debate.

**The Chief Minister:** Thank you, sir.

1290 In response to Deputy Storey, the UK actually *has* supported us and has given us support on *other* Human Rights issues. It is part of their Treaty Obligation to do so. So whilst I agree with you we cannot look to the UK Government for support on many things, I think, in the field of Human Rights, I think we can and there is precedent certainly for their support.

1295 You mentioned Sark. Yes, it would have been preferable, as I stated in the Report, if Sark was included. Having said that, however, it is very difficult, if there is any situation where litigation could be commenced in Sark, it is unlikely that there are any *assets* in Sark that would be covered by such litigation. The reality is that the Seneschal's Court is unlikely ever to be brought into play. However, I accept the concern you have expressed and, through the Policy Council external relations group, we will, no doubt, try and follow up with Sark and perhaps suggest they might reconsider their position and bearing in mind that they are due to have an elections very shortly anyway.

1300

1305 But we do have to recognise – and in response to Deputy Gollop – that the constitutional position of Sark... we have no ability to *impose* our will on Sark. Clearly, we are happy to assist Sark, if and when called upon by Sark to do so, but we must recognise that, constitutionally, we are not responsible for Sark although, clearly, we must recognise that things that happen in Sark may have an adverse reputational risk on ourselves and also upon Jersey as well. They are part of the Channel Islands insofar as it impacts that.

1310 Deputy Bebb, I was surprised, but I understand, the basis for your opposition. I would, however, point out this is merely directing the preparation of legislation, it is not setting up the legislation itself and I think *your* concerns will, no doubt, be noted by the Crown draftsmen – the legal draftsmen – when they go about preparing, but I would point out to you that there is extant UK legislation which we can use as a template. I would also say to you that, by adopting this particular, or approving this particular, Report, we are not necessarily *supporting* those

jurisdictions listed in that appendix, we are merely putting in place the procedure that will stop others abusing the Guernsey Courts by enforcing debt actions against those jurisdictions. It is not evidence of supporting those jurisdictions, it is that point.

**Deputy Bebb:** If I may just a point of clarification, I am not objecting to the principles and I have no objection to the whole objective of this Report, I am just stating that this *particular* Report is poorly drafted because it *does not* specify any means for the draftsmen to actually consider that law. Therefore, we are giving *carte blanche* to the draftsmen, whereas I believe that it is a better place for *this* Assembly to actually decide how the draftsmen should proceed.

This Report, as it stands, is not particularly helpful.

**The Chief Minister:** I take note of Deputy Bebb's intervention.

The list, and the implementation of the HIPC Initiative, is actually led by the IMF and the World Bank and it is they who determine the depth to which countries are implicated.

Deputy Trott, I am glad to see your support of this. I wholeheartedly agree that the fiscal management of Guernsey has stood us in good stead and, maybe, should be a lesson to lots of other jurisdictions.

Deputy Brehaut, again, I thank you for your support. You widened the debate to concern of this Assembly generally in relation to visiting foreign countries, or involvement in foreign countries, and I am sure that the Assembly has taken note of your concerns.

And to Deputy Jonathan Le Tocq, thank you for *your* support. As you say, it is not a perfect... none of this is perfect but, at least – and I emphasise the point – it prevents this Island's courts from being used by abusive commercial creditors.

I therefore, notwithstanding the reservations that have been expressed in this Assembly, would urge all members of the States to support the recommendations.

**The Bailiff:** Members of the States, there are two propositions: they are on page 2154.

In the light of, in particular Deputy Bebb's speech, I propose to put the two propositions to you separately. So we will take, first, the proposal to resolve to support the Heavily Indebted Poor Countries Initiative, as recommended in the Report.

Those in favour; those against.

*A majority of Members voted Pour.*

**The Bailiff:** I declare that carried.

The second proposition is to direct the preparation of legislation.

Those in favour; those against.

*A majority of Members voted Pour.*

**The Bailiff:** I declare it carried.

## POLICY COUNCIL

### Repeal of Control of Borrowing legislation Report approved

*Article VI.*

*The States are asked to decide:*

*Whether, after consideration of the Report dated 1 October 2012, of the Policy Council, they are of the opinion:*

*1. To repeal the remaining provisions of the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 upon, or in order to coincide with, the bringing into force of the Companies (Alderney) (Amendment) Law, 2012.*

*2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.*

**The Deputy Greffier:** Article VI, Policy Council, Repeal of Control of Borrowing Legislation.

1375 **The Bailiff:** Chief Minister, Deputy Harwood.

**The Chief Minister (Deputy Harwood):** Sir, as I said before I introduced the last Report, I have *great pleasure* in submitting this Report.

1380 As a legal practitioner over the past 30 years, I have struggled with the concept of the Control of Borrowing (Bailiwick of Guernsey) Ordinance and to keep pace with all the various amendments and nuances – and I do make an apology, particularly to those Deputies from the Castel, this is commonly known as COBO, but it is no reflection (*Laughter*) on those who live near, or anywhere by, Cobo Bay!

1385 This Report examines the relevance and legislative history of the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959. It concludes that most of the provisions of the Ordinance have been repealed or replaced and those that remain have no useful commercial or regulatory functions, save for those aspects that relate to company formation in Alderney. It is recommended that the Ordinance is repealed, to allow Alderney to control and exercise oversight of beneficial ownership of Alderney companies in a manner that is consistent with the companies' laws in Guernsey.

1390 By way of history, legislation for the regulating of borrowing, raising money – as in promoting and financing transactions – was introduced throughout the British Isles after the end of the Second World War at a time of chronic financial difficulty. The purpose of the legislation was to stop flows of capital out of the sterling area to the detriment of the United Kingdom and the British Isles. The provisions that were enacted generally across the British Isles were replicated in Guernsey by the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946. The Control of Borrowing Ordinance, as amended, was originally introduced in 1959 and one of the main purposes of the introduction of the 1959 Ordinance was to extend the use of the 1946 Law to regulate offers for sale of shares, such as prospectuses. An extraordinary extension, it was using legislation that was primarily intended to control borrowing for purposes for which it was not necessarily intended.

1400 Applications under the 1959 Ordinance: responsibility for considering those applications were vested in the old Advisory and Finance Committee. Following the various Government changes, but also the establishment of the Guernsey Financial Services Commission, certain of those functions were then adopted by the Guernsey Financial Services Commission and, *in particular*, some of the functions were, for example, taken on board under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 which, effectively, made a number of the old 1959 Ordinance provisions superfluous.

1405 In 2007 the States began to further repeal elements of the 1959 Ordinance. In particular, the introduction of The Companies (Guernsey) Law, 2008 took away a *significant* amount that was originally regulated under COBO and, therefore, rendered superfluous a number of the remaining provisions of the then COBO. The one part of COBO that *has* remained, and which has been used, related to the formation of Alderney companies. You might ask yourselves why the Advisory & Finance Committee, now the Policy Council, or through the GFSC, necessarily should be involved in determining the formation of Alderney companies – many people have asked that same question.

1415 Following consultation and advice from the GFSC, the Policy Council has concluded that, in respect of Guernsey, all remaining sections of the 1959 Ordinance – but, not for the time being, the enabling 1946 Law – serve no useful purpose from either a regulatory or commercial point of view. The purposes of the Ordinance relate to period when a control body was essential for economic reasons. Those reasons no longer exist and, as I have said, a lot of the aspects of the 1959 Ordinance have now been subsumed under subsequent regulatory laws which are now regulated by the Guernsey Financial Service Commission. Accordingly, the Policy Council recommends the repeal of the 1959 Ordinance, provided that no aspect is required by Alderney and Sark.

1420 In relation to Alderney, originally the COBO regime imposed a control over the formation of Guernsey companies and there was a process whereby one had to get the *fiat* of the Crown Officers for the formation of any Guernsey company. That was largely removed when the Guernsey new Companies Law was enacted in 2007/2008 but the provision still remains for Alderney companies and this, in itself, has created an anomaly whereby now the Policy Council, which is accountable to *this* States of Deliberation, is being asked to make decisions in relation to company formation matters under Alderney law, a matter which, in our opinion, ought to lie within the competence of the States of Alderney.

1430 In addition to *that* anomaly, the GFSC's involvement under the 1959 Ordinance in respect of

1435 the formation of an Alderney online gambling business is no longer considered appropriate or  
 necessary, given the overall supervisory regulatory role of the Alderney Gambling Commission.  
 Applications that relate to proposed companies that are to be regulated by the Alderney Gambling  
 Commission, or that propose to undertake activities related to gambling, are now processed  
 1440 directly by the Policy Council, or currently processed directly by the Policy Council in  
 consultation with the States of Alderney, the Alderney Gambling Commission, GFSC, the Law  
 Officers of the Crown and law enforcement agencies.

The States of Alderney has been consulted on the repeal of the 1959 Ordinance and the Policy  
 and Finance Committee of the States of Alderney raise no objection to the Ordinance's repeal,  
 following the amendment of Alderney Company Law, which now replicates the provisions of the  
 1445 Guernsey Company Law, which effectively means that there is some control and recognition of  
 the beneficial ownership of Alderney companies, as is the case with Guernsey companies. That  
 amendment to the Alderney Company Law has been passed by the States of Alderney and a  
 commencement ordinance was passed earlier this year, to take affect from 1st January 2013, so the  
 sole remaining part of COBO, which has been used for the last two or three years, will then also  
 1450 itself become superfluous .

In relation to Sark, the Chief Pleas have been consulted and the Finance and Commerce  
 Committee has supported the repeal of the 1959 Ordinance. They made the caveat that the  
 provisions relating to the consent being required for the formation of Alderney companies should  
 continue in existence until such time as Alderney had enacted its own amendments to its  
 1455 Companies Law and, as I say, that has now been satisfied.

The Guernsey Financial Service Commission supports a repeal of the 1959 Ordinance. The  
 repeal of the 1959 Ordinance will meet with the six principles of good governance. At its core, it  
 prevents the States of Guernsey and the GFSC, on its behalf, from carrying out functions that are  
 superfluous to requirements, the lack of accountability that arises because the Policy Council is  
 1460 responsible for decisions in relation to COBO applications, that relate to Alderney company  
 formation under Alderney law, will finally be removed.

Policy Council recommends the States of Deliberation to repeal the remaining provisions of  
 the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 upon, or in order to coincide  
 with, the bringing into force of the Companies (Alderney) (Amendment) Law which, as I said, will  
 1465 take effect and the implementation will be from 1st January – so, again, *that* condition has also  
 been satisfied and to request the preparation and the necessary Legislation to give effect to this  
 decision. As I say, as a previous law practitioner, I am sure the legal profession and the  
 accountancy profession would welcome this proposal.

I therefore would ask States Members to endorse the recommendations of the Policy Council.  
 1470

**The Bailiff:** Is there any debate?  
 Deputy Storey.

**Deputy Storey:** Sir, I have no problem with the general thrust of this Report but I would like  
 1475 to ask the Chief Minister a question in relation to paragraph 13 in the Report which, again, harps  
 back to reputational risk.

In paragraph 13 it says that:

1480 ‘The 2008 Law provides that a resident agent [or...] resident director of a Guernsey Company... is under a duty to  
 know upon incorporation, and thereafter from time to time’

– which perhaps the Chief Minister could explain –

1485 ‘to take reasonable steps to obtain, the identities of the beneficial owners of the company.’

My concern there is that it says ‘beneficial owners’ rather than ‘ultimate beneficial owners’  
 because, quite often, assets of companies in Guernsey are owned by other companies not resident  
 in Guernsey and I hope, perhaps, the Chief Minister will explain what arrangements would be in  
 place to enable these people – the resident directors or, in fact, the resident service providers – to  
 1490 be aware of the change in ownership of companies registered overseas that are registered as the  
 beneficial owners of Guernsey companies.

It seems to me that, unless that ability is available, then there is a considerable reputational  
 risk. I came across this particular problem when trying to identify the owners of properties in St.  
 Peter Port, where some of the properties are owned by companies not registered in Guernsey: they  
 1495 are owned by companies registered in other jurisdictions and it occurred to me that, at the end of  
 the day, how do we know who the final beneficial owners are of these properties? Are we going to

find out because there is a headline in the *Daily Telegraph* one morning that criminals, or whatever, are laundering their money by investing in companies which own companies which own assets in Guernsey? Whilst I have every confidence in the regulatory authorities in this jurisdiction and many others, there are other jurisdictions in which I do not have the same degree of confidence and perhaps the Chief Minister could satisfy my anxieties in that direction?

Thank you.

**The Bailiff:** Any other debate?

No, Chief Minister.

**The Chief Minister:** I am happy to respond to Deputy Storey.

The whole point is that, since the 2008 Companies Law was introduced, the aspects of the Control of Borrowing Ordinance that previously related to the formation of Guernsey companies fell into abeyance, anyway, so the proposals here will make no change to that.

In relation to the issue about beneficial ownership, under the previous regime the only obligation, and the only certainty, was the details of beneficial ownership at the time of the *formation* of the company. That information had to be supplied to the Crown Officers as a condition of obtaining their *fiat*. There was never any obligation anywhere to notify, to inform, or to advise of subsequent changes of beneficial ownership. Under the Companies (Guernsey) Law – and I apologise, I do not have the Law immediately to hand – but there is an obligation clearly placed upon the Guernsey director and the resident agent to be informed of any change of ownership and it does go, I believe, under the legislation, up to ultimate beneficial ownership. But that is governed and regulated by the Guernsey Companies Law. The service providers who operate under that Law are, insofar as they are based in Guernsey, clearly regulated by the Guernsey Financial Services Commission: they have to be licensed. Individual directors can, I believe, be prosecuted if they have not got the information available. But, as I say, that is a matter that is governed by the Companies Law: it is no longer part of the Control of Borrowing Ordinance. If that helps you, Deputy Storey.

**Deputy Storey:** Thank you, sir.

I appreciate that it was a pass – a hard pass – because we are not discussing the Companies Law but since it was mentioned in the Report I felt it was reasonable to raise the matter.

Perhaps it might be better if I pursued this more directly with... Well, perhaps you could advise me who I should pursue it with.

**The Chief Minister:** I would suggest that, in the first instance, possibly the Guernsey Financial Service Commission may be the appropriate body to pursue the matter with.

Having dealt with that comment, I would still urge all States Members please to support the recommendation.

**The Bailiff:** Members, there are two propositions they are on Page 2162.

I put both of them to you together.

Those in favour; those against.

*A majority of Members voted Pour.*

**The Bailiff:** I declare them carried.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### Revision of Companies Law

#### Report approved

*Article VII.*

*The States are asked to decide:*

*Whether, after consideration of the Report dated 1 October 2012, of the Commerce and Employment Department, they are of the opinion:*

*1. To agree that the above amendments be made to the Companies (Guernsey) Law, 2008.*

*2. To direct the preparation of such legislation as may be necessary to give effect to their*

*above decision.*

1560 **The Deputy Greffier:** Article VII, Commerce and Employment Department, Revision of Companies Law.

1565 **The Bailiff:** Deputy Stewart, the Minister for Commerce and Employment Department, will open debate.

**Deputy Stewart:** Mr Bailiff, fellow Members, when it was introduced back in 2008, the Companies Law represented the most substantial change in commercial law for a generation and the 2008 Law was the result of almost a decade of work by Commerce and Employment, in consultation with the financial services industry and the Guernsey Financial Services Commission. At the same time as modernising the Law, the Department also introduced a new world-leading and money-generating Company Registry.

1575 However, company law does not stand still. In order to remain competitive, Guernsey needs to be constantly reviewing its legislative framework to ensure that the Island's competitive advantage is maintained and strengthened. That is why, once the Company Law was introduced and had been in operation for a short while, the Department decided to conduct a post-implementation review. The Report which is before the States today represents the culmination of that review.

1580 In developing these proposals, the Department has consulted widely. We have worked with – amongst others, of course – the Guernsey Registry User Group, that represents administrators who interact with the Registry on very much a daily basis, the Commercial Bar Association, which represents the lawyers working in the international financial services industry and the Guernsey Society of Chartered and Certified Accountants who represent the accounting and auditing profession on the Island.

1585 In addition to working with these, the Department has also conducted a very thorough consultation process – and the response to that consultation was substantial, with 24 responses running to hundreds of pages. Much of that feedback dealt with technical and legal issues and I am not going to bore you with that today. However, what I can say, if you are bothered to read it – and there are quite a few hours' worth of reading – the consultation paper and the feedback from that consultation has been published and is available on the Company Registry website.

1590 In developing these proposals, the Department has taken the approach of the fact that changes should take into account developments in company law elsewhere, changes should try and simplify the administration of Guernsey companies and reduce, of course, the compliance costs, to keep us competitive, and changes should be consistent with Guernsey's international obligations and meet international standard, as approved by the Financial Action Task Force and the Organisation for Economic Co-operation and Development, the OECD. Above all, the changes should increase Guernsey's competitive position in the world and amongst the twenty competing offshore jurisdictions.

1600 I am not going to go through the changes in detail. However, I would like to cover a couple of the more substantial changes for the record and for, perhaps, some of the Members and the public listening, and explain how they improve Guernsey's competitive position. What we are proposing is that all entities licensed by the Guernsey Financial Services Commission can apply to the Registry to form a Guernsey company. It is also proposed to permit lawyers and accountants that are subject to the Island's AML/CFT framework to form Guernsey companies. This will increase the number of people who can legitimately form Guernsey companies, which will increase the attractiveness of using Guernsey companies, increase the number of companies on the register and increase the revenue.

1605 This will only apply to the formation of companies and not to migrations, amalgamations or acting as a resident agent.

1610 It is also proposed to permit companies to have an additional name in non-Roman script. This will allow companies to use other languages, such as Mandarin and Arabic, as their official company name, although an English name will also be kept on the Registry. This will increase the attractiveness for using Guernsey companies in new and emerging markets.

1615 There are also proposals to allow for simplified corporate governance for companies which are closely held, with fewer than ten shareholders. Requiring full compliance with the corporate governance framework in the Law adds significant complexity and expense to using a Guernsey company. There will remain appropriate, though, protections for shareholders, who can apply to a court if they feel that that company is being run in a prejudicial manner.

These changes will significantly increase the attractiveness of Guernsey companies for the purpose of holding assets where, currently, other jurisdictions are the preferred choice, due to the

1620 simplicity of the administration. Also, a question I was asked at the Douzaine: currently, companies can elect to be exempt from audit on an annual basis. This has created a substantial administrative burden, with significant cost consequences for a company for failing to file an audit waiver within the relevant time, so it is proposed to allow companies to elect to be exempt from audit on an indefinite basis. This waiver will simplify the administration and reduce compliance costs. Shareholders, though, will remain protected, as any shareholders holding 10% of the voting rights will have the *absolute* right to call for an audit at any time.

1625 So these changes represent a significant evolution of Guernsey Company Law. It is constantly evolving and Commerce and Employment will continue to work with the industry to ensure that the Island's primary piece of commercial legislation remains competitive and fit for purpose.

1630 I urge Member to support these proposals.

**The Bailiff:** Any debate.

No? Then we go straight to the...

Sorry, Deputy Soulsby.

1635 **Deputy Soulsby:** Sir, I just want to make a brief point.

Firstly, I agree with the Minister that there has been considerable consultation. As a Trust professional, I have seen various earlier proposals during the consultation process which raised some concerns in my mind and am satisfied that the views have been considered and changes outlined now seem sensible.

1640 In particular the expansion of those professionals who will be able to incorporate a company is logical. At the moment it is expensive to have to go to a corporate service provider when you want to set up a company, widening those eligible should have the effect of bringing down costs and allowing those requiring a company for whatever reason to receive a more joined-up service. I also welcome the areas that seek to dispense with certain requirements for small companies and to make the audit exempt waiver indefinite. This can only help smaller businesses, as it effectively reduces cost and unnecessary red tape, even if just in a small way.

1645 It is a start and I hope that we can see more of the same over the coming years. We need legislation that helps local businesses, not regulates them out of business.

1650 I therefore fully support these proposals.

**The Bailiff:** Any further debate?

Deputy Stewart, do you wish to reply?

1655 **Deputy Stewart:** I think we made an excellent choice earlier on, Mr Bailiff!

Can I thank Deputy Soulsby for her comments and also can I take this opportunity to wish her a very Happy Birthday, as well (*Laughter and applause*).

**The Bailiff:** There are two propositions Members of States. They are both on page 2182 and I put them both to you together.

1660 Those in favour; those against.

*Members voted Pour.*

1665 **The Bailiff:** I declare them carried.

## HEALTH AND SOCIAL SERVICES DEPARTMENT

1670

### Tobacco Control Strategy 2009-2013, Re-introduction of tobacco licences and controls Debate commenced

1675 *Article VIII:*

*The States are asked to decide:-*

*Whether, after consideration of the Report dated 11 September, 2012, of the Health and Social Services Department, they are of the opinion:*

*1. To resolve and to direct that the express objective of the legislation to give effect to anti-*



- 1680 *smoking measures, approved by the States in 2008, 2010 and following this States report, is stated to be to reduce the prevalence of smoking and other use of tobacco products, especially amongst persons under the age of 18.*
- 1685 2. *To direct that legislation be drafted under the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010, to provide for the licensing of sale and supply of tobacco products in terms set out in this report and its appendices, subject to any necessary modifications and adjustments. Penalties for offences should be based on similar regulatory offences, and forfeiture of tobacco products and suspension or revocation of licences should be imposed as penalties in appropriate cases.*
- 1690 3. *To direct that an amendment be made to the Smoking (Prohibition in Public Places and Workplaces) (Exemptions and Notices) Ordinance, 2006, to remove the States Prison from the exemptions to facilitate the smoke-free prison strategy.*
4. *To direct that legislation be drafted to allow the Police to confiscate tobacco products and paraphernalia from under 18's in the streets and other public places.*
- 1695 5. *To direct that legislation be drafted to regulate price displays of tobacco products.*
6. *To direct that legislation be drafted to prohibit commercial importation and retail sales of cigarettes other than in a minimum pack size of 20.*
7. *To direct that legislation be drafted to give officers authorised by HSSD adequate powers to enforce the licensing regime and other legislation to be made under the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010, as well as smoke free and other anti-smoking legislation, subject to appropriate safeguards.*
- 1700 B. *To direct the preparation of such legislation as may be necessary to give effect to their above decision.*

1705 **The Deputy Greffier:** Article VIII, Health and Social Services Department, Tobacco Control Strategy 2009-2013, Re-introduction of Tobacco Licences and Tobacco Controls.

**The Bailiff:** Deputy Adam, the Minister for Health and Social Services Department, will open the debate.

1710 **Deputy Adam:** Thank you, sir.

This States Report is entitled 'Tobacco Control Strategy 2009-2013'. This particular Report is 'Re-introduction of Tobacco Licences and Tobacco Controls.'

1715 Smoking remains the major preventable cause of premature death and ill health in the Bailiwick. Smoking is *highly* addictive, with two thirds of regular smokers taking up the habit before they reach the age of 18. In adopting the Tobacco Control Strategy 2009-2013, the States demonstrated its wish that all necessary legislative and regulatory measures are taken to protect children from tobacco and to ensure that the interests of children take precedence over those of the tobacco industry. The over-arching strategy was first presented to the States of Deliberation in 2008, with a range of proposals to be implemented over the years between 2009 and 2013. Thus,

1720 there is nothing new; everything has been on the table since that time.

In summary, these proposals comprise: firstly, setting mechanisms for increasing rates for excise duty on tobacco products in the future by a minimum of RPI plus 3% annually for five years; safeguarding of future budgetary funds for tobacco control initiatives – I have to accept that seems to have fallen by the wayside to some extent; introduction of pictorial health warnings on cigarette packets; further legislation to be prepared to ban advertising at the point of sale; further legislation to be prepared to ban import and sale of packs of less than twenty cigarettes; introduction of stricter requirements for securing proof of age at the point of sale of tobacco; that licences to sell tobacco be introduced and to direct the Health and Social Services Department, Commerce and Employment and Home Departments to report back to the States regarding their preferred method of implementation and enforcement, including proposals on how to meet the associated costs of any licensing systems; future consideration of changes to the Prison smoking policy; future consideration of a ban on smoking whilst driving; and to direct the preparation of such legislation as may be necessary to give effect to the above decisions, and that such legislation should also provide for the Tobacco Advertising (Guernsey) Law, 1997 to be amended by supporting legislation in the future.

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These various proposals were incorporated in the recommendations of the Report and were agreed by the States *at that time*. All these proposals I have just spoken about have been on the table since that time. I accept that there are a lot of new Members in the States now but the information *has* been available to anyone who wished to access it.

1740 The next States Report concerning the Tobacco Strategy was in May 2010, including

1745 recommendations in relation to prohibiting advertising at the point of sale would be extended to include prohibition on the display of tobacco products; legislation in relation to banning the sale of self-service tobacco from vending machines and legislation enabling the States to meet provision by Ordinance for matters relating to importation, advertisement sale, supply or consumption of tobacco products. At that time, there was considerable consultation because a lot of retailers required advice on what was meant by in relation to 'advertising at the point of sale' and 'prohibiting the display of tobacco products'. For example, the airport and the larger shops, how was that going to be achieved? During this whole process, there was a strategy group dealing with this which involved Home, Education, and Commerce and Employment personnel. This, sir, is the third and, hopefully, the final Report in relation to this 2009-2013 Tobacco Strategy.

1750 There will be another strategy coming to the Assembly to move forward on various other aspects of controlling tobacco consumption. It is a simple and straightforward Report, dealing with the re-introduction of tobacco licences and other tobacco controls.

1755 I have gone over the historic information. As I have already stated, Members of this Assembly were not present when the earlier Reports were discussed and I think it is extremely important to emphasise that this information has been in the public domain for several years. Each stage has a States Report. The recommendations of this Report are on page 2188.

These recommendations include the sentence

1760 'to reduce the prevalence of smoking and other use of tobacco products, especially amongst persons under the age of 18.'

1765 This is relevant, as one group that appears to have shown an increase is young females of less than 18 years of age. This was highlighted in the School Education Unit 2007-2010 Young People Survey. This strategy, including other aims, is to reduce the prevalent abuse of tobacco products by under 18-year olds. Licensing sellers, combined with prohibition of point of sale displays, the ban on vending machines and sales etc. will *undoubtedly* have a positive effect on reducing under-age exposure and access to tobacco products. Licensing is necessary to *regulate* all those who sell tobacco products, to ensure they are abiding by the Law, the Law that is *already in place* in relation to display and advertising within retailers. It ensures that all outlets who sell tobacco are identified and monitored; that those selling tobacco can receive targeted information related to tobacco; that those selling tobacco are fully appraised of their legal responsibilities; that licence withdrawal or suspension may provide effective sanction for breach of licence conditions.

1775 Consultation on implementing a system of licensing in Guernsey follow the States Resolution of 2008 and, after departmental discussion, it was agreed that the Office of Environmental Health and Pollution Regulation would administer and regulate the licences. They prepared the framework for a licensing regime which was approved by HSSD Board early in 2011. It is *incorrect* to state there was *no* communication with the traders. I *personally* am *astonished* by the response of some retailers since this Report was published. As it is, Article 5.3 of the WHO Framework Convention on Tobacco Control, recommends – it *recommends* – that the tobacco industry is *not* consulted on matters of *public health policy* and only on issues that allow effective regulation of the industry. That is the World Health Organisation Framework.

1785 The Health and Social Services Department choose to widen the scope of its consultation with the industry, in order to provide an open and transparent dialogue on issues relating to the Tobacco Control Strategy. The information on the proposal for the re-introduction of licences was available in June 2011 and there were presentations concerning licensing at that time. The Director of Environmental Health and Pollution Control offered meetings for tobacco traders, with presentations explaining proposals for a licensing system in June and July 2011. I circulated copies of this presentation given at that time to all Deputies. I gather some of you, when you tried to open it, found it was corrupt... but if you kept persevering, you could successfully open it.

The recommendation 32(b) in the November Billet states clearly,

1795 'Legislation is drafted on the Tobacco Products (Enabling Provision) (Guernsey) Law, 2010, to provide for the licensing of sale and supply of tobacco products in terms set out in this report and its appendices' –

November Billet –

'subject to any necessary modifications and adjustments',

1800 a very important sentence. In other words, it is recognised that there will be even *further* consultation because this is subject to any necessary modifications and adjustment. This allows for the possibility, as I say, of further changes in the detail – the *detail* – of the licensing scheme,

following consultation with local tobacco retailers and wholesalers.

1805 I fully understand that retailers would not welcome the additional demands made by licences.  
The industry came forward with alternatives: they will introduce ID Cards. But, sorry, there are ID  
cards already available for people who buy alcohol: they have to be over 18, therefore they are  
already in place through the Drug and Alcohol Strategy. *They* will police the system; *they* will  
administer the system themselves. How often do we arrange for someone who is selling a product,  
1810 making profit from the product, provide, administer and *police* all these aspects and controls of the  
sale of that product? Is that good governance? We know from experience that voluntary  
agreements with the tobacco industry *do not work*. Guernsey had a voluntary agreement with a  
Channel Island tobacco manufacturers and importers from 1992 until 1997, when the prevalence  
of smoking was at its highest in Guernsey.

1815 Following the implementation of the first tranche of tobacco control measures, including  
legislation, in 1997 the prevalence of use of tobacco has gradually dropped – following the  
introduction of legislation – from 34% to the present day amount of about 16%. The Director of  
Environmental Health and Pollution Regulation has held meetings with the retailers and, as a  
result, changes have been made to the Licensing Framework – Appendix 1 of this Report. They  
contain an amendment that I will be proposing later on, substituting Appendix 1.

1820 In addition to the proposed licensing scheme, the Report has a recommendation in regard to the  
Prison's exemption from the 2006 smoke-free workplace and other places legislation. This was  
given subject to the proviso that the policy was reassessed in three years with a view to becoming  
smoke-free. This is essential to protect the health and safety of the staff and prisoners from  
second-hand smoke. Work to make this change has been progressing through collaboration  
1825 between HSSD and the Home Department over the last year, with plans in place for the Prison to  
go smoke-free on 1st January, 2013. States agreement to this tranche is *essential* to ensure that the  
Home Department have legislative support to support this initiative.

Plans to draft legislation to allow the Police to confiscate tobacco products and paraphernalia  
from under-18s in the streets and other public places is also proposed to support the existing Law  
1830 against under-age smoking. This is a relative minor inclusion but does bring local Police powers in  
line with those around the world and provides another means to reduce smoking.

Prohibiting the commercial importation and retail sale of cigarettes, other than in a minimum  
pack of size twenty will make tobacco less affordable for young people. The prohibition of display  
of tobacco products approved by a previous States Report in 2010 does not allow for pricing to be  
1835 prohibited and could, potentially, have a loophole in the regime. It is, therefore, recommended that  
legislation is drafted to regulate price displays of tobacco products to just an A4 piece of paper,  
with a list of tobacco brands in small font.

Legislation is drafted to give officers authorised by HSSD adequate powers to enforce the  
licensing regime and other legislation to be made under the Tobacco Products (Enabling  
1840 Provisions) (Guernsey) Law, 2010, as well as smoke-free and other anti-smoking legislation,  
subject to appropriate safeguards.

The implementation of this package of legislation will complete the 2009-2013 Tobacco  
Control Strategy. In doing so, this legislation will support and strengthen existing Legislation  
reducing the burden of smoking related disease as the Island moves towards providing a smoke-  
1845 free environment for young people to grow up in.

Tobacco *is* a deadly product that kills one in two of its long-term users and the Health and  
Social Services Department and the States as a whole have prided themselves on taking a  
proactive approach to be at the forefront of smoke-free initiatives, in order to improve the health  
and lifestyle of *all* Islanders. I hope that I have made it clear that the Tobacco Control Strategy is  
1850 an *ongoing* process formed from a multitude of inter-related initiatives, of which licensing is only  
*one*, designed to impact positively on the health of Islanders through dealing with tobacco use and  
its known detrimental health outcomes from several targeted angles.

Ensuring the health and wellbeing of the population is a *key* States priority – ‘a healthy society  
is an SSB priority’, Billet XXVI, page 2267. The recommendations in this Report, sir, are a further  
1855 step towards this objective and I ask the Assembly to support it.

Thank you, sir.

**The Bailiff:** Members of the States, I have had notice of three amendments. I believe they have  
all been circulated but, for the avoidance of doubt, there is one proposed by Deputy Adams,  
1860 seconded by Deputy Brehaut, one proposed by Deputy Laurie Queripel, seconded by Deputy  
David Jones, and the third, proposed by Deputy Lester Queripel, seconded by Deputy Paint.

I have not had a chance to discuss them in any way with the proposers of the amendments but  
it seems to me that the one that goes furthest is the amendment proposed by Deputy Laurie

1865 Queripel and I propose that we debate, first, the amendment proposed by Deputy Laurie Queripel  
and seconded by Deputy David Jones.  
Deputy Queripel.

1870 **Deputy Bebb:** I am sorry, but if I may... I believe that the amendment might fall under Rule  
13.(2)(b) or 13.(2)(d) and is, actually, in contravention of 13.(3). Therefore, if you are in  
agreement, I would ask that the amendment not be tabled.

**The Bailiff:** 13.(2)(b) deals with amendments that relate to

1875 ‘expenditure which may have the effect of –  
(i) increasing expenditure; or  
(ii) substituting another contractor; or  
(iii) altering the timing of any works,’

1880 13.(2)(d) relating to

‘taxation, fees or other charges bearing on the revenues of the States.’

1885 If that was so, as you say, that would impact on 13.(3), which requires that twelve clear days  
notice should have been given.

I may have to turn to Her Majesty’s Comptroller to advise me, if I have misunderstood the  
amendment, but I do not, at the moment, see it as being in conflict either with 13.(2)(b) or  
13.(2)(d).

H. M. Comptroller, do you wish to assist me?

1890 **The Comptroller:** Sir, I would agree with that. Insofar as there may be an assumption that, if  
this amendment is carried, there may be further work for HSSD, I suppose there is a line of  
argument that, maybe, that is where Deputy Bebb is coming from but I would disagree that this  
engages Rule 13.(b) because that could apply to so many issues. That is not what it was intended  
for.

1895 **Deputy Bebb:** Sorry, 13.(3)(b) says that it would be ‘altering the timing of any works’ and I  
propose that the amendment asks that further work be undertaken by the Department. Therefore, it  
does fall under the altering of timing of any works.

1900 **The Bailiff:** I do not think that is the type of work that that amendment –

**The Comptroller:** I agree, sir.

1905 **The Bailiff:** – is intended to address. If so, then that would apply to many amendments that  
come before the States that require Departments to do further work.

**Deputy Bebb:** If I may, that may be so, but the Rule does not make specific reference to that.  
The Rule is general; it may be that the Rule needs amending! *(Laughter)*

1910 **The Bailiff:** That is why I am here to interpret it... *(Laughter)* and that is my interpretation.  
*(Laughter)*

1915 **The Comptroller:** Sir, may I just say, as well, that is also predicated on the fact that it relates  
to expenditure, as we have just discussed.

**The Bailiff:** Yes, thank you.

Well I thank H. M. Comptroller for her assistance. As I say, in my view I do not believe that  
this amendment brings into play 13.(2). Therefore, Deputy Laurie Queripel, will you please...

1920 **Deputy Laurie Queripel:** Thank you, sir.

Mr Bailiff, Assembly colleagues, I find myself in a rather curious position. I stand before you  
as a lifelong non-smoker and someone who has a real *dislike* for the habit and would discourage  
all people, not just young people, to cease smoking or resist the practice in the first place, so I am  
not particularly happy that the first motion I bring to the Assembly is on a subject such as this.

1925 I always imagined it would be something, perhaps, more noble, something that would seek to

balance the cause of social equality and justice or perhaps an environmental issue. So, hopefully, that highlights the *real* concerns I have in regard to the content, or lack of content, within this Report and its disproportionality.

I now move my amendment:

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*To delete all the propositions and to substitute therefor:*

*'1. To resolve and to affirm that it is an express objective of the States to reduce the prevalence of smoking and other uses of tobacco products, especially among persons who have not attained the age of 18 years.*

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*2. To direct that an amendment be made to the Smoking (Prohibition in Public Places and Workplaces) (Exemptions and Notices) Ordinance, 2006 to remove the States Prison from the exemption to facilitate the smoke free prison strategy.*

*3. To direct that legislation be drafted to allow the Police to confiscate in the streets and other public places tobacco products and paraphernalia from persons who have not attained the age of 18 years.*

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*4. To direct that legislation be drafted to prohibit commercial importation and retail sales of cigarettes other than in a minimum pack size of 20.*

*5. To direct that the Health and Social Services Department shall present to the States of Deliberation as soon as possible a States Report outlining the case for the licensing of the sale and supply of tobacco products and any proposals relating thereto which they consider necessary; and to direct that in advance of submitting the Report the Department shall enter into further and comprehensive consultation with all parties potentially affected by such proposals; and to direct that the Report must include a fuller examination of:*

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*i) the merits or otherwise of any licensing regime being funded in whole or in part by the consumers of tobacco products;*

1950

*ii) the merits or otherwise, either in the short-term during a transition phase or permanently, of permitting persons who have attained the age of 16 years but who have not attained the age of 18 years, and who are employed by outlets licensed to sell tobacco products, to sell such products in the absence from the premises of the licensee;*

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*iii) any credible empirical evidence which demonstrates that such a licensing regime will contribute materially to the objective of the States to reduce the prevalence of smoking and other uses of tobacco products, especially among persons who have not attained the age of 18 years.*

*6. To direct the preparation of such legislation as may be necessary to give effect to their above decision."*

1960

For a while, I will concentrate on the three parts of Proposition 5 within the amendment.

The Report, as I say, sir, is light on content and even some of the information it *does* contain is erroneous. The Report infers that substantial consultation *has* taken place with stakeholders and other States Departments and yet I have a document to hand supplied by a C & E staff member who attended the Tobacco Control Steering Group meetings, confirming the fact that the Department was never consulted on a *political* level and I would just like to quote a few lines from that report, if I may, sir –

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*'The purpose of the Group is to assist and advise HSSD to developing and implementing Guernsey's Tobacco Control Strategy. The Group does not, and has not, drafted States Policy Reports or similar documents, such work resting with HSSD.'*

1970

and, further down,

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*'More recently my attendance on the Group has expanded to include representing Commerce and Employment's interest in retailing but I must stress that my understanding of this wider role is that it has always been at an assistant and advisory level and not in any way providing political input. The Steering Group, as explained earlier, was, and is, not a political group, in any event.'*

1980

And again, sir:

*'To the best of my knowledge, a draft version of the States Report has not been placed before the Group, nor has it been circulated to the Group outside of a meeting. In recognising the role of the Group, this is not something I would have expected to occur.'*

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And the penultimate comment, sir:

1990 'No other relevant information is on the Department's files to support the statement that Commerce and Employment had been consulted on a licensing system.'

And, finally,

1995 "there is neither file record, nor any individual memory of the Department having received a draft of the States Report for comment or any other request for formal comment."

Sir, as for consultation – regardless of what Deputy Adam is saying – with the retail sector, I have a quote here from a member of the retail sector:

2000 'Much has been said on the consultation process but two undeniable facts remain. Firstly, after retailers voiced serious concerns when they heard about the proposals in June and July 2011, they heard nothing further. Hardly anything at all was changed before the proposals were published as proposed policy in the November 2012 Billet, although there is no dispute that shops will be affected. There has been no impact assessment at all to gauge the extent of that, despite the current trading climate.'

2005

In addition to that, I am informed that a consultation group was set up in the middle of 2011, round about this time, which included a number of retailers but was *never convened*, despite the fact that the members of this group were more than willing to work with the Department in order to arrive at measures that *may* have helped HSSD to achieve its stated objectives.

2010

Sir, I took it upon myself to go out and conduct my own research over a weekend – I think it was actually a Friday and a Saturday. I went across the Island, visiting various retail outlets, to ascertain what measures they already had in place in regard to the sale of tobacco products, so I will be happy to furnish HSSD with a copy of that report, or that paper, if they so desire. This is my brief summary of my findings – and I will just quote from that report that I compiled:

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'There was unanimous agreement between retailers, customers and members of the public that I spoke to, that discouraging smoking, particular amongst young people, was a *very good thing*. All retail outlets seemed to follow the same basic guidelines in regard to the sales of tobacco products and take enforcement of these measures very seriously.'

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What I mean by that, sir, is that most of the outlets displayed signs warning would-be customers of tobacco products that, if they looked to be under the age of 21, they would be asked for identification. Many outlets would only accept what you might class as *formal* identification, either a passport or a driving licence and, on top of this, employees of these outlets were under no illusion, if they contravened – knowingly contravened – the policies that the outlets had in place, there would be serious consequences: in other words, their continued employment would be very much under consideration.

2025

*These* measures, and the fines associated with failure to comply with the current Law, were seen as a *sufficient* deterrent. It was felt that the proposals would have little effect on the problem of smoking amongst young people but *would* add to the costs of businesses. The objective was *right* but the proposed method *wrong*. No real proof has been supplied to evidence the stated objective – i.e. it would lead, or had, in other jurisdictions, led to, say, a 20% reduction in smoking amongst minors. Some felt that, at a time when the public were calling for smaller, less invasive government, HSSD's proposals would just increase bureaucracy.

2035

The proposed measures were deemed to be heavy-handed and disproportionate, bearing in mind that much of the work was already being carried out by businesses *imposing* a strict sales policy, so I will resist the temptation of using the cliché of the 'sledgehammer and the nut' but somebody did say it was rather like employing a wrecking ball to knock down a garden shed! So proper, proportionate, effective measures *are required*, not just another way to add to retailers' costs and increase bureaucracy.

2040

Indeed, sir, such strict measures were imposed that sales of tobacco products to minors was hardly an issue. The conclusion can probably be reached that a great majority of minors who smoke do not obtain their products from retailers but, rather, another source, perhaps parents, relations, older siblings or older friends. So this would seem to be a socio-cultural matter, rather than anything else, which is why I believe the educational awareness approach is probably the best way to tackle the issue.

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The feedback I got in regard to the employment of teenagers within the retail sector was also quite interesting, and I will quote that, as well, sir.

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'The proposed measures could have a significant effect in regard to the amount of under-18s employed within the retail sector.'

2055 In other words, a great many teenagers *are* employed within the retail sector and a great many of those teenagers *are* under 18. It is a significant employer of teenagers and, indeed, part of the new Skills Strategy is to train and prepare young people to work within the retail sector, so there is something to consider there, sir.

2060 There are other factors that indicate that the consultation, or engagement, process left a great deal to be desired. I attended a presentation at the PEH and, on a number of occasions, the Minister had to turn to, or be corrected by, his staff and even Deputy Brehaut who, I know, is a very keen supporter of these measures, said at one point that the presentation had been, I *think* he said, 'a bit of a shambles' or 'a bit of a disaster'.

2065 On that evening, it was agreed that HSSD would consider making a number of amendments to their own Report and these would be circulated within a day or two of that meeting. In fact, it took a lot longer, *several days* and I know of at least one retailer who still has not received the details. Now, sir, the very fact that HSSD were willing to quite heavily amend their own Report shows that it had not been well thought through. During that period of, if you could call it consultation, or public engagement, Deputy Adam was interviewed on the local radio and *he* said that it had been *suggested* that the proposed measures would help to achieve the stated objectives – *suggested* – no mention of hard evidence. Hardly a ringing endorsement to support the heavily bureaucratic regime being proposed!

2070 HSSD's report also refers to packs of 14 cigarettes. In fact, no such packs have ever been retailed in Guernsey...

2075 I have researched forms of prohibition and partial prohibition, ranging from the US Alcohol Act of 1919, an Indian version of it in the 1960's, and also a more recent US Government crackdown on gambling. The evidence, revealed from *all* these reports, was that consumption of the prohibited products continued on unabated, the conclusion being prohibitions that focus on suppliers are largely ineffective. The 'out of sight, out of mind' approach does not seem to work. If anything, it may increase the appeal of the product and add to its allure and mystique.

2080 Now, I realise, looking at other parts of the propositions in the amendment, that T & R are not keen on hypothecation. This may be one of the reasons why HSSD plumped for a licensing regime rather than a user-pays approach. But hypothecation *has* been employed before. Deputy Brouard and Deputy Dave Jones were successful with an amendment based on hypothecation a couple of years back, actually, as a means to fund the Transport Strategy. So, if HSSD can come back with conclusive proof, (1) that smoking-related illnesses cost the Department a certain figure every year – and I have heard the figure of £14 million mentioned but, once again, this is not in the Report – and that, (2), a certain amount is needed for educational and awareness programmes, I see no reason why a 'user pays' principle should not be applied.

2090 Referring to the Department's propositions that have survived in this amendment, (1) I think is fairly self-explanatory now. (2) In regard to smoking in prisons or non smoking in prisons, there are very strong reasons to believe that HSSD's objectives *can* be achieved here. This measure can be effectively policed in a controlled environment. (3) In regard to confiscating tobacco products and paraphernalia from under-18s in the streets and public places, this measure has a good chance to achieve limited success, i.e. under-18s are visible, can be seen in public with tobacco products and paraphernalia by police officers, the Law can be applied in a practical sense. Of course, there are implications here for the Home Department; it is their officers who will undertake this duty.

2095 But, all in all, sir, I would call this a 'Swiss Cheese Report' – it has many holes. Its structural integrity is in doubt. Although it is well intended, I believe the method it seeks to employ is, to a large extent, in error. If I was marking this piece of work, I would say 'Could do a lot better.'

2100 Just voting for something, in the vain hope that it might work is not sufficient justification to support the Report un-amended. In fact, such an Act is against the principles of good governance. That is why I am asking Members to approve the amended propositions, to give HSSD the *opportunity* to go away and then come back with something not only well-intended but well-researched, widely consulted and containing measures that are *proportionate*, heavily evidenced and with a very good chance of being effective and, thereby, with a very good chance of achieving these essential objectives.

2105 Thank you, sir.

**The Bailiff:** Deputy Jones, do you formally second –

2110 **Deputy David Jones:** I do, sir.

**The Bailiff:** – and reserve your right to speak?

2115 **Deputy David Jones:** Thank you.

**The Bailiff:** Deputy Hadley.

**Deputy Hadley:** Mr Bailiff, before the Minister gets a chance, I would call on the Assembly to roundly object this absurd amendment.

2120 One thing, if this amendment *were* passed, it would require the Department to do a lot of work which Members are easily able to do themselves. There is ample evidence around that licensing the sale of tobacco reduces the sale of tobacco products to young people and does, in fact, reduce the incidence of tobacco smoking. It was, I think, in 1957 when the first reports came out underlining the link between tobacco smoking and cancer and, at that time, many pharmacies – as  
2125 Members will probably remember, I am a pharmacist myself – actually sold tobacco products. By 1964 pharmacists were written to by the Royal Pharmaceutical Society, pointing out that selling tobacco products was incompatible with the work of a pharmacist in trying to help people get better because the link between death and smoking was now well established.

2130 Interestingly it made me think about a time about thirty years ago when I received a prescription for *chloramphenicol* capsules and at least one other Member of the Assembly will know that, at that time, the prescribing and dispensing of *chloramphenicol* capsules, a very effective anti-biotic, was frowned upon because it had a rather unpleasant side effect in causing aplastic anaemia – and the problem with aplastic anaemia is that it is fatal! There isn't a cure for it: you generally die! So when I received this prescription for *chloramphenicol* capsules, I rang up the  
2135 doctor and said 'Are you *sure* you want to prescribe *chloramphenicol* capsules for this chap?' and he said, 'Oh yes, yes, there was an article in the British Medical Journal and I want you to dispense them, so I said okay. About half an hour later, I received *another* prescription for *chloramphenicol* capsules and I thought 'Well, surely, the chap cannot mean this twice' and I said, 'Look, this is the *second* time you have prescribed *chloramphenicol* capsules. You haven't  
2140 forgotten that it causes aplastic anaemia?' And he said, 'Oh, good God, so it does. I didn't mean *chloramphenicol*, I meant *trimethoprim*! For heaven's sake, can you change the prescription? I said 'Yes, but what about the chap that's gone?' Oh, he said, get it back and change that as well. Think of something clever to say to him... (*Laughter*) You know, it was a mistake... and we didn't mean to do it.'

2145 *Chloramphenicol* capsules are not used now in the western world. I think it is used in the developing world to a small extent, so it made me think, you know, you could not have *chloramphenicol* capsules on Guernsey because it causes aplastic anaemia. Now, the incidence of aplastic anaemia is roughly 1/30,000. So *chloramphenicol* capsules, a highly effective anti-biotic, cannot be sold because it kills one person in thirty thousand and here we are, trying to prevent  
2150 retailers selling a product that *kills half the population that smoke* over the course of a lifetime. We heard the Minister say it kills one person in two. Members should have *no* sympathy with retailers who make their money out of selling *death* to the population of Guernsey. I would rather we charge them much *more* for their licences. We should *hound them out of existence* (*Laughter*) and to say that a business could not afford to pay £300 to sell these items that cause death is *absolute nonsense*. Any business losing £300 a year that goes out of business should go, and go quickly.

2155 If we reduce the number of outlets for the sale of, these agents of death then that is a jolly good thing. So I do, any Member who doubts the efficacy of this regulation, do a quick Google search, I did a quick search and there is a lot of work on licensing tobacco products throughout America and the effectiveness of it. A few months ago the *British Medical Journal* reviewed various anti-smoking measures, including the licensing of retail outlets, and it concluded that, *in every single measure taken*, there was a benefit in terms of the reduction of the number of people who smoke.

So I *urge* Members to throw out this amendment and any other that comes before us, except that of the Department itself. (*Applause*)

2165 Thank you, Mr Bailiff.

**The Bailiff:** Deputy Duquemin.

**Deputy Duquemin:** Mr Bailiff, I rise to speak against the Queripel amendments – both of them – and in support of HSSD's Policy Letter. I will not be speaking again in general debate.

2170 I will start with a quote from Oscar Wilde, when he referred to people who know the price of everything and the value of nothing – who know the price of everything and the value of nothing! To be honest, like Deputy Hadley, I did a Google search last night and I did not know it was an Oscar Wilde quote until I googled. It is a quote and a criticism that my friends and family will tell you, I repeated many, many times.



2175 Like all Members of this Assembly, I have received a lot of e-mails from retailers and their lobbyists. Sir, from the contents of these e-mails, I firmly believe that these individuals are guilty of doing exactly what Oscar Wilde said. They know the price of everything and the value of nothing.

2180 As I read, and re-read, some of these e-mails I think it at best surprising, at worst shameful, that they find it so *easy* to put a price on their losses – or perhaps that should just be reduced profits – but they find it so *difficult* or impossible to acknowledge the value of life, whether that be quality of life or life itself.

2185 I was one of the Deputies who went to the Houses of Parliament last month on a visit organised by the Commonwealth Parliamentary Association. One of the most memorable moments of a very worthwhile and packed two day itinerary was when we watched Prime Minister's Questions in the Commons. Soon it got into full swing and you could barely hear yourself think, let alone hear what was being said but, before that, sir, you could hear the proverbial pin drop when David Cameron read out a list of all the British servicemen and women who had been killed in Afghanistan since the last PMQ's. Why am I recounting this story? Well, for me, it was a very powerful reminder of the cost – the human cost – of the decisions that politicians have to make and loss of life is surely the greatest cost of all. On that, surely, there needs to be no debate.

2190 Thankfully, perhaps, we have delegated the responsibility to send troops to war with the resulting unfortunate and what at times feels like an unnecessary loss of life. But today, let us make it absolutely clear, there is *no* delegation of responsibility, and there is a human cost to the decision on HSSD's Tobacco Control Strategy that we are being asked to make as politicians. What impact would it have on our decision making today if our Chief Minister, Deputy Harwood, was able to read out the names of all of the Islanders, each and every one who are killed by smoking each year. Or perhaps he could read out a list of the hundred babies, the one hundred babies each year who are born to Mums who are still smoking in Guernsey. Or let us turn things on its head and look at it from a more positive angle. Would it not be great if Deputy Harwood was able to read out the names of all those teenage Islanders who, because we made the right decision in this Assembly today, *did not* take up the habit that they would otherwise have lived, or perhaps that should be died, to regret.

2200 Mr Bailiff, the corner shop, the local supermarket and the local wholesaler are as much a part of the supply chain, no pun intended, as the global corporations that manufacture these suicide sticks and I see no reason why they should not be properly licensed and see no reason why they should not pay for the privilege. HSSD are planning modest charges and I, like Deputy Hadley, could not believe how low they are.

2210 **Deputy David Jones:** You'll hear it soon.

**Deputy Duquemin:** To the contrary, I see *every* reason why they should be licensed and *every* reason why they should pay for the privilege, particularly if some of this money could be directed to the good work of GASP outstanding – let me change that to the outstanding work of GASP – outstanding, in the sense that what Alan Williams and his team have achieved is nothing short of terrific but also outstanding, that it is still work in progress. GASP's job is not, and perhaps never will be, completed, just like a smoker who wishes they could turn back the clock and not start a habit that he or she wishes she could stop now. I think the figure is about 70% – seven in ten smokers wish they did not smoke – telling statistic.

2220 But let me continue: I wish we could turn back the clock because I wish the previous licensing regime had *not* been suspended in 1980. Why license the sale of alcohol but not license the sale of tobacco? It makes absolutely no sense to me. I have all the credible empirical evidence I need, to know that it makes absolutely no sense to me to continue to leave tobacco outside of a licensing regime, leaving it to chance. Moreover, I see licensing the sale of tobacco as an integral part of the workstream and policy stream towards HSSD's ambition of a smoke-free Guernsey.

2225 Much has been said about the consultation process and HSSD has received much criticism in some quarters. I think much, if not all, of this criticism is unfair. HSSD have consulted but, to use one of my sister's favourite statements, you cannot reason with the unreasonable – you cannot reason with the unreasonable.

2230 One question that I would like the HSSD Minister to answer during the course of this debate, on the overall Tobacco Control Strategy 2009-2013, is that in the Policy Letter and the States Resolutions from March 2008 it included a move to more effective pictorial health warnings on packets. Deputy Adam did mention it in his opening speech and I ask Deputy Adam why has this not happened yet?

2235 Sir, Members of this Assembly will know that I am a man who likes brands but would the

Minister of HSSD agree with me that, as soon as possible, we should go further and remove *all* branding from cigarette packets, perhaps replacing it with larger and more graphic pictorial health warnings of the effects of smoking – the more graphic, the better, in my opinion (**A Member:** Hear, hear).

2240 I could end with another Oscar Wilde quote: ‘No man is rich enough to buy back his past.’ Powerful and apt, in equal measure. Instead, I would like to end with a quote, or short extract, from one of my favourite authors/journalists, Tony Parsons. Parsons writes novels and columns that often make me laugh. This extract from one of his columns is anything but funny but, like everything he writes, it is very real and heartfelt. Parsons wrote:

2245 ‘...but cancer seems a high price to pay for an innocuous looking habit. You get into smoking and you are robbed of the last twenty-five years of your life. Some cocky souls will say, “Ah, yes, but they are the worst twenty-five years”. Nobody feels like that in a cancer ward. There are no cocky souls in a cancer ward but there is a lot of pain, not just of the excruciating physical kind that they shoot you full of morphine to smother: there are a lot of tears all round. It is hard to say goodbye to the people you love and it is scary. Cancer wards have a way of knocking the cockiness out of you and, for what, another cigarette?’

2255 Mr Bailiff, I hope this speech, if it does anything, knocks the cockiness out of those who, in bringing these amendments, have blindly fallen into the trap of considering the price of everything and the value of nothing. (**A Member:** Hear, hear.) I urge Members to throw out these amendments and support HSSD’s proposal. (*Applause*)

Thank you, sir.

2260 **The Bailiff:** Deputy Storey.

**Deputy Storey:** Sir, I rise because I agree with a great deal of what has been said in this debate.

2265 It seems to me that part of the problem is that there was no proof provided in HSSD’s Report relating to the benefits that might accrue to the elimination of under-age smoking. I think to myself that licensing in the alcohol industry has not done a great deal to prevent under-age drinking but then, when you think about it, we do not know how much *more* under-age drinking there might have been if there had not been licensing in the alcohol business. Thinking of *that*, I have spent most of my life working in the brewing industry and I *know* that over-indulgence in alcohol can cause fatal illnesses and that is why the licensing regime was brought in – to try to prevent *over indulgence*. It can certainly prevent over-indulgence in public places but, obviously, it cannot prevent over-indulgence in private. Nevertheless, it has helped to reduce the amount of drunkenness and illness resulting from over-indulgence in imbibing alcohol.

2275 In the brewing industry there has never been a problem about having to have a licence to sell alcohol, whether it be ‘on licence’ or ‘off licence’. It is an accepted norm that, in order to purvey what is a product which *can* be injurious to health, you need to conduct your business in a proper way and to ensure that you conduct your business in a proper way, you have to apply for a licence and be considered to be ‘a fit and proper person’ to hold that licence. That has never caused a problem. So I cannot understand why, where we are talking about a product which is a lot *more* injurious to health than alcohol, why we should not be considering licensing the purveying of tobacco in the same way.

2280 I accept that in this report there is not any proof that introducing licensing will *reduce* under-age smoking but I am convinced, in my own mind, that it sends the right message to the population. It enforces on people who are selling tobacco products that they have a responsibility and, if they do not live up to that responsibility, then they will, quite rightly, lose their licence.

2285 The other point which puzzled me is there seemed to be a lot of concern about the suggestion that people serving tobacco in a shop should be over the age of 18. I do not find that a problem at the moment. That applies to alcohol, as well. I think back and I think how many times do you go into a shop, where the only person serving is under 18, even if the proprietor of the shop is not there, there is normally somebody responsible for what is going on in the shop, who is over 18. I do not see that having such a responsible person serving in a shop is a *major* problem for shopkeepers. I do not think that shopkeepers, however small, are going to leave their shop purely in the hands of a 16-year old for any significant length of time so I cannot see that *that* should be a problem.

2295 Whilst I have some other problems with the presentation of this Report, as far as *this* amendment is concerned, I do not see that there is benefit to supporting this amendment. I think that introducing the licensing regime for the sale of tobacco, which is much more lethal than alcohol, should be quite an acceptable proposition for the industry.

Thank you, sir.

2300 **The Bailiff:** Does anyone else wish to speak in this debate on the amendment?  
Deputy Lester Queripel.

2305 **Deputy Lester Queripel:** Sir, I will be supporting the majority of the proposals in the amendment, I am concerned though about Deputy Hadley's approach to local businesses, the essence of which seems to be that any business that finds itself struggling, to the extent that paying for a £300 licence would put them out of business, then let them go out of business, the sooner the better. I find that appalling, sir, absolutely appalling.

2310 We all received the annual report this morning from the Guernsey Growers Association which tells us that *all* growers in Guernsey are currently struggling. Would Deputy Hadley advocate, and welcome, the demise of every Guernsey grower?

Thank you, sir.

2315 **The Bailiff:** Does anyone wish to speak?  
Deputy Luxon.

**Deputy Luxon:** Thank you, sir. I will only speak once.

2320 In terms of Deputy Duquemin's and Deputy Hadley's, I thought they were very powerful and emotive speeches, but you cannot be 'a bit pregnant' and you cannot be 'a bit principled'. If you felt that way about smoking, then you should be asking for smoking to be banned *entirely*, (**A Member:** Hear, hear.) make it illegal and make Guernsey a smoke-free jurisdiction. (**A Member:** Hear, hear.) I am not advocating that: you cannot be 'a bit principled'.

2325 I also do not agree with Deputy Hadley's comments that Deputy Laurie Queripel's amendment is 'absurd'. Of all the Deputies' speeches I have heard so far this term, Deputy Queripel has given great thought to his amendments, so I do not agree with that.

To a degree, I stand here slightly poacher/gamekeeper. In my previous life I did operate a business that was a tobacco importer (*Hissing*) – you can hear the hisses in the room! (*Laughter*) – but I recognise that I stand here now, and we sit in this Assembly, to represent the best long-term interests of the people of Guernsey and, therefore, I will apply myself on that basis.

2330 I will not support Deputy Queripel's amendments and I will not support the other amendment, apart from Deputy Adams, because I believe that HSSD, as the Department responsible, should be the Department bringing forward these proposals. I also will not be supporting *all* of the propositions in the Report because I want HSSD to come back and *fix* some of the problems that they will create if these proposals were supported.

2335 There is a disconnect. HSSD, I believe, has an absolute desire to eradicate smoking in the Island – it is their overall vision. It is not a sledgehammer to crack a nut, they are using a *JCB* to crack this nut... and I would like to see proportionality in what we do.

2340 It is *wrong* that retailers should be put into a position where their businesses become non-viable as an act of unintended consequences. The fact that they are selling a *legal* product, they should be allowed to do that. If we ask small retailers to *seal off* the tobacco in their premises, it is almost certain that will close some retail operations. I cannot tell you that *is* the case because there is so much smoke and mirrors in both arguments from HSSD and those from the industry. There are lots of quotes about what *might* happen, what will happen but Sir there is not any actual evidence on many of these issues.

2345 What I would like to see is that HSSD will take note from many of the speeches that are made today and try and come back with something that is more proportionate, that would not affect business in this Island. We talked earlier about the need for our economy to flourish and to thrive and I do not think that closing retail outlets unnecessarily, for the wrong reasons, would be appropriate.

2350 The industry *has* argued very actively and the industry *would do*, there is an element of vested interest. Tobacco manufacturers, importers, wholesalers, retailers, have a common interest. They probably prefer the *status quo*. They *may* agree with some of the policies that HSSD are putting forward but, principally, it is about business. It is a legal product and they would like to carry on being able to sell it as part of the mix of the business that they do. Smokers believe they should have the freedom of choice. It is a legal product and, therefore, why should they not have the freedom of choice.

2355 HSSD have a responsibility to look after the health and wellbeing of the 63,000 Islanders and I *commend* this strategy, the Tobacco Strategy. I *commend* the fact that, of 63,000 people in this Island, 38% of the smoking population has now reduced by more than half, to 16%. By my

2360 calculations, that is 14,000 fewer people smoking now than were before, so well done, HSSD, and well done, the Island of Guernsey!

I, too, am against smoking. I do not like smoking. I have not smoked... It is not true, sir – I did smoke once in a shed behind Castel Hospital and made myself sick when I was twelve! (*Laughter*)

2365 **Deputy Brehaut:** Did a wrecking ball come through it, by chance? (*Laughter*).

**Deputy Luxon:** My parents do not know about this and they never will!

2370 I do not mean to make light of this. This is a serious issue and, again, I commend Deputy Duquemin who really did look at the core issue here of health and death and impact and implications, but I am a pragmatist and I am practical. I will not support these amendments and I would ask Members not to support the Propositions in the Report in their entirety because I think they need to be made more proportionate.

Thank you, sir.

2375 **The Bailiff:** Deputy Dave Jones, then Deputy Dorey.  
Oh, sorry... Well, Deputy Dorey is ready to get up if you are not ready.

**Deputy David Jones:** No, I am fine. There is just one thing: I wanted the Assembly to save the applause... (*Laughter*)

2380 Clearly, I am supporting this Amendment and I, too, agree with some of what Deputy Luxon has said in terms of the Health Department. The Health Department could, I suppose, really eradicate all the Island's health problems just by coming back here time and time again with more and more draconian laws until nobody does anything that might affect their health. I am not sure if that is the sort of Island you want to live in really, it is certainly not one I would want to live in and because I smoked for forty years I probably would not live to see it, anyway. I was also  
2385 interested in the Health Minister's opening speech, talking about the dangers of health and my piece advice to him would be well to give it up because if anybody drives past the Minister's house they will see these clouds of smoke coming out of it (*Laughter*) from his pipe that he chunters away on, looking like a freight train heading down (*Laughter*) to what used to be Whitewoods (*Laughter*).

2390 But I thought that Deputy Duquemin's speech was a good speech, it was very emotive and of course when the State is always wanting to trample over people's rights and, as Deputy Luxon has said, this is a *legal* product. That is the bit you have got to live with. Find the courage to *ban* it completely, to outlaw smoking, the importation of cigarettes into this Island, go the whole hog.  
2395 But whenever the States wants to trample over people's rights, the emotional arguments start to come in. There are many other things that kill the populations of countries all over the world: exhaust fumes, unhealthy eating in terms of diabetes, meat causes the arteries to clot up; all kinds of things that kill people. How far are you prepared to go? Are we going to draft legislation from the Health Department on all those kinds of issues?

2400 Smoking is a legal pastime and, as I say, the emotive arguments are well made and they carry quite a lot of weight but, as I say, they always do when the state is trying to trample on people's rights. The thing that really concerns me about this Report and the other Report is the kind of zealotry and persecution that is creeping in about this particular group of people. If we started to persecute *any other* group of people who were addicted, in the way that we persecute smokers, we would put a stop to it, quite frankly. We do not *persecute* people who have got alcohol problems  
2405 the way we do smokers, we do not *persecute* people who have got drug problems the way we do smokers and, quite frankly, the zealotry in this Report has got to stop. We do not, once people become addicted, Deputy Minister of Health, once people become addicted, we treat them and we look after them. That is the problem I have with a lot of what is going on here.

2410 **Deputy Brehaut:** So, is the process that we arrest them first, generally, don't we?

**Deputy David Jones:** So is that what we are suggesting in the future, then: smokers will just be arrested? Actually, if you look at some of the enforcement on this and the draconian powers that we are going to give to more officials – if you remember, last month I was complaining about  
2415 more and more Government officials being given ever more powers to wander on to people's land now – it will be almost akin to 'stop and search', as I understand it, to go into people's shops, with the powers that we are going to give them today – or *you* are going to give them today. At one time –

2420 **Deputy Bebb:** I am sorry, can I make a point of clarification. The work of GASP, and other smoke free organisations do not *persecute* smokers, they look to *assist* them in order to give up the habit. I feel that, to say that we are *persecuting* smokers, when these measures will actually go partially towards *funding* smoke facilities, such as GASP, is incorrect.

2425 **Deputy David Jones:** That's a speech!

I did not mention GASP, Mr Bailiff, but I *am* talking about a Government Department, part of the state. They are the people I am talking about, not the voluntary groups out there who are trying to help people addicted.

2430 The 'persecution', in my view, is coming from the state, from your Department, the Department that you sit on, and I do not believe that is right. We talked earlier... Deputy Duquemin raised the word 'unreasonable'. But, again, I say to Deputy Duquemin, it is a legal product. Is it then unreasonable for the state to say, 'Well, you have got a legal product, you can buy it and you can consume it or you can use it, but we are then – because we do not have the courage to ban it altogether – going to start to behave unreasonably in the way that we persecute smokers because they consume a legal product.' I did not put that very well, but then, sometimes, I don't, but I know what I mean! (*Laughter*)

2435 But, as I say, people are addicted, but the thing about this 'persecution' bit is, because they are addicted, they do not suddenly lose their *rights* in our community not to be persecuted. We do not say to people, 'You are a smoker, therefore there you go, you are on the list of the groups that we are going to chase down, hunt down and persecute' – so I think I have made that point clear.

2440 One of the reasons I agreed to second this amendment is because Deputy Laurie Queripel made the point to me that there is no evidence that this is even going to work. At the moment, on page 2184, the Environmental Health Officers 'already visit' most retail premises on a regular basis. So they were already out there.

2445 Deputy Queripel – I am sure he will give you a copy of it – has contacted all the tobacco outlets on the Island and they, to a man and a woman, have all said that they have very strict rules about who tobacco can be sold to. So here we are, then. We are going to have a licensing system, where we are going to charge people for it, to do a job that is already being done. Environmental Health officers are already going into these outlets, so why they want to employ somebody else and get the industry to pay for it, I have absolutely no idea! It sounds like a good job creation scheme to me.

2450 I will just remind you, one of my other favourite subjects when it comes to Health: Ronald Le Moignan used to sit where Deputy Burford now sits and, on one occasion, Health came to the States to ask for £23,000 for a Health Promotion Officer. Deputy Le Moignan stood up in that debate and said 'If you grant that sum of money today, in a few years' time you will end up with an entire department' – and they all laughed and said 'Oh, rubbish, we just want one officer.' This is my fear, again, here. This will then be extended, this department, and it will grow like Topsy. We will have all kinds of officials and then other sections of the community will be forced to pay for it through other licensing regimes. Of that I have no doubt.

2460 What I do not understand is that, first of all, the cigarettes that children smoke are not being sold by the retailers to those children. That is clear from Deputy Queripel's evidence and he has spoken to all the retail outlets. They *do not* sell to people... If I go to my Co-op, and children or anybody who does not look old enough puts a packet of cigarettes on the counter, the cashier tells them immediately to produce some ID. So they are asking for ID. They are even asking for *proper* ID – that is, passports, driving licences – they are not just accepting that I have got a school badge and I am in the sixth form of a grammar school so, therefore, I am old enough. They are saying that they want proper ID. So can anybody tell me how that policing is going to improve by employing this statutory official and charging the retail outlets for it – huge amounts of money – can anybody explain to me, from Health, how that policing of this is going to improve?

2470 We have already heard, this morning that, when it comes to alcohol, most of the youngsters consume alcohol that is given to them by adults – irresponsible adults, I grant you but, nonetheless, they are consuming alcohol. Kids cannot go and buy alcohol in pubs or supermarkets or shops because, just like the tobacco retailers, they are responsible people and they *do not sell* it to them. So we seem to be introducing a layer of bureaucracy that *they* have got to pay for, to do a job that is already being done, and that they are policing *better* than it is going to be policed in the future. I tell you what, if this was an episode of 'Yes, Minister', I would say you couldn't make it up: I can see you in an episode of 'Yes, Minister', sitting behind your desk, explaining this to your 'Sir Humphrey' – because *he* would not be able to explain it to *you*.

2480 **The Bailiff:** Through the Chair, please.

**Deputy David Jones:** Sorry, Mr Bailiff – *he* would not be able to explain it to you! (*Laughter*)

**The Bailiff:** You have made the point!

**Deputy David Jones:** That is why I am supporting this amendment – and I do not believe that it *is* an ‘unreasonable’ amendment. When you hear things like ‘the presentations were a shambles’ and ‘the retailers do not feel like they have been consulted’, I mean we are all guilty of it, Government Departments and Ministers. The Government’s idea of consultation is ‘We will tell you what is going to happen. You can faff around a bit and moan about it and we will pretend to listen to you and write it down and then, once all that has happened, we will do what we wanted to do in the first place.’ That is the Government’s idea of consultation! (**Members:** Oooh) Well, I’m sorry, let’s make no mistake about it, that is definitely what seems to have happened with this tobacco licensing issue.

So I am going to obviously support Deputy Queripel’s very sensible amendment. I think that the Health Department should go away and they should look at this more closely and tell *us* what the benefits are of charging retailers this amount of money and then employing another person and before they say well it is self-funding, because the retailers are going to pay for it, are the retailers going to pay this employee’s pensions and all the other fringe benefits that States employees get. Of course not. That will carry on long after we have all died and people have learned that cigarettes no longer exist. They will find another job for them, I suppose.

So I ask you to support this amendment and send the Department of Health away to do the job properly. (*Applause*)

Thank you.

**The Bailiff:** Members, I propose that we rise now and return at 2.30 p.m.

*The Assembly adjourned at 12.31 p.m.  
and resumed its sitting at 2.30 p.m*

## HEALTH AND SOCIAL SERVICES DEPARTMENT

### **Tobacco Control Strategy 2009-2013, Re-introduction of tobacco licences and controls Debate continued**

**The Deputy Greffier:** Debate continues on Article VIII.

**The Bailiff:** And specifically on the amendment proposed by Deputy Laurie Queripel, seconded by Deputy David Jones.

I was going to call Deputy Dorey next. Are you ready to speak, Deputy Dorey?

**Deputy Dorey:** Yes, thank you, sir.

I am opposed to this amendment. In July 2006 there was a report done by the House of Commons Science and Technology Committee titled ‘Drug Classification – Making a Hash of It’. (*Laughter*) They involved in their report a wide range of expert panel members – professional experts who had specialised in addiction, including psychiatrists, GPs, forensic science specialists, law enforcement officers and many other professional categories. What they tried to do was to assess twenty of the major drugs, in relation to how harmful they were. They classified them under three difference categories; physical harm, dependence and social harm. According to their results, the panel’s assessment of tobacco is that it was the ninth most harmful drug, not as harmful as alcohol – which was the fifth most harmful drug – but alcohol and tobacco were considered far more harmful than three of the Class A drugs.

I think the conclusion that *I* draw from this – and most would – is that tobacco *is* very harmful and that, in fact, if you were starting with a clean sheet of paper, you would not legalise tobacco. It is far more harmful than some Class A drugs. In my view, the harmful effects of tobacco is a good enough reason for us, as a society, to have control, via a licence system, on the businesses that can sell this dangerous product to our community.

2545 The purpose of a licence system, as mentioned in the 2008 report, was that tobacco was sold in a responsible way and according to the law. But the most important part of any licensing system is to be able to withdraw that licence, to stop shops selling it, if they are not selling it in a responsible way and according to the law. That is the greatest value we, as a society, can have in relation to this licensing system.

2550 Finally, on consultation: if proposals coming before this Assembly affect part of our community, those affected will always lobby against proposals, but it doesn't mean that they are right. I welcome the retailers being consulted and I consider they *have* been consulted on this issue. I have been to meetings and I think, from the number of e-mails, they have had an adequate opportunity – since the proposal for a licensing system was originally mentioned in the 2008 Report – to put their views forward. As HSD said, they have held meetings. I welcome their views but, in this case, I disagree with them and we, as Members of Government, must decide what is best for our community, *not* for a group who are lobbying us.

2555 So I ask you to please reject this amendment.

**The Bailiff:** Does anyone else wish to speak on the amendment?

Yes, Deputy Bebb.

2560 **Deputy Bebb:** I am heartened as to the people that support HSD and have spoken *against* this particular amendment.

2565 If I could just address a few points that were actually raised. It is unfortunate that we heard from both Deputy Laurie Queripel and Deputy Jones, reference to prohibition. Licensing does not mean *prohibition* and I think that it is completely inappropriate for anybody to be making reference to 'prohibition', when what we are talking about is a duly considered licensing scheme.

2570 Prohibition, in this respect, would be the same as prohibition of alcohol merely because we are licensing it. We are not. A duly considered licence system would actually bring benefits to the Island, more than anything because, at this point in time, we don't *know* the number of retailers. We have no idea how many people *sell* tobacco. It is quite possible that you have certain places, such as hotels or bed and breakfasts, that might hold certain amounts of tobacco in reserve, in order to sell to certain people who are resident – but the point is that they are selling it with no consideration. We need to bring some form of perspective into this and I thank Deputy Luxon for having said that we do need to bring some perspective here.

2575 When we are talking about bringing licensing regimes in for tobacco, we have to consider, would we be so careless with regard to alcohol? Last month we licensed pharmaceuticals and we deemed that it was only appropriate that licensed and regulated, properly qualified pharmacists should run pharmacies, and that we brought in a proper means of regulations and licensing those policies. In what way can we consider that tobacco, which has a far more harmful effect on people's health and longevity of life and, for lack of anything else, which has such an *enormous* burden on our health service, estimated to be in the region of £14 ¼ million per annum, which is spent on dealing with tobacco-related illnesses, in comparison to tax which we raise on tobacco, which I believe is in the region of £7.3 million...? The deficit is *unbelievable*. It is only appropriate that we, therefore, consider how we bring in proper, regulated controls with regard to such a drug that is *so* damaging to the Island's health. At the same time, we agree that it should remain a *legal* participation for those who *choose*, who are adult, who make a proper choice that they deem it appropriate to smoke. But notice that that should be *adults* and, therefore, licensing will bring in regulation and will ensure that those people who sell tobacco will only be selling to *adults*. I think that we have to put that into perspective.

2590 As I said previously, I have heard this condemnation of how the States are dealing with those people who smoke and that we would *never* treat people who suffer from obesity or alcoholism in the same way. I would disagree. I think that part of this proposal is that the licence will fund Quitline. That is a means of allowing people to access a system that will assist them in weaning themselves off this *very toxic*, addictive habit. Therefore, it is only appropriate that we consider that this is *not* draconian and against peoples' civil liberties, this is assisting people, where necessary, in order to come off a very addictive drug.

2600 The other point was with regards how we are punishing retailers and how we need to have some perspective – and here is where I was slightly disappointed at Deputy Luxon's comment, as well. £300 per annum and he asked for some perspective! £300 per annum equates to £5.77 per week! That's a packet of cigarettes. Are we honestly saying that retailers cannot pass on £5.77 by adding to the cost of tobacco that they sell? Do we honestly think that that makes this an imposition on companies, so that they have to sell an extra packet of cigarettes or, alternatively, they might choose to increase the cost of tobacco? That *is* perspective! £300 per annum is *not* a

huge burden on companies, when they *choose* to sell tobacco and, therefore, £5.77... we are only talking about a very small increase in what would be necessary for them to sell.

2605

**Deputy Luxon:** Just a clarification, sir.

I did not make any comment. 82p a day, for me, is perfectly reasonable. I did not say it was unreasonable.

2610

Thank you, sir.

**Deputy Bebb:** My apologies, therefore. I obviously misheard.

Finally, I am going to move into a slightly more emotive point. My father died ten years ago. He died from tobacco-related illness: he had small cell lung cancer. He died within a year of having been diagnosed – I was 28. Not many people that *I* know, at 28 lose a parent. it is something that I continue to regret that he never saw either my brother or myself enter into a parliament. He was 61 and looking forward to a *very good* retirement. He worked his whole life in order to gain sufficient money and that was as a result of having smoked his whole life. He started smoking when he was 14 because, back then, we considered cigarettes to be merely acceptable. We have moved on from that but we have not moved on in legislation. We *haven't* given the due weight of law as to the very toxic effect that *these* products have.

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I sincerely hope that everybody will *reject* this particular amendment because it is only appropriate that we bring in licensing of a product that really does have detrimental effect, not only on peoples' lives in the immediate fact, but how it damages families when they also have to lose members of their family.

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Thank you.

**The Bailiff:** Deputy Conder

**Deputy Conder:** Thank you, sir.

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Sir, in my limited experience in this Assembly, I think some of the speeches I have heard on this topic have been the best I have heard in these six or seven months I have sat in this Assembly – on both sides. I would compliment Deputy Queripel and Deputy Jones in favour of this amendment, really powerful speeches, much of which I agree with and, on the other side, Deputy Duquemin and Deputy Hadley and just now Deputy Bebb *against* the amendment. I have learnt a lot from listening to them, as I always do in this Assembly.

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Sir, I will vote *against* this amendment and in favour of most of the propositions in HSD's Report and for many of the reasons that colleagues have expressed in terms of the damage that smoking does to anybody who engages in it. I suspect, in 100 years, it will seem absolutely bizarre that we retailed to our fellow citizens items that we knew were going to kill them and that we allowed, one way or another, people to start at a very young age in this essentially fatal habit. I think if we look back the other 150 years, backwards in history, I suspect – well, I know – that Apothecary Hadley *then* would have been able to sell, through his practice, arsenic, strychnine, opium and cocaine and various other *legal* substances – on some occasions simply by signing a book, the poison register and, on other occasions, without any register, any signing or licence whatsoever!

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Society changes. Society decided, over time, that it was not a good idea to sell opium and cocaine to its members or, indeed, arsenic or strychnine – unless one particularly needed to get rid of a spouse! (*Laughter*) Society made that decision, that those substances, and other substances, were harmful – harmful to individuals and harmful to society in general – and they either licensed them... I completely agree with Deputy Bebb, there is a *significant* difference between licensing and prohibition: they have different effects. So they got rid of those products and the ability for ordinary members of society to gain access and, by and large, [*Inaudible*] prohibition.

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Deputy Laurie Queripel mentioned prohibition and I think he referred to the United States. That was prohibition in 1919 whereby, in the United States, you were not allowed to manufacture, distribute or consume alcohol – and that was a legal product at the time with, yes, certain problems for society. Prohibition meant you could no longer obtain it and that *does* generate illegal activities as, indeed, does the same prohibition of illegal drugs now – heroin and cocaine. But licensing is a *completely different* matter. That recognises, as Deputy Jones quite rightly said, that tobacco and cigarettes are a legal product – are legal. Society licences them to make sure those legal products only get into the hands of those people who can make a sound judgement and know what they are doing by actually buying them.

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So, as I said, I will vote in favour of the Proposition by the Department and vote *with passion* in favour of that, but I do recognise what this amendment is trying to achieve and I would ask the



2665 Department... As I said before, I really do believe in small Government. I think Government should interfere as little as it can in the lives of its citizens. Usually, historically, governments *have* interfered, have got involved in trying to ensure that its members – members of society – are protected both from third parties and from themselves.

In voting against, and urging colleagues to vote against, this amendment – I will only speak once, sir, in terms of this Proposition – I hope HSSD will reconsider the need to appoint *yet another* public servant. We are in a time of financial stringency and, as Deputy Jones said, there is a danger – and I have seen it in other areas of my life in Guernsey, where you create a new part of the public sector and, before very long, they require an office and a secretary and an assistant and a manager – and I hope, and will vote accordingly, that Deputy Jones and his colleagues will just, in that one respect, perhaps, reflect on that and see if they can effect the licensing regulation from their existing resources.

I urge colleagues to vote against this amendment.

Thank you, sir.

2680 **The Bailiff:** Deputy Brehaut.

**Deputy Brehaut:** Excuse me, sir, I have to move because the microphone is...

2685 **The Bailiff:** If you wish, this afternoon, would you like to move and sit in one of the empty seats further to your left?

**Deputy Brehaut:** Oh, does this mean I am walking across the floor of the House, sir? *(Laughter)* I can do that. *(Laughter)*

I would be comfortable making my speech from here at the moment, sir, but I may consider that. Thank you very much.

2690 Firstly, I want to commend Deputy Queripel on the structure of his speech. It was a very, very good speech and I also commend him for going out in the community, asking people, meeting retailers and meeting members of the public. The balance, of course, is that, meeting retailers with an interest in selling the products, you may not get the balanced view, the impartial view, you are looking for.

2695 I, like others, have been mentioned in this discussion on this amendment. I feel it was a mistake that the regulation or the former mechanism, that was in place in the 1980s, was removed. We have had to revisit it to correct something that I feel has been left set aside for too long. I remember the last time speaking at a debate of this nature was on banning smoking in public spaces – places, sorry – and the debate then was ‘restaurants would go out of business’, ‘businesses would close’, ‘the impact would be enormous’, ‘the economy would disintegrate’ and, of course, *none* of us would turn the clock back with regard to that particular piece of smoking legislation. When we presented that at that time, it was clear, in that documentation, that this is the direction we were going, so it is just a continuation of that process.

2705 I commend Dave Jones on his speech but not on this one: it was on the last one he gave, which was an article by Basham & Lewick, which he plagiarised from the internet. It was a very good speech indeed, not one I could agree with, but I have to say –

**Deputy David Jones:** Sir, I have to take issue with that.

2710 The Bailiff of the day asked the then Comptroller to investigate that allegation and it came back that it wasn’t a plagia... I can’t even say it now. The speech was not plagiarised from anything. The quotes that I quoted in that speech were all given their due position in that speech. In other words, they were attributed to the people who made them.

2715 **The Bailiff:** Deputy Brehaut.

**Deputy Brehaut:** What I will do, sir, I will refer the Basham & Lewick – the twenty paragraphs read by Deputy Jones at that time – I will, perhaps, give it to my colleagues at SACC and they can arbitrate, once and for all. The Greffier was left in an extremely awkward position at that time.

2720 Unlike Deputy Laurie Queripel, I don’t want to see anyone below the age of 18 selling cigarettes. That is fairly fundamental to me. I just think it is fundamentally wrong.

The amending our own consultation: the context must be understood – amending our own amendments, sorry, following consultation: the context needs to be understood here. We went out to consultation with other States Departments. The uptake was not good but that is not uncommon.

2725 With regard to the early stages of consultation, Scrutiny did a piece of work whilst I was Chair, that dealt with public engagement and that was an aspect of the area we were looking at: how do you really do meaningful consultation with the public? It presented a challenge for three Departments to go out and do that consultation, but we did.

2730 However, the consultees did arrive to the conversation – to the debate of the discussion – very, very late in the day, and I would ask – although I did speak to one States Member who said that there was possibly a thread of 76 e-mails on this, there have been four people, actually – two retailers, Mr James... [*Inaudible*] and another – four people who have probably been the opposition to these proposals, if we give the feedback in that way any real analysis. So the opposition to the States Report was actually quite slight but what we were facing, remember, is the potential of a *sursis* from other Ministers, saying ‘If you present this States Report unamended, we will *sursis* it and you will be sent once more around the block again to come up with an alternative.’

2735 We then spoke to those people with an interest. The amendment that Deputy Hunter Adam and I placed later deals, I think, with the *vast majority* of concerns that those who are acknowledged at a later stage came to consult with us. I think we took those concerns on board and you will see that in the amendment later this afternoon.

2740 But what I wanted to do, I wanted to apologise because I did not attend the first presentation given by HSSD. I understand that the Minister, Deputy Hunter Adam, *did initially* make an address to those people who had congregated to hear the meeting, then he had to leave to attend another meeting, so it was not that no political representative of HSD was at the top table – and I will apologise for not being at *that* meeting. I will also apologise for the second meeting because it started off as a car crash, it rapidly became a derailment and then a forest fire – and there were reasons for that, actually – because it was a meeting that was put on for States Members... There was an issue as to whether Dr Steven Bridgman *should have* invited a gentleman who had chronic – *has* chronic – obstructive airways disease to address the audience. I appreciate that that does raise an ethical issue in peoples’ minds and, if people were offended by that, then I will certainly, as Deputy Minister, apologise if that caused people distress.

2745 However, the meeting was awkward because the meeting was also attended by a member of the Tobacco Retailers Association. I felt, at one stage, that it was almost – and please excuse this modest exaggeration – like having arms traders on one side of the room, saying ‘We know selling landmines and kalashnikoffs isn’t actually very good, but can we just sell them for another two years longer while you do a bit more consultation?’ It felt like that. Although this individual supports and advocates for small businesses, British American Tobacco need hundreds of thousands of small businesses to survive and we may, quite rightly, get sentimental about places like the Candy Shop and other places but, without them, British American Tobacco and others can’t survive. I think it is important that the balance of that meeting... We had a Deputies Presentation, the door opened and, all of a sudden, it was a presentation to retailers *and* States Members and it I think it is clear to say that it lost its way and, again, I will apologise for that.

2750 The question always – and it is addressed by Deputy Laurie Queripel – is why don’t we ban? Of course, this argument always comes up but the Guernsey way of doing things is always measure by measure, in moderation, piecemeal change. I think this is what this legislation is. People are always going to say ‘Show us your true colours, put your money where your mouth is’. I would ban smoking; I’d ban smoking in cars with children in; I’d ban smoking totally and for the reasons very well expressed by Deputy Bebb. When you lose family members you have very, very strong views but, as Deputy Jones will remind us, we don’t live... Although he refers to us as a draconian society, we are not, actually. I think we are quite liberal and this legislation, I think, expresses that liberalism through doing legislation piecemeal, measure by measure.

2755 I think, again, although Deputy Bebb has already said that businesses that cannot afford £5.70 or £5.20 a week – and, remember, wholesalers are £1,000 – if we are saying that some of these huge wholesalers cannot afford £1,000, this is really the most moderate, most modest, charge you could have, to ensure that we can employ and regulate and keep sponsoring Quitline. It’s not very much to ask at all.

2760 Again, on Deputy Jones’ speech – where I came in – I am familiar with the type of generic speech that Deputy Jones gives. It is usually Europe – it’s all gone mad! Health and Safety – it’s all gone mad! Regulation – it’s all gone mad! (*Laughter*) I just wish he would have presented a report on BSE. He could have told us: cows – it’s all gone mad!

2765 What this legislation is designed to do and, remember, we are talking about environments where *children* go in to purchase the product. They are in there to buy sweets and crisps and coke, and the message that needs to be given to them is, if you want that other product, that other product that’s going to really cause you harm, that’s different. That product would be in a locked

cupboard somewhere else, because that product is a drug and we want to protect you from that product. This is the intent behind, I believe, this very modest legislation.

Please, Members, I would ask that you do not support the Queripel/Jones amendments for the reasons that I have tried to articulate.

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Thank you.

**The Bailiff:** Does anyone else wish to speak on the amendment?

Deputy Gollop.

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**Deputy Gollop:** Thank you, sir.

I have heard a lot about the two presentations HSSD held. I missed both of them, I am afraid. The first one I was in London at the House of Lords seminar, which was interesting. The second clashed with a Disability meeting but then I could have followed it up but I had a bit of lung problems during the month, which put me out of action a bit (*Laughter*) to campaign on behalf of the tobacco industry.

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Because I am sympathetic to the issues that the retailers and others have put across – and I think there are other points in this Report that require closer scrutiny when we get on to some of the other topics – I am going to give the Queripel amendment the benefit of the doubt here and support it, because I know that the Minister, Deputy Dr Hunter Adam, has *stressed* the consultation process that has gone on but, as Deputy Jones reminded us, sometimes public engagement falls short of the ideal. I think that the process HSSD have followed for some time is they have started with a mission, and the mission – the vision – is that smoking *is* a killer. It *does* undermine public health in Guernsey and, therefore, you should be constantly stretching the barriers to make the situation less easy. Because of that, it was not an open-ended consultation exercise. It was more of a telling, than a selling, of a set of principles, I would suggest.

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Actually, I am not unsympathetic and may vote, if the amendment loses, for the costs to the retailers and wholesalers, not because I think that it would do much difference in that area of industry but because, actually, the States and, in particular, Health, needs as much money as it can get and, therefore, the charging is tolerable on that level. What is not clear, though, is why the funding stream for Quitline seems to have been reduced and I would like to have an explanation of that issue because, surely, as part of this package, support for the Third Sector and for the education that that group does is integral to strengthening the public health sell on this matter, especially as regards young people.

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I would like to see a little bit more time taken, more of a lead-in period, and greater consultation as to how Health and Social Services Department, with their officers, can work for the best interests of the Island, in *partnership* with the retailers. Because I think, if you actually look on the ground at the retailers, retailing in this context isn't just about supermarkets, it's about hotels, about vending machines and about little convenience stores and candy shops. There are quite a number where only teenagers work for much of the time and some of these shops do not even sell alcohol. I would suspect, if we could only go back to 1980, the reason why the old licensing was abandoned was because, at the time, it was seen as bureaucratic and against the interests of the tourist industry. Times have moved on but we, nevertheless, need a balance between maintaining the economy and regulation and the public health initiatives.

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**The Bailiff:** Deputy Stewart.

**Deputy Stewart:** I speak, once and for all, if I may, sir.

Interesting. We have heard a lot about tobacco and we have had some good speeches, particularly from Deputy Duquemin on Oscar Wilde who, himself, was a cigar smoker. When he died a bankrupt, he owed Fox's of St James the princely sum of something like 25 shillings which, actually, someone paid off a couple of years ago.

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Oscar Wilde was a great writer and, unfortunately, this is not a great bit of writing here. It seems to me this is rushed. I don't understand why Commerce and Employment was *not* consulted on the licensing scheme which affected retailers – and they *have* objected.

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When we start looking through the licensing, if we want regulation, if we want licensing, what do we want to achieve? I started smoking and I wish I didn't smoke now – I have patches on, I have given up, I've taken it back up again – it *is* an addiction and it is very tough and I don't want to see anyone smoking. But, at the same time, if we put tobacco to one side, we have to say is what we are doing fair, proportionate and achieving our objectives? Surely, a licensing system is there so that if someone does something that they should not do, that transgresses the law, their licence is taken away and they, therefore, cannot sell that product again? That's what we want to achieve.

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What we *don't* want is to have to pay for someone with a degree in clipboard management that can go round and police this, what we should have is a very simple, proportionate system perhaps through the internet where they can log on pay £25 and be done with it, rather than – if we start reading through this with if we don't have tobacco on display, if we don't have the prices on display why do we then need to seal off something that you can't see in the first place, it doesn't seem that that's very well thought through. The fees are going to be set by regulation by HSSD we don't know whether they might want to ramp them up without coming back to the States in a year or two I don't know what their intentions are certainly they seem from the consultation point of view they seem very much that there was, as Deputy Jones put it, something of the zealots about them and that bothers me.

When we look at some of the criteria for granting the licence applicant is the subject of a pending charge anywhere in the world for an offence involving fraud and dishonesty', well I doubt whether they would own up to that would they if they were being done for fraud and dishonesty. Authority to seek and disclose personal data for the purpose of determining whether or not a person is disqualified the Department may seek, receive or *disclose* information. What information and *to whom* are they wanting to disclose? I just think this is just badly thought through. I would like to see licensing but not this sort of licensing. I would suggest that HSSD and I will support all the other proposals here – that HSSD go away and think of a system that is easy to operate that is simple and coming back to some of the existing laws, I would ask the Minister how many people have been prosecuted for selling tobacco to minors – through the Chair.

For example my neighbour came round to me just when this appeared in the press about a week or so ago and she said they are talking about all this tobacco licensing but why are they allowing all the kids at lunchtime to be smoking all up the Baubigny? I went to pick my daughter up from outside St Sampsons School and, as soon as the kids were walking out the school, they were lighting up and that was about eighteen months ago, and I took it up with the then Minister for Health, Deputy Steer, at the time and she said "oh they can't *enforce* the rules outside of the school". well in my day they could and if I was wearing the school uniform, Sir, I was dragged back into school, as I was several times, and I did detention and I think there is *a lot more* we can do under the existing regulations. We have to stop children at school smoking and we don't seem to be attempting to do anything. Why can't the headmasters of their schools drag them in put them in lunch time detention so they are not outside smoking that's what used to happen and that's what needs to happen?

I know when I started smoking and I don't suspect it's any different nowadays it was peer pressure and trying to be big at school and that's why we did it. It wasn't because I went into a shop and saw some cigarettes there, it was because some of my friends said go in go and buy some cigarettes. I think there is a lot more thinking to be done about this Tobacco Strategy I think we should have school rules that if you are wearing the school uniform you should not be outside the school gates smoking and the real thing that bothers me is we have all talked about getting our legislation prioritised. Now this is about *three months* of someone's work as a law officer. What we need to be thinking about is do we *really need to legislate* or can we manage this in a much simpler form. I believe there are far, far, far more important things that we can legislate and this problem can be managed in a different way, and when I am asking law officers to help me with some fairly big problems that we are tackling at C & E that they are having trouble getting back to us and I understand their workload is so great why are we piling more and more on which is not necessary. I would suggest that there will be very little prosecutions under this law, there would be also, to my mind, one or two conditions on the licences which are just way so complicated that a very small shop will have great difficulty in complying.

I will be supporting this amendment and I suggest that we ask HSSD to go back to the drawing board – only for a couple of months – and come back with better provision for this Assembly.

**The Bailiff:** Deputy Perrot.

**Deputy Perrot:** Sir, I don't know who Deputy Jones' scriptwriter is, but I wish I could have some of his time – it would certainly add, I think, to the joy of debates in this Chamber. When I was listening to him, I did not detect in what he was saying a sort of generic-type speech, as alleged by Deputy Brehaut. What I did see is something which I recognise in Deputy Jones, and I hope that I share with him, and that is an anxiety for there to be smaller government, rather than bigger government, and a wish not to legislate for its own sake. That is what I detect in what Mr Jones was saying.

Irrespective of what the States decided some years ago, the fact is that we have legislation which prevents the sale of tobacco to those under age and I do not see that the licensing system

proposed is actually going to do anything to add to that. It seems to me that the proposal now, although it is justified by what was debated a few years ago, is nothing more than gesture politics. After all, tobacco is legal, cigarettes are legal. If we wanted to do something properly about this, we really would *ban* cigarettes but the States have not had the courage to do that, I suppose for two reasons: one is the *monumental* fuss there would be if we did try to interfere with what had hitherto, or thitherto, been somebody's own *personal* choice of pleasure; and the other, of course, would be that we would be doing away with a fairly large chunk of tobacco duties. So those two things, I think, have combined to stop us doing that.

There has also been concern expressed about 16- and 17-year olds working in small shops. Those people, it seems, are actually relied on by retailers who have small shops but now we hear that 16-year olds and 17-year olds cannot be trusted to work in tobacco shops, without either taking tobacco themselves or passing it on to others. I do find it *hard* to square up the idea that we can't trust 16-year olds in those circumstances. After all, we do trust 16-year olds – and we have done it for the last four years – not only to elect Governments here but to elect the legislature, so if we can trust them to do that, surely we can trust them to work in a shop without breaking the rules – and, in any event, there are draconian laws preventing the sale of tobacco to under-age people.

Quite apart from anything else, and apart from the unfairness, it seems to me, the lack of necessity for it, we are actually adding insult to injury by saying 'Well, we're going to control you and you've actually got to pay for the person who is going to be put in place to control you.' I think that the whole thing has got out of hand and I *will* be supporting this amendment.

**The Bailiff:** Does anyone else wish to speak?  
Deputy St Pier.

**Deputy St Pier:** Sir, we have had some *excellent* speeches this afternoon and, indeed, this morning.

There has been a lot of emotion but I can't help feeling that it has been a little bit unnecessary, in the sense that I suspect we are *unanimously* agreed that smoking is bad and we probably unanimously agree that smoking *should* decrease as a public health objective and, more particularly in the context of this whole debate, smoking should be discouraged amongst the young. The only issue at stake is what is the best way to achieve that and what would be effective in achieving that.

Deputy Laurie Queripel's amendment is not some radical amendment, which is seeking to peddle death – which might have been interpreted from some of the speeches – it is simply directing Health & Social Services to go back and do a bit more work on their proposed licensing scheme and I do think that is entirely appropriate. I asked, in the period leading up to this debate, for the Department to provide some more evidence. They have, very helpfully, circulated quite a bit of information in support of the propositions. One of them was a report from ASH Scotland that was written five years ago and it was talking about the different types of licensing scheme that were present around the world and whether they had been effective or not.

There was no real evidence in that report, at that time, because all these schemes were quite new and my question was what stronger evidence has emerged in the intervening period. The Department, very fairly and honestly, had to come back and say, unfortunately, there has *not* been a wealth of recent data relating directly to the effects of licensing schemes on health outcomes or relative amounts of smokers and smoking. So, for me, that critical piece of information is why, then, are we continuing to pursue this route?

Deputy Brehaut, quite rightly, referred to the Guernsey way as being piecemeal and incremental and, for me, I feel that the Department has, perhaps overly hastily, dismissed the option of what is termed in the ASH Scotland report 'negative licensing'. In other words, you have a right to sell tobacco unless and until you breach the law by selling them to those that you should not be selling them to, i.e. the under-age. That strikes me as being a very sensible next step that would allow us to move forward with discouraging smoking but without all the paraphernalia of a full, positive licensing regime which is being proposed.

It does concern me, also, that – and I am really picking up on Deputy Conder's point about the bureaucracy and the costs that may be created – in the original licensing scheme, HSSD said that the level of licence fees should be set to enable *full cost recovery*. Those costs will be associated with the administration of the licensing regime, the enforcement of the licensing regime, including inspections, the provision of licensing-related information, the provision of information for applicants etc., and public education about the health risks associated with smoking. In the revised appendix which will be tabled later, we are simply told that the fees would be set by the HSSD Board to ensure the costs of the administration of the scheme are covered. So the question of the

2970 costs of enforcement and future education, in particular, we no longer seem to have the comfort that they would be covered by the cost of the scheme which could, potentially, leave the taxpayer exposed to covering those additional costs if, indeed, those do arise.

So, I will be supporting the amendment because I do feel it is appropriate that HSSD take a fresh look at the most appropriate licensing scheme and, if that fails, then I will be unable, unfortunately to support Propositions 2 and 7 in the States Report in relation to HSSD's proposals.

2975 Thank you, sir.

**The Bailiff:** Deputy De Lisle

2980 **Deputy De Lisle:** Sir, this is no time to be adding costs to small business or to be adding bureaucracy in the States, and I think that this actual Policy Letter comes forward at a very difficult time.

Certainly, all would resolve to affirm the objective to reduce the prevalence of smoking but I think there are other very major objectives of the Government that we have also got to comply with and one, of course, is reducing bureaucracy and the other is looking very hard at whatever austerity measures we can bring in.

2985 To me, this is coming forward at a difficult time for retailers and also seems to run counter to our objectives which are, of course, to enhance small business and business generally in the Island, at a difficult time with global economic circumstances and, also, from the States point of view, to be reducing, and to be *seen* to be reducing, and following the private sector, actually, in deliberations to become more efficient, effective and cut down on bureaucracy. So I feel... and, of course, I recommended very early to the Minister, actually, to withdraw the Policy Letter until further consultation, consideration and discussions had taken place with retailers and others.

I stand by that today, although that was something the Minister decided that he was not going to do. That could have been done within a few months and perhaps we could have come up with something that provided the States with a better compromise, given the impact that this could have on small business and adding bureaucracy to his Department and to the States in general.

2995 Thank you, sir.

3000 **The Bailiff:** Deputy Green

**Deputy Green:** Mr Bailiff, Members of the States, I believe Deputy De Lisle is exaggerating that case. I do not support this amendment and I will be supporting HSSD's proposals on *their* amendment this afternoon.

3005 What HSSD is proposing is a very modest restriction on the freedom of tobacco retailers. No matter how much certain vested interests have tried to exaggerate the effects of tobacco licensing, we are still left with the core fact that a number of speakers have identified this morning. Tobacco has no safe level of consumption, unlike all the other products that are sold by small retailers in the Island. The sheer degree of harm caused by tobacco clearly justifies, in my opinion, a strong and restrictive regulatory approach. Having a licensing regime is entirely consistent with the message that tobacco is just not a normal convenience product, it is in a special category. It is *sui generis* in the context of lawful products. It is a *dangerous* product.

3010 The licensing regime that is being suggested will *undoubtedly* make it more difficult for retailers to sell to children. It *will* deter unscrupulous sellers and it *will* enable the proper administrative enforcement options to be applied in appropriate cases, where shops fail to abide by their conditions. The ability to withdraw licences will be a powerful sanction, in appropriate cases, where a retailer steps too far and sells to somebody who is under-age or otherwise breaches their licensing conditions. That, inevitably, will cut the supply of tobacco in this Island and that *must* be a good thing.

3020 Most smoking strategies are normally based on three key areas, (1) more education, (2) increasing the cost of tobacco, and (3) cutting the supply. I suggest that this licensing regime will be rather effective, in the long run, in cutting the supply.

3025 Just a few comments on the costs implications of this, because I identify with what Deputy Bebb and Deputy Brehaut said this afternoon, the sort of costs that we are talking about for this licensing regime are not significant, when compared to the cost of licensing for many other business activities that exist in this Island – in terms of liquor licensing and in terms of taxi licences, those kinds of things – of and in themselves, this is not a significant cost. £300 a year for a small retailer: it has already been well put, it is around about £5 or £6 per week and that is *not* disproportionate.

So, in conclusion, Mr Bailiff, Members, let us not be swayed by the vigorous special pleading

3030 of those with vested interests, who profit unashamedly from tobacco, because tobacco is not a *normal* convenience product, so let's not treat it in that manner. I support HSSD's proposals and their amendment and I oppose Deputy Queripel's amendment.

3035 **The Bailiff:** Does anyone else wish to speak on the amendment?

In that case, Deputy Adam, do you wish to exercise your right, as a Minister, to speak on the amendment immediately before Deputy Queripel sums up.

**Deputy Adam:** I do, sir.

3040 **The Bailiff:** Deputy Adam, then.

**Deputy Adam:** Thank you, sir.

3045 Firstly, if one looks at this amendment, one has to accept it is trying to adapt most of the proposals in the original States Report. The one slight, shall we say, blockage, is that it does not accept the re-introduction of licences for those selling tobacco products. Dr. Laurie Queripel considers that the case for licensing of sales of the supply of tobacco has not been made and there is not enough evidence, there needs to be more consultation...

3050 Now, first of all, this 'evidence' aspect: I have heard it several times during this debate, 'evidence', 'proof'... Sir, in any area that deals with epidemiology... that is an area where you can't see someone has hit you in the eye and you've got a bruise, therefore that hit caused the bruise, that's simple! Epidemiology is looking at across-the-board factors and trying to assess which ones have produced the results you've got: which things added up that result. You can't say it's *that*, or it's *that* or it's *that* because, in your strategy, it is not *specifically* one thing, it is the fact that a multitude of things are being brought forward together and gradually which, *in total*, will help to reduce tobacco smoking. What's the proof of that? the proof is that, since licensing in 1997, when the amount of tobacco smoking dropped from 34% within our community to 16%, I am sorry, sir, but I feel that is *proof* that this strategy *is* effective.

3060 The next thing about licensing: why do it? Well, I gave the reasons in my original speech: it 'ensures that all outlets for sale of tobacco are identified and monitored'. Deputy Queripel said he went round them all. I don't know whether he went round 80 or 280, or what, but that is, roughly speaking, we are not too sure how many places sell tobacco. That's the trouble. We don't know who is all selling tobacco. We don't know who we have to regulate. That's why we need licensing in place so they are identified and monitored.

3065 They can receive targeted information related to tobacco and those selling tobacco are fully appraised of their legal responsibilities: that licence withdrawal and suspension may provide effective sanction for breach of licence. But it is *not* intended to be a *brutal, horrible, hard stick*. It is *not* intended to be a route to prosecution, as good regulation – and this happens in the food industry. You ask how many premises are regulated in the food industry and how many are actually taken to court? Recently, we did have one and that was after about after six months of him not complying with the requirements of the Department, for cleanliness etc of the premises. That was in the *Press*. So, basically, good regulation is about working *with* the industry providers, to help and prevent any possible breaches, advising, educating.

3075 Licensing gives us a knowledge of who is supplying these products and it is going to be proportionate. It is *not meant* to be heavy handed, it is meant to help and support retailers, so they understand what the regulations are.

3080 Deputy Gavin St. Pier is correct. He mentioned this report that is in this pile of paperwork in front of me, from Scotland but, again, what he does is he takes *one* aspect: did it prove anything? I've explained that you cannot say *one* specific thing of a strategy gave you the results. You can say what the results *are* but, since you introduced various things into it, you can't say which one solved it. Like in Scotland, you stopped smoking in pubs and public places... I was astounded that it actually worked in Scotland because, I hate to say it, they are fairly heavy smokers in Scotland. So, as I say, since this is a combined effect, it is very difficult to prove specifically.

3085 Then we have heard quite a lot about consultation. Now the problem about consultation is it depends how you want to consult. You can take a horse to water, but you can't force it to drink. You can advertise about meetings but you can't force people to come along to them. The other problem is, to a certain extent, the Department is actually not doing it correctly, because if the Department follows the guidelines – I have already stated this – Article 5.3 of the WHO Framework Convention on Tobacco Control recommends that the tobacco industry are *not* consulted on matters of public health policy.

3090 That is the important thing. This is not necessarily HSSD policy, this is public health policy

and, as Deputy Langlois full well knows, the public health doctor can write a report and say what *he* thinks is correct etc. – and he may sometimes drift into political arena, which he is not meant to, but he can do that – because he is more or less at arm's length from the Department. He *has* to be: he is dealing with public health issues, and this is a public health issue. That is because he is within the Department of HSSD – we bring the strategy to the States.

And, if you want to... another thing that came up quite often – since I am talking about Dr Bridgman – yes, there are ideas for changes. The strategy for the next four years is starting to be written now and will probably be brought forward nearer the end of this year. Then, sir, the members of this Assembly can have a field day because it may well include removal of all branding – that has been suggested: sorry, it's been suggested by this Assembly – pictorial warnings more forceful, a ban on cigarettes having *any* branding on them at all.

School rules: Deputy Stewart mentioned school rules. As you say, it was Deputy Carol Steere, who told you that a teacher is only responsible within the boundary of the school and you are quite right, as soon as you walk across the boundary of the school, they have not got responsibility for the school. They find it difficult to police that area.

And another one I have considered might be reasonable is to have on-the-spot fines by Home Department, by Customs & Excise. The problem with them charging someone for bringing excess duty free in is that you can just charge them the excess duty on the cigarettes over the limit, but to take a prosecution is very expensive. Therefore, you would be much better to have a fixed price fine, say £100, and that therefore people would think twice about bringing excess tobacco.

Deputy Jones – (*Interjection and laughter*) Deputy Jones, very *unkindly*, reminded members of this Assembly that I do smoke. I smoke a pipe, I have never smoked cigarettes and never smoked cigars. Pipe tobacco is – you can't purchase pipe tobacco in Guernsey (**A Member:** Shame!) – normal... (**A Member:** Packets?) (*Laughter*) 'Packets' are quite good. You can get stuff that comes in big jars from one retailer but you can't... Why not? Because *they don't make a profit*. There's too few of us, and the likes of me, around (*Laughter*) and, therefore, Deputy Jones – and, as you say, Deputy Jones, you smoke 40 a day – *you* yourself, personally, are fully aware of what effect that has had on you and it's not very pleasant. We talk about cancer, we forget to talk about *emphysema*. You forget to talk – sorry, that's where your lungs are partly damaged, to a fair extent, and this type of stuff – so it's not just the cancer you should be thinking about, it's the other conditions that go hand in hand. You can't walk up from here to the car park, you can't walk up the steps here, you can't walk up here and this type of stuff... Yet I think I am older than you, Deputy Stewart, and I know I'm older than Deputy Jones so, you know, fortunately, pipe smoking isn't so bad, but it is bad, it is an addiction and once you try and get...

Another point that was brought up about things was about Commerce and Employment. They had a representative on the strategy group: now people say there was no *political* representation. Sorry, the strategy was presented to *this* Assembly. The politicians at that time accepted the strategy. Therefore, once you accept the strategy, surely it is up to officers to carry it forward. It is not for the politicians to do every nitty gritty bit of it – the minutiae – and micro-manage it. It is up to the officers to sort things out and, if there are any problems, they have to be in a position to come back to the politicians to make sure they *are* going down the route that the strategy said – which this policy is going down the route of the strategy. As far as Commerce and Employment: as I stated, they had someone on the Committee and, if the person or staff was not happy, he should have gone back to his Board to discuss things. The steering group is *not* political. It is a public health issue and often chaired by either our Director of Environmental Health and Pollution Regulation or our Medical Officer of Health, or our Public Officer of Health.

*None* of what has been said in this Report prevents the industry continuing to police themselves but would simply *ensure* that it is not poacher/gamekeeper and the legal framework is just like alcohol licensing. Just like alcohol licensing! We have this comment that 16-year olds are not allowed to sell tobacco, or won't be, in two years time. That's quite right. Sixteen-year olds are not allowed to sell alcohol now, and have not been allowed to sell alcohol. That's why we are saying it would be sensible to keep it the same type of licensing as alcohol.

Now Dr De Lisle – actually, it *is* Dr De Lisle – Deputy Dr. De Lisle mentions about the affect of this on small business – once I find it – at a time when small businesses are having problems enough. Also, he said it is counter to the objectives of the States – it is counter to the objectives of the States! I'm not too sure where that comes from. This States Report is in exact line with objectives of SSP, as I said in my introductory speech. It is all the way down that road. What aspect, what actual prevention is considered better for HSSD and more cost effective? If we can prevent people having to come into hospital, it is much cheaper for us and that is why it is very difficult to say 'do our analysis', which has been asked for by one person, related to Commerce and Employment, who suggested we should do a cost benefit analysis and relate it to that. That



sounds very good but what does that mean?

Dr Deputy Laurie Queripel, you – as you are on that Department – probably are fully aware of what it means, having an economic assessment. In actual fact, sir, when I asked my staff to make some enquiries from the Department, the reply indicated that, as they had not done any economic assessments, they were unable to help with the costing of such an exercise. They understood it would probably mean turning the value off to the Exchequer – which is, roughly speaking, £7.5 million; the £5 to the retailers depends how many they sell and the percentage expenses of the average household; the value in terms of salaries if staff were to be lost because of shop closure or changes in employment requirements; it also would include lost years due to illness of the person who has been affected by it, medical care, drug costs, etc for tobacco related disease. My impression was it would come out at a highly negative format.

So, sir, for these reasons, in trying to highlight that licensing is a fairly soft touch situation, it is a way of educating... Yes, it will cost some money but it is *not* going to cost anything for *policing* of the licensing, as Deputy Stewart suggested. The policing, sir, will be done by staff employed at the present time. They are out and about, going round various food premises and other premises doing... It does mean extra workload, I accept that, but they are trying to be cost conscious.

Sir, I ask this Assembly to reject this amendment. The main aspect is the licensing. I have described that further consultation is bound to take place because, as Deputy Queripel said, what is the point in more legislation etc., there is a long waiting list and it is going to take time to draft this, which will be done partly by the Department and partly by Law Officers. During that drafting process – which may take up to six months, if we are lucky, or up to a year, if we are not so lucky so, obviously, this is not going to come in for that length of time, anyway – there is *every intention* of going over the framework of the licensing with what we call the stakeholder group of retailers, who attended on Tuesday and Wednesday, after the initial meeting, to go over the framework to make sure they feel it is as *reasonable as possible* a way of bringing a framework in that is *not* too burdensome to retailers to use and function.

Thank you, sir.

**The Bailliff:** Deputy Laurie Queripel, now, to reply to the debate.

**Deputy Laurie Queripel:** Thank you, sir.

Before I begin my reply, I must crave your indulgence. I have noted that in the amendment there was one item that I left out, that I would like to have included that were part of HSSD's original propositions and it was to direct that legislation be drafted to regulate price displays of tobacco products. H. M. Comptroller has – sorry H. M. Procureur – has very kindly drafted a new version of the amendment for me, just including that as 3.A. Would it be too late to consider that, or – ?

**The Bailliff:** Yes, everybody has now spoken so –

**Deputy Laurie Queripel:** It was an oversight on my part, sir. I must apologise, but I have no problem with that particular proposition, anyway

**The Bailliff:** I am not sure that I have entirely followed what proposition you are intending to add, but can you –?

**The Procureur:** The amendment, as circulated, does not reflect Proposition 5 in the original Propositions to direct legislation be drafted to regulate price displays of tobacco products.

Deputy Laurie Queripel has told me that was an error on his part. He intended to reflect that Proposition with identical wording. Strictly speaking, in accordance with the Rules, if the Assembly will give him some indulgence, he could move a slightly modified amendment now.

**The Bailliff:** It is just difficult when everybody has spoken, so nobody, then, has the chance to speak on that aspect.

**The Procureur:** That is, of course, the issue.

**The Bailliff:** Yes.

**The Procureur:** Sir, if he just continues with his present amendment, when the legislation comes back, in whatever form it comes back, it will, of course, be open to HSSD to propose that

there be such regulation.

3215 **The Bailiff:** Yes. Thank you.

**Deputy Laurie Queripel:** Thank you, sir, for that.

3220 **The Bailiff:** I will continue with the amendment, as circulated.

**Deputy Laurie Queripel:** Thank you, sir, I appreciate that.

I thank Members for their contributions to debate – I think! (*Laughter*)

3225 Deputy Hadley accused me of making extra work for the Department. Well, sir, I am only trying to send them back to do the work they should have done in the first place, (**A Member:** Yes.) in my opinion. I thank Deputy Hadley for the health risk and I appreciate the points that he made in regard to the health problems that tobacco causes, but the fact still remains that no substantial evidence exists to prove that a licensing regime will *help* to achieve HSSD's, or should I say *our*, objectives, because I agree with the objectives. Retailers at the moment sell a States-

3230 approved product. It may be an inconvenient truth for us but, at the moment, we approve it.  
Now, sir, Deputy Duquemin is missing the point slightly. I am not a particular friend to the retailers. However, I am a fan and a friend of well-researched, evidence-based rational policy that has a very good chance of being effective and achieving *our* objectives. Deputy Duquemin made mention of the UK government – this is a government that is happy, as a by-point, really, to send soldiers to war, and perhaps to their deaths, based upon a false premise (**A Member:** Hear, hear.), which is a fact that no weapons of mass destruction were ever found, and that was the reason for the British Government for going to war, in the first place.

3235 The Deputy then spoke of decision-making – yes, I agree with that – but based on what? Deputy Duquemin said he had all the imperical – empirical – evidence he needs, but perhaps he should share that evidence with HSSD because they do not have that evidence. Deputy Duquemin called me 'cocky' and, although we shared football dressing rooms in the past at football matches, perhaps we should draw a dark veil over that particular point! (*Laughter*) However, I am not being unkind when I say this, but I do have a phrase or a word for *him* and that is 'sanctimonious'. Why doesn't Deputy Duquemin bring proposals to the States to ban the importation of tobacco products? Indeed, he could have made an amendment today to that end and I might well have supported it.

3240 I am not about to produce a film called 'Carry on Smoking'. What I want to see is effective evidence-based *anti*-smoking measures, measures that *do* work. So I thank Deputy Luxon for his constructive and very well-balanced comments. I appreciated those.

3250 I thank Deputy Dave Jones for his support and the *many* valid points that he made. And he was right about the combustion engine: I have done some research into the combustion engine and it has has been proved, it could be the cause of many, many respiratory illnesses, illnesses that mimic smoking-related conditions – the numbers are comparable.

Excuse me, sir, I was looking for my place... Now I come to Deputy Dorey: he spoke about a survey that included the word 'hash', I believe, and it was all very interesting. I realise that tobacco is a *very harmful* product but, once again, where is the proof that this proposed regime will work? Where is HSSD's report on the extensive, or the detailed, effects of tobacco and cigarette products?

3255 Deputy Bebb, sir, referred to prohibition and I *did* refer to prohibition but, actually, I referred, also, to *partial* prohibition, the out-of-sight, out-of-mind aspect, when we hear about the sealing off of products and keeping them out of sight and all that kind of thing. I agree that we need perspective. Also, Deputy Bebb spoke about liquor licensing, but there is *no proof* that liquor licensing has any effect on under-age drinking – it certainly didn't when I was 15 or 16 years of age, I must admit, sir.

3260 Deputy Conder: I thank Deputy Conder for *his* considered and reasonable views but I would say to Deputy Conder... He spoke about the chemicals and products that society allows, and does not allow but, of course, it still allows harmful chemicals to be placed in our food, and harmful chemicals to pollute our air, so there are *many* harmful chemicals out there that do great damage to all of us.

3270 Deputy Brehaut: I thank him for his comments in regard to the efforts that I have made to present what I think is a reasonable and balanced case and for the fact that I went out and did my own particular survey. He spoke of some of the measures that have already been put in place and about the measures that smoking is now banned indoors in public places. But I have heard a comment from somebody who has a four-year old son and they feel that, actually, in some ways,

3275 those measures have been counter-productive – actually, it has driven smoking out into the streets and out into the open air – and he did tell me the story that he was walking past the café with his four-year old son and his four-year old son asked him why all these people were standing outside in the wind and the rain and he had to tell him they were smoking because they were not allowed to smoke inside. So it has, in fact, in some ways, put smoking in the face of young people. I thank Deputy Brehaut, sir, that he acknowledge the fact that the presentation has left a lot to be desired.

3280 Once again, we spoke about the conditions attached to the regime and, once again, I have to reiterate I do not think the ‘out-of-sight, out-of-mind’ approach works. I just think it adds intrigue to the product that is seemingly being put out of reach of people. I do not think that will put off young smokers, I think they will just look to find the product or obtain the product from somewhere else.

3285 I thank Deputy Gollop for his comments. I agree with him, there is lots of scrutiny required in regard to HSSD’s proposals and their approach and I also agree with Deputy Gollop and Deputy Dave Jones in the fact that there has been something of a mission, of a zealous crusade, about this approach from HSSD. It is almost like they have worked backwards and tried to find a way to justify this approach, this proposed regime. There is something of the finger-wagging quality to  
3290 the whole thing and I think it will be far more... I still believe that education and awareness programmes are by far the best way to get the message across and that is why I do not understand the funding being withdrawn from Quitline.

Deputy St. Pier: I thank him for his comments, as well. I do agree, I think – there is no need to rush this, I do not think it is quite right at the moment. That is why I have brought this amendment.  
3295 I think HSSD could go back and give more consideration to what they need to do and come back with a much fairer and much more proportionate regime. It does not need to be heavily bureaucratic, it does not need to be overly invasive, it just needs to be something that is effective.

Deputy Perrot: I thank him for his considered comments and his views about the concerns, actually about over-legislation. As he pointed out, there are rules that already exist to adequately  
3300 *police* this problem of smoking and under-age. Under-18s cannot buy the product at retailers, so there are already laws that exist that will help to counter this problem. And I also agree with his point that teenagers, remarkably, are quite responsible people – or can be – and in the workplace they *can* abide by sales policies that are in place in regard to tobacco products and the products that they sell.

3305 Deputy De Lisle: sir, I do take his points on board and I do agree about the cost to small businesses and the bureaucracy – yet more bureaucracy – being introduced by the States, when I clearly said, in my opening remarks, that people are wanting *less* bureaucracy, *less* invasiveness from the Government, not more. I agree with him that all we are asking to do is that the Department, Deputy Adam and his Department, go back and reconsider these propositions, these  
3310 proposals, and come back with something that is more measured and something that is more evidence-based and more the result of *proper* consultation.

Deputy Green, sir, said that these measures... I believe that he said these measures are ‘quite modest’, but then he went on to say that they are ‘strong’, that it will result in a ‘strong and restrictive regime’ so I cannot quite marry those two together. My other concern is, if we do put  
3315 this strong and restrictive regime in place, will it not just increase the flow of duty free tobacco products into the Island, and will it not increase black market activity, and will not *illegal* tobacco products find their way into the Island? I wonder if that might be the unintended consequences of this regime.

I agree with Deputy Adam, sir: I am not putting forward a radical amendment here. Many of the Department’s propositions exist, they have survived in this amendment. It is not radical at all. And I do thank Deputy Adam for vesting a doctorate upon me. I will treasure that (*Laughter*) – we are now colleagues in more than one way. We are Deputies together and doctors together! I *agree* with Deputy Adam that the educational aspect, the awareness approach, that has been taken in regard to smoking has proved to be a success and I think this should continue and be increased.

3325 Sir, in regard to the Department needing to *know* what retailers are selling tobacco products, in fact the two tobacco wholesalers that exist in the Island have a *register* of the retailers that it supplies and they have the details of those retailers *on their books*, so it is very well known, very clearly known, which retail outlets sell tobacco products. I am sure the wholesalers will be very happy to supply the Department with that information.

3330 I forgot to mention, when I spoke earlier in my opening remarks, the fact that all retail outlets ask for identification if they suspect that customers are under the age of 21. There are at least two outlets that ask for identification if customers appear to be under the age of 25, so that is how strict retailers are in their sales of tobacco products. As I said, sir, I do not think this is a radical amendment. Many of the Department’s propositions have survived this amendment but, maybe,

3335 the anti-smoking ardour that exists within the, or within part of the, Assembly, anyway, has missed that point.

Sir, I think that HSSD have come here today, believing that their intentions or objectives are *so good*, something that we all agree with, that should be enough, that they should not have to supply a route map or a sufficiently evidenced method to accompany those measures and those propositions. But, for me, it is *not* enough. That route map, that evidenced method, *is* required. We have to realise that decisions we make in this Chamber have an impact, have consequences, across the Island in many ways. That is why we have to get them right. That is why reports and recommendations must be appropriate and proportionate, substantially evidenced-based measures which have been arrived at by careful consideration and extensive research. Often I have observed States Assemblies putting in place *new* policies, new legislation, without proper consideration for the consequences or not realising that adequate legislation already existed and just needed to be applied. We *have* to get these things right.

I want HSSD to go away, to think again, to conduct meaningful consultation, undertake proper research and come back with recommendations that *are* appropriate, proportionate and that are strongly evidenced-based, so that those measures will be effective, the measures that I want to see in place, and that I want to see be effective.

Thank you, sir.

3355 **The Bailiff:** Well Members we then come to ... Deputy Bebb.

**Deputy Bebb:** Sorry, I did not want to disturb Deputy Queripel during his speech but can I ask for a point of clarification, if possible, from the Minister?

Deputy Queripel referred repeatedly to 'out-of-sight, out-of-mind' which I believe leads this Assembly to believe that what they *might* be voting for is in relation to the hiding of tobacco products, which is not part of the current proposals. That has already been approved. Can I just seek clarification that that is definitely the case and, therefore, that we are not voting in any way with regards to that particular piece of legislation that has already been passed by this Assembly.

3365 **The Bailiff:** Are you suggesting, then, that Deputy Queripel misled the States? Is that how this becomes admissible?

**Deputy Bebb:** There could have been misleading with regard to 'out-of-sight, out-of-mind', referring to part of the Tobacco Strategy, which has already been passed by this Assembly, which is to actually put tobacco products out of reach.

**Deputy Adam:** Out-of-sight, out-of-mind: basically, there is *no* advertising allowed and tobacco must not be on obvious display – in other words, it is 'out-of-sight, out-of-mind' – but that was passed in June 2011, I think it was.

3375 At that time, we had an awful lot of consultation because we had to describe to the shops *exactly* what was meant by 'out-of-sight, out-of-mind' at that time. I am not too sure if that is in place yet. Like I said, the drafting for *this* measure, that is taking some time and is not in place yet, so the retailers have had a lot of time to understand and be educated concerning it.

3380 **The Bailiff:** We come, then, to the vote on the amendment:

To delete all the propositions and to substitute therefor:

'1. To resolve and to affirm that it is an express objective of the States to reduce the prevalence of smoking and other uses of tobacco products, especially among persons who have not attained the age of 18 years.

3385 2. To direct that an amendment be made to the Smoking (Prohibition in Public Places and Workplaces) (Exemptions and Notices) Ordinance, 2006 to remove the States Prison from the exemption to facilitate the smoke free prison strategy.

3. To direct that legislation be drafted to allow the Police to confiscate in the streets and other public places tobacco products and paraphernalia from persons who have not attained the age of 18 years.

3390 4. To direct that legislation be drafted to prohibit commercial importation and retail sales of cigarettes other than in a minimum pack size of 20.

5. To direct that the Health and Social Services Department shall present to the States of Deliberation as soon as possible a States Report outlining the case for the licensing of the sale and supply of tobacco products and any proposals relating thereto which they consider necessary; and to direct that in advance of submitting the Report the Department shall enter into further and comprehensive consultation with all parties potentially affected by such proposals; and to direct that the Report must include a fuller examination of:

3395 i) the merits or otherwise of any licensing regime being funded in whole or in part by the consumers of tobacco products;

ii) the merits or otherwise, either in the short-term during a transition phase or permanently, of permitting persons who have attained the age of 16 years but who have not attained the age of 18 years, and who are employed by outlets

3400 licensed to sell tobacco products, to sell such products in the absence from the premises of the licensee;  
 iii) any credible empirical evidence which demonstrates that such a licensing regime will contribute materially to the  
 objective of the States to reduce the prevalence of smoking and other uses of tobacco products, especially among  
 persons who have not attained the age of 18 years.  
 3405 6. To direct the preparation of such legislation as may be necessary to give effect to their above decision.'

**Deputy Laurie Queripel:** Yes, can I have a recorded vote, please, sir.  
 Thank you.

*There was a recorded vote.*

3410 *Lost – Pour 15, Contre 29, Abstained 0, Not Present 3*

	<b>POUR</b>	<b>CONTRE</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
	Deputy Robert Jones	Deputy Soulsby		Alderney Rep. Kelly
	Deputy Le Clerc	Deputy Sillars		Alderney Rep. Arditti
3415	Deputy Gollop	Deputy Luxon		Deputy Fallaize
	Deputy Lester Queripel	Deputy O'Hara		
	Deputy St Pier	Deputy Quin		
	Deputy Stewart	Deputy Hadley		
	Deputy Trott	Deputy Harwood		
3420	Deputy David Jones	Deputy Kuttelwascher		
	Deputy Laurie Queripel	Deputy Brehaut		
	Deputy Lowe	Deputy Domaille		
	Deputy Paint	Deputy Langlois		
3425	Deputy James	Deputy Sherbourne		
	Deputy Perrot	Deputy Conder		
	Deputy Brouard	Deputy Storey		
	Deputy De Lisle	Deputy Bebb		
		Deputy Gillson		
3430		Deputy Le Pelley		
		Deputy Ogier		
		Deputy Le Lièvre		
		Deputy Spruce		
3435		Deputy Collins		
		Deputy Duquemin		
		Deputy Green		
		Deputy Dorey		
		Deputy Le Tocq		
		Deputy Adam		
3440		Deputy Wilkie		
		Deputy Burford		
		Deputy Ingliis		

**The Bailiff:** It is getting warm in here. I have had a request, so Members may remove their jackets if they wish to do so.

3445 Whilst those votes are counted, I suggest we move on with the next amendment and I was going to propose that we deal next with the amendment proposed by Deputy Lester Queripel and seconded by Deputy Paint.

Deputy Lester –

3450 **The Procureur:** It is very technical but Deputy Lester Queripel's amendment depends on Deputy Hunter Adams' amendment having been approved.

**The Bailiff:** I see thank you Mr Procureur, so... yes.

3455 **The Procureur:** It is only the technical thing that these sort of... He refers to bits in the draft, in the statement that is in the back, with reference to the revised one.

**The Bailiff:** I see, yes. So you are suggesting that, technically, we should deal with Deputy Adams...?

3460 **The Procureur:** I think, especially if that is going to be fairly – I must not say – uncontroversial, in that Members would accept it and then, if they did not like any of it, vote against it. At the end of the day, it could, perhaps, be disposed of quite quickly. I hope so.

3465 **The Bailiff:** I take your advice, then. Sorry, Deputy Queripel, we will deal with Deputy Adams' amendment.

Before that, I have the result of the vote on Deputy Laurie Queripel and Deputy David Jones

amendment. There were 15 in favour, 29 against. I declare it lost.

3470 So, Deputy Adam, to open the debate on the amendment that you are proposing, seconded by Deputy Brehaut. *(Interjection)* According to what I have here, Deputy Brehaut, yes.

Sorry, Deputy Lester Queripel?

3475 **Deputy Lester Queripel:** Sir, does that mean that if Deputy Adams amendment is successful, mine is cast adrift *(Laughter)* or do I still get to submit it, sir?

**The Bailiff:** I think that is what the... Your amendment is dependent upon that being successful, yes.

3480 **The Procureur:** Well, part of it is.

**The Bailiff:** Part of it is. The second part is, yes.

**Deputy Adam:** Thank you, sir.

3485 The amendment to the Report on Reintroduction of Tobacco Licences and Tobacco Control seeks to substitute a revised Licensing Framework in place of the present one at Appendix 1:

3490 *1. In Proposition 2, after the word 'appendices' to add 'but for Appendix 1 entitled Licencing Framework, substitute new Appendix 1 entitled Revised Licencing Framework attached to this Proposition'.*

*Appendix 1*

*REVISED LICENSING FRAMEWORK*

**1 The Licence Holder**

3495 *1.1 Licences will be held by all wholesalers and retailers of tobacco including indirect sellers (where the seller and purchaser are not in the same place at the same time – e.g. telephone and internet sales). Indirect sale is included to ensure 'future proofing' of the system.*

3500 *1.2 It will be a requirement of wholesalers obtaining a licence, to provide the Regulator, on request, with a current and complete list of all the parties to which it supplies. The wholesalers have agreed to provide the list voluntarily. It is recognised that some parties, to which the wholesalers supply, have multiple outlets.*

*Furthermore, the licensed wholesaler could only supply licensed retailers. Licensing wholesalers would also effectively help spread the financial burden on retailers created by the licensing regime. Most importantly, such joint licensing would increase public health outcomes not least through increased protection of minors.*

3505 *1.3 Each licence would apply to individual premises and the licence would also stipulate the contact details for the licence holder or a person responsible for those premises. The advantage of this approach is that the location of all tobacco-related premises is known to the Regulator. Furthermore, this approach more directly provides a link between the fee structure and the nature of enforcement (inspections are based on the number and size of premises, not the number of owners). Checks to ensure compliance with the legislative provisions concerning display and advertising would be undertaken as part of the licence inspection. Visits to premises by the Regulator will be supportive and advisory in approach and will follow the Regulatory Policy. Education will be provided, free of charge, by the Regulator in advance of implementation of the scheme. This may be in partnership with trade organisations.*

3510 *1.4 The licence may be held by either an individual or a body corporate (with 2 or more designated responsible persons nominated by the body corporate). The licence holder or the body corporate will be responsible for compliance with tobacco control legislation. The licence would authorise the sale or supply of tobacco products by the licensee, or servant or agent of the licensee (provided, from the date of 1<sup>st</sup> January 2015, they were aged 18 or over (and before that date persons under the age of 18 may be authorised to sell or supply tobacco products provided they are under the supervision of the licence holder)). Each licence can authorise the sale/supply at retail and/or wholesale premises or by indirect sales. Provision will be made for retail sale from mobile and temporary premises.*

**2 The Application Process**

3525 *2.1 To be made using an approved form issued by the Department. Information to include:-*

- *If the applicant is an individual, the name of the applicant and proof of identity*
- *If the applicant is a body corporate, proof of incorporation, the names of the persons who act on behalf of the body corporate.*

- 3530
- *Postal address of applicant*
  - *Physical address of the premises, or the address where any mobile will be kept*
  - *Type of proposed sale/supply – retail and/or wholesale or indirect with subcategories of retail to cover mobile or temporary*
  - *For retail sales, information about the location of the area where tobacco products will be displayed and how it will be sealed off from under 18s*
- 3535
- *Any other information or evidence the Department requires for proper consideration of the application*
- 3 Fees – to be debated by the States**
- 3.1 *Fees may be prescribed by regulation.*
- 3.2 *The fees would be set by the HSSD Board to ensure the costs of administration of the scheme are covered.*
- 3540
- 4 Criteria for granting of licence**
- 4.1 *The Department must grant the licence unless one of the following disqualifications applies:*
- 3545
- *Applicant (if an individual) has not reached 18 years of age*
  - *Applicant has been refused or disqualified from holding a licence anytime within the 2 year period before the application was made*
  - *Applicant holds a licence that has been suspended*
  - *Applicant has been convicted of an offence under this Ordinance or a relevant law anytime within the 2 year period before the application was made*
- 3550
- *Applicant is the subject of a pending charge anywhere in the world for an offence involving fraud or dishonesty*
  - *The information or evidence provided is insufficient to assure the Department that the applicant's operations would comply with the tobacco control laws*
  - *Any other disqualifications prescribed by regulations*
- 3555
- 5 To whom do the disqualifications apply?**
- 5.1 *The disqualifications apply to the applicant if the applicant is an individual. If the applicant is a body corporate, the disqualifications apply to the body corporate.*
- 6 Authority to seek and disclose personal data**
- 6.1 *For the purpose of determining whether or not a person is disqualified, the Department may seek, receive and disclose information.*
- 3560
- 7 Advance notice of proposed refusal**
- 7.1 *The applicant would be notified in advance of any proposed refusal and allowed to make representations.*
- 8 Licence Conditions**
- 3565
- *Compliance with tobacco control laws and all licence conditions*
  - *Payment of any fee payable under this Ordinance or any associated regulations*
  - *Holder must not authorise or allow the sale or supply of tobacco products other than*
- (a) *at premises specified on the licence, and*
- (b) *in accordance with the terms and conditions of the licence*
- 3570
- *Retail tobacco sellers to be allowed to sell tobacco products from the designated display area.*
  - *Wholesale tobacco sellers must not sell or supply to anyone other than a tobacco licence holder. It is recognised that some wholesalers may also engage in retail. This will be provided for on their licence.*
- 3575
- *Current licence or copy of licence must be prominently displayed at each licensed premises*
  - *Holder (or former holder) must keep records prescribed by regulations, for a prescribed period of time*
  - *Sale or supply of tobacco products at the licensed premises will be the responsibility of the licence holder*
- 3580
- *Provision of any information prescribed by regulations, either on request by the Department or an authorised officer*
  - *Holder must promptly notify any material change to the Department, and apply for variation of licence. This applies to –*
- 3585
- *change of licence holder*
  - *change of place at which products will be displayed*
  - *any other change that affects or is likely to affect the holder's ability to comply with licence conditions, this Ordinance or any relevant laws*
  - *any change of a kind prescribed by regulations*
- 9 Transferability**

- 3590 9.1 The licence cannot be transferred to another person (and cannot be amended to apply to different premises)
- 10 Renewals**
- 10.1 Licences to be renewed annually, subject to any disqualifications and payment of any prescribed fee.
- 3595 **11 Replacement licences**
- 11.1 Lost or destroyed licences must be reported. Replacement licences will be issued by the Department on payment of a small fee.
- 12 Surrender of licence**
- 3600 • Expired or revoked licences must be returned to the Department
- Holder who ceases to carry on business that is licensed must surrender the licence
- Holder may surrender the licence at any time
- 13 Fees payable**
- 13.1 The level of licence fees should be set to enable full cost recovery. Those costs will be associated with –
- 3605 • the administration of the licensing regime
- the enforcement of the licensing regime including inspections
- the provision of licensing related information directed to customers and the community
- the provision of information to applicants and licensees to ensure their continued and future compliance
- 3610 13.2 The fees payable shall constitute an application fee and licence issue fee on making an application for a licence or making an application for renewal. If the application is refused the application fee is non-refundable however the licence issue fee will be refunded.
- 13.3 Fees payable are to be prescribed by regulations. It is anticipated that different fees will be prescribed for –
- 3615 • application for first licence
- application for licence renewal
- application for licence variation
- grant of licence (licence issue)
- renewal of licence
- 3620 • variation of licence
- 14 Suspension and revocation**
- 16.1 Subject to giving the holder advance notice and opportunity to make representations, the Department would be able to suspend or revoke a licence on the grounds that it has reasonable cause to believe that –
- 3625 • any of the disqualifications apply in respect of the holder
- any condition of the licence has been breached by the holder
- the licence was granted on the basis of false, misleading or incomplete information
- 15 Appeals**
- 15.1 Appeals are allowed against the decision of the Regulator to refuse a licence or variation of conditions, suspension or revocation.
- 3630 15.2 It is proposed that appeals against the decision of the Regulator will be heard by an Internal Review Panel appointed by HSSD – usually the Chief Officer and two Directors. If the applicant does not accept the decision of the Internal Review Panel, then they may proceed to the Royal Court subject to consultation with the Bailiff.
- 3635 **16 Register of licences**
- 16.1 The Department will keep a public register of licences, including
- Type of licence
- Name of holder
- Address of licensed premises
- 3640 • Identifying number of licence
- Day on which licence is issued
- Conditions of the licence
- Any suspension or revocation, or variation of conditions
- Any surrender of licence
- 3645 • Any change of name of holder
- Any change to the list of responsible persons
- The licence ceasing to be valid for any reason including expiry
- Any other particulars prescribed by regulations
- 16.2 The register will also include details of enforcement action.
- 3650 **17 Administration**



17.1 To be administered by the Office of Environmental Health and Pollution Regulation (OEHPR), acting under authorisation by the Department.

**18 Powers of Enforcement**

3655 18.1 Appropriate powers of entry, inspection, search and seizure to be part of the licensing regime; with requirements for a warrant to enter a dwelling house. Any action will follow the OEHPR Regulatory Policy and with appropriate safeguards.

**19 Offences**

3660 19.1 Offences will be created for breaching any provision of the Ordinance or breaching any condition of a licence, as well as standard matters such as obstruction, providing misleading information, assisting or attempting the commission of an offence.

19.2 Provision will also be made for the directors and other officers of a body corporate to be individually liable for the actions of the body corporate under certain circumstances.

**20 Penalties for offences**

3665 20.1 Various penalties will be provided for the different offences and will be set in the Ordinance, as agreed with the Law Officers.

**21 Other powers of the Court on conviction of a licence holder**

- May attach any condition or restriction to a licence held by the holder
  - May suspend or revoke a licence
  - May disqualify the holder from holding any licence for a specified period or permanently
  - May order forfeiture and disposal of any tobacco product or other thing –
- (a) seized by an authorised officer under the Ordinance, or used in, the subject of, or otherwise involved in the commission of the offence.

3675 Can I remind Members, again, that Recommendation 32 of the Report states –

‘Legislation is drafted under the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010, to provide for the licensing of sale and supply of tobacco products in terms set out in this report and its appendices, subject to any necessary modifications and adjustments.’

3680 The Revised Licensing Framework is the result of such modifications and adjustments. When the States Report was published, a number of concerns were expressed by the tobacco retailers, especially relating to operational detail of the proposed licensing framework contained in Appendix 1: the Licensing Framework. The Environmental Health and Pollution Control Regulator had discussions – dare I say ‘consultation’? – with the retailers by simply having a Powerpoint presentation up on a screen and going through it, paragraph by paragraph, sentence by sentence, and then, in red, changing areas which were thought to be reasonable and agreeable to change that the retailers requested.

3690 That original document is framed, I hope, and in her office, just in case they wish to see it. Time was taken to go over it with retailers – and I think there were ten or twelve of them at the meeting because it was certainly meant to be a representative group and not 40... [Inaudible] The second time they went along they seemed to be fairly, fairly content, with the changes. The idea of the changes that were made were to provide less of an administrative burden to the industry.

3695 I sent a copy of the revised document round to all Deputies but I will read out the key changes. I am not going to go through the whole Appendix because, sometimes, it is words that have changed, sometimes the text is reorganised slightly: it is quite a large re-drafting job that was done. But the key changes – which were actually sent to the Law Officers for checking – were removal of the requirement to name responsible persons on the licence, and removal to notify changes of responsible persons; removal of the requirement for named responsible persons to personally supervise sales of tobacco products, this to be substituted by a general requirement for sales to be personally supervised by one or more persons aged over 18 years old. In other words – sorry, these are original changes – that 18 has been changed by the Board, so we had two situations, one was the Director of Environmental Health and Pollution Regulator speaking to retailers and the other was a case of the HSSD Board meeting and discussing this document and, you might say, putting their oar in to change some aspects – so the one that I have just mentioned is 18, which I will come back to; removal of specific power for the Department to prescribe knowledge requirements which need to be satisfied before an applicant can be granted a licence; a removal of the requirement for retailers to provide a map, showing point of sale and notify changes to the location to points of sale; an introduction of internal review by the Department of licensing-related decisions made by the delegate of the Department, as a low-cost intermediate step to solve licensing issues before an appeal can be taken to the Royal Court.

3710 These were things that were submitted and agreed by the HSSD Board but there were two aspects over which there had been no agreement with retailers, namely the age that the age of a

3715 person selling tobacco products be 18 years or over and the cost of the licence to the licence holder. The HSSD Board decided on a further change, that is to allow for the requirement for the seller of tobacco authorised by the licence holder to be aged 18 or over to be delayed for two years. Therefore, this was not to come in straight away: it was delayed so people could arrange their personnel appropriately. This means that, until January 2015, under the licence a person of 16 to 18 may have charge of the sale of tobacco products. Obviously, they must be selling tobacco products from a licensed premises but the licence holder themselves do not have to be present in that premises.. I hope that clarifies – someone sent me an e-mail asking me that question.

3720 Following introduction of the ban on display of tobacco legislation and the ban on sales by those under 18 years old, retailers can choose to lock up the tobacco cabinet, if they wish, or to leave young people in the shop on their own and, therefore, not let them have access to the product. In respect of the funding of the scheme, the retailers stated they would be able to provide a cheaper version. They also suggested an increase in tobacco duty could cover the cost of charge. As you know, the Budget is out now and there is an increase in tobacco duty: they suggested a further increase and that is why I think Deputy Queripel – Deputy Laurie Queripel – did manage that hypothecation by T & R. I tried that and I did not get a very positive response so we decided to go a different route.

3730 Also they suggested to the wholesalers that, if they feel that it is not fair for the retailers to pay for it, then *they* could put the price on the tobacco themselves, collect the money and give it to the Department. But the HSSD Board supported the *principle* that the administrative costs of the licensing regime should be borne by the licence holder: in other words, the person who is selling the product should pay for the licence and that cost should be proportionate. The main aim is to cover the cost of regulation, although the Board considers the fees should also help to fund Quitline, which provides services to support people wishing to stop smoking. As I have already said, the Strategy has been successful in bringing it down from 34% to 16% but, obviously, the number of people attending Quitline increased markedly and it has spikes, usually about once or twice a year, when we have ‘No Smoking Day’ and these events... Quitline work very hard and are very successful, actually, at their job, but some people realise that it is effective, take off the patches too early and start smoking again.

3740 So, as I say, the suggestion is for a sliding scale for licence fees, dependent of size of their premises or the turnover of the outlet. This is still to be finally decided *with* the retailers. And fees: as you all know, it has been suggested between £300 and £1,000 a year, which is under £6 per week for small shops. The fees for liquor licensing, sir, start at about £280 and go up to about £1,800 and it is dependent on the area that is involved for the sale of that product.

3750 It should also be highlighted that tax revenue raised from tobacco products currently falls far short of amounts spent on health care to treat smoking and tobacco-related health problems. The aim of *all* tobacco control measures is to *prevent becoming ill* from smoking and smoking related conditions, rather than to increase taxation to cover the ever increasing financial burden of treatment. Therefore there is no great desire to *persecute* people who might wish to smoke (*Laughter*) by putting prices up dramatically. They have gone up more but tobacco... Cigarettes are still cheaper in Guernsey than they are in Jersey and, obviously, cheaper than they are in the UK.

3755 So, in laying this amendment, I hope the Assembly will accept that discussions *have* taken place at both the Environmental Health and Pollution Regulator and HSSD *have* listened and changes *have* been made without, I accept, weakening the aims of the licensing scheme. It is recognised that tobacco retailers may continue to have some disquiet in the relation to the re-introduction of tobacco licences but one hopes that this might be further alleviated with discussions leading up to – during – the drafting of the Law and the Ordinance concerning this issue.

3760 I ask the Assembly to accept this amendment and consider the Revised Licensing Framework at Appendix 1 of the Report.

3765 Thank you Sir.

**The Bailiff:** Deputy Brehaut do you formally second the amendment?

**Deputy Brehaut:** I do, sir, thank you.

3770 **The Bailiff:** Does anybody wish to debate the amendment?  
Deputy Dorey.

**Deputy Dorey:** Thank you Sir.

3775 When T & R considered this Report we were... our staff had been in contact with HSSD staff and the comments which we make in the Billet were based on the fact that... in fact, we say just under a third of the money will fund Quitline when, in fact, the numbers that we had were that 70% of the licensing would be for administration and 30% of it will be to fund Quitline. In the Report, page 2184, paragraph 8. i) d), it says that

3780 'the licence fee will be set at a level that will also generate income to extend the Quitline service'.

There is another at paragraph 16: it says –

3785 'The HSSD Board will set the level of fees to ensure that the licensing regime and the Quitline support is cost neutral...'

But then when you, in the Billet, turn to page 2192 and Appendix 1 – and I would ask Members, if possible, to turn to that page and see Paragraph 15.1, which is under the title of '15 Fees Payable' – you will see there are five bullet points there and the final bullet point says

3790 'public education about the health risks [from] smoking'.

Now, if you turn to the amendment – and Deputy Adam has gone through the various changes – you will see, if you look under Fees Payable, which is now Section 13, under 13.1, there are only  
3795 *four* bullet points and the final one which said 'public education about the health risks associated with smoking', has been dropped. That was of concern to me because part of the attraction of this for me was, as well as the cost of administration, that we generate money for Quitline so I had various e-mail exchanges with HSSD staff and Deputy Adam and the indication that came back from those e-mails was that the costs related to public health education are not directly attributable  
3800 to either the licence system or the retailers' wholesalers. The point was changed to reflect the fact that it is not intended to be a revenue-generating scheme *per se* and that the cost of the licence will reflect the work that it generates.

So I am concerned that we have a Report which talks about funding Quitline but there is a change which seems to have removed it. Now I ask Deputy Adam to explain to the House, is the licence fee going to be set at a level that will generate sufficient money to enhance the Quitline service or not? I ask for a very clear answer on that because, if it is not, I will not support this amendment and I would rather have Appendix 1 as it is. There is flexibility in the Appendix due to the wording of the Proposition, which talks about being able to make changes but I want to be absolutely clear that I expect the licence fee to be set at a level that helps to fund Quitline.

3810 Thank you.

**The Bailiff:** Deputy Gillson.

**Deputy Gillson:** Sir, I will also speak in a general debate.

3815 Instinctively, I am inclined to support HSSD in both the amendment and the Report: we do need to try to reduce the number of people starting to smoke. I am a little concerned that what is been proposed does seem a little heavy-handed but, on balance, I support it and I hope that they will try and simplify the process.

3820 Sir, I would like to take a moment to comment on what has happened since the publication of the Billet. In the Billet we have quite a bland letter from T & R and a comment of unqualified support from the Policy Council. There is *nothing* in the comment from the Policy Council to suggest that support from the Policy Council is anything but unanimous but, since then, we have had very strong criticism from Deputy Jones, received a long e-mail from Deputy St. Pier, with more questions, Deputy Luxon has spoken, expressing concerns...

3825 The purpose of Policy Council, in making comments in the Billet, is to inform us backbenchers about the views and concerns of Policy Council, so what happened this time? Did Ministers raise these concerns at the Policy Council meeting? If they were raised, why is the comment from Policy Council one of unconditional support? Or did none of them raise any concerns? Having raised these questions, I accept that there is an argument that some of the comments from the  
3830 Ministers may have been personal thoughts and not really Departmental comments. Even so, shouldn't we know Ministers have got concerns? They are, after all, senior politicians. However, comments about them being 'personal thoughts' cannot be said for the comments made by Deputy Stewart. The comments he has made are related to the lack of consultation between HSSD and Commerce & Employment, clearly comments of a Departmental nature and the sort of issue which  
3835 it is absolutely correct to raise at Policy Council. In fact, not only is it the sort of matter which

*could* be raised, it is exactly the issue that *should* be raised in Policy Council. So why, when Policy Council... did Deputies, Stewart, Jones, St.Pier, Luxon not raise their concerns?

3840 Why did Deputy Stewart not say, 'Hold on, paragraph 29 is wrong: we have *not* been consulted properly'? Sir, I know that it is unusual to refer to Ministers in this way, but Policy Council makes comments about States Reports for the benefit of us backbenchers and the benefit of the public. For their comments to be of any value, for them to have credibility, we must have confidence that all Ministers have expressed their views and they have considered properly the Reports from their own Departmental view point and have *expressed* those fully in Policy Council and that that is included in Policy Council's comment.

3845 Sir, I ask that the four Ministers I mentioned – who are now criticising the Report – please explain, in general debate, *did* they raise their concerns in Policy Council? If not, why didn't they? And a question to the Chief Minister: if any of the Ministers did raise their concerns, why is the comment from Policy Council misleading?

3850 I know it is unusual to ask questions of Deputies who are not sponsoring Departmental Reports, but it seems to me there has been a real breakdown in the workings of Policy Council. We backbenchers should be able to rely on the assumption that members of the Policy Council have considered Reports properly and fully and *rely* on the Policy Council comment – in this case, 'the Policy Council supports the Report' – to be full and clear. In this instance, we cannot take comfort from the Policy Council comment. Somewhere there has been a failure in the way Policy Council has worked.

3855 The impression *I* get from this situation is that some Members of Policy Council, some Ministers, have only really considered this Report *after* there was a public outcry and, sir, that is of real concern.

3860 Thank you. (*Applause*).

**The Bailiff:** Deputy Brehaut.

3865 **Deputy Brehaut:** Just as a point of clarification, sir, and in the absence of Deputy Hunter Adam, I took this Report to Policy Council and there was only one comment. That was from Deputy Jones, who was consistent in expressing his concerns regarding regulations but there was no other comment on the Report.

**The Bailiff:** Deputy De Lisle.

3870 **Deputy De Lisle:** Yes, as a point of information, sir, and clarification, the Minister, Deputy Dr Hunter Adam, did not mention staffing.

In terms of Item 17 – Administration in the Revised Licensing Framework, is it the intention to add staff complement to the Environmental Health Department still?

3875 **The Bailiff:** Any further debate?  
Deputy David Jones.

3880 **Deputy David Jones:** Thank you and I thank Deputy Bebb, actually, for reminding us earlier that we did actually pass, in this Assembly, a Law telling our people what they are allowed to look at.

3885 My prediction, really, is where do we go from here? We accept that we narrowly lost the amendment – (*Laughter*) but I do have some real issues and, after hearing Deputy Dorey's speech, giving HSSD a licence to increase this fee to cover the issues that *he* wants covered, my prediction is that the licence fee will periodically climb, I cannot say yearly, but it *will*. It is starting off at £300. I would not mind betting that, in six or seven years' time, it will be £1,000 for the small retailers. I think actually, in a way, listening between the lines, like we do sometimes to Minister's speeches, I think the Minister of Health actually let the cat out of the bag. I think one of the real reasons for this is to try and drive cigarettes out of the small shops altogether. It is to try and close down the number of outlets and that will be done by increasing this fee...

3890 So that is a prediction that I make to you and I still go back to the point that – I know members of the Health Board did not like the idea that a couple, or three, of us referred to, banning the product altogether – it is a distinct lack of courage by this Department. If *you* have not got the courage... if you continue to persecute a minority of people – which smokers are now – in this draconian way, have the courage, find it within yourselves to bring a Report to the States, instead of this five year plan, or this six year plan – we have heard now that there is going to be another four year plan – where we are going to ratchet up the attack on smokers again and again, and

retailers for that matter. Have the courage to say ‘We want to *ban* smoking in Guernsey’ and bring it on.

3900 It was not an invitation, Deputy Bebb .....

**Deputy Bebb:** I’m sorry –

**The Bailiff:** Is this a proper interruption, Deputy Bebb?

3905 **Deputy Bebb:** Yes, just a point of clarification. Quite frankly, it is being proposed that the Department would like to actually propose banning.

Sir, I am *firmly* of the opinion that prohibition is incorrect and I do object to the proposition that I do not have the courage of my convictions – I *do* have the courage of my convictions.

3910 **Deputy David Jones:** Well bring it, then! Bring it.

**Deputy Bebb:** As I said, *I do not support prohibition*.

3915 **Deputy David Jones:** Ooh! Right.

Moving on to my next prediction, the numbers of people that will be employed to monitor this new, growing department – as it surely will become, simply because the funding will be ratcheted up, as I say, periodically, to pay for it... As far as I can see, the persecution of smokers will get worse in the future and the smoking police will be out in force.

3920 So I think that you *are* going to see these fees ratcheted up to considerable levels over the next few years and, as I say, I think the numbers of people will grow. You have heard the Minister today say, in the next four year plan... I fully expect that to include the banning of smoking in cars and elsewhere. Deputy Le Tocq’s Department will need several more police officers, I think, to police all these new areas of concern, in order that we can enforce this draconian law.

3925 Thank you.

**Deputy Brehaut:** Thank you, sir, if I –

**The Bailiff:** Deputy Brehaut, you spoke a few minutes ago.

3930 **Deputy Brehaut:** It was a point of clarification, sir, regarding –

**The Bailiff:** There is no such thing under the Rules as ‘a point of clarification’. I know that term is being used many times but –

3935 **Deputy Brehaut:** I apologise, that may be over-learned behaviour on my part and I apologise. Am I permitted to speak, sir, if I...? It would be a brief speech, as is usual of me. Thank you, sir.

3940 **The Bailiff:** I forget what your point of clarification was now, as to whether it was a *proper* interruption, even though you referred –

**Deputy Brehaut:** Well, sir, it was that I did take the report to the Policy Council and there was no comment at that time... was the point I made earlier, which was the point raised by –

3945 **The Bailiff:** Which was a speech.

**Deputy Brehaut:** Sir, are you permitting me to speak?

**The Bailiff:** Can I just remind Members of what Rule 12.(6) says:

3950 ‘A Member shall not interrupt another Member who is addressing a Meeting save:-  
(a) on a point of order;  
(b) to correct an inaccurate or misleading statement made by that other Member; or  
(c) to explain any statement previously made by him in the course of the debate which is being misconstrued.’

3955 There is nothing in there about points of clarification. I did take your speech earlier as being a speech, Deputy Brehaut .

**Deputy Brehaut:** The speaker had finished speaking, sir, so it was not an interruption.

3960 **The Bailiff:** Yes, but in which case, you ....

**The Procureur:** He is not interrupting but:

3965 ‘Save in the exercise of the right to reply [...] a Member may not, without the leave of the Presiding Officer, speak more than once on the same motion.’

**The Bailiff:** Thank you, so, yes, you have had your speech, I am afraid, Deputy Brehaut.  
Deputy Le Tocq.

3970 **Deputy Le Tocq:** Thank you, Mr Bailiff:

Sir, I was not going to say very much – Deputy Jones has somewhat got me to my feet. I want to make a few comments with regard to a couple of things on this.

3975 First of all – and I will leave the Chief Minister to make a comment perhaps on the way in which this was handled at Policy Council – I think Members should be aware of the fact that this was work that had been ongoing from the *previous* Assembly and, therefore, for example, from my Home Department perspective, this came via Policy Council and was approved at Policy Council. Whilst I took part in the conversation, the debate, around it, certain issues were raised afterwards because it had not come to *my* Home Department – our new Board at that time – it had come to the *previous* Board. Therefore, we did not have an opportunity to comment on it.

3980 However, there have been questions, since then, from members of the public and I want to raise one of those issues, which is regarding the policing and the aspects of confiscation. Obviously, when it comes to legislation, there is going to need to be some co-operation and consultation as to how this would take place because it will not be *illegal* to possess these paraphernalia. And tobacco itself: it will not be illegal to smoke it for under-18s and yet the police  
3985 will have some powers. This mirrors what happens elsewhere – in the UK, for example – and, certainly, my staff see no problems in copying those sorts of procedures here. So it will be possible to do the things that are stated here, although it does look rather unusual, as it will not be a criminal offence having taken place in that way.

3990 Secondly, sir, with regard to Proposition 3, I will just make a comment at this point. The Prison has been planning for this for some time – to be smoke free – and, sir, could I ask particularly that particular Proposition is taken separately. I would encourage everyone to vote for that because we have found that to be very successful.

Thank you, sir.

3995 **The Bailiff:** Does anyone else wish to speak on this amendment?  
Deputy Domaille.

**Deputy Domaille:** Thank you, sir. I would just like to echo Deputy Dorey’s comments.

4000 For me, a key part of these proposals *is* the public education about health risks of smoking and whilst I see the sense of this Amendment, this Appendix, I will not support it *unless* I can be reassured that public education will remain.

Thank you, sir.

4005 **The Bailiff:** Deputy Conder, are you rising to speak? No?  
Does anyone else wish to speak, who is allowed to speak?  
No? Deputy Adam, then, to reply.

**Deputy Adam:** Thank you, sir.

4010 First of all, Deputy Dorey, as he states quite rightly, in the meat of the document it suggests that we should *attempt* to set the levels of fees for the licences at such a level that we will have surplus monies to help with Quitline. But the problem is one has to be proportionate, I thought, sir. I have been told that all day: one has to be proportionate. Likewise, the level of fees must be proportionate. Therefore, how much we generate depends how many retailers are going to be charged, so that has to be discussed.

4015 It does *not* preclude – he states about the public education about the health risks associated with smoking. Although that is there, the staff from the Department – because the policing of the premises is done by staff from the Department – also help in education of the staff in the shop concerning the risks to health. Therefore, it does not preclude the use of fees to contribute towards Public Health Education but this *will* be dependent, as I said, on *how much* revenue is brought in.

4020 If you accept that it is going to be between £300 and £1000, and there is sufficient, then it is going to be used for that. Quitline *will* receive funding through this scheme but health promotion is also considering another workstream of their mixed strategy – and it will have further aspects of education, health promotion etc., because we must keep education as a priority. That is the best way of helping to stop younger people starting smoking.

4025 I found Deputy Gillson's comments interesting. I tend to agree with him but I was not at that Policy Council meeting, sir, because I was on holiday. I could not understand why I saw 'Policy Council supports this Report'. I checked the minutes and it does not say Policy Council supported it by a 'majority' or anything – it supported it. And then you find, as you state, I think there was three of them voted for the amendment.

4030 Deputy De Lisle asked about the cost issues. As I say, the cost of policing is borne within those who regulate other areas like fruit [*Inaudible*] and stuff, so that is nothing. The other costs, one hopes that it will be roughly speaking about half an administrator but what is quoted in this States Report is £30,000 but that includes all the computer, software, etc to keep the information up to date as well as a staff person, so it is not a high paid job.

4035 Deputy Jones mentioned licence fees and how they *might* go up over the years: all licence fees go up over the years. The liquor licence fees, I believe, are going up shortly but the Minister of the Home Department can probably tell me that. Driving shops to close down: shops do not have to close down because they cannot sell cigarettes! I am afraid to say that I do not have the knowledge of what proportion of profits for a small shop comes from cigarettes but it seems rather unfortunate if they are relying purely on cigarette sales for their profits, so they may have to take on some other form of items to sell in the shops if they feel they do not want to balance the cost of a licence with the profitability of the product they are selling.

4040 Banning products altogether: sir, I do not support prohibition. Simple as that. As soon as you go down that road, you go into crime. I remember, several years ago, one Deputy, who is still in this Assembly, was telling us whether we should de-criminalise cannabis and other drugs and then you would stop so much crime. Is that not correct, Deputy Jones?

**Deputy David Jones:** Possibly.

4050 **Deputy Adams:** As I say, a number of people to monitor.

I have already said that, as far as cars, it is not smoking *in* cars, it is smoking in any cars in which there are young people. That is within the new strategy as well.

Deputy Le Tocq talked about 'policing' but he was talking about the policing in the public place, not the policing of the regulations in shops, which I have described.

4055 I think that is about all the comments, thank you, sir. I hope the Assembly will accept this revised Licensing Framework and please also accept that there will be further discussions to take place with retailers to finalise it during the drafting period of this part of the regulations.

Thank you, sir.

4060 **The Bailiff:** Members of the States, I put to you the amendment proposed by Deputy Adams, seconded by Deputy Brehaut.

Those in favour; those against

*Some Members voted Pour, others voted Contre.*

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**The Bailiff:** I declare it carried.

We come, then, to the last amendment. That is the one proposed by Deputy Lester Queripel and seconded by Deputy Paint.

Deputy Lester Queripel.

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**Deputy Lester Queripel:** Thank you, sir.

Currently, there is no Law that makes it illegal for anyone to smoke at any age. A child of four, five, six years old can smoke if they want to. Therefore, it makes perfect sense to me to introduce this law:

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*1) To introduce a new proposition being No 9, to read as follows:*

*'9. To direct that legislation be introduced to make it illegal for anyone under the age of 16 to smoke tobacco'.*

*2) In Proposition 2, after the word "appendices" to add " Save that instead of the age of '18', where it appears in paragraphs 1.4 also 2.1 and 4.1 of Appendix 1. The Revised Licensing*

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*Framework, substitute the age of '16'.*

4085 In fact, I am absolutely amazed that HSSD themselves are not proposing introducing such a Law, which makes a mockery of the statement Members will find at the end of the first paragraph on Page 2183 of the Billet, which reads as follows:

“The States [has] demonstrated its wish that all necessary legislative and regulatory measures are taken to protect children from tobacco’

4090 but even HSSD themselves are not proposing a legal age to smoke.

The HSSD Proposal number 4, page 2197 of the Billet, reads as follows:

‘To direct that legislation be drafted to allow the Police to confiscate tobacco products and paraphernalia from under 18s in the streets and other public places.’

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What is that actually telling us? Is it telling us that it will be illegal to smoke in a public place and, if you are caught, you will be prosecuted in a court of law and fined? Or is it telling us that Police officers will merely have the authority to confiscate all tobacco related products from under-18s? Are we to assume that Proposition 4 means that, once an 18-year old has had tobacco related products confiscated, they will automatically be prosecuted and fined? That is not at all clear: it certainly is not clear to me. In fact, I would go as far as to say that the terminology used in Proposition 4 is ‘as clear as mud’ and to use the word ‘nebulous’ would actually do the terminology a favour, whereas the terminology in *my* proposition is *absolutely* clear, so clear that a five-year old child can understand it. You do not need a magnifying glass to look for any hidden meanings and you do not need to make a dozen phone calls to your colleagues to decipher the terminology. It is there right in front of you

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‘To direct that legislation be introduced to make it illegal for anyone under the age of 16 to smoke tobacco.’

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If you reject my proposal and vote for Proposition 4, as proposed by HSSD, then we could have a problem on our hands. Why do I say that? Well, I *think* my understanding of the HSSD Proposition 4 is this – a Police officer is given the power to confiscate tobacco-related products from under-18s in public places. These under-18-year olds will not actually then have to appear in court or be fined. So I ask Members to imagine a group of thirteen, fourteen, fifteen year olds huddled in a shop doorway on the Bridge, or in town, or wherever, and these children are all smoking. Suddenly a Police officer appears in front of them and demands they hand over all smoking-related products, which they then do. Ten minutes later the same Police officer could find the *same* children smoking in the *same* shop doorway and have to go through the whole tedious process of confiscation again. Ten minutes after *that*, the same Police officer could find the *same* children, smoking in the *same* shop doorway and this could go on all day long. It could in fact develop into a game of great amusement for these youngsters and youngsters love to play games.

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But in the meantime the poor Police officer, who has far more important things to do, has to deal with the situation time and time again. I have said it before, and I will say it again, I am a great supporter of our Police force and I do not want to see officers messed around, ridiculed and made a fool of. I want to see them given powers to enforce the Law, a Law which results in an under-age smoker being taken to court and fined because that sends out a clear message to the whole community that smoking under a certain age will not be tolerated.

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Adopting Proposition 4 of HSSD’s proposals could also result in a situation whereby an under-16 year old, under-18 year old, whoever, could say to a police officer ‘I am not doing anything illegal, you are infringing on my rights to smoke’ and all that could be avoided if we introduce a Law that makes it illegal to smoke under the age of 16. So I ask Members to please support my first proposal and move on to my second proposition. The reasons I am proposing we reduce the age from 18 to 16 to buy and sell tobacco are many fold. First of all, I would ask any Member of this Assembly who thinks that any person under the age of 18 is actually waiting until they *are* 18 before they smoke cigarettes or drink alcohol to please step into the real world. Anyone who wanted to smoke or drink before they reach the age of 18 will have done so long before they reach that age. *I* started smoking when I was nine, I gave up when I was eleven! (*Laughter*). I absolutely detested it. I was simply trying to look big in front of my mates. But those two mates I started smoking with are still smoking to this day. In fact, they were both smoking twenty cigarettes a *day* by the time they *were* 16. So let us please not kid ourselves that our young people are waiting until 18 before they smoke or drink. A person of seventeen years, eleven months, thirty days and twenty-three hours old is not looking at their watch and thinking yippee this is great in an hour’s

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time I will be able to smoke my first cigarette and drink my first ever glass of brandy, because the truth of the matter is anyone who wanted to drink and smoke will have done it long before *then*. I ask that we get real. Finally, I would like to spend a few moments explaining why I am trying to level the ages out a little bit here. Currently, we tell our young people that we think they are responsible enough to ride a motor scooter at 14. They could easily kill somebody or even themselves whilst riding it, but we still tell them we think they are responsible enough to ride it. We tell our 16-year olds that we think that they are responsible enough to leave school and decide for themselves what it is they want to do for the rest of their lives. We also tell our 16-year olds that they are responsible enough to vote for the politicians they want to represent them in this Assembly, the very same politicians who will determine the political direction of that 16-year old's life for the whole of the next four years, plus – and this is the big one – we also tell them that we consider them to be responsible enough, at the age of 16, to have sex, (*Exclamations and Laughter*) which could result in them bringing another life into this world which they will then, ultimately, be responsible for, as well as their own life. Then we tell them, at the age of 17, we consider them to be old enough to drive a car which, driven at speed, as we all know, becomes a lethal weapon. And then we tell them that we *do not* consider them to be responsible enough to buy or sell tobacco until they reach this magical age of 18.

Prior to that, we have given them our blessing to ride a lethal weapon at 14, vote for their own Government at 16, leave school and pick and a career at 16, have sex and bring another life into the world at 16 and drive another lethal weapon, called a car, at 17. Where are we actually going with all this? (*Laughter*) I am starting to wonder myself! (*Laughter and applause*)

The Government – namely us – we are telling our young people they are responsible enough, at 14, to ride a lethal weapon, have to wait until 16 to do certain other things, 17 to do other things and, at 18, well, do whatever you like, you are on your own! I really think it is time we levelled out some of these ages as much as we can. If the argument is that we do not want to criminalise young people, well, we do it for alcohol, so what is the difference? Besides, up until 1997, the legal age to buy and sell tobacco *was* 16. It is only because we have allowed ourselves to evolve into a 'Nanny State' that all of this is happening. I do not know who was in Government in 1997 but I suggest... (*Laughter*) I suggest you go and argue with Deputy Lowe if you consider my views conflict with your own because the politicians in this Assembly prior to 1997 obviously held the same views as I do. I accept that one of my colleagues could stand up in this Chamber today and blow my proposals out of the water completely but, in my defence, sir, I have been trying to make sense of HSSD's proposals for *weeks*. In my opinion, the manner in which these proposals have been presented to us has been, *sadly*, most unprofessional, even to the point of being extremely uncivilised at the presentation HSSD recently staged at the Hospital, where everybody was shouting and nobody was listening.

To conclude, sir, *my* proposals are as professional as I can possibly make them and I am submitting these proposals in an attempt to bring a little bit of common sense into the equation and also to ensure that we send out a clear message to the community. I ask that Members give serious consideration to all that I have said and support these proposals.

*Thank you, sir.*

**The Bailiff:** Deputy Paint, do you formally second the proposals?

**Deputy Paint:** Yes, I do and I reserve the right –

**The Bailiff:** Reserve your right to speak.

I have been asked whether this amendment goes beyond the Proposition. I do not –

**A Member:** A very good question, sir, a very good question. (*Laughter*)

**The Bailiff:** In my view, it *does* go beyond the Proposition.  
Mr Procureur?

**The Procureur:** Well, the first part of it certainly does.

**The Bailiff:** The first part certainly does, yes.

**The Procureur:** I am not certain about the second part but that is a matter for you to rule on.

**The Bailiff:** Are you suggesting we sever the...? I am not sure you *can* sever the... because

the amendment as a whole goes beyond the Proposition, does it not?

**The Procureur:** Oh, I see. Well –

**The Bailiff:** So we cannot really sever one part from it. We are being asked... The rule is whether the amendment goes beyond the original Proposition.

**The Procureur:** I don't know, sir. You are the judge in these matters... *(Laughter)* I mean, it does seem to *me* that if Deputy Lester Queripel had, rather than putting 1) and 2), had just put in two bits of paper, you would be in a more difficult position.

The last thing I want to do is to protract this debate but I cannot, in all honesty, say to you that *my* judgement is that the second part of it is unseverable and also goes beyond the Proposition. If people do not want to debate the second part of it, then you can just invoke Rule 13.(4) and see if the Assembly want to debate it

**The Bailiff:** In that case –

but, certainly, the first goes beyond the Proposition so you could call a motion on that.

**Deputy Le Tocq :** I think we had this situation once before and the Ruling was – from you in the Chair, sir – was that we could not separate them.

**The Bailiff:** Yes, based on the advice I had from the Law Officer at the time – that it could not be severed. That would not prevent, I guess, Deputy Lester Queripel immediately laying another amendment that just contains the second part, if he so wished, but I think that would be consistent with the Ruling that was given, on advice, on the last occasion. So I will be consistent and rule that the amendment does go further than the *original* proposition and what I am being asked is to put to the States a proposition that the amendment be not debated. Probably we need to have a recorded vote. Deputy Bebb has proposed that.

So the Proposition is that the amendment be not debated. If you do not want to debate it, vote Pour: if you do wish to debate it, vote Contre. The Proposition is that the amendment be not debated and no vote be taken thereon. We need a recorded vote because we need to see if one third of the Members support that Proposition:

I remind you that the Proposition is that the amendment be not debated.

*There was a recorded vote.*

*Carried – Pour 30, Contre 14, Abstained 0, Not Present 3*

POUR	CONTRE	ABSTAINED	NOT PRESENT
Deputy Soulsby	Deputy Luxon		Alderney Rep. Kelly
Deputy Sillars	Deputy Gollop		Alderney Rep. Arditti
Deputy O'Hara	Deputy Sherbourne		Deputy Fallaize
Deputy Quin	Deputy Lester Queripel		
Deputy Hadley	Deputy Trott		
Deputy Harwood	Deputy David Jones		
Deputy Kuttelwascher	Deputy Laurie Queripel		
Deputy Brehaut	Deputy Lowe		
Deputy Domaille	Deputy Le Lièvre		
Deputy Langlois	Deputy Green		
Deputy Robert Jones	Deputy Dorey		
Deputy Le Clerc	Deputy James		
Deputy Conder	Deputy Brouard		
Deputy Storey	Deputy Burford		
Deputy Bebb			
Deputy St Pier			
Deputy Stewart			
Deputy Gillson			
Deputy Le Pelley			
Deputy Ogier			
Deputy Spruce			
Deputy Collins			
Deputy Duquemin			
Deputy Paint			
Deputy Le Tocq			
Deputy Adam			
Deputy Perrot			
Deputy Wilkie			
Deputy De Lisle			

Deputy Inglis

4275       **The Bailiff:** The votes are being counted but I think that we have more than one third...  
So the next question is, assuming that more than one third *have* voted that the amendment be not debated, does Deputy Queripel and/or Deputy Paint wish to lay a further amendment that would contain only the second paragraph of that amendment?

**Deputy Lester Queripel:** Yes, sir, I am willing to do that.

4280       **The Bailiff:** I am not asking you to do so! (*Laughter*) I am saying, do you wish to?

**Deputy Lester Queripel:** Yes, sir, I wish to.

4285       **The Bailiff:** Deputy Paint?

**Deputy Paint:** Sir, after voting the wrong way, (*Laughter*) I would like the second part to be debated.

4290       **The Bailiff:** Sorry, you would second that.

**Deputy Paint:** Yes.

4295       **The Bailiff:** The voting on the original was 30 in favour, 14 against, so what we will do is just deal with the second part of the amendment, paragraph 2.  
We have got to where the Procureur wanted to get to, but by a long-winded route!

**The Procureur:** I would ask Members... I mean Mr Queripel has already addressed all his arguments on that point, so –

4300       **The Bailiff:** So, I would not suggest that he addresses us again. He has, yes.

**Deputy Lester Queripel:** I am quite happy to make another speech, sir! (*Laughter*)

4305       **The Procureur:** I do not want to be too disruptive but people have been invited, so I really think we have reached the point –

**The Bailiff:** The point where we open debate –

4310       **The Procureur:** – where we take a vote on... Oh no, we don't –

**The Bailiff:** We have not had debate yet.

**The Procureur:** People have got to be allowed to speak. Yes, sorry. (*Laughter*)

4315       **The Bailiff:** Yes.

**The Procureur:** It is late in the day, sir, (*Laughter*) and this democracy thing is –

4320       **The Bailiff:** Does anyone wish to speak in debate on the amendment?  
Deputy Brehaut.

4325       **Deputy Brehaut:** It is a question for the Procureur, thank you, Mr Bailiff.  
Throughout the debate on this we have heard about the young people being dragged through the courts and criminalised. Could he, perhaps, give us a minute – I appreciate that I have given him no notice – on the role the Children's Convener has in sometimes weeding young people out of the court process, please?

4330       **The Procureur:** Yes, I can.  
It was very much on my mind that, whether or not a *criminal* offence is involved, if the behaviour of a young person is such as to give cause for concern for his health and and proper development, I think it is, that is a matter that *could* be referred to the Child Youth and

Community Tribunal by the Convener. Indeed, a discretion would be exercised, depending on the age of the young person on the report of an offence, as to whether a criminal disposal was really the most appropriate and helpful. So that system does have a role to play in this area.

4335 I do not think I can say very much more than that, but...

**The Bailiff:** Does anyone else wish to speak in debate?

Deputy Paint.

4340 What we are speaking on is really paragraph 2 of what was circulated as Deputy Queripel's amendment.

**Deputy Paint:** Sir, that is on ages.

**The Bailiff:** Sorry?

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**Deputy Paint:** That is on ages.

**The Bailiff:** Yes, on ages – reducing 18 to 16 in paragraphs 1.3 and 2.1 and 4.1 of Appendix 1.

4350 **Deputy Paint:** Sir and Members of the Assembly, I agreed to second this amendment because I believe there is a great lot of merit in what Deputy Queripel is trying to say.

4355 However, I must express shock at finding ourselves, over many years, after so much has been said about the damage cigarettes and tobacco products cause for everybody, that no Law has yet come in force to say a child of three and upwards cannot smoke. They can actually smoke but they cannot buy cigarettes. Now, to me, that is absolutely shocking and I do not see anything at all in here that can adjust that so I think that is a big flaw in what is being proposed.

4360 The fact is that many, many people do smoke. I smoked as a youngster – perhaps not too much as a youngster, only when I joined the States! (*Laughter*) But, at the end of the day, we have got to consider young people, we have got to consider students that assist in shops and cafes whilst still in education. This is all part of the process for young people learning the facts of their future working life before their education has been completed. They learn to budget and how to spend the money that they earn from working in these establishments but, more importantly, they learn that the workings of the working place, which is all part of education and I would not like to see any dampening that would reduce their enthusiasm to do this.

4365 If this amendment is not carried through by the Government – this Government – I have no doubt that it will cause a great deal of damage to students in all sorts of different forms and then, of course, the shopkeepers will have to find other labour, for them that survive. So I am afraid we are finding ourselves in the same situation as we have done before, in that they have to employ foreign labour – and I do not think this is very good. I do believe that we should at least reduce it to 16, but leave it at 16, rather than increase it to 18.

4370 Thank you, sir.

**The Bailiff:** Deputy Luxon.

4375 **Deputy Luxon:** Sir, if I may, two of the oppositions I had to HSSD's Policies were regarding the lifting of the age at which people could sell these products.

4380 Clearly, small retailers have made it very clear that their business depends on the ability to use teenagers, so I will support this amendment. I did feel that the first proposition went beyond the Report but, sir, if I may – if it would be possible to address Deputy Gillson's earlier comments which, frankly, amazed me, –I am a Member of the States of Deliberation first and a Member of the Policy Council second. The HSSD Tobacco Strategy has been running for several years and is a living strategy. When the proposals came to the Policy Council, I read them and, in fact, I e-mailed Minister Adams, Deputy Hunter Adams, with a tremendous amount of queries I had on a personal basis. It is fair to say that my concerns arose between that time and us having this debate today. I listened to the feedback that we had from many people and hence my concerns in the speech I made earlier.

4390 I am surprised Deputy Gillson finds it strange that each of the 47 of us in this Assembly should have our minds remaining open to feedback and questions that are asked once these documents are put into place. There has been confusion in terms of what HSSD has said about consultation, the quality of it, the extent of it, and there has been confusion from the industry representatives about how they believe it. It *has* been smoke and mirrors, so my position today reflects what I have heard since and I refute the fact that the Policy Council, in terms of my involvement in not making

any negative comments when these proposals were put to the Policy Council, was ‘inappropriate’, a ‘failing’ or a ‘failure’, as he described.

4395 Thank you, sir.

**The Bailiff:** Yes, Deputy Le Clerc.

**Deputy Le Clerc:** Sorry, sir, I do not speak very often.

4400 I would just like a point of clarification. I just do not understand the substitution of the age 18 to 16 on 2.1 and on 4.1. It seems to me, particularly on 4.1, that it would mean that a 16-year old could apply for a licence. Perhaps I am reading it incorrectly?

**Deputy Gollop:** It does mean that.

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**Deputy Le Clerc:** Alright, okay. Thank you, sorry.

**The Bailiff:** Deputy Dorey.

4410 **Deputy Dorey:** Following on from that, I do not think a 16-year old is mature enough to hold a licence. Therefore, I cannot support this amendment and I think it should be thrown out.

**The Bailiff:** Deputy Gollop.

4415 **Deputy Gollop:** Yes, I can see there are anomalies in this amendment, which is the problem of drafting policy and legislation on the hoof. I think it has been an issue with this whole Policy Letter and the way in which it has been amended by the Department and presented and so on, and it is an argument to put some of it into the long grass.

4420 I can accept the amendment on one level because, of course, it is facilitating 16-year olds to work in the businesses and I think we should remember, when we passed the Minimum Wage legislation a couple of months ago and updated it slightly, that we are aware that there is a different context to employing the under-18s and some of these businesses that sell candy, that sell tobacco, are really, I suspect, on the margins of profitability and they cannot accept too many controls. They will simply close. And I think if you walked through St. Peter Port, or indeed the  
4425 Island, you would see a lot of ghosts of former tobacconists in corner shops: there were many, many more a few years ago than there are today.

When I hear all these stories about young people abusing of cigarettes, we seem to have the misconception that they are acquiring these cigarettes from tobacconists. How do we not know that they are not raiding their parents’ provisions, who have acquired them, say, through duty free – and why is the States still selling products through States outlets of duty free? That is another issue. I think we have got to realise there is a certain hypocrisy here and there are difficulties but I support this amendment, as far as it goes and, to make one final point, which is more on the other general point, I cannot understand the Prison element. I can see Deputy Quin and Deputy Le Tocq eager to ban the prisoners from smoking but how is it that they are imposing a policy on 1st  
4435 January, when we have not yet passed the legislation which, apparently, is required because it has not gone to the Legislation Select Committee, either? Will that create a problem?

**The Bailiff:** That is moving into general debate, rather than specifically this amendment.

Does anybody else wish to speak on this amendment?

4440 Yes, Deputy Bebb.

**Deputy Bebb:** Sorry, just very briefly, personally, I would like to see a new future licensing of tobacco as we are proposing today. I would like to see it very closely aligned with alcohol  
4445 licensing and, indeed, I would sincerely hope that, at a future date, we could amalgamate the two into one system of licensing.

Therefore, I would ask Members to please consider that we bring parity between alcohol licensing and tobacco licensing and, therefore, to reject this amendment because we need to see a closer unity with regard to approach. Strangely enough, exactly what Mr Queripel is asking for but, in this case, I would ask that he bring parity with regard to the alcohol licensing system.

4450 Thank you.

**The Bailiff:** Deputy Laurie Queripel.

4455 **Deputy Laurie Queripel:** Yes, sir, I rise to speak in my capacity as a doctor, (*Laughter*) just to say I that I would have supported this amendment, sir, except it does include 4.1. I have no problem with 1.4 and 2.1 but the fact that it includes 4.1 will mean that I will vote against this amendment.

Thank you, sir.

4460 **The Bailiff:** Thank you.  
Deputy Gillson.

4465 **Deputy Gillson:** Sir, just to reply to Deputy Luxon, I did put in my speech a caveat and I quote: 'having raised these questions, I have to accept that there is an argument that *some* of the comments from Ministers may have been personal thoughts and not departmental comments.'

**Deputy Luxon:** Sir, thank you for that apology. (*Laughter*)

4470 **Deputy Gillson:** It was a clarification, most certainly not an apology!

**The Bailiff:** Does anyone else wish to speak on the amendment?

No? Deputy Adam, then, do you wish to exercise your right to speak immediately before Deputy Queripel replies?

4475 **Deputy Adam:** I will be very brief Sir, thank you.

I think Deputy Lester Queripel made a very good point about the variation of ages young people are allowed to do certain things. Scooters at 14, 16 vote, 18 alcohol: what *we* are trying to say is that it would be more sensible, as Deputy Bebb said, that we make it as similar to liquor licensing as possible. Certainly, I am sure that it is purely a slip up that 4.1 was put in as well, suggesting that someone at the age of 16 can own a premises and have a licence to sell tobacco. I do not think that is appropriate at all and, therefore, I cannot support this amendment, sir.

**The Bailiff:** Deputy Lester Queripel, then, to reply to the debate on the amendment.

4485 **Deputy Lester Queripel:** Thank you, sir.

Sir, I think I will just thank those members who have spoken in favour of amendment and ask that we go to the vote and a recorded vote, please, sir.

**The Bailiff:** Thank you.

4490 Members of the States, we then are to have a recorded vote on the amendment proposed by Deputy Lester Queripel and seconded by Deputy Paint. This is the revised amendment: it is just paragraph 2 of the amendment that was circulated earlier. Paragraph 2 of the Amendment that you have in front of you:

4495 In Proposition 2, after the word "appendices" to add " Save that instead of the age of '18', where it appears in paragraphs 1.4 also 2.1 and 4.1 of Appendix 1. The Revised Licensing Framework, substitute the age of '16'.

*There was a recorded vote.*

*Lost – Pour 5, Contre 39, Abstained 0, Not Present 3*

4500

**POUR**

Deputy Gollop  
Deputy Lester Queripel  
Deputy Trott  
Deputy Paint  
Deputy Burford

**CONTRE**

Deputy Soulsby  
Deputy Sillars  
Deputy Luxon  
Deputy O'Hara  
Deputy Quin  
Deputy Hadley  
Deputy Harwood  
Deputy Kuttelwascher  
Deputy Brehaut  
Deputy Domaille  
Deputy Langlois  
Deputy Robert Jones  
Deputy Le Clerc  
Deputy Sherbourne  
Deputy Conder  
Deputy Storey  
Deputy Bebb

**ABSTAINED**

**NOT PRESENT**

Alderney Rep. Kelly  
Alderney Rep. Arditti  
Deputy Fallaize

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4520 Deputy St Pier  
Deputy Stewart  
Deputy Gillson  
Deputy Le Pelley  
Deputy Ogier  
4525 Deputy David Jones  
Deputy Laurie Queripel  
Deputy Lowe  
Deputy Le Lièvre  
Deputy Spruce  
4530 Deputy Collins  
Deputy Duquemin  
Deputy Green  
Deputy Dorey  
Deputy Le Tocq  
4535 Deputy James  
Deputy Adam  
Deputy Perrot  
Deputy Brouard  
Deputy Wilkie  
4540 Deputy De Lisle  
Deputy Inglis

**The Bailiff:** Well, that concludes the debate on all the amendments.

Does anyone wish to speak in general debate who has not already spoken in general debate?

Deputy Soulsby, Deputy Rob Jones and then Deputy Brouard and Chief Minister.

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**Deputy Soulsby:** Firstly, I would like to declare my interest in this debate as a patron of GASP – The Guernsey Adolescent Smoke-free Project. I would also like to thank Deputy Duquemin for his supportive comments regarding GASP from his excellent speech. As someone representing a charity, whose principle aim is to reduce smoking in under-18s you would expect me to be fully endorsing this report. I have never smoked either and I must have been a born accountant as, to me, it never made sense seeing your money literally going up in smoke. So, up front, I have to say that I totally support the implementation of a licensing scheme and for the Police to be able to confiscate cigarettes from under-18s. Government should know which outlets are selling a highly toxic and addictive substance and be able to control how it is sold, bearing in mind, as Deputy Bebb has made clear, the cost to the taxpayer of treating people with smoking related illnesses.

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We must do all we can to stop under-18s from smoking. Those who start under-18 are the ones who find it hardest to give up and succumb to the worst illnesses. I also believe that it is wrong for under-18s to sell tobacco. What message does it give out that it is not okay to buy cigarettes but it is okay to sell them? I do welcome HSSD listening to the retailers, however, and coming to a pragmatic solution with regard to delaying this aspect of the recommendations.

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Despite all the above, I have real concerns that, with one hand, HSSD are bringing in a new method of tackling smoking whilst at the same time they are taking away proven existing methods with the other. This Report states that the express objective is to reduce the prevalence of smoking and other use of tobacco products and I quote ‘especially amongst persons under the age of 18’. But, at the same time, the very same Department is cutting the amount of tobacco education in schools. The very same Department, its Minister today expressed the fundamental importance of tobacco education in cutting the prevalence of smoking.

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Since GASP began its work, the numbers of young people who have taken up smoking has dropped significantly however, under the HSSD’s proposals for 2013, GASP’s funding has been reduced under the mistaken expectation that HSSD would take on the education programme in its entirety. HSSD now plans very limited provision in primary schools, only limited education in secondary schools and there will be *no* community activities or special projects which are so effective at targeting support to those young people who are most vulnerable to smoking. Yes, they *are* bringing in the ASSIST Programme for Year 8 pupils but it is costly and only one school has so far agreed to take it up. Currently, Guernsey’s Tobacco Control Strategy is shared equally across three pillars, controlling access to tobacco, tax and education. If HSSD *really* wants to reduce the numbers of young people smoking they need to take action in all three of these areas and, in particular, a steep rise in tobacco excise duty, while reducing demand among the young, should also provide funds which could be used for education.

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I appreciate that HSSD have to work to a budget and that savings have to be made. However, I am surprised that the Department, given the success of services provided to date, have chosen *this* as an area to cut costs and services. I would also like to ask the Minister if the extension of Quitline is not now to be funded through the licence fee, where is the money coming from and,

perhaps he can also advise whether the extension also covers the revision of free nicotine patches to inmates at Guernsey Prison. I will support the recommendations in this Report, the principles behind them hold good, all the evidence shows that a multi-faceted approach is essential to reducing the levels of smoking and the recommendations fit well with this. However, I do have serious concerns that there is no joined-up thinking here. If HSSD were *really* signed up to its 20/20 vision which focuses on prevention rather than cure, surely it would be directing its resources on services that prevent young people from smoking in the first place. I would like the Minister to confirm that, if it does not have those resources, his Department will think laterally as to how it *could* raise those funds through either fees or duties to ensure that we do not see a reversal of all the good work that has been done over recent years to reduce the prevalence of smoking in under-18s (*Applause*).

**The Bailiff:** Just before I call Deputy Robert Jones the result of the vote on the revised Deputy Lester Queripel/Deputy Paint Amendment was 5 votes in favour, 39 against. I declare it lost.  
Deputy Robert Jones.

**Deputy Robert Jones:** Thank you.

I would just like to speak, really, just to gather my thoughts on what has gone on today.

I support the Tobacco Control Strategy in general. I support the measures that are needed to be taken in order to, overridingly, protect our children from tobacco and to ensure that the interests of children take precedence over the needs of the tobacco industry, which has all been set out in HSSD's Report.

What did concern me – and Deputy Luxon has also highlighted this – was the confusion in relation to the consultation process. We have States Reports that often put in the line that states that 'the Department has complied with the six principles of corporate governance in the preparation of this States Report'... and I think that has to apply, obviously, to the consultation process. We have one of the principles – and I think it is number six – that says that good governance means engaging stakeholders and making accountability *real*. One of the things that underpin that principle is engaging effectively with stakeholders. We have heard from Members of the C & D Board and we have also heard from retailers, via the e-mail, that principle does not seem to have been applied during the consultation process.

I voted for Deputy Laurie Queripel's amendment because of that confusion and I have found myself wanting better evidence-based Reports as the months have gone by – and that was one of my concerns with this. Where are we now? Well, I have reassurance from the Minister of HSSD that the legislation will be drafted in accordance with the Report and now the amended Appendix 1. He has emphasised that this will be subject to 'necessary modification and adjustments'. Now I hope that, when those modifications and adjustments are made, effective and meaningful consultation will be ongoing with all stakeholders and that, when we come to set the detail of the framework, we have meaningful and effective consultation in relation to the licensing fees, which I hope are proportionate, and for the staffing of that regime.

**The Bailiff:** Deputy Brouard.

**Deputy Brouard:** Thank you, sir, Members of the House.

I must admit I was disappointed that we were not able to debate Deputy Lester Queripel's amendment because I thought that the idea of directing that legislation be introduced to make it illegal for anyone under the age of 16 to smoke would be rather a good idea. I think that would actually give a *really strong* message to our young people and I was a bit surprised that so many Members of HSSD are so against having a debate about it because that would, actually, cut straight to the point. I would like, therefore, to ask HSSD, when they are bringing other aspects of this particular Strategy, if they could bring this particular aspect back to the States. I appreciate, with this time, the considered arguments for and against, we do not want to criminalise young people, but I think it would be a very strong message for any parents dealing with their children: it is something you are not allowed to do. I think that would certainly be a help in our society.

I am a little concerned now with the funding arrangements that were going to come out of the original proposal because I thought part of the idea was that the funding would pay for the member of staff or part of the member of staff and then put some funding back into the business of health prevention, GASP, Quitline whatever. So I would like the Minister, perhaps, if he could say how that funding is going to happen, because if you want to, it is so much easier to stop someone from starting early than someone who is addicted because it is an absolutely evil product. Having dabbled with it myself, it is an addiction which is *really* hard to break and, five years down the



4645 road, I think, from stopping smoking, I could take it up tomorrow, the addiction is that strong! And  
it would be just the same for a 14-year old who had smoked for a couple of years, or for a 15-year  
old who has smoked for a couple of years. That powerful addiction is still there, so people do need  
help to give up and they need that reassurance and that ability from other people to help them to  
4650 give up. A very strong message would be it is illegal to smoke while you are a young person, so I  
would very much encourage HSSD to come back with something along those lines.

Thank you Sir.

**The Bailiff:** Deputy Harwood.

4655 **The Chief Minister:** Thank you, sir.

If I may, first, address the question, as posed by Deputy Gillson, I would remind Deputy  
Gillson that we do not have executive Government. The Policy Council, therefore, is not an  
Executive. Also, we do not have the principle of collective responsibility. Therefore, it is perfectly  
proper for Policy Council, as a body, to agree to support a Report such as this, whilst individual  
4660 members reserve their right to speak and vote against the Report. I see nothing inconsistent with  
that. There have been instances, I believe, in the past, where Members of Policy Council have  
stated opposition to a Report and, in those circumstances, I believe it has been recorded whether  
the Policy Council supports by a majority or not. But that is the background in which the Policy  
Council came to the decision here: the matter *was* discussed at the Policy Council Meeting and the  
4665 Policy Council agreed to support the Report. But, as I said, that does not, in my opinion, in the  
absence of collective responsibility, therefore preclude *any* Member of Policy Council from  
speaking against or voting against the Report.

Sir, if I may just address the subject of the Report, there were various stages during the debates  
on the amendments where people have talked about prohibition. There is no prohibition,  
4670 incidentally, against the consumption of alcohol below any specified age. The prohibitions, such  
as they are, are against buying, selling to a youth or seen to be drinking in a public place. In this  
context, I think it is entirely appropriate and it would be, indeed, I suggest, impossible, for the  
HSSD to try to invoke an absolute prohibition against a subject such as smoking. The principle of  
licensing is not new, as Deputy Hunter Adams has already stated. There was a licensing regime in  
4675 place for the sale of tobacco until the early 1980's. Licensing applies for a number of other legal  
activities – the obvious example is the sale of alcohol but it also applies in the case of betting. You  
have to have a licence for betting premises.

The importance of the licensing regime is it gives an effective sanction against any of those  
who offend against the principal Law, which is the sale of tobacco or alcohol, to a person below a  
certain age. Whilst I accept that there can be a criminal penalty if you breach that, nevertheless the  
effective sanction is having the licence removed, that it then prevents you from continuing to sell  
tobacco. I also suggest that the cost of the licence, as indicated by Deputy Hunter Adam, is not  
4680 excessive. The cost works out, per week, at the equivalent cost of *one* packet of cigarettes. I do not  
think that anybody can suggest that that is excessive.

My friend, Deputy Perrot, has raised the question about governance, the desire to maintain  
small governance and the desire to avoid legislation. I agree with his sentiment. We do not wish,  
as an Assembly, I suggest, to promote legislation for the sake of it. But legislation is sometimes  
necessary, I suggest, when it is in the public interest. I suggest that in this context – and we have  
heard all the emotional stories about the dangers of tobacco, particularly for the young. I suggest  
4690 that it *is* in the public interest, on this occasion, to bring in legislation.

I therefore urge all States Members to support the Report and the propositions from HSSD as I,  
indeed, will be doing so.

4695 **The Bailiff:** Members of the States, it is now getting very close to 5.30 p.m. and a few people  
have been asking me whether we are going to continue this evening or adjourn and come back  
tomorrow. It would be helpful to have an indication of how many other people wish to speak.

I know Deputy Le Tocq and Deputy Trott do... (*Several Members indicated their intention to  
speak*) so that is half a dozen. There are at least half a dozen people who wish to speak and then  
Deputy Adam has to reply to the whole debate.

4700 Deputy Brehaut also wishes to speak for two minutes.

**Deputy Bebb:** Sorry, could I also suggest that it would also be beneficial that, if we continue  
tomorrow, then, of course, we can hold the election, as well.

4705 **The Bailiff:** Yes, I was just about to make that point. If we do continue tomorrow then,

hopefully, the Alderney representatives will be here and we could have the election tomorrow.

What I will do is – so that the Members of the States that take the decision, rather than me – I will put to you the Proposition that we continue until six o'clock. I will put that to you in a moment and it will be in your hands, rather than my decision.

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So I am putting to you a proposition that we continue until six o'clock.

Those in favour; those against.

*Members voted Pour, with some voting Contre.*

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**The Bailiff:** I think it is your wish that we continue until 6.00 p.m..

Deputy Le Tocq.

**Deputy Le Tocq:** Sir, I will be very brief.

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Education, education, education. Sir, that is my response to this and I think that, in any particular way of dealing with this sort of problem, prohibition, which has been mentioned and being even debated, is not the answer to it.

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That is my answer also to Deputy Gollop with regard to the Prison. What has happened is that there has been a voluntary scheme in operation on a trial basis for the last year. That, in fact, has been really successful and because it also affects prison officers and staff, as well as those serving custodial sentences, it is important that there was a time to educate and to give people an opportunity to voluntarily take part in the ban. As a result of that, what this particular Proposition does is to make it enforceable in law. So the Home Department is supportive of that.

Thank you, sir.

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**The Bailiff:** Deputy Trott.

**Deputy Trott:** Sir, the timing is appropriate because it was on that matter that I wish to rise.

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Sir, as a twelve and a half year veteran of this Assembly, I have only been genuinely dumbfounded on, maybe, half a dozen occasions. One of those occasions was back in 2006, when I remonstrated with the then Minister for the Home Department, my good friend Deputy Mike Torode, about the absurdity of the Home Department's request for the exemption that enabled a prisoner to continue to smoke in a public place whereas, as a free person, that prisoner would not have been able to.

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But it did not just stop there. If a situation arose in the Prison, at the time where we were at or close to capacity, the rights of the smoker would take precedence over the rights of the non-smoker. In other words, a smoker would be billeted with a non-smoker and would be subjected to passive smoking, as a result. So I welcome Proposition 3 wholeheartedly.

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Two other reasons for standing, sir. The first is on the Chief Minister's point about the fact that the Policy Council does not have collective responsibility. Well, I would agree wholeheartedly with the comments made by my friend, Deputy Gillson, earlier. That may well be the case but, if there is no collective responsibility, why be so equivocal in the Policy Council's Statement: 'The Policy Council supports the Report'. No caveats, no qualifications, no ifs and buts – an absolute, categorical statement – that is where the problems lie. Be silent unless you are absolutely certain as to your unanimity, would be my advice.

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And lastly, sir, I would like to talk about the issue of clarifications because you found yourself in a rather awkward position earlier and I completely respect and, indeed, for what it is worth, agreed with your decision. But we have had many occasions over the course of the duration of this Assembly –

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**The Bailiff:** Is this on point, Deputy Trott?

**Deputy Trott:** Well, that will be for you to decide, sir (*Laughter*).

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**The Bailiff:** Well so far it sounds to me as if it is not.

**Deputy Trott:** Bear with me, sir. Bear with me because I am almost finished!

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We have even had the Chairman of SACC rising and giving points of clarification to his own Report. Clearly, it is now time for SACC to visit the issue of whether points of clarification *are* appropriate and, if they are, in what environment they should be allowed – well, 'environment' – clearly in here – but in what context they should be allowed!

Thank you, sir.

**The Bailiff:** Thank you.  
Deputy Storey.

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**Deputy Storey:** Thank you, sir.

I have already made my views clear on the licensing prospect, the proposals, and I think we are all agreed that smoking is a pernicious habit which causes not only lung diseases but circulatory diseases. It is a killer. So I wanted to support the objectives of this Report, but I have two problems with the Report which I hope the Minister can respond to in his summing up.

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The first is that we already have a licensing system in place in relation to alcohol consumption. I share the views of several Members who have spoken earlier today about the ever-increasing number of people employed in bureaucratic jobs. It seems to me completely unnecessary to create a *new* licensing system for cigarettes and tobacco when we already have one in relation to alcohol, especially when a *very large number* of the premises which sell tobacco also sell alcohol. It seems to me that what we are embarking on here is a duplication of effort and staff which is going to add increased costs to the Government as a whole. I am sure that the Minister has a good reason for suggesting a separate regime of licensing but, at the moment, it is not clear from his Report why he should need to go down that route. So I would like him to address that point in his response because I think it is an unnecessary duplication of effort and expense.

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Secondly, sir, other Members have, in previous debates, felt that this Report has been rushed and I think that is clearly evident, especially with the need to introduce an amendment for the Revised Licensing Framework.

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When I read the Billet originally, I found nearly ten items which I felt meant that the Licensing Framework was quite impractical from an operational point of view in a retail environment. I now find that, in the Revised Framework, most of these are addressed, so I do not really have a problem. Where I have the problem is that this shows to me that the consultation was *not* concluded before the Billet was issued. It would have been much more sensible, and much more helpful to us in considering the Report, if the consultation had taken place before the Report and its Appendix was actually published – and I hope that not only the Minister of HSSD, but other Ministers, take note of that comment because I think to come forward, after the Billet has been published, with amendments to one's own Report, just shows that due care and attention has not been paid in creating and producing the Report in the first place.

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That is all I have to say, sir. Thank you.

**The Bailiff:** Deputy Brehaut.

**Deputy Brehaut:** Thank you very much, Mr Bailiff.

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I have to be absolutely frank. I was prepared to bring these proposals to the House absolutely unamended because I thought that the proposals, as drafted, had integrity and were evidenced-based from those people – not politicians – but those people that work in that area and realised what the risk to families and the communities are. I think, perhaps – just an observation on the overall process for new Members – we need to distinguish between consultation and lobbying because if you think you were lobbied on smoking, you have just begun to get lobbied on mortgage interest tax relief, really. For those of us who were around for the voluntary euthanasia, now that is serious lobbying! I think that you really do have to brace yourselves and believe that, as politicians, you consult as best you can, you get the barometer from the public and then brace yourself for the lobbying.

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In my most recent experience, I think, actually, if a group of people formed tomorrow and called themselves 'The Interest Tax Relief Lobby Group', I think it does not take that many people to shape and change policy in a small community. I also wanted to change... with regard to employers being ever so altruistic that they are prepared to take on 14-, 15- and 16-year olds in the interest of giving them an education into work, well, that is thoroughly decent of them! (*Laughter*) I could put another argument that says the coincidence of the Minimum Wage just might be another factor that encourages so many people to do such an altruistic thing, and it does concern me. There are a number of retired people out there who would very much enjoy being back to work and very much enjoy working in some of these very prosperous, very good retail outlets that happen to sell tobacco.

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I shared Deputy Soulsby's observation regarding cutting funding of £23,000, I think it was, to GASP, or of that nature. It is poetic irony. The timing could not be worse. However, I think that, following a statement released by T & R and HSSD at some point over the next couple of days, it will put the £23,000 in perspective. HSSD has hit the buffers! We do our best for the community

but, sooner or later, the money ain't there and, with regard to GASP, I am desperately sorry to say the money ain't there, and it will not be there.

4830 Just before I sit down, another observation on process: I attended the Policy Council to discuss the Tobacco Regulation matter. I think it is fair to say it was down for noting and people duly noted it. It was not tabled, in the sense that 'we are now about to discuss', it was not tabled in that way, so if Members had read it, they had an opportunity to make observations and did not. But I would just say I note that when we go to away days, we are ever so corporate, we have due regard  
4835 for the sensitivities of each Department and I think these workshops – which is not a term I like – are actually very successful but, only hours later, we get tweets alleging the Departments are irresponsible, we get accused of being 'zealous'... It would be great, sometimes, if we could just distil down the essence of these workshops we attend and perhaps bring a bit more into this parliament, notwithstanding the political differences we have.

4840 Finally, I agree with the sentiment expressed by Deputy Perrot. I think he was right to pick me up with regard to my references to Deputy Jones' speech. We should be celebrating diversity in this Assembly, rather than me highlighting differences in people's individual approach.

Thank you.

4845 **The Bailiff:** Does anyone else wish to speak?  
Deputy Stewart.

**Deputy Stewart:** A point of clarification.

4850 **The Bailiff:** Yes, you have already spoken once. You said you were going to –

**Deputy Stewart:** My point is Deputy Brehaut was sat next to me at the Policy Council and I did raise the concerns of the lack of consultation with Commerce and Employment, sir.

4855 **The Bailiff:** Deputy Bebb.

**Deputy Bebb:** Thank you, Mr Bailiff.

I do not think any Member of HSSD could actually go through the experience of this debate and say that we would go away and not listen to the comments that have been made. It is very true  
4860 – and it is one that I will take with me back to the Department – that consultation is one that we *need* to consider far more carefully. On this occasion, it would seem there has been some breakdown with regard to communication but I would like to bring some clarity to this. The WHO World Health Organisation, as we know, states quite clearly that there should be *no* consultation with tobacco companies. We must remember that the tobacco companies, these days, do not  
4865 approach and lobby directly, they employ PR firms and it is strange that we should be lobbied by such a PR firm. I would not possibly know whether that PR firm *was* directly funded from a tobacco company but it seems to fall into exactly the type of workings that currently are employed by tobacco companies.

4870 During the consultation process, of course, that so many have asked for, one of the things that was requested was that the licence fee only covers the *cost* – the administrative cost of the licence – so hence the reason that this no longer specifically funds the educational programmes that certain Members have asked for. We *cannot* bring both consultation and make everybody happy. Unfortunately, such matters do tend to cause a difficulty for us and I think that all I would ask is that, yes, on this occasion we have removed certain specific references to the funding of Quitline,  
4875 GASP and any other form of tobacco cessation avocation but, on the other hand, that has been on the back of a greater degree of consultation with the retailers that has been requested.

The joined-up Strategy, which has also been commented on: can I just say that this is the end of one particular strategy and the intention is that we bring another strategy. So it may feel very much as though it is not particularly structured but that is because we are approaching the end and,  
4880 as anybody knows, when we have a consultation strategy it feels a lot more coherent towards the beginning than it does towards the end. That is why the Department *will* embark upon another strategy for the coming years and that it will be a priority for the Department. We *will* take the comments that have been made in this Assembly today on board.

4885 Finally, with regard to the comments on criminalisation or, rather, law *prohibiting* young people from smoking. As a Department that also has responsibility for care for a number of young people, I cannot possibly support any measure that would seek to *criminalise* young people, hence the reason that it is a very difficult, tight line to walk between trying to advocate no smoking amongst the young and also not criminalising them because I do not think that a criminal record

4890 for someone who is 14 is in any way beneficial for them in their future years. As a Department that has to have due care for people's wellbeing – and that wellbeing extends into the mental health wellbeing of the Island – I would say that could cause untold anxiety and difficulty for people as they progress through life. Therefore, it *is* a little anomalous, when we look at things in black and white, but it is a case that we have to be considerate of also what is the right approach. Hence the reason why, personally, I could not advocate criminalisation of children for the fact that they are smoking.

4895 Thank you.

**The Bailiff:** Does anyone else wish to speak?

Deputy St. Pier.

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**Deputy St. Pier:** Sir, very briefly, I was quite surprised to hear Deputy Bebb say that it was an aspiration to have tobacco licensing aligned with alcohol licensing because I share Deputy Storey's concern that, perhaps, we have missed an opportunity here with what has been proposed by HSSD.

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I rise mainly to respond to Deputy Gillson as to why he referred specifically to me and why it appeared my position has changed. I think there are four things which have changed: the consultation, which was referred to in the States Report, by HSSD's own admission – as we heard from Deputy Bebb and also by the fact that they have changed the Appendix of the Report – was *not* as robust as, perhaps, we were first led to believe with the States Report.

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Secondly, I was left with the impression both by the Treasury and Resources Board and the Policy Council that an objective of this proposal was to reduce the number of tobacco outlets. I accept completely that was the impression which *I* gained and I was informed, after it had been through Treasury and Resources and Policy Council, that was not, indeed, the intention, so that was the second change for me.

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The third change was that HSSD provided significant additional information post-the States Report, and I referred to the ASH Report earlier. That was *not* present when either T & R or Policy Council considered the matter. *My* concerns and questions arose out of that additional information and Deputy Gillson referred to the e-mail which I raised and I referred to it again in my comments earlier.

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Finally, again, the changing in the financing arrangements is a comment which Deputy Dorey referred to earlier, actually, on behalf of the Treasury and Resources Board. That had changed from the original proposal. So I hope that explains my personal position.

Thank you, sir.

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**The Bailiff:** Deputy Lester Queripel, were you wishing to speak?

**Deputy Lester Queripel:** Sir, I am not sure if I can finish my speech in twelve minutes! *(Laughter)*.

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**The Bailiff:** Well, in that case, shall we rise now? **(A Member:** Hear hear) Are you serious you are not going...

**Deputy Lester Queripel:** I could amend it, sir.

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**Deputy Trott:** Do not risk it, sir. Do not risk it! *(Laughter)*

**The Bailiff:** – because we still have other speakers and the Minister to sum up, so it would be helpful if you could –

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**Deputy Lester Queripel:** I am quite happy to let someone else speak, sir. And we resume tomorrow morning...

**Several Members:** No!

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**The Bailiff:** Mr Procureur, what were you going to suggest?

**The Procureur:** Well, the Rule says that you may –

**The Bailiff:** I may go to 6.30 p.m.

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**The Procureur:** – extend the meeting to a time, if you think that the matter can be dealt with. You evidently thought that the matter could be dealt with by 6.00 p.m., otherwise you would not have extended it.

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**The Bailiff:** Yes.

**The Procureur:** You have been shown – wholly exceptionally, methinks – to have been incorrect in that prediction! (*Laughter*)

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**The Bailiff:** Obviously, I was.

I am not convinced that we would finish by 6.30 p.m., if we have still some long speeches to come, so I think the proper thing is that we will have to rise and resume tomorrow morning.

*The Assembly adjourned at 5.48 p.m.*