



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Royal Court House, Guernsey, Thursday, 9th November 2017

*All published Official Reports can be found on the
official States of Guernsey website www.gov.gg*

Volume 6, No. 28

ISSN 2049-8284

*Published by Her Majesty's Greffier, The Royal Court House,
St Peter Port, GY1 2NZ. © States of Guernsey, 2017*

Present:

Sir Richard J. Collas, Kt, Bailiff and Presiding Officer

Law Officers

Miss M. M. E. Pullum, Q.C. (H.M. Procureur),

People's Deputies

St Peter Port South

Deputies P. T. R. Ferbrache, J. Kuttelwascher, D. A. Tindall,
B. L. Brehaut, R. H. Tooley

St Peter Port North

Deputies J. A. B. Gollop, C. N. K. Parkinson, L. C. Queripel, M. K. Le Clerc,
M. P. Leadbeater, J. I. Mooney

St Sampson

Deputies L. S. Trott, P. R. Le Pelley, J. S. Merrett, G. A. St Pier,
T. J. Stephens, C. P. Meerveld

The Vale

Deputies M. J. Fallaize, N. R. Inder, M. M. Lowe,
S. T. Hansmann Rouxel

The Castel

Deputies R. Graham L.V.O, M. B. E, C. J. Green, B. J. E. Paint,
M. H. Dorey, J. P. Le Tocq

The West

Deputies D. de G. De Lisle, S. L. Langlois

The South-East

Deputies H. J. R. Soulsby, H. L. de Sausmarez, P. J. Roffey,
R. G. Prow, V. S. Oliver

Representatives of the Island of Alderney

Alderney Representatives L. E. Jean and S. D. G. McKinley, O. B. E.

The Clerk to the States of Deliberation

S. M. D. Ross Esq. (H.M. Senior Deputy Greffier)

Absent at the Evocation

R. M. Titterington, Q.C. (H.M. Comptroller); Deputy J. C. S. F. Smithies (*indisposé*);
Deputy E. A. Yerby (*indisposée*); Deputy A. H. Brouard (*absent de l'Île*);
Deputy L. B. Queripel (*relevé à 9h 33*); Deputy A. C. Dudley-Owen (*relevée à 9h 33*)

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States of Deliberation

The States met at 9.30 a.m.

[THE BAILIFF *in the Chair*]

PRAYERS

The Senior Deputy Greffier

EVOCATION

The Bailiff: We have two more Members who have just joined us, Deputy Dudley-Owen, probably wishes to be relevée.

5 **Deputy Dudley-Owen:** Yes, please, sir.

The Bailiff: That just gives time for Deputy Laurie Queripel to get to his seat as he wishes to be relevé.

Deputy Laurie Queripel: Yes, please, sir, thank you.

Billet d'État XXI

POLICY & RESOURCES COMMITTEE

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III. Protecting the interests of the Bailiwick of Guernsey as the UK leaves the EU – Debate continued – Propositions carried

The Senior Deputy Greffier: Billet d'État XXI – the continuation of the debate.

The Bailiff: Who wishes to speak next? Deputy Tindall.

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Deputy Tindall: Thank you, sir. Good morning.

Sir, Deputy Prow was right yesterday about the extent of the challenge we face because the other country has decided to leave the EU. He ably discussed the areas we will need to address and the need to be so nimble.

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I am, however, more concerned about how we are to become more nimble, and what we are being asked to approve today, and giving it due consideration as to whether or not we want to take this major step.

25 The policy letter explains what legislation the UK Government is seeking to introduce including a Withdrawal Bill, which could also be called a Preservation Bill, which will enable amendments, repeal, and adaptations or modifications by statutory instrument. There has been a great deal of opposition to the UK Withdrawal Bill with over 300 amendments to the legislation, and it has also been described by the Shadow Brexit Secretary, Keir Starmer, as one which would give huge and unaccountable powers to Ministers and puts vital rights and protections at risk.

30 I wish to consider whether we are also introducing legislation which could be said to do the same. Whilst our legislation is similar in its hierarchy, primary legislation or Laws in Guernsey, whilst they are known as Acts in the UK, and are approved by Parliament in both cases. Primary legislation is also amended by statutory instruments, which includes orders, rules and regulations, and also ordinances in Guernsey. But there we leave the similarities.

35 In the UK they have executive government with political party in power, or nearly, and a party is the official opposition. The government also lays draft legislation, which MPs have the chance to amend each clause, and debate each line, its meaning and effect. In the case of the UK Withdrawal Bill it is only 66 pages long, so it is difficult to imagine a clause, let alone a page which someone is not objecting to, and so much scrutiny. Much time is spent on this.

40 However, in Guernsey we do not give legislation as much scrutiny – nowhere near enough, in my opinion. We will approve the principle of such legislation today, and this will be drafted by the Law Officers, reviewed by P&R, and then by the Legislation Review Panel. It will then be back before this Assembly, but it will no doubt be in its final form. It is rare for it to be changed at that point. Although we have had amendments, say to the Population Management Law, which had a last gasp debate and other changes made since through ordinance regulation. Whilst Deputies on their respective Committees and individuals are all scrutineers, there is nothing like the amount of scrutiny given to it in the UK.

45 HM Procureur has recommended statutory instruments be used to introduce these powers, and points out that these powers must be subject to appropriate democratic scrutiny. I agree. However, we are also advised that the UK may take exception to the granting of such powers, because they are too far reaching. However, my concern is that the amount of legislation that will no doubt be needed, which will be far reaching, without this level of scrutiny. I agree we are in need of speed, however, the current system already allows for the introduction of emergency legislation, with scrutiny by the Legislation Review Panel and then approval by P&R, and this has been successful on many occasions.

55 Sir, with the knowledge and tacit approval of the President of Scrutiny I suggest that the Legislation Review Panel is included in the scrutiny process of such important pieces of legislation. We should not just reply on the process of annulment under Rule 19, a process which I have not seen used in the last 18 months. This scrutiny by the Panel can either be by review before the subordinate enactments come into force, or before they are laid in the States. As we on the Panel have often ensured changes are made with import, I see only a benefit from this extra scrutiny and it may assist with the UK and any objections they may raise.

60 I am also grateful that we have been advised of more resources for drafting, but would appreciate confirmation that the non-Brexit legislation will also be given due regard, and the resources needed to avoid delays.

65 Lastly, for the avoidance of doubt, I would like an explanation of the reason the word '*particularly*' is in Proposition 1. It appears to be a strange word to use, putting stress on a certain paragraph at paragraphs and actions, and I would appreciate if I could have an explanation as to its importance, if any.

70 As you can see, sir, I do not object to being nimble in this manner, I just would appreciate a little bit more scrutiny, and we have the means to do it, so let's use it.

Thank you, sir.

The Bailiff: Deputy Gollop.

75 **Deputy Gollop:** Yes, sir.

My observations are possibly in some respect similar to Deputy Tindall, because like herself, I sit on Deputy Chris Green's Scrutiny Legislation Review Panel, and like herself, I have sat on previous legislation committees, and indeed the scrutiny procedure that we adopt is relatively rigorous. We have the benefit of a least one solicitor and three advocates who were members of

80 the Committee and that is before any of the excellent members from St James' Chamber come in through the door, as it were. Indeed we also welcome civil servants from Income Tax, Social Security, Economic Development, and many other Committees who give advice on their pieces of work. We are, in many way, meeting more frequently now, because of the current timetable of the States, meeting on a fortnightly or three weekly basis, on occasions.

85 That said, the process is a little bit cumbersome, and curious oddity of the new system is that it has been made larger rather than smaller in terms of efficiency. For example we are now well managed by the Scrutiny team, who are generally based in Sir Charles Frossard House, but we also, of course, the actual legislation comes to us from St James' Chambers, and indeed, technically we do not meet unless a senior member of St James' Chambers is present.

90 Now, when I was Chairman, or Vice-Chairman on occasions we would have sanctions, and we still do, that had to be done urgently and, perhaps, only two of us would meet in the Procureur's office or the Comptrollers officer, or somewhere like that. More recently I am afraid I let the side down and I stayed in Alderney an extra day for the Pageant and the Legislation Select Committee needed five voting members, and two who go but were not voting, and they only had two at the

95 time, because two other members were either not there, or committed on other States' business, and we had to meet hurriedly the following day.

Now in the old days that would not have been necessary, because two – especially if the Vice-Chairman or the Chairman chaired the meeting – would be necessary. Moreover, in those days curiously, perhaps, reflecting its former status when the Bailiff chaired the Committee, the

100 Legislation Committee had the power – Henry VIII style really – to impose on the Island a measure, and then, of course, it would go to the States subsequently for possible consideration. That has gone.

We now have a system whereby the Head of Legislation at St James' Chamber, the Crown Advocate, will present the legislation to a fairly rapidly convened meeting of the Scrutiny

105 Committee, and then if it has been done satisfactorily we will pass it on to our masters at Policy & Resources, who have replaced the Policy Council in this respect. But we have duplicated a function, and to some extent we have doubled up on staff. I am not criticising that because it reflects a new way of doing scrutiny, whereby you more precisely separate the executive functions from the parliamentary scrutineering functions, but of course, it adds an extra obstacle to the

110 path.

Indeed, perhaps, the most worrying aspect of this policy letter is the, I think, correct assumption by HM Procureur that we will have an enormous amount of legislation, potentially, to review. It will be not exactly a great Brexit Repeal Bill, but it will have a lot of consequences. As we said yesterday, I think there is a case for stronger prioritisation of legislation. There is a case for

115 maybe additional members of the team at St James' Chambers, who might be specialists in these areas, but also a case for outsourcing some of this legislation to professionals elsewhere, or private sector law firms, whether it be in Jersey, United Kingdom or specially Guernsey, where appropriate.

Another area that arises from that, of course, is the way in which we manage legislation. I would not mind, I have voted for it in the past when I was Chairman, and I know that the current

120 President is sympathetic to this, having occasional meetings in public. Hopefully, they would not be an opportunity for grandstanding or interrogatory questions or that sort of ...

I had an interesting dialogue at one of these meetings only recently. I was a bit critical to see a piece of legislation that was four and a half years old and I asked the senior advocate concerned

125 why it had taken so long to come to us. He suggested it probably would not have taken more than a day or two to draft, and his response, or her response, which was very fair enough, was that

they were awaiting instructions from the Principal Committees' staff as to pushing it through. Now, some Principal Committees, historically Commerce & Employment, and definitely Social Security, are very focused on legislation; so are people connected to Income Tax. Others less so, and one can see the usual suspects if one had a long list of legislation that has been voted on by Resolution but has not come to this Assembly. There are certain areas that perhaps pop up more than others, but I will not say any more than that. But those are precisely the kind of areas where not only Scrutiny and all of us as scrutineers, but Policy & Resources need to focus their attention on.

135 As regards the meat of this, I welcome the can-do attitude. Deputy St Pier gave an excellent presentation to the Young Business Section of the Chamber of Commerce, and reminded us that Guernsey, in many ways, was more well prepared than our larger sister for the eventualities, and I think we have hit the ground running, in many ways.

Deputy Prow is right, though: the challenges cannot be underestimated.

140 There were perhaps two areas of concern though, I would draw out of the overall meat of the policy letter. The first is the assumption that the Population Laws relating to what used to be a Housing Law are not really relevant. There are not in themselves, because they entirely relate to the ability to reside in particular parts of our housing market. But they do contribute to misunderstandings and our free flow of migration in terms of economic mobility and, as has been, I think, correctly identified, the combination of Brexit, the worries of Europeans about their long-term rights within the Common Travel Area, and the consequential reduction in the strength of the pound has contributed to some economic mobility issues of labour and retention, and I think we need, therefore, to look holistically at population and migration in this context.

150 The other point is that, of the four priorities that are listed, I am surprised – oh, I will get into trouble here with Deputy Paint, sir – to see that fishing is one of the big four, because fishing is a very vital and important part of our economy and way of life, as it is for Alderney, and Sark, and Jersey too, and it is one that we respect and appreciate, but due to changing times, it probably represents only 1% or 2% of our overall economy, and certainly workforce.

155 One priority we do have, of course, is importation and transport of food, and indeed I went to a conference talk in the UK last month whereby a professor was saying that the UK Conservative Government and their supporters were underestimating the potential of a sharp rise in the cost of food, or the need to import food from outside of the European Union – and fishing is, of course, a part of that. But, I would argue that we do not want to lose other negotiating positions because we take a strong-arm stance on the bass or the bream, because the reality is that there are bigger fish in the sea as well. I would argue in terms of priority –, that is not to say fish should not be dealt with – that transport and energy are of greater material substance, and when and if we have to negotiate work on this, we have to take that on board.

Deputy Inder.

165 **The Bailiff:** Deputy Inder – Deputy Gollop is giving way to you.

Deputy Inder: Thank you for giving way, Deputy Gollop.

170 I just wanted to remind him, and possibly, Members as well, that in the Policy & Resource Plan the fishing industry was embedded within that as one of our heritage industries – which seems reasonable to me, because it is not just about fishing; it is about territorial waters. There is a lot involved in this which is not just about the industry itself.

Thank you very much.

175 **Deputy Gollop:** I take that point, because, of course, it might have ramifications for energy and ownership rights, and international control. But, in the past, maybe this will not be the case in the future, Guernsey has not seen eye to eye with our cousins in France, or England, or even Jersey, and hopefully, we do need to work together on these areas, and therefore, we do have to, occasionally, make compromises if the situation demands.

180 The other concern I have, really, is that there is no timeline, which perhaps reflects the lack of information that we are getting from the United Kingdom, and it is perhaps becoming increasingly unlikely that every aspect of the deal will be done in two years. I remember going to a local Guernsey Chamber of Commerce survey when a keen supporter of Brexit was having second thoughts on the grounds that it was perhaps not easy to join up the dots.

185 My final point is to do with public engagement. It is interesting to note that Channel Television did a mock vox pop last night and interviewed 48 people, of whom there were 29 who wanted to remain, I think 18 who wanted to leave, and one person who changed their mind in the middle of the interview. It was not me, no! (*Laughter*)

190 What most of the respondents said was a very strong view on how they saw Britain in the EU. Actually, Guernsey's position is particular and unique, and it is particularly relevant to our transportation needs, our population needs, and our financial services, and other industrial sectors. We really do need to concentrate the public mind on the Guernsey perspective – and just one little bit of caution to Deputy Tindall, although I agree with every point that she has made today, that if we are going to put extra pressure on the legislation machine and the political machine, which is inevitable, really, as Deputy Prow suggested, it will perhaps make it harder to prioritise interesting, but not relevant pieces of legislation, such as noisy fireworks, which I dislike too.

195 So, as Deputy Ferbrache once said in one of his best speeches, he said he would like to see a situation where, if we do have to introduce new legislation, that we could rid of or burn or dispose of some outdated red tape at the same time.

200

Several Members: Hear, hear.

The Bailiff: Deputy Green.

205 **Deputy Green:** Sir, thank you very much.

I have sympathy with the points that Deputy Tindall made this morning, and similarly to what Deputy Gollop also said.

210 I have some reservations about this policy letter, and I think the potential implications of some aspects of this policy letter are of a worrying nature and could be of enormous constitutional significance. But, before I get on to that, I think, as the previous speakers this morning have said, the implications of this are not only a much increased workload on the Law Officers, a substantial increase on their workload, but also potentially a big increase in resources in that regard; but also an increase in the workload of the work of the Legislation Review Panel, as others have said. Also, what exactly are the implications going to be for the non-Brexit legislation that we all want to see, and there are already issues with the delays and the lack of progress being made on key pieces of legislation, including the Disability Discrimination Law and others? What is going to happen in that regard?

215 But the main thing that I wanted to say, sir, and the main reason why I am standing, is I have reservations, I think we should be very wary about seeking potentially very vast Henry VIII clauses for our own primary legislation. The Privy Council has a historic role in overseeing and applying scrutiny to our primary legislation. What we are seeking to do here is to get the authority to have a very wide ranging Projet de Loi, which will allow us, in effect, to make whatever changes we see fit to our laws, without that Privy Council oversight, which is a substantial departure from that practice.

225 I remember last term, sir, we debated the recommendations of the Constitutional (*Interjections*) Investigation Committee – I thank Deputy Graham and Deputy Fallaize for that. They came up with some recommendations which proposed a very radical departure from that. I must confess, sir, I do not know what the status of those recommendations are. I am presuming that they are not being progressed at this time, and not being actioned, so putting that to one side, we are, potentially, looking at a radical departure from the current historic arrangements. I do not think,

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sir, I just do not believe that the Privy Council is realistically going to agree to such powers in my view, over such a wide variety of different things.

Yes, of course, we are going to have the need to move forward quickly with legal changes, but I just do not see us getting those powers quickly, or without problems.

235 That brings me on to what are the potential implications of that if we are denied those extra powers, because in a way you could read the request for such Henry VIII clauses as almost kind of tentative step towards a greater form of independence from the Crown, you could see it that way, and that is why the potential implications of this are enormous.

240 Of course, it is also the fact, Privy Council does provide an important role in terms of the scrutiny of the legislation of our Bailiwick, which is no bad thing, in my view. We have had problems in the past, of course, when we have sought to insert these fairly hefty powers, Henry VIII powers into our primary legislation, and that led to quite a backlog in the progression of our legislation through the Privy Council a number of years ago. I think we are, potentially, going down a road, sir, that that could lead to problems.

245 So, I would be grateful if I could have some indication in terms of how we are thinking these issues through as a States in terms of the Policy & Resources Committee's view on this, because what is our Plan B? What is our plan if or when the Privy Council says that actually, no, we cannot have these vast Henry VIII powers as envisaged in this policy letter?

250 The other thing is, it is a rather more political point. We have set out our aims and objectives for the Brexit process, in terms of our Bailiwick. I do not think we have set out with a great deal of precision exactly what it is that we want at this stage, and certainly that is not in the public domain, as far as I am concerned. Certainly what is not in the public domain is any kind of indication from the UK in terms of the likelihood or merits of what it is. But the question I have got, sir, is, if it becomes very clear from this whole process that our aims and objectives as a Bailiwick are going to be increasingly seen as unrealistic, or undeliverable, or unachievable, within our existing constitutional arrangements, what is our Plan B in that political scenario?

255 So, I would be grateful if I could have an indication from Members of Policy & Resources that these issues are being taken into account, that there is a Plan B, that the best interests of our Bailiwick can be guaranteed, or at least argued for and progressed whatever happens – both in terms of the legal issues that I have raised, but also in terms of the politics of it as well.

The Bailiff: Deputy Paint.

265 **Deputy Paint:** Sir, I will declare an interest. I was not going to speak about fishing at all, but as it was brought up, I thought I had better – as President of the Fisherman's Association.

270 First of all, I do have to disagree with my colleague Deputy Green. I would like to see us move further away from the UK. We are having to endure various things being imposed on us, like the recent DEFRA things on fishing (**A Member:** Hear, hear.) where we are limited on what we can catch because of their rules, not ours. Also because of overruling rules being made without rules of different places. I will give you the undulate ray for a start: it was overfished in the North Sea and Greece so they put an overrule in that you could only catch a little bit. The fishermen are actually dumping it, and that is absolutely wrong to dump good fish at sea.

275 **Several Members:** Hear, hear.

The Bailiff: Deputy Green.

Deputy Green: I am very grateful to Deputy Paint for giving way, and thank him for doing so. Just for the sake of clarity I was not arguing that it is wrong to seek greater independence from the Crown; I am saying we should be absolutely clear about what our aims and objectives are.

Deputy Paint: The real problem is that with Europe and the UK one rule is made to cover all, but different places have got different fisheries. DEFRA have given us a certain species of fish we can catch, 70% we do not catch in these waters. Is that fair? Of course, it is not.

285 Moving on to what I was actually going to say, I would like to congratulate Deputy Le Tocq for the efforts he has made in trying to work the Bailiwick closer with Brittany and Normandy, he has made a splendid effort there. But we have problems – financial problems coming up. We already have our imports to Europe are much less than our imports, so we have a problem there of balance of payments. Shortly – well, within the next few years, hopefully –we will have a new
290 electric link to France, which will be an import of electricity which is going to cost us, so we have to try and get the balance of payments, that might be the door that we could use to have, perhaps a new type of Protocol 3, that England had, but with Europe rather than the UK. So we can export to them and we can import from them, rather than what might happen. It is just something that is worth looking at.

295 Really, that is all I have to say. I am just concerned that we are paying out a lot more, or will be paying out a lot more, than we will be getting back in.

Just one other thing on fishing is that our fish get sold on the markets in France for whatever value bidders are prepared to pay for it. It is very high quality fish, so they want it, but when you see the price that it is being sold at the final stage of its ... from the merchants to the public, it is
300 two or three times the price, so in actual fact what we are doing there is we are helping France's balance of payments. Our fish is helping to pay for their balance of payments. That extra two or three times more that the French people are paying for the fish is actually helping the French economy.

Thank you, sir.

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The Bailiff: Deputy Trott.

Deputy Trott: Thank you, sir.

310 Sir, one of the key dynamics involved in the Brexit negotiations surrounds the UK's increasing needs to preserve most of its political capital for the Brexit negotiations rather than the ongoing day to day politics of Europe. Increasingly, the UK's voice carries less weight in negotiation on ongoing EU business. This impacts on our own engagement strategy. They cannot be relied upon to make our case as enthusiastically, and as regularly, as they might once have. It makes our international identity even more important, and it makes the demands on our resources even
315 more significant.

Sir, having the CDs and the Overseas Territories as third countries is one thing; having the United Kingdom as one is altogether another.

320 A key issue for all the EU 27 is arriving at policies that do not look like they *are* – subjective, ill-defined, and very often inconsistent. Now, sir, one of the key issues for the EU 27 is the definition of economic substance. The economic substance lying behind companies established in jurisdictions with tax-neutral zero corporate tax rules, like us. Now, sir, in Guernsey around 7,000 financial service workers, often highly qualified, usually highly qualified, provide an environment where real people make real decisions in real time. Now, our relationship with the City of London, in particular, has never been stronger, as we face these challenges with a common mutually
325 beneficial set of objectives.

Picking up on Deputy Green's point, sir, I am sure Deputy St Pier will speak to the importance of our ongoing legislative competence, and in whatever form that may take. I will, however, say this, legislating on our behalf, without our consent, is and will remain constitutionally unacceptable, (**A Member:** Hear, hear.) and will not ever be acceptable either to this Assembly or
330 to the people of Guernsey. (**Several Members:** Hear, hear.)

Thank you, sir.

The Bailiff: Deputy Le Tocq.

Deputy Le Tocq: Thank you, sir.

335 I echo those comments just made by Deputy Trott.

I thank Deputy Paint for his comments, I will come back to some of the things that he referred to in a moment.

340 I just want to address, sir, some of the remarks made by, and questions raised by, Deputy Green. To use his terminology, sir, our Plan A is still the Resolutions, accepted unanimously by this Assembly during the last term, of the Constitutional Investigation Committee. That is, if you like, Plan A.

345 The Plan B issues have come as a result of Brexit. So I would rather see them that way round because the Ministry of Justice at that time, because we engaged with them immediately after that, and have subsequently, despite changes, obviously, in personnel and in Ministers there, and at that time they supported and recognised the democratic decision of this Assembly to progress on those changes to the legislative process, and indeed, on entrustment and treaty making, which were part of those Resolutions in this Assembly.

350 In fact, indeed, the Justice Select Committee has underlined those things, and I met only last week with the current Chair, but also actually with the previous Chair of the Justice Select Committee who understand the importance of those Resolution and those proposals and that direction of travel for us in our evolution, as Deputy Trott has alluded to, of greater international identity, and recognition of our own determination of where we should sit, and our relationship on the world's stage. That is very, very important, obviously there are some unknowns at the moment, because there is some undoing to do in order to develop a new relationship in the future, and that will depend, to some degree, on where the UK end up, after their negotiations are complete with the EU.

355 One thing is certain, we will need more friends internationally, and if our identify is increased and our process of legislation, which at the moment, I do not disagree with Deputy Green, has the test of time, as it were, working well for us, generally speaking, but we have recognised, the Assembly has recognised, that that will not always be appropriate for us.

360 Indeed, the UK in its Brexit decision making, the UK Government has chosen to rely upon Henry VIII clauses, because we are dealing here, and I have said this before, but I will say it again, in a world, and an environment, where rapidity of making decisions, and of enacting legislation will become increasingly important. So we are going to have to adapt to that change as well in the future.

365 But these are bigger things than just Brexit and they are constitutional matters, and so I do think we should probably leave it there as far as this policy letter is concerned, but they are right to be raised, we should be aware of the effect upon them.

370 To come to some of the points that Deputy Paint was making and in fact, Deputy Inder alluded to that in his interjection as well, on fishing. Fishing is not just for us, and in this respect not just for Guernsey, but for Alderney and for Sark as well. It is not just a heritage issue; for many people it is a livelihood. (**Several Members:** Hear, hear.) We have taken that seriously even before the Brexit issue, but obviously, that adds complications to it.

375 One of the obvious points of challenge in that is our relationship with France and with Normandy in particular. That is why I am very pleased to have been involved in the signing of and the negotiating of agreements both with Normandy and the Département de la Manche, and in Brittany with the Département d'Ille-et-Vilaine. Those are relationships that I am very pleased to say are *much* stronger than they have ever been before. They put us in a good place.

380 To illustrate that, at a recent summit in Caen in Normandy, where not only President Morin of Normandy, but President Philippe Bas, who was until recently President of La Manche – he is still a Senator in the French Parliament.

385 I was very pleased to see, when we did a Brexit presentation to them, how important they realised our relationship – our trade, indeed even our fishing – is to France, to Normandy in particular. They have become, not only stronger friends in that way, but actually advocates for maintaining and strengthening our relationship with France, not just for fishing, but in terms of

potential for electricity, in terms of the potential for renewables, marine renewables in these waters in the future – and there we come into territorial sea issues, again – but also in terms of travel issues, which are ongoing and again, as I mentioned earlier, much broader than this policy letter.

390 But I raise that here because those are things that I think give opportunities – it is not just about challenges – opportunities in the future that this Government, this Assembly, should be aware of.

Thank you, sir.

395 **The Bailiff:** Deputy Fallaize.

Deputy Fallaize: Thank you, sir.

400 There is a sentence in this policy letter which has originated in a letter from HM Procureur, which says since the triggering of Article 50 by the United Kingdom in March 2017, which began the two year time scale for Brexit, HM Government has been slow to set out its negotiating position, and has not provided the clarity expected, which is perhaps the understatement of the decade, (*Laughter*) but is put very eloquently and diplomatically.

405 Actually, I think, probably the UK has provided the clarity expected, because no clarity was expected at all. But clearly, they have been slow to set out their negotiating position. Now, as if the lunacy of Brexit was not enough in terms of the likely economic decline which the people of the UK have voted for, and for the weakening of the UK's position in relation to European and, probably, global affairs, now we find that Brexit may have the consequence of, in practice, weakening legislative scrutiny for some of the Bailiwick's legislation.

410 Deputy Trott said that the role in practice, what he was saying was that the role played by the Privy Council at the present time, without effective representation from the Bailiwick is what he called constitutionally unacceptable, and that may be so. I think that there is a coherent case to be made in that regard, but the important point is that at the moment, as Deputy Tindall said, and as others have said, or alluded to, we do not have the parliamentary infrastructure to scrutinise legislation as fully as would be expected, let's say, in an independent mature democracy. So, we often see, because we approve policy, we approve legislation, we think we have done our job, then it gets sent off to the Privy Council and probably we see that stage as an obstacle. We complain we are waiting for the Privy Council to, effectively, give us permission to get on to the Statute Book, stuff which we have already approved. So that is often how we interpret the role of the Privy Council. But actually, the Privy Council is fulfilling a role which otherwise would have to be filled domestically, and the Privy Council for very many years, and historically, have been an important part of our process of legislative scrutiny, which helps us to demonstrate to the outside world that we are a mature parliamentary democracy. We can offer up as evidence to demonstrate that we are a mature parliamentary democracy that our legislation is scrutinised by the Privy Council. So we may see it as a hurdle but actually it does help us in terms of projecting to the outside world our capacity to approve and scrutinise legislation.

425 I will give way to Deputy Le Tocq.

430 **Deputy Le Tocq:** Just for clarity I wanted ... I do not disagree with anything that Deputy Fallaize has said, he is absolutely right, but when he says Privy Council what he is really saying in terms of the process, the scrutiny takes place at the Ministry of Justice, and that is where the problems, certainly in terms of perception, can occur.

Deputy Trott: On a point of correction, sir.

435 **The Bailiff:** Deputy Trott.

Deputy Trott: Thank you.

440 It is clearly constitutionally acceptable for the Privy Council to sit in scrutiny of our laws. They have done for centuries. What is constitutionally unacceptable to us is if HM Government sought to legislate in a way that impacted negatively upon our affairs without the due consultation and consideration that is implicit under our international identity.

The Bailiff: Deputy Fallaize.

445 **Deputy Fallaize:** Yes, I accept both of those points, but it does not change the fact that we, at the present time, do not have the legislative ...

Is Deputy Trott wanting me to give way again or is he just ... ?

450 **The Bailiff:** I think he thought you had finished your speech, in which case –

Deputy Fallaize: Oh, I see. Yes, I gave way.

Deputy Trott: Oh well, it was not a point of correction, then.

455 **Deputy Fallaize:** That is why I said I was giving way.

The Bailiff: But if you had sat down he would not have been able to raise the point of correction, because it would have been too late, so ... (*Laughter and interjections*)

460 **Deputy Fallaize:** If you just carry on (*Laughter*) and I will speak to the rest. (*Interjections and laughter*)

The Bailiff: When you are ready, Deputy Fallaize.

465 **Deputy Fallaize:** Thank you, sir.

Sir, I agree with both of the points made. The point made by Deputy Le Tocq and the point made by Deputy Trott, but it does not change the fact that we do not have the parliamentary infrastructure to do what the Ministry of Justice and the Privy Council is doing on our behalf at the moment. Whether we ought to be doing it as a completely different matter, and some of those points were touched on by the Constitutional Investigation Committee, and we can have that debate if we want, but what concerns me in this policy letter, and I am not saying that, necessarily, that I am going to vote against the Propositions which concern me, but what concerns me is that we are potentially seeking to diminish the role of the Ministry of Justice and the role of the Privy Council in quite significant volumes of legislation before we have put in place domestically the sort of arrangements to demonstrate legislative scrutiny which at the moment are provided for us, or to us, by the Ministry of Justice and the Privy Council.

475
480 Now, Deputy Green says he is doubtful – I think that was the word he used, or certainly he implied he was doubtful – that the Ministry of Justice and the Privy Council will accept that. In other words we may send this legislation up to them, as it were, but we may not find that it is given Royal Assent, or Royal Sanction. Well, who knows whether that is the case, but we may face quite a significant constitutional issue if that happens.

485 The underlying point, I think, is that though we may regard the role of the Ministry of Justice and the role of the Privy Council to be obstacles, that is the way we perceive it, but in terms of the way the outside world perceives our ability to make and scrutinise legislation, I think that our ability to demonstrate the role played by the Ministry of Justice and the Privy Council is actually quite important. If it is not going to be played by them it ought to be played by some other body domestically and clearly our scrutiny of legislation is inadequate domestically, if it were not for the role played by the Ministry of Justice and the Privy Council.

490 So perhaps when Deputy St Pier sums up, he could provide some assurances that we are not going to find ourselves in the position of, in a sense, dispensing with the role of the Ministry of Justice and the Privy Council without putting in place additional and new powers of legislative scrutiny domestically.

A Member: Hear, hear.

495

The Bailiff: Deputy Roffey.

Deputy Roffey: Thank you, sir.

500 That classic line, I was not going to speak but I have been brought to my feet by some dreaming, I think, that is going on in some quarters.

505 I will get on to that in a second, but first of all, I am very much going to support this policy letter. I think it is a question of needs be where the devil drives. I think we are in a unique situation in relation to Brexit. I would not extrapolate from that the generality that we no longer want the Privy Council to carry out the function that they have always done in looking at our legislation. I do want them to do that. However, I do not think that it is practical in relation to the hugely tight timetable in relation to Brexit. It is not ideal. I fully accept it is not ideal. We do not have the domestic scrutineers, Deputy Fallaize has just said, and it is useful to have that external look, but in this particular case, I think it is absolutely essential. (**A Member:** Hear, hear.) I cannot come up with a better approach.

510 Now, if it is turned down – I hope it will not be turned down by Privy Council because I think, by and large, they are fairly pragmatic and they will see that, but if they do not – then I think the onus is on them to actually come up with an alternative suggestion about how we can approach this. Because it would be utterly unacceptable if they just said, ‘No, you have got to send it all through us’, but, yes, maybe they will prioritise all of it, but I doubt it, with the work that they are going to have to do over the next few years; but it is down to them.

515 What brought me to my feet, I think, was some of the almost romantic dreaming about what greater independence might actually bring. Also, to be fair, I think some romantic dreaming from Deputy Trott about what constitutional niceties actually mean. There are constitutional relationships, and then there are power relationships. There is what is written or not written in our constitution, and there is the real politic of who really has the influence.

520 Now, Deputy Trott said it would be totally unacceptable if the UK legislated in a way that we did not like on our behalf without our say so, yet constitutionally he is absolutely right, but in effect, that is exactly what is going to happen, isn't it? I mean if the UK go through with this folly – even despite the fact that most people in the UK seem to be opposed to it now – if they go through with it, they are going to come up with a new immigration law, and a new immigration regime. Now, it is not automatically extended to us, but if we do not, then bang goes the Common Travel Area, and bang goes our economy. So, in reality, they will legislate, because they will not tailor that immigration regime and immigration law to what Guernsey, Jersey or the Isle of Man want; they will do what the UK want. Yes, we have the technical constitutional power to say we want no part of this if we really want to commit suicide. But we do not.

525 So, in all but name, they are actually legislating for us, and actually, I think we need to know what that immigration regime is going to be before we actually bottom out where we are going with our population control regime, but that is for debate later this month.

There is ... I heard from – I give way.

535

The Bailiff: Deputy Trott.

Deputy Trott: I am hugely grateful, because so often on these sorts of things, Deputy Roffey and I are surprising closely aligned.

540 I want to give you an example of where some sort of extra-territorial reach would not be acceptable and let's use exchange controls as a perfect example. One of the reasons why Guernsey is today a thriving international finance centre is because of actions that were taken by the UK Government in the 1970's that imposed UK-wide exchange controls, and for capital financial centres to exist there needs to be free movement, whether it be free movement of
545 people, of course, of free movement of capital. If a Corbyn-type government was inclined to introduce exchange controls, and they have hinted that they may be, and they sought to territorially extend those to Greater Britain, to the British Isles, that would be absolutely unacceptable to us, because it would kill us as a financial services industry. It would kill any financial services industry. God knows what the effect on London would be. So that is an example
550 of what I am talking about in the absolute extreme. Now, I cannot imagine that even a Corbyn government would be that stupid, but one has to prepare for every eventuality.

Deputy Roffey: I do not disagree with that. All I am saying is that in the spin out from Brexit, the UK will be making certain decisions focused entirely on their own interests, and while they have got a duty to take ours into account, they will not be looming very large, particularly when it gets to the gallop towards the end, and in many of those cases while they have the constitutional ability to say we do not want any of this, in reality we are absolutely shackled to the UK, and we will be foolish not to plan on that basis, because that is the truth.

Now, we have had a couple of Members like Deputy Paint, and Deputy Green, talking about should Plan B be to move further away from the UK. In fact, Deputy Green sounded like he wanted a republic because he wanted to move further away from the Crown, rather than away from British Government, so that is interesting. (*Interjections*) The reality is it is easy to get oh so romantic about the up sides of greater independence from the UK without focusing on the legions of down sides that come with it. So, please do not allow ...

565 There will be things in the months ahead that irritate us about the outcome of these negotiations, where we feel that the Guernsey perspective has not been taken fully into account. But to actually use that as a spring board to some kind of *quasi*-independent nation status should be only done as absolutely the nuclear option. I do not think we should get carried away.

570 But my central point is I think this is far from ideal. Ideally I would not like to do it. It is going to be that this legislation will not be given scrutiny ... Assuming we are allowed to do this, the legislation relating to Brexit – or 'Guexit' I suppose, for Guernsey's exit from Protocol 3 – will not be given the scrutiny it ideally should have, but it is the real world, and I absolutely support it, because I do not see an alternative.

575 **The Bailiff:** Deputy Ferbrache.

Deputy Ferbrache: Sir, I echo every syllable of the speeches made by Deputies St Pier, Le Tocq and Deputy Trott, particularly these three speeches, in connection with this particular matter, because we are now in the most uncertain world we have been in for probably generations. I remember when we got the pack before the Brexit vote in June of last year, we were advised to read it. I thought 'Why should I read this? The British people will not be silly enough to exit the European Community!' Well, I am glad I read it, and I am sad at the decision, but the fact is, we had that decision, and I think it is romantic, and unrealistic, to expect that to change. The UK Government are set on a course, the Europeans are set on a course, and that course will run its
585 course, in connection with what we are having to face.

Now, a key word that Deputy Le Tocq said is that we are going to have to move with rapidity – we cannot analyse and super-analyse everything, we will not have the opportunity to do that, because even though events are moving at the pace of the slowest snail at the moment, they will gain pace, and there will be decisions made, and we will have to react.

590 When I hear, and it is probably the sentiment, rather than the words that I have heard today from some of the speakers, that 'Well, we have got to be careful, we have got to scrutinise

everything', you have actually got to trust people that you have elected to certain offices to do their job. If you do not trust them, then take steps to unseat them.

595 I have every confidence in the people that have been elected to be ... Deputies Le Tocq, St Pier, and Trott, who are very much involved in the Brexit process. Deputy Prow and I are also involved, and there are other people involved. It is scrutinised, as best it can be, every two weeks. We have this meeting every two weeks, and sometimes there is very little to talk about because nothing has happened, but we still have that meeting every two weeks, and we will continue to have that meeting every two weeks, or if required much more frequently.

600 But I do not think it is romantic, and I do not actually see that much difference between what Deputy Trott and Deputy Roffey said. Of course, it would be the nuclear option to go independent, but equally there might be, whether it is exchange control, or something else, there might be something that is so fundamental to this jurisdiction that we have to take a step that we do not really want to take, and it will not be easy, and there will be troubled waters. Indeed, at the moment, we are moving from shallow waters to deep waters of problems that we are going to have to face.

605 Brexit will touch every business, every person in the Bailiwick, whatever we think, and Deputy Le Tocq is right, we need as many friends in the world, and in Britain – well, Britain is not the world, we need as many friends as we can get. (**A Member:** Hear, hear.) But this is a topic that you are going to have to trust people, sir, if I may respectfully say to the Assembly, that they are going to have to trust those leaders that they have voted in and given responsibly for to do the job. We are not going to be able to bring back every single thing and every single moment and have it super analysed if we did. We cannot have a bonfire debate like we did the last three days on every single topic, otherwise we will be sitting in these States 24 hours a day, seven days a week, 365 days a year. We are in a unique situation we have to act responsible and speedily.

The Bailiff: Deputy Kuttelwascher.

Deputy Kuttelwascher: Thank you, sir.

620 Sir, the essence of this debate can be summarised in one word: 'speculation'. You could elucidate a bit, assumptions, presumptions, we are talking about Plan A, B C and you could almost have an infinite number of plans. What we have is a situation, and we have not got a clue what is going to happen. We really do not. All we can do is try and prepare ourselves for all reasonably possible eventualities. That is why I will completely support this policy letter and the Propositions.

625 It is a bit like a game of chess: somebody has made an opening move, the UK Government have given notice they are going to leave the European Union. Our move now is ... there are thousands of moves possible; our move will be to try and put in place enabling legislation which will enable us to deal with a whole host of possible, unfortunate outcomes, and that is all we can do.

630 If the Privy Council decide they do not want to do it, we will take it from there, and we will take it as we go along.

It reminds me, going back a long time, when I was doing what they call a command course in flying, we used to have flying manuals, technical manuals, almost every situation you could think of was covered by a manual, engine fires, failures, bombs on board, and I asked the question to my mentor, 'What do you do if something happens that is not in the book?' He said, 'You deal with it because that is what you are paid for.'

635 We just have to deal with it, this is a perfectly reasonable next step and I hope it gets unanimous support.

Thank you, sir.

640

The Bailiff: Deputy Graham.

Deputy Graham: Thank you, sir.

645 I was not going to contribute to this at all, because I thought it was a fairly straightforward thing, other than I think the very realistic points that Deputy Chris Green has raised, which have been more than adequately answered from Deputy Le Tocq and Deputy Lyndon Trott.

650 But it seems to me we are almost trying to re-run the referendum on Brexit here, and I think as a marginal Remainer I am entitled to try and give it a bit of balance here. As a marginal Remainer – my family were actually split, funnily enough my young multi- racially involved grandson in London was a fervent Brexiteer, and I just cautioned him as a marginal Remainer – but I have to say this, we are getting from those who are still embittered about Brexit a lack of humility, almost verging really on arrogance, in making I think a fair point, that many of those in the United Kingdom who voted for Brexit were not clear what they were voting for, nor about the consequences that would come.

655 But I would ask those who had they been a voter, and would have voted Remain, were they equally clear about the Europe that they wished to remain in? (**A Member:** Hear, hear.) Did they foresee the emasculation, really, of Angela Merkel, who in the last election received a mere 30% of the votes in her country, yet is still regarded as the sort of lynchpin of Western Europe togetherness? Did they foresee, for example, that Spain was in danger of fracturing? Did they foresee that in consequence, perhaps, Belgium might have a few second thoughts about its coherence? Did they accept that Greece was either never going to recover from its indebtedness, or if it did not that it might be kicked out? Did it foresee the move in some quarters for a European Army to replace NATO; and it is NATO, not the EU that has kept the peace in Europe for the last 50 or 60 years? I do not think they would have foreseen those things. Nor could they have
660 foreseen, really, the attitude in the future of the European Union and particularly the EU block to the interface with the United Kingdom who remain outside the EU.

665 All I am asking for is a little bit of balance. This probably does not change one jot what we here in Guernsey should do, but I think a little bit of balance needs to be restored.

670 **A Member:** Hear, hear.

The Bailiff: I see no-one else. Deputy St Pier will reply.

Deputy St Pier: Thank you, sir.

675 It has been an interesting and useful debate, I think. Revolving, really, around only a couple of key issues, and I think it is worth just spending a little bit of time to respond to those.

680 Dealing first with Deputy Tindall's question about the wording of Proposition 1, and the use of the word '*particularly*' in that Proposition, I think I can probably do no better than actually read the advice from HM Procureur, who I had the opportunity to consult during the debate. HM Procureur says, 'In my view there is nothing out of the ordinary in using the term, '*particularly*'. It is intended simply to highlight the Bailiwick projects needed, whilst not excluding references to other legislation.' So for example in paragraph 6.4 which refers to UK orders in council which may be extended as regards immigration, which Deputy Roffey mentioned for example. So, in short nothing turns on the use of the word. It was simply used to assist the States in identifying critical
685 Bailiwick legislation without detracting from other legislation which may be needed.

As HM Procureur said to me, I hope that assists, and I relay that on to Deputy Tindall through you, sir, I hope that explanation assists. It seems fairly clear to me, sir – and I think Deputy Green raised the same question.

690 Deputy Gollop was, I think, right to draw attention to the fact that there are other areas of priority, and I would just refer him to the section of the report headed areas of priority, where the three in particular that he mentioned, transport, is dealt with at paragraph 6.9, energy at 6.10 and fishing at 6.7.

I think Deputy Inder in his intervention, I think, made a very valid point that, actually, this is far broader, it touches on a number of other issues, including of course territorial seas, and that

695 again, is referred to in paragraph 6.7 and the need to work with Sark, and with Alderney, and indeed with Normandy on a number of issues that arise.

Sir, Deputy Green raised in his – a slight distraction from this particular debate – but the question of where are we in relation to the Constitution Investigation Committee proposals. Now, sir, he was complaining yesterday during the Budget debate that the Policy & Resource Plan was
700 too long, so he may be forgiven, if I draw his attention to page 135 of the report that was presented earlier in the year, sir, where one of the priorities is seeking greater autonomy from the UK in respect of the legislative process and international agreements. This arises from the recommendations of the Constitution Investigation Committee, and is even more pertinent now in the view of the UK's changing relationship with the EU, which will, of course, have consequential
705 implications in Guernsey.

The Committee – that is P&R, of course, in that reference – recognised that it will need to work with the States' Assembly & Constitution Committee in the pursuance of the relevant States' Resolutions, with the aim of securing greater autonomy in matters pertaining to the granting of Royal Sanction for legislation, the extension of international agreements, and the ability to enter
710 into agreements under entrustment, not later than 2020. So, hopefully, that deals with that question.

Sir, I think Deputy Green also referred to the use of the Henry VIII clauses and, again, sir, if I may, I think it is again useful to refer to comments from HM Procurer, in which she said, if it assists, the legislation requested is largely about enabling powers by ordinance. This is not quite
715 the same as the Henry VIII in the UK sense, as a UK Henry VIII clause enables primary legislation to be amended, or repealed by subordinate legislation with or without – importantly, with or without – further parliamentary scrutiny. Bailiwick ordinances are, of course, always subject to parliamentary scrutiny and, of course, through the Scrutiny Management Committee, the Legislation Review Panel, and come back before the States. That is a fairly significant difference
720 between the two.

In relation to ... I will give way.

The Bailiff: Deputy Tindall.

725 **Deputy Tindall:** Thank you, sir. Thank you, Deputy St Pier, for giving way.

Would he agree that the letter also includes the fact that statutory instruments are recommended, and they are not scrutinised by the Legislation Review Panel, and that is what my point was in should we consider including the Panel for those specific Brexit statutory instruments.
Thank you.

730

Deputy St Pier: That is a valid observation, although, of course, statutory instruments are laid before this Assembly, and there is an opportunity to challenge and debate them if so desired.

Deputy Fallaize: On a point of correction, sir. There is not.

735

The Bailiff: Deputy Fallaize, point of correction.

Deputy Fallaize: There is not. They are laid before the States, but they are only (*Interjection*) considered by the States if there is a motion to annul them. There is no possibility to debate and
740 consider them in the normal way.

Deputy St Pier: I stand corrected. I give way.

Deputy Prow: Thank you, Deputy St Pier, for giving way.

745 Sir, I think one point needs to be made, that with immigration legislation, indeed, a lot of customs legislation now, the actual policy is implemented through statutory instrument now. So, this will not necessarily change through what we are deciding to do today.

For example, the immigration rules are made by statutory instruments which are laid, where this Assembly does have an opportunity to scrutinise them. So the implications of the policy letter is not introducing anything new in the actual practical effect of implementing both customs arrangements policy and immigration policy through statutory instrument.

Thank you, sir.

Deputy St Pier: Sir, I am, actually, particularly grateful to Deputy Prow for that intervention, because I think that is a very important point to make. That in essence it is entirely consistent with current practice, in some of those important areas that we are talking about being subject to change.

Deputy Green also asked what Plan B was, I think he was really asking what the two Plan Bs were, the Plan B in relation to the legislation, and the Plan B in relation to the political. I think Deputy Le Tocq responded to that. But, certainly in relation to the legislation, it is intended that the draft of the projets will be with the Ministry of Justice in draft form for pre-vetting, if you like, and we should be in a position to share those, at least two of the current drafts, before the end of this month. So, I think we are going to have a fairly early indication as to whether it is a practical approach. Clearly, if it is not, then we will engage with the Ministry of Justice to understand their concerns in order that we can adjust and amend the legislation. So, I think that deals with the legal Plan B.

But I think I absolutely echo Deputy Roffey's analysis. This is an entirely pragmatic response to the position in which we ... and indeed the United Kingdom finds itself, with a very limited amount of time available to it, and I think the Ministry of Justice is likely to find itself required to be pragmatic and not least because of the pressures on them in relation to this process elsewhere.

In relation to the political Plan B, absolutely, I can give Deputy Green the reassurance that it is a matter which, as you would expect, Policy & Resources is keeping under review, quite rightly, and it is not something that would necessarily, of course, be constantly debated in public, and because the scenarios keep changing, but I can give him that reassurance that we are very conscious that if we need to respond in a different way then, obviously, we will do so quickly and seek the approval of this Assembly, if and when required. I hope that gives him the reassurance that he was looking for.

I think Deputy Trott provided an entirely appropriate, and timely, reminder of the constitutional position that the United Kingdom is not in a position to legislate for us without our consent. Deputy Roffey's response in relation to the political realities is also entirely, of course, valid. But we are talking about seeking to strengthen our hands in dealing with the United Kingdom so that they do properly understand the constitutional relationship and position. In particular, they need to understand that we are not in the same position as the devolved administrations in other component parts of the United Kingdom.

It is very encouraging in a slightly allied constitutional issue that David Davis, the Secretary of State for the Department for Exiting the EU, in his response to the House of Lords EU Committee, which was distributed over the weekend, absolutely echoed what we have been saying for the last 18 months. His analysis entirely accorded with our own, and if I may just quote the relevant part of it. This is in relation to the House of Lords report questioning how the UK will represent the interests of the Crown Dependencies if these differ from those of the UK.

The UK Government and each of the Crown Dependencies signed an International Identity Framework Agreement in 2007–2008. In these agreements, the UK committed that it will not act internationally on behalf of a Crown Dependency without prior consultation and that, where the interests of a Crown Dependency differ from those of the United Kingdom ...

and this is the critical part,

the UK will seek to represent those interests when acting in an international capacity.

(**A Member:** Hear, hear.) So, it is absolutely acknowledged that it is wearing a different hat on the international plane when it is representing our interests.

795 Now, it is entirely appropriate that we constantly re-emphasise at every opportunity, as Deputy Trott has done in relation to legislation, and as we do in dealing on the international plane, that that constitutional position is re-emphasised, the political realities may be somewhat different, but in terms of the starting point of our negotiating position in dealing with the UK it is important that that is fully and properly recognised. So, I am grateful to Deputy Trott for that intervention.

800 Deputy Fallaize said something which really surprised me: he said that we do not have the infrastructure of a mature independent democracy to provide the level of scrutiny of the legislation that he felt was appropriate. Well, I happen to believe, sir, that we are a mature independent democracy, and I think we do have the infrastructure. It resides here in this Assembly. We may not choose to use it, to the extent that we might always wish to do so, but I think feeling that we can just sit back and rely on a group of civil servants in the Ministry of Justice to do what we should be doing here in relation to the scrutiny of our own legislation is a very surprising position to take. I think it shows a lack of confidence in our own abilities, and I do not remotely share that, because I think we have already demonstrated in the 18 months of this Brexit process that we are considerably more organised, competent, and prepared, than the larger mature independent democracy to the north of us. (**A Member:** Hear, hear.)

810 I do not lack at all any faith in our ability to handle whatever is thrown at us in this process, and our ability to prepare and scrutinise the necessary legislation to deal with the consequences of the situation in which we find ourselves. I hope very much that the Assembly does not also lack the confidence and will, as Deputy Kuttelwascher said, unanimously support the Propositions before you.

815

The Bailiff: We come then to the two Propositions. Does anybody wish to have a recorded vote on them? Do you want to show that they are unanimous?

Deputy St Pier: Yes, sir.

820

The Bailiff: In order to demonstrate, if it is the case, that they are unanimous, the only way to demonstrate unanimous support is to have a recorded vote, otherwise there could be abstentions. That is not to put any pressure on people to vote one way or the other. I am not suggesting you should vote in favour of them, of course, but if it is the wish of the Policy & Resources Committee that they test to see whether these are unanimously supported, this is the only way of doing so.

825

So we vote on both Propositions together, 1 and 2.

The Senior Deputy Greffier: This session, sir, the voting begins with St Peter Port North.

There was a recorded vote.

830

Carried – Pour 37, Contre 0, Ne vote pas 0, Absent 3

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Gollop	None	None	Deputy Smithies
Deputy Parkinson			Deputy Brouard
Deputy Lester Queripel			Deputy Yerby
Deputy Le Clerc			
Deputy Leadbeater			
Deputy Mooney			
Deputy Trott			
Deputy Le Pelley			
Deputy Merrett			
Deputy St Pier			
Deputy Stephens			
Deputy Meerveld			
Deputy Fallaize			
Deputy Inder			
Deputy Lowe			
Deputy Laurie Queripel			
Deputy Hansmann Rouxel			
Deputy Graham			
Deputy Green			
Deputy Paint			
Deputy Dorey			
Deputy Le Tocq			
Deputy Dudley-Owen			
Deputy De Lisle			
Deputy Langlois			
Deputy Soulsby			
Deputy de Sausmarez			
Deputy Roffey			
Deputy Prow			
Deputy Oliver			
Alderney Rep. Jean			
Alderney Rep. McKinley			
Deputy Ferbrache			
Deputy Kuttelwascher			
Deputy Tindall			
Deputy Brehaut			
Deputy Tooley			

The Bailiff: Well, the vote was 37 in favour, with none against and no abstentions. I declare that those Propositions were indeed carried unanimously.

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

IV. Referendum on Guernsey's Voting System – Voter Turnout – Proposition 1 carried

Article IV

The States are asked to decide whether, after consideration of the attached policy letter, they are of opinion:

1. To agree to introduce the electoral system which is the most favoured in the referendum on the method of electing People's Deputies to the States of Deliberation provided that the number of persons voting in the referendum is at least 40% of those persons inscribed on the Electoral Roll who are eligible to vote on the day of the referendum; and to agree that, in the event that turnout at the referendum is less than 40%, the States' Assembly & Constitution Committee should within three months of the date of the referendum submit a policy letter to the States setting out any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.

OR, only if Proposition 1 shall have been defeated,

2. To agree, irrespective of turnout, to introduce the electoral system which is the most favoured in the referendum on the method of electing People's Deputies to the States of Deliberation.

OR, only if Propositions 1 & 2 shall have been defeated,

3. That in advance of the referendum the States shall make no commitment to implement the results of the referendum; and to direct the States' Assembly & Constitution Committee to submit a policy letter to the States setting out any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.

835 **The Senior Deputy Greffier:** Article IV – States' Assembly & Constitution Committee –
Referendum on Guernsey's Voting System – Voter Turnout.

The Bailiff: Deputy Fallaize.

Deputy Fallaize: Thank you, sir.

840 A similar vote on the outcome of this policy letter would be very acceptable.

Sir, in June the States approved proposals from the States' Assembly & Constitution
Committee to hold a multi-option referendum on the method of electing Deputies. The
preparations for the referendum are progressing well. The legislation which is needed to underpin
the referendum should be submitted before the end of the year for consideration by the States in
845 the first quarter of next year to proceed to holding the referendum in October 2018.

However, there is an important matter which was left outstanding following the June debate,
and that is what is the status of the referendum result? In other words, how will the States treat
the result of the referendum? The reason I say it is outstanding is because in June, on a tied vote,
the States rejected the Committee's proposal that the States should commit to accept, respect
850 and implement the option which wins the referendum, in the event that turnout exceeded or met
40% of those persons inscribed on the Electoral Roll. But the States did not substitute an
alternative Proposition, or an alternative Resolution, for example to have a different turnout
threshold, or to state clearly that the referendum would be held on an advisory basis only.

So, at the present time the States have clearly said there will be a multi-option referendum. We
855 know what the options are: four options proposed by the Committee, and a fifth option which was
inserted by the States as a result of an amendment by Deputies Green and Graham. We know we
are proceeding to a referendum in 2018, but there is no clarity at all in terms of how the States
will treat the result of that referendum. That is considered unsatisfactory by the Committee.

The whole purpose of the referendum is to empower the people of Guernsey to determine
860 their future electoral system, and the Committee believes the public need an assurance, in
advance of the vote, of the circumstances in which the will of the people shall be carried into
effect. Uncertainty as to how the result of this referendum will be treated can only result in voter
disengagement. It obviously is going to do nothing to promote turnout, and if the States are not
clear about how the result of the referendum will be interpreted, we risk creating the impression
865 that we have organised a referendum, at some expense, which could well be disregarded by the
States. A sort of expensive consultation exercise with no meaningful outcome. So, the Committee
does believe the States need to make a political commitment, in advance of polling day, to
implement the winning option.

Now, I will just say a few words on what is meant by political commitment, because, I think, in
870 the last debate we went down several rabbit holes in relation to whether the result could be made
binding on the States, or what the definition of a political commitment was. Of course, the States
are sovereign in this sense, and at any time the States can decide to supersede one of their
previous decisions. The point is that it is important, before polling day, that the States provide a
very clear political commitment to the voters to implement the result of the referendum. I do not

875 think one needs to get too caught up in the legality of it all. The important point is the States should make that political commitment.

The Committee is recommending what it recommended in June, that the result of the referendum should be implemented, or the winning option should be implemented, provided that the turnout is not less than 40% of those persons inscribed on the Electoral Roll who are eligible
880 to vote on polling day. The reason the Committee is proposing setting a voter threshold, and there is no great science behind, exactly, what the percentage threshold should be. It is a matter of judgement, but the reason the Committee proposes a threshold is because the States are in effect being asked to give up their right to determine the future electoral system. The Committee does not believe that significant change to the electoral system should be undertaken lightly.

885 A threshold, perhaps most importantly of all, does guard against the possibility of the voting system being changed quite substantially through the wishes of a relatively small number of people. It is quite important if the voting system is going to be changed, and if the States are going to effectively hand over this decision to the people of Guernsey, it is quite important that any change should be the result of, if you like, the breadth of opinion amongst the people of
890 Guernsey, and not simply because a very small number of people feel particularly passionate about the issue one way or the other.

So, the Committee believes that setting a turnout threshold in this way will help to make the result of the referendum decisive and legitimate.

As explained in the policy letter, turnout thresholds are very common in referendums
895 elsewhere, especially so for those which concern constitutional amendments, or changes to the electoral system, but even in referendums which do not engage constitutional or electoral issues turnout thresholds are quite common, and many of the examples are listed at paragraph 4.5.

The Committee does believe that the question being put to the electorate is a constitutional issue. The constitution could be defined as the set of fundamental rules governing the politics of a
900 nation or sub-national body, and the Committee's view is that the electoral system falls under that definition. Certainly, it is possible that the Reform Law may need to be amended, depending on the outcome of the referendum, and the Reform Law is generally understood to be our primary piece of constitutional legislation. We do not have a written constitution, obviously, but in many countries which do their electoral systems are, to a greater or lesser extent, set out in those
905 constitutions. In the United States for example, the composition of the Congress is set out in the Constitution.

So the Committee believe that this is a constitutional issue and furthermore, that the proposed threshold level of 40% is the right threshold level with reference to turnouts which have been
910 achieved in not dissimilar referendums elsewhere – which is covered in paragraph 4.6 of the policy letter.

The Committee's primary aim is to ensure that there is clarity established, one way or the other, that we ought not to leave the whole thing hanging in the balance, that through these Propositions the States ought to make it very clear how they will treat the status of the
915 referendum. If the States do not want to give any political commitment to implement the winning option, the States should say that, and they should say, in advance of voting day, we are not giving any commitment to implement the result under any circumstance, this is only an advisory process. That is why the Committee has set out three alternative, or one recommendation and two alternative Propositions.

The Committee hopes the States will support the proposal to implement the result of the
920 referendum, so long as the turnout meets 40%. If the States cannot support that, the Committee hopes the States will be able to support Proposition 2, which is to implement the results of the referendum irrespective of the turnout that is achieved, and if the States cannot support that there is then Proposition 3, which allows the States to make a decision and to make it very clear that the referendum is being held on an advisory basis.

925 All three Propositions are preferable to leaving the whole thing hanging in the balance and not providing the public with any certainty. The Committee's recommended Proposition is Proposition 1.

Thank you, sir.

930 **The Bailiff:** Deputy Dudley-Owen.

Deputy Dudley-Owen: Yes, thank you, sir.

I would like Deputy Fallaize please to just clarify something for me, because it all looks very sensible in the policy letter, but in terms of the numbers, would Deputy Fallaize please be able to let me know, based on average sign-up for the Electoral Roll in Guernsey, how many people, actually, this 40% equate to?

Notwithstanding what happens in other jurisdictions, it does look a little bit on the low side to me, and therefore what the rationale is to go for 40% rather than 50% would be if it is only a matter of judgement and not science behind it.

940 Thank you very much.

The Bailiff: Deputy Gollop.

Deputy Gollop: Sir, thank you.

945 Deputy Dudley-Owen has asked a sensible question, but I would disagree with her earlier point that this all looks very sensible. To me it is complete nonsense, every aspect of it, in many, many ways.

I know we had a nonsense debate before, and I am partly to blame for that voting one way on Deputy Laurie Queripel's referendum and then re-switched in the previous Assembly.

950 But let's look at the facts of the situation. None of us know, for certain, who would succeed in an Island-wide election. I remember once Deputy Inder's submarine company put me and Deputy Parkinson as poll-toppers and were chuffed at that, now that is not the case.

I was on a recent *Phone-In* with my colleague Deputy Langlois and one caller suggested that certain people, meaning those on the *Phone-In*, were only in because we did well in our parishes and we did not have Island-wide popularity. You cannot say. You can debate until the cows come home whether establishment figures, populists, large names, people representing minorities, people who are characters, people who represented executive positions would do well or not.

955 But, what is interesting is we have had these debates, at least a dozen of them, since the 1970's: we had the Frossard Report; the Carey Report; the campaign group that Deputy Dorey played a leading role in; we had U-turns by the States, even in those days; we had Conseillers in two different systems; we had three Conseiller elections electing 12 and then 6 and then 1; we split their terms; we went for 45 Deputies, then 38. We have played around with this, and yet there has been a call from the public for some revision on this, maybe for an Island-wide element. I remember Deputy Rihoy had his point of view, Deputy Lowe had her point of view in the past, well-argued to the Assembly. At no time – and I sat on one of the SACC committees, which was then called House Committee – has any SACC or House Committee successfully been able to persuade the majority of its colleagues on the correct way to change our electoral system. Indeed, many of them more able, intelligent, and eloquent Members of the Assembly have in the past expressed strong reservations about the merits of Island-wide elections. Although we are now in a situation where we are choosing groups, perhaps, to promote different bodies.

960 I do sometimes wonder if Island-wide elections are the solution what is the problem, but that is another matter, because I think we are a very successful community, as Deputy Ferbrache and Deputy Trott, and Deputy St Pier remind us, in so many ways, we have so much to be grateful for, but nevertheless, the little issues that we suspect, collectively and individually, could be done better, possibly more to do with policy, relationships between executive and Government, maybe between civil servants and our system, maybe between engagement with the voters.

975

The Bailiff: Deputy Gollop, I hesitate to interrupt you – are you going to come back to the Propositions directly before us in this policy?

980 **Several Members:** Hear, hear.

Deputy Gollop: Well, I am just coming there, because –

985 **The Bailiff:** Well, could you come there a bit quicker. (*Interjections*)

Deputy Gollop: You have almost, sir, without wishing to, made my argument for me, because we have wasted hours and hours on this subject (*Interjections*) and many, many debates.

990 The fundamental problem is twofold. One we do not appear to know what public opinion is, (*Interjection and laughter*) but we have had appeals before, and a report that many people are questioning, and all the rest of it. But now we have got a referendum. The second point is we have conclusively proved, regardless of whether I ever change my mind or not, I have been remarkably consistent on Island-wide elections, actually, that we cannot, as an Assembly, somehow make a decision on behalf of the public. It is an issue we do not like, it is an issue that we U-turn on, it is an issue that we have had uncertainties on. In that context, I think it is ridiculous to have any
995 threshold. We have to accept the public's verdict, even if only 20 people turn out, because the reality is that we have had almost 20 people voting here and we have not come to a decision.

I have in front of me the votes of the first Jersey referendum for 2013. They had a 26% turnout. Nevertheless there were 16-odd-thousand votes, the population being larger, and only 20% of their population, 3,000 people, on the day, to my surprise, but the figures are the figures, voted to
1000 continue with Island-wide elections in Jersey. The other two winners wanted to have either a system of district Deputies like we have currently got, or and/or with Constables, parochial representatives. Now, the winning margin there was never adopted by the States. They never did go for district Deputies in the previous election and they went for this one.

1005 So the States have deliberately disagreed with the majority opinion of the public, and have continued with their Island-wide representatives, and their tri-part system of representation. Even though they had a referendum. In fact they had a second referendum. Neither of them got to the 40% mark.

I believe 40% is an extremely high mark for a constitutional subject. Bearing in mind our Electoral Roll is not perfect, and we could be operating basically the Electoral Roll from a year ago. So, although it is with a heavy heart that I give up the right of every elected Member of the States to have a vote of conscience, which is really the other argument. I think to make headway and rebuild public confidence we not only need to give the public motivation to vote in this, not 20 people, but hopefully 20,000, by saying we will respect the public's verdict, whichever way it goes, and that we will not be questioning a threshold. Because even 35% of the electorate would be
1015 equivalent to over 10,000 people. 10,000 is surely a greater barometer of public opinion than 38 or 40 Members here.

So, I very much urge us to reject SACC's recommendation, and go for a recommendation based upon respect for the vote, regardless of turnout.

1020 **The Bailiff:** Deputy St Pier.

Deputy St Pier: Sir, thank you.

1025 I will be brief. I started my position on this issue during the last debate, exactly aligned with Deputy Gollop. I am doing a 180-degree U-turn on this, and actually will support the alternative Proposition 3. The reason for that was a chance encounter I had with the recently appointed Ambassador from Switzerland to the United Kingdom, and discussing referendums or referenda, which, of course, are a familiar part of direct democracy in Switzerland. Referendums have obviously become the flavour of the moment, and we have seen the consequences of a number of

1030 those in UK domestic politics recently. His observation was that well, the problem is in the Westminster style of government, there is no proper understanding of the consequences of a referendum, and I asked what he meant by that. He said, 'Well, if we had had a result that was split 52/48, we would understand that actually neither side of the argument had won, and it would be necessary and incumbent on the government to interpret that result, produce a consensus that worked for everybody, and enable events to move forward.'

1035 Having reflected on that, I think that is exactly the position that we are in. We have to remember that we are a representative democracy: the responsibility for decisions, ultimately, lies in this Assembly, with us as the elected representatives. We cannot and we should not, I think now, devolve ourselves of that responsibility and say that it is a matter for the result of a referendum whatever, whether there are only 20 people turn up as Deputy Gollop suggested. We, I think, have to interpret the results of the referendum, in the light of all the facts and circumstances at the time, including turnout, and so on.

1040 It is for that reason, sir, in light of the advice of the Swiss Ambassador, who I suspect knows a thing or two more about referenda than anyone in this Assembly, I have decided that I will be supporting Proposition 3.

1045 **The Bailiff:** Deputy Lowe.

Deputy Lowe: Thank you, sir.

1050 Well, if we do not want people to turn out for this there was a very good speech just heard from Deputy St Pier, because if we want people to go and vote, they want us to take notice of it. (**Several Members:** Hear, hear.) What is the point of going out, and all this expense, to say, 'Well, okay, but if we do not like the answer we are not actually going to go with it.'

1055 Do not waste their time, do not waste our money, make it very clear to the people that are actually going to go and vote, whatever the majority of the people that turn out and the system they want that is it. Finished. Never mind about percentages – we do not do percentages for Deputies. We have had Deputies sitting in here who have made decisions on the outcome of how people live in this Island, on how they pay tax, with 100 votes. We do not actually say, 'Well, that is not very good. All of you have more power in here, with very few votes, than changing our system for election. For me, it is more important that if we are going to go and do this, which we have made that decision, there really should not be any debate for this; we should be able to go straight to the vote. We should not be having a discussion and a debate on Island-wide voting, that is decided; this is just how we are going to recognise it.

1060 If we are going to go down through the true democracy route, you go with the majority vote on the day, regardless of how many people turn up.

1065 **The Bailiff:** Deputy Trott.

Deputy Trott: Thank you, sir.

1070 Sir, during the course of the last debate I used an expression numerous times, and that was the referendum should be binary, binding without hurdle. Now, with regards binary, that ship has sailed. There are going to be a number of different options. With regards binding without hurdle, that really is the decision that we are making here today. Of course, it should be binding. I mean to do anything else would be absurd. But the hurdle thing is probably the most material discussion point.

1075 I commend, I compliment Deputy Fallaize for his honesty, because he made it quite clear that the 40% hurdle favoured in Proposition 1, favoured by SACC, is not scientific. It could be 39% it could be 41%, it could be 42%, it could be whatever we dreamed up. That, of course, is its absolute imperfection, and that is why for this system to have credibility it needs to be without hurdle.

1080 Now, I strongly believe, though there will be no way of proving it, of course, but I strongly
believe that the turnout will be substantially higher as a consequence. (**A Member:** Hear, hear.) I
think that is a material element in a democracy. At the end of the day people will know that their
voice will be heard without the hurdle. So, my strong recommendation to this Assembly – and it is
rare for the President of P&R and I to disagree, but on this we do, fundamentally – is that the
1085 States voted for Proposition 2, which will agree, irrespective of turnout, to introduce the electoral
system which is the most favoured in the referendum, on the method of electing People's
Deputies to the States of Deliberation.

Thank you, sir.

1090 **The Bailiff:** Deputy Roffey.

Deputy Roffey: Thank you, sir.

Some very valid points have been made by Deputy St Pier and by the two people either side –
not myself, but the two people either side of him politically.

1095 I think, actually, it brings me back to the problem that we are a representative democracy, but
we have chosen to farm out a decision, that probably we should be taking, to a referendum. Now
that is what the last Assembly did. As a member of SACC I have had to pick up and run with that,
because I think if we had overturned that, we would have brought the States into disrepute. A
certain expectation had been built, that how we elect our States' Members would be a matter for
1100 the people of Guernsey. That leaves us trying to square a very difficult circle, because Deputy St
Pier is correct that we owe the people of Guernsey our judgement. That is what they elect us for.

It is going to be very difficult, whatever the result, I think some people are assuming a result
there, which they are going to be comfortable with, it may not be that way. It is going to be very
uncomfortable for whoever is sitting in here who actually thinks that the total option is bonkers,
1105 to actually say, 'But I will vote for that, notwithstanding, I will set aside my critical judgement
because that is what we have decided to do.' On the other hand if we do not do that, we go down
the Ambassador for Switzerland's route, we are actually saying, 'We are going to have a
referendum, turn out if you like, but I tell you what – we may not take a blind bit of notice of what
you are saying.' Well, that would guarantee almost, I think, a low result. I do not think we can go
1110 down that route either.

There is no perfect way of overcoming this. What SACC have tried to say is that the best
compromise between those two pitfalls is to sign up politically in advance as an Assembly to say,
yes, we will definitely implement the winning result, if there is some kind of reasonable turnout.
Now, we think that that is a good compromise.

1115 Now, Deputy Dudley Owen is saying maybe it should be a bit higher, I think Deputy Gollop
was saying maybe it should be a bit lower, Deputy Trott has pointed out that we have admitted
there is no perfect science behind this, but I would point out we say in the text of the policy letter,
if you think that the threshold should be different, then for goodness' sake just bring an
amendment! Nobody has chosen to actually do that.

1120 Sir, we are not here really, I think, to debate the strengths of referendums or not, because that
decision has been taken. Personally, I would only do it on real fundamental constitutional issues
like whether we become part of the UK, or what we do with our future relationship with Europe
etc. But this is the route we are going down.

I am going to vote for option 1, because I think it makes a good compromise. I am, even
1125 though I think I am betraying those people that elected me, who expect me to use my judgement,
I am willing to actually vote, when this comes back to the Assembly, potentially completely
against my judgement. I am willing to actually vote to implement something that I think will be a
dog's breakfast possibly, depending on what the outcome is. But I am not willing to do that on a
5% turnout, or an 8% turnout. I do not think that is right.

1130 But the best way to overcome that is to make sure that we do have a good turnout – which,
means, I think, option 3 is a real disincentive to that. If we actually guarantee that if there is a

reasonable turnout we will implement the result, and if we really promote this exercise properly, over the months ahead, then I think we should be able to get a good turnout.

1135 I do not think we should prolong this. We all have our own views. If some of you feel that 50 people turning out should be sufficient to override people's conscience, fine, you will vote for option 2. Some of you that feel that in no way whatsoever, no matter what the turnout, even if it is 80%, we should guarantee that we will vote against our conscience, we will only treat it as advisory. I think you are going to scupper the whole exercise, but fine, vote for that. I, personally, prefer the compromise in Proposition 1, and I will be voting that way.

1140 But to be honest, I think we have all thought about it and one of these must reflect roughly where we come from. If it is just the number 40% that is wrong, Members could have brought an amendment, and chosen not to do so. So I think the choices are clearer, we should get on with it.

1145 **The Bailiff:** Deputy de Lisle.

Deputy de Lisle: Do not prolong it, sir, because Deputy Roffey has now spoken. *(Laughter)*

1150 **The Bailiff:** Does that mean you are calling for a guillotine motion, *(Laughter)* if you don't seek to prolong it?

Deputy de Lisle: It certainly does not! People can have their say on this and they can prolong the debate accordingly.

1155 But I think it is important to note that in the UK, in all its referendums, it has been advisory only, and that we have to acknowledge also the writing in Proposition 3, which says having taken into account the results of the referendum. So there is no indication that one would not take into consideration the results of the referendum, that would be taken, and I think that should have been expressed by Deputy Lowe, when she stood up, that Members would take account of – in Proposition 3 – of what the population had stated and then they would vote accordingly.

Thank you, sir.

1160 **The Bailiff:** Deputy Inder.

Deputy Inder: I was just going to try, try and invoke Rule 26(1) sir.

1165 **The Bailiff:** The guillotine motion.

Will those who have not spoken stand in their places, if they wish to speak. Sorry, only if you wish to speak.

Eight people are standing. Do you still wish to invoke the guillotine motion, Deputy Inder?

1170 **Deputy Inder:** I will withdraw it, sir.

The Bailiff: You will withdraw it.
In that case, I will call Deputy Lester Queripel.

1175 **Deputy Lester Queripel:** Thank you, sir.

I will be brief, honestly, and I am willing to give way to any of my colleagues, sir. *(Interjections)*

1180 I have the same concerns, sir, about Proposition 1 succeeding, as I had in the previous debate, because if the threshold is set at 40%, and the turnout is less than the threshold, SACC will have to then go away and do a lot more work, putting together another policy letter to lay before the States within three months of the date of the referendum, and the States will then have to debate the whole matter all over again. Surely, we can accelerate proceedings. Surely, we can bypass all of that, by a majority of us voting in favour of Proposition 2 today, which as we know, for the benefit of anyone listening on the radio is:

To agree, irrespective of turnout, to introduce the electoral system which is the most favoured in the referendum ...

1185 So, surely, if Proposition 2 succeeds, that is the job done. I appreciate I could be missing a fundamental point somewhere along the line, sir, and I hope somebody can point out that point to me if I am, but it seems to me to be as simple as that. Of course, any colleagues who are not in favour of a referendum, full stop, will vote against both Propositions anyway.

1190 So moving on to Proposition 3, I am of the view that we should make a commitment to implementing the result of the referendum. So I will be voting against Proposition 3.

1195 One more point I would like to make about setting a threshold. I understand the Committee's rationale in saying they have concerns that if a threshold is not set then only a handful of people could dictate proceedings, but if the handful of people that turn out can be bothered to turn out and the rest cannot, then surely, so be it. Sir, we implement the will of the people who can be bothered to turn out. (**A Member:** Hear, hear.) That to me makes absolute perfect sense.

Once again, sir, I appreciate I might be missing a fundamental point along the line on that one. Hopefully someone will point it out to me if I am.

In closing I agree, I appreciate we have been elected to govern, but who elected us in the first place?

1200 Thank you, sir.

The Bailiff: Deputy Oliver

1205 **Deputy Oliver:** Sir, I have a few problems with this, because I do agree that it should be binary, and I do not agree that it should just be if a few people turn up. However, my main problem is the way which the votes are counted. We could end up with 49% of people wanting to change to Island-wide voting, but that is not 50%; suddenly 49% of people end up with their second choice. I feel that as a Government we should use our common sense and say 49% is a strong and clear way forward, and that is the way the people's choice goes. Now, none of these
1210 Propositions actually allow for that, because of the way that we are actually voting on the referendum.

Thank you.

The Bailiff: Deputy Tindall.

1215 **Deputy Tindall:** Thank you, sir.

For me, sir, this is *déjà vu*, another bite of the cherry, if you will. However, this one I do not object to. I say that, because I believe this needs to be revisited, as it was left in an ambiguous position last time. I would point out that this is something that could happen again, if all three
1220 Propositions are rejected. So, if we did get the chance to get to Proposition 3, and my colleague Deputy Lester Queripel decided to vote against it, as indeed the majority did, we would be back to square one.

1225 Also, Deputy Victoria Oliver's point, I do not think we are talking about that today, it is not a question of binary position; it is a question of binding, and whether or not it is 40%.

The Bailiff: Give way to Deputy Oliver.

1230 **Deputy Oliver:** Sir, this is the main problem, sometimes, we look at things in silos, we keep being told to look at everything joined up, I am looking at the whole package of the referendum, and that is what you need to do. The way the voting is, that is the main problem.

Thank you.

Deputy Tindall: Thank you, sir.

1235 All I can say is that this is not what we are talking about today, and there is no amendment in that regard. So, I continue.

1240 Again, we are being asked to consider turnout threshold, and our commitment to the result. I feel I have something useful to contribute today, in particular, as I alone voted against the multi-option question, but when the single question option was defeated I voted for a binding result subject to a specific threshold of 40%, because the amendment to increase it to 50% failed last time. I feel strongly that if we are to ask so many questions on the ballot paper we should ensure there is a sufficient number engaged in the decision. There is encouragement to take part in the referendum. We cannot do that without a sensible turnout threshold, which gives credence to the outcome, by virtue of the actual number of people who choose a certain option, and that this Assembly will commit to that result.

1245 Last time the single question was rejected, but so was the commitment to adhere to the people's choice. I do not comprehend why that was the case. Why not commit to the outcome?

1250 Personally, the combination put forward by the States' Assembly & Constitution Committee that if the threshold of 40% is achieved a commitment to the outcome is given today. I urge my fellow Deputies to take this second chance, and vote to give certainty to our voters and credence to the referendum, and support Proposition 1.

The Bailiff: Deputy Leadbeater.

Deputy Leadbeater: Thank you, sir.

1255 Today, for some reason, I find myself totally agreeing with Deputy Lester Queripel – not often that happens.

I will be brief. Proposition 2 is my favoured Proposition, without a doubt. I have got no time for a threshold. I think if we promote the referendum properly, it is up to the people to decide if they can be bothered to turn up or not. I think Deputy Lester Queripel covered that.

1260 I totally agree with Deputy Roffey's analysis of Proposition 3, I think we should forget about that, and everybody needs to decide what they want to do between 1 and 2, but I would strongly urge the rest of the Assembly to forget about a threshold, let's concentrate, get this referendum done. It is going to cost us a lot of money, and the result should be binding. We should crack on with it.

1265

Several Members: Hear, hear.

The Bailiff: Deputy Dorey has been waiting for some time. Deputy Dorey.

1270 **Deputy Dorey:** Thank you, Mr Bailiff.

Changing a voting system is very significant. I have no doubt it will affect who will be successful in a future General Election, and hence the decisions of this future Assembly.

1275 There are a significant number of people who have been constantly asking for change. We, of course, do not know the size of that number. Many attempts over the years have been made, in speeches, and even in sending out a questionnaire to try and establish how many actual people do want to change our voting system, but none have been successful in terms of persuading this Assembly that there is a majority who want to change our system.

1280 I cannot agree to introduce an electoral system unless there is a substantial number of people on the Electoral Roll who vote for change. I see the whole purpose of a referendum is to establish if there is public support for change. What is the point of having the referendum if that is not the purpose of it?

1285 In my view that threshold is 40%: 40%, I think, as has been said is not scientific, but that is not 40% for a particular system, that is 40% who would turn out. We know that it is possible that even with a 40% turnout there could only be just over 20% who vote for a particular system, and that is when you include, their second, third and fourth preference votes. So, it is important that we

could be making a commitment to introduce a system on just over 20%. That to me is the absolute bare minimum. I am not willing to commit to making change without at least that number voting.

1290 Setting a threshold is a norm for referendums. Deputy St Pier spoke about Switzerland, but in the June policy letter there was a list of a whole number of other countries which set a threshold for their referendums. I think that is right.

1295 So I urge Members to vote for Proposition 1. If unsuccessful please vote against Proposition 2, as we cannot justify committing to change electoral system if there is a very small percentage of our Electoral Roll who turn out. That is not the public asking for change. If Proposition 1 is unsuccessful, then I will vote for Proposition 3. Please do not vote for Proposition 2, the public have got to tell us they want change, and Proposition 2 will not give us that answer.

Thank you.

The Bailiff: Deputy Ferbrache.

1300 **Deputy Ferbrache:** Sir, I am sorry to disappoint Deputy Dorey and Deputy Fallaize, because I am going to vote for Proposition 2, and I say that quickly, because I do not want to annoy Deputy Lester Queripel, who I annoyed in the last debate by saying this really was a decision the States should have made. I am still of that view, really, but I accept the decision that has been made by the States in June.

1305 It is all right saying that people, as Deputy Roffey said, could come along and amend any Proposition, they could with this, and say 35%, 45% whatever it may be. But this is the Rules of Procedures Committee, whatever it calls itself, and when you look at the people who are members of it, they are all intelligent people, and they should have ... I do not understand the word 'binary' in this context. If they had brought an option last time which said the decision made by the people is binding, that would have passed. Because I voted against the 40% threshold last time, but I told Deputy Fallaize very soon after the debate, and repeated it to him, that I regarded the decision of the people if they went out and it was 20%, 25% or 62% as binding. So, I am disappointed with them, they did not do their job, and they should actually apologise, but I do not hold my breath for that apology, because it was wrong.

1315 I give way to Deputy Fallaize.

The Bailiff: Deputy Fallaize.

1320 **Deputy Fallaize:** I am grateful.

I am not going to make Deputy Ferbrache very happy by apologising, but what is it that I am meant to be apologising for – ?

Deputy Ferbrache: I will tell you.

1325 **Deputy Fallaize:** If he could just clarify exactly what it is that I should be apologising for, then I shall weigh up whether to issue (*Laughter*) such an apology. (*Laughter*)

Deputy Ferbrache: I am still not holding my breath. (*Laughter*)

1330 What he and his Committee members should apologise for, is that they did not put in Proposition 2 last time – because if they had put that in last time, we would not have had to come back now five months later and debate it, because I would have voted for the equivalent of Proposition 2 last time. I did not like it linked to 40%, and if I recollect in the debate – and I am the only one this side of the Bailiwick who was born in the 1950's, everybody else was born in the 1960's, so my memory may not be as acute as theirs, but I think it probably is – I remember
1335 Deputy Fallaize saying we could have amended it, people could have changed it and brought a

different Proposition. It is his job, and his four Committee members' job, to put all the options before the States! But we are here now. We are here now, and we have got to make a decision.

1340 Frankly, Deputy Gollop summed it all up in his speech, that we have got to just take the will of the people; it is a point Deputy Leadbeater made. I actually think we probably will get, as Deputy Trott does, far more than 40%, but if we do not, we do not.

1345 We have two good Members who came back into the States in a by-election, I am thinking of Deputy Parkinson, and I am thinking of the gentleman who was elected in the Vale recently, and both of those, if I recollect, when they were elected at a by-election there was a less than 40% turnout. That is very common. Does that make their contributions as States' Members any less valid? Of course it does not. So, it is a nonsense to ask for that.

1350 Now, in relation to Deputy St Pier's comments about let's have a look at option 3, if I had any hair I would pull it out, because it is ridiculous. I mean, Proposition 1 itself is ridiculous, because look at the wording, and it reminds me of people I do not want to sound like, humbug, because I know Christmas is coming up. So if I change from Dickens to Shakespeare, it reminds me of *Much Ado About Nothing*. (Laughter) They have got too much time on their hands, and Deputy Fallaize reminds me of a character called Don Pedro. Now Don Pedro was the Prince of Aragon and, really, I regard Deputy Fallaize as the Prince of Procedure, and that is the problem, and he tried to bring everybody together ... Well, I do not want to be ... There was a character in *Much Ado About*
1355 *Nothing*, I think he was a brother of Don Pedro, called John the Bastard, who would disagree with Deputy Fallaize. I am no John the Bastard but I certainly disagree with Deputy Fallaize in relation to what has been proposed.

1360 Because what it says ... Proposition 1 is a nonsense, it talks about the 40%, and look at it: it is more gobbledegook coming back to this Chamber, more research, more time, it says if there is not 40% then the States' Assembly & Constitution Committee, which I call, as I say, the Rules of Procedure Committee, and though I wish them all a long and happy life individually, as a Committee I wish they would R.I.P. (Laughter) I would like ...

Well, I will carry on reading what this says:

[It] should within three months of the date of the referendum submit a policy letter to the States setting out any recommendations for reform to the electoral system which it considers necessary, having taken into account the results of the referendum.

1365 What on earth does that mean? What on earth does it mean? What will we be debating in nine months', 12 months' time, or whatever it is after the referendum? Let's actually make a decision; let's do what Deputy Leadbeater said; let's do what Deputy Lester Queripel said; let's do all these things.

1370 I am a great admirer of Deputy Fallaize, he is a perceptive, informative and well-researched Member of the States. He has only got two faults. One, he supports the wrong football team in North London – he cannot help that; the second that sometimes his speeches are too long and he should be mentored by Deputy Lester Queripel (Laughter) and myself.

Reject the nonsense, just vote for Proposition 2.

The Bailiff: Deputy Paint.

1375

Deputy Mooney: Sir, can I invoke the Rule 26(1)?

The Bailiff: Again. Will those who have not spoken and wish to do so, will you please stand in your places. This time we have six people standing. Do you still wish to invoke the Rule?

1380

Deputy Mooney: I do, sir.

The Bailiff: Right. In that case we have a vote. I put to you the motion that debate be terminated. Those in favour – sorry, we have a recorded vote request.

1385 So, we have a recorded vote on a Rule 26(1) motion that debate be terminated.

There was a recorded vote.

Not carried – Pour 15, Contre 22, Ne vote pas 0, Absent 3

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Parkinson	Deputy Gollop	None	Deputy Smithies
Deputy Lester Queripel	Deputy Leadbeater		Deputy Brouard
Deputy Le Clerc	Deputy Trott		Deputy Yerby
Deputy Mooney	Deputy Le Pelley		
Deputy St Pier	Deputy Merrett		
Deputy Stephens	Deputy Meerveld		
Deputy Inder	Deputy Fallaize		
Deputy Lowe	Deputy Laurie Queripel		
Deputy Hansmann Rouxel	Deputy Graham		
Deputy Le Tocq	Deputy Green		
Deputy Dudley-Owen	Deputy Paint		
Deputy Soulsby	Deputy Dorey		
Deputy Prow	Deputy De Lisle		
Deputy Oliver	Deputy Langlois		
Alderney Rep. McKinley	Deputy de Sausmarez		
	Deputy Roffey		
	Alderney Rep. Jean		
	Deputy Ferbrache		
	Deputy Kuttelwascher		
	Deputy Tindall		
	Deputy Brehaut		
	Deputy Tooley		

The Bailiff: Members, the voting on the guillotine motion was 15 in favour, 22 against. I declare it lost. Debate will continue, and I will call Deputy Paint.

1390

Deputy Paint: Thank you, sir.

I would just like to point out that you had already called me before the thing, so perhaps I could have spoken anyway. It does not matter which way it went.

1395

Sir, we actually missed an excellent opportunity in the last elections, because it was suggested that on the voting cards of people a little box was put there, 'Would you be in favour or not of Island-wide voting?' We would have had enough of an indication whether all this was necessary. If 90% did not want it, there would be no point in going through this whole process, but it was not taken. I just felt like I wanted to point that out.

Thank you.

1400

The Bailiff: Deputy Graham.

1405

Deputy Graham: I stand with strong modest confidence that the Green/Graham hybrid is going to win, however many people turn out to vote (**Several Members:** Hear, hear.) next year. But I can see things in a more objective context.

1410

I rise simply, really, partly in response to the query raised earlier on by Deputy Dudley-Owen about how 40% translates into votes and the significance. That is the gist, I think, of the point she raised. Now, I suspect Deputy Fallaize will reply to that with more authority than I can, but for what it is worth, my view is that out of a population of 63,000 we have about 53,000 over the age of 16. So, in theory, there are 50,000 people out there who are eligible to be voters, except that only 60% of those actually put themselves on the Roll. So already, we are into difficulty here, in terms of representation of the population at large.

1415

Now, we have got an Electoral Roll round about 30,000 last time, which actually translates into 60% of those who are on the Roll who were eligible to be voters if they wished. So we are already down to quite a low number. There was 72% turnout in the last Election, which again translates into 44% of the adult eligible population. Now we are getting down to some fairly small numbers

1420 here, and it is complicated when, as Deputy Mark Dorey mentioned, we get into the preferential vote system, which is there to cater for five different options. So 40% is going to be a pretty low threshold. Essentially, it means can we get 12,000 voters, roughly, out there to commit to this democratic process.

Now, the point has been made – 40%, it could have been 45%, 50% whatever, and those of us who felt strongly enough about it, I suppose, could, as has been pointed out, have laid an amendment. I am happy to settle for 40%. It does actually mean that the decision could be made on a relatively low turnout of those who might actually have an interest in the affair.

1425 My personal view is that if as an Island, we cannot get 12,000 people to engage with this process, I take that as a vote that really the majority of people are content with what we have got – 40%, I am willing to start listening, and I commit myself to Proposition 1.

The Bailiff: Deputy Kuttelwascher.

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Deputy Kuttelwascher: Sir, I just want to focus on one point which has not, I think, been focused on yet, and it is Proposition 3: that it is not actually, in my view, a referendum; it is a mother of all consultations, when you consider the cost. To me it has got to be the barmiest suggestion I have heard in a long time, especially, when we consider that we are scratching around for pennies here, and pounds there, and everything ... I really find it extraordinary.

1435

I will be supporting Proposition 2 for all the reasons already given, and I will say no more.
Thank you, sir.

The Bailiff: Deputy Le Pelley.

1440

Deputy Le Pelley: Thank you, sir.

I was not actually going to speak. I got to my feet because surprisingly, the *Contres* before the recorded voted actually were louder than the *Pours*, I thought they were very, very loud – just happened to be some very loud voices near me, anyway.

1445

I want to ask a few questions, if I may, of Deputy Fallaize, and also to put up one or two points. It has been said before that the SACC Committee is actually having a second bite of the cherry, there has been a decision already made. If I can steal a sort of quote from Deputy Gollop, he wants his penny and a choice of buns. Because there are various options here.

I have written constitutions in the past for youth clubs and associations and various things, and this is really a constitutional change. When you come to actually do a change of constitution you are talking of much bigger percentages than just a clear majority of 50% plus 1. You are normally talking about two thirds, 66.6%, or even three quarters, 75% decision. So, whatever the actual turnout, really, you should be looking at whatever number of people turn out, quite a large proportion actually wanting a change. Now, I can understand that if the actual result is for no change, that is fine there is no change, but if the actual decision is to change it to something differently, normally you would be looking for a much bigger percentage than just 50% plus 1. Just an observation.

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1455

The other thing is that we are the sovereign body of this Island, we are the decision makers, the people who decide on what should and should not happen. I think, really, we should actually have been doing that right from the word go. I hear what Deputy Paint said, earlier, not necessarily on the actual voting slip, but perhaps a different coloured form could have been put in with the ballot papers and we could have actually had for no extra cost at all, or very little extra cost, a decision, a view of what the population were thinking, and that would have been the way, for me that we should have gone.

1460

1465

Now, whether it should be binding or not, my view is that this body here should be making the decision. I am quite happy to say that I am more likely to accept whatever the population out there tell me they want to do, but do I want to be absolutely bound by it, not knowing what things might be thrown up as a result of the various debates, and things that will be going on

1470 leading up to it, some unknown unknowns, who knows, but you could actually be saying here you are bound to it no matter what, and that is dangerous.

The other thing that comes up, and I am talking really more or less to the item, rather than for or against it, well I am a bit mixed up, actually, on bits of everything. But what happens if people say, well, that is a brilliant idea to have a referendum, the idea is great, let's go like Switzerland, let's have referendums on lots of things. Two schools or three schools, Brexit or no Brexit, what we should be doing with our social security and our contributions there. Let's put it out for the whole population. It is going to cost us a fortune. How much is this particular exercise going to cost us, when we are actually looking at efficiencies and trying to save every penny we can?

1475 At the end of the day, how clear are we going to be if there is a very, very close turnout, or a very, very close result?

1480 I also, really want to know what the population in Guernsey ... what their first options are. I do not want to know what the result is after we have had three or four different transferable votes down the line. We could actually end up with something that is nobody's first choice, and everybody's second, third or fourth choice. So, I would just like those questions answered, if possible.

1485 My own position is that I will probably vote for option 3, bearing in mind, or saying to the population, I will bear in mind what you tell me, but I do not really want to be absolutely bound to it no matter what.

Thank you, sir.

1490 **The Bailiff:** Deputy Meerveld.

Deputy Meerveld: Thank you, sir.

I am going to reiterate some of my comments from the last debate. I believe this Assembly is abrogating its responsibility. The fact is that nobody, other than the Members of this Assembly, fully understand this new format of Government, and the electoral process to form it. We should have made that decision. We are elected by the populace to make difficult decisions on their behalf, and I believe this Assembly, and I agree with Deputy Ferbrache, and Deputy Lester Queripel, we should have made that decision as an Assembly, and then we could have applied, as Deputy St Pier pointed out, our judgement to what was the most workable, practical, form of Island-wide voting, and then that form could have been given to the populace in a binary choice. Do you want to stay as we are, or would you like to move to the structure that the States of Guernsey has formulated as the best potential way of moving to Island-wide voting.

1500 Having missed that opportunity, I have serious concerns, as Deputy Oliver does, regarding the complexity of the structure of voting we are taking forward, and whether it will end up truly, as Deputy Pelley pointed out, reflecting the desires of the people, or if we may end up with a second or third choice, ending up being the one after the use of transferable votes. I have great concern that this will not be a referendum, it will be more of a 'wreckerendum'.

1510 I also cannot support an arbitrary hurdle rate. If we are going to have a vote, if we are going to ask the population to opine on this, I do not think we can pick a number out of the sky and just say, 'That is appropriate. If it is 39% we will not listen to you and if it is 40% we will.' So, reluctantly, although I would like to have reserved further judgement, and actually the way the original Proposition was written, policy letter, it does require SACC to come back with a proposal for further debate after the result.

I will be supporting Proposition 2.

1515 Thank you, sir.

The Bailiff: Deputy Green.

1520 **Deputy Green:** Sir, yes, very briefly. The decision has been made to hold the referendum, we have to deal with the situation as it is, and not as we might like it to be.

I will be supporting the first Proposition, because I think that is the best way to do two things, to maximise the turnout, which is the most important consideration in all of us, but also a tied issue, which is another issue of some importance is to ensure that the option that is the most popular in the referendum is a legitimate one. The point is made in the policy letter. The problem with option 2, or Proposition 2, is set out at paragraph 4.4 in the policy letter. I quote:

‘Setting the threshold lower than 40%, or dispensing with a threshold altogether, could draw the subsequent electoral system’s legitimacy into question...’

That is the reason why I cannot vote for Proposition 2. The reason why I cannot vote for Proposition 3 is I think that would be the option that would have the very most negative impact on turnout.

So, if we are serious about this referendum, if we are serious about trying to maximise turnout, and if we are serious about having an electoral system, in the end, that has the legitimacy of support in the Island, I would suggest that people should support Proposition 1.

The Bailiff: Deputy Tooley.

Deputy Tooley: I have got some sympathy with Deputy Le Pelley’s views on referenda. I am not, in general, a great fan of referenda. It is not, in my opinion, the ideal way to decide the forward path of a government. But the way that our general elections work, and the way the system works here in Guernsey, means that people do not vote for a manifesto, they do not vote for a set of pledges that the people in power will then take forward once they move on. They vote for five or six disparate people who they think will act in their individual benefit going forward.

Now, I am not aware that voters looked at their chosen five or six people and then went, ‘Right, of those five or six, a majority of the ones that I am sending in will vote for three schools, or two schools, or selection or not; of those a majority will vote for a referendum which will give us Island-wide voting; of those a majority will vote for the waste strategy.’ If they were doing that, if they had a spreadsheet that allowed them to pull that together and create their ideal team to go forward, then maybe we could work on the basis that we were absolutely representing their views, all the times, on all things, and to a certain extent on some things. The public are in a position where they are forced to accept the decisions that we make because we are the people that they chose, when they might potentially be thinking about a different policy that we had coming forward.

So when it comes to something like constitutional change, where this is going to affect the way they get to place their votes for evermore, I think that is different, and I think we do need to go out to referendum. We do need to be sure that what the public want is what they will end up with.

I had my bite at the cherry back in June, and I proposed an amendment to lift the threshold to 50%. It is not scientific, but in my opinion, if we could say that the majority of the majority of the people on the Electoral Roll had said that this is what they wanted, then we would be able to be not in the same position that they are in in the UK, where absolutely nobody can say that any majority wanted anything at all. We would at least have been able to say we are doing what the majority of the majority of people wanted.

I have been bothered, as I have been in debates on other subjects, about this use of the word ‘bothered’, ‘the people who bother to vote’. When I was canvassing for the General Election I met people who said to me, ‘I have not registered for a postal vote, I am not sure I will be able to vote because my husband is in intensive care.’ I met people who said, ‘Well, I will do my best but I do not have any child care and I cannot guarantee being able to get there.’ It is not always about being bothered. There are people who are disenfranchised by the way in which we do things, and there are people who would be bothered but what is going on in their personal lives on that day on that week means that they cannot get to the polls. It is not necessarily about being bothered. There are people who are bothered but circumstances prevent them being there to vote.

1570 So, I do not think it is enough to say, well if 26 people and their dog turn up to vote then we should take notice because they are the ones who were bothered. I think we do need a threshold. As June shows –
I give way to Deputy Lowe.

1575 **Deputy Lowe:** Thank you very much, Deputy Tooley.
Would you agree with me that it is very important, as for all general elections, but certainly in this one if we are going for a referendum, that part of that is that we promote postal voting? Because anybody can use postal voting now, whereas before many years ago you could not, and rules were changed, and that has got to be key, so there is not any excuse for anybody not to be able to go and use their vote.

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Deputy Tooley: Well, absolutely, I would promote postal voting, but that does require a certain amount of advance planning. Although in many cases it does make that possible, people's lives do not always make it possible to advance plan for what you will be doing on a particular day. But yes, absolutely, postal voting, on-line voting, if we bring that in at some point, is definitely something that we should be looking at. Anything that makes it easier for people to register their vote.

1585
I do think we need a voter threshold. I do think we need to be able to say that the people spoke, they spoke with a loud voice, they told us clearly what they wanted, and therefore we will listen and we will act.

1590
So, I will be voting for Proposition 1 here. I think we should say that we will take this as binding if a reasonable number of people turnout, and I believe we will get that reasonable number if there are enough people who want to see change.
Thank you.

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The Bailiff: Deputy Langlois.

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Deputy Langlois: Deputy St Pier shared with us the insights of somebody with a lot of experience of referenda, and said that had convinced him to vote for option 3. Now, I agree with a lot of what he said, but there is a danger in the way that the Propositions are structured that if, for instance, you think Proposition 2 is the worst possible outcome, and you sit there waiting for Proposition 3 to come along, it might never arrive. So I would urge anybody who agrees with Deputy St Pier, and several speakers do, to vote for Proposition 1 as their second best option, otherwise I think it is going to be a disaster, which is Proposition 2 might just win.

1605
We have no experience of referenda in Guernsey. I found the attitude particularly of Deputy Ferbrache extraordinarily cavalier about it. Because I am not interested really in the turnout for the referendum. What worries me is the turnout in the following General Election, because what is going to happen is if we have no threshold we could possibly get a very low turnout and barely 50% of that low turnout voting for a particular option with the transferable vote systems kicking in, we could still end up with what will be perceived as a very low vote for a particular change
1610 (*Interjection*) to our constitution. (*Interjection and laughter*)

The Bailiff: Giving way to Deputy Meerveld.

1615
Deputy Langlois: I give way.

The Bailiff: Deputy Meerveld.

Deputy Meerveld: I thank Deputy Shane Langlois for giving way.

1620 I was just thinking about his comment about the option 1 potentially being somebody's second choice and they are missing the opportunity to get their first choice. Maybe we should structure this debate as a transferable vote. (*Laughter*)

Deputy Langlois: Yes, that is quite neat. I wish I had thought of that one, I could have brought
1625 an amendment to that effect.

No, I think the danger, we could end up with people reading their *Guernsey Press* and seeing there has been this low, 10%, 15% of people want a major change to our constitution, our electoral system, and then we have a General Election, and the last thing we need in Guernsey is more political apathy about the States amongst the general population. I think if we end up with a
1630 low turnout and a change in constitution on that basis it could do a lot of damage to politics in Guernsey.

So, I would advise everybody not to vote for Proposition 2. I think the SACC members who have spoken have admitted Proposition 1 is a compromise. They are exactly right, and I think it is quite a good compromise, and I will certainly be supporting it. I would urge other Members of the
1635 Assembly to do so too.

The Bailiff: Deputy Fallaize will reply.

Deputy Fallaize: Thank you, sir.

1640 Deputy Dudley Owen asked a very relevant question, which is what does the 40% figure translate into in terms of actual people? I am not going to apologise to Deputy Ferbrache, for reasons I will come on to later, but I do apologise to Deputy Dudley-Owen and other Members, because I think we probably ought to have put that number in the policy letter. It may have been in the original policy letter, actually.

1645 The 40% figure – I did send Deputy Dudley Owen a note actually, saying rather than asking me she would have been far better off to ask the walking chronicle sitting to her left, but fortunately, he has since sent me a note (*Laughter*) so I can now answer Deputy Dudley Owen's question. I was going to say roughly 12,000 people represented 40%. Deputy Dorey tells me that, based on the Electoral Roll at the point of the last election, it would be 12,120. So, I am grateful to Deputy
1650 Dudley-Owen for her question, and to Deputy Dorey for enabling me to answer it. (*Interjection*)

Deputy Dudley-Owen asked why not 50%? As Deputy Tooley has pointed out there was an amendment laid by her during the last debate for 50%, and I think I am right in saying that only 6 Members voted in favour of it. The Committee took that into account when deciding to propose 40% on this occasion. The key point though, whether the right figure is 35%, or 40% or 45%, or
1655 50%, the key issue is that in the opinion of the Committee, Deputies cannot reasonably be asked to suspend their judgement about what the future electoral system should be, and to hand that decision over to the public, unless we can be satisfied that the judgement made by the public does genuinely represent the broad will of the people, rather than just the strong feelings of a very small number.

1660 Deputy Gollop tried to rehearse all of the arguments about Island-wide voting, he came up with a gem, when we are debating what the arrangements should be for a referendum, he criticised the policy letter on the basis that we do not know what the public think of this issue. Well, that is why we are holding the referendum. (*Laughter*) But he thought 40% would be too high. The turnout in the most recent General Election was 72.5%, so in terms of not wanting to set
1665 a threshold which is unattainable, I think the Committee has taken all of the relevant considerations into account, and thinks 40% is attainable and reasonable.

Deputy St Pier, I think he would actually prefer no referendum at all, and he has been consistent in ... articulated that view previously anyway. But, he now says, he accepts that we are proceeding to a referendum, but he wants an advisory referendum, and hopes that subsequent to
1670 that consensus will emerge among Deputies on what to do about Island-wide voting. (*Interjections*) Well, I am a great admirer of Deputy St Pier, but even he I do not think is going to

be able to ensure that consensus emerges where it has failed to emerge, not just for years, but for decades, which really takes us back to the reason for holding a referendum in the first place.

1675 He has, in the past, as have others, and Deputy Le Pelley did today, made, I think, very good arguments against the holding of a referendum. There is a perfectly credible, legitimate argument to be made against the holding of referendums generally, including on this issue, but we have been there, we have had that debate. We had it in February, I think it was, 2016, we had it in March of this year. I will not expand on all the reasons why we have ended up deciding to have a referendum, but I have a lot of sympathy with the points made by Deputy Le Pelley, and Deputy St
1680 Pier, but the referendum was appropriate in the circumstances the States found themselves in at that time.

We are proceeding to a referendum. We have to encourage turnout. We have to give the public the right to determine their future electoral system, if we are intent on holding a referendum, which is meaningful. Proposition 1, for the 40% threshold does give the public the
1685 right to determine their future electoral system, because if enough of them are enthusiastic about exercising that right, the 40% threshold will be met, and the States will have committed to implementing the result.

Deputy de Lisle is another supporter of Proposition 3, the advisory referendum, because he says States' Members can take account of public opinion. But presumably, that is what States' Members have been doing for years in failing to reach any sort of outcome on the subject of –
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Deputy de Lisle: Can I make a point of clarification, sir?

The Bailiff: No, there is no such thing.
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Deputy Fallaize: I am happy to give way.

Deputy de Lisle: A point of correction, then.

The Bailiff: Well, Deputy Fallaize indicated that he will give way. So he will give way to Deputy de Lisle.
1700

Deputy de Lisle: Just to clarify the fact that all the points that I was making was simply that option 3 would take account of the referendum results; secondly, that the UK was actually taken referendums as advisory only; and thirdly that Members here should have the right to make the points that they wanted to make during this debate.
1705

I was not committing myself to that particular option 3.

Thank you, sir.

Deputy Fallaize: I appreciate Deputy de Lisle's clarification, and I understand that, although I would say I am not sure that the example of the UK in holding advisory referendums is a particularly good one, given that they have somewhat got themselves into a mess, where the referendum was held on an advisory basis, no commitment was made to accepting the result, then when the result was declared, most Members of Parliament felt they could not vote according to their conscience and had to vote to implement the result of the referendum anyway.
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I think that takes us back to the point, which is that the most important thing is to establish clarity, in advance of the referendum, about how the result will be treated.

Deputy Oliver is concerned about what level of support the winning option may receive in the referendum. But we did go over this ground, quite extensively, in the last debate, the previous debate, and using the alternative vote will guard against that. The whole point is that we ought to end up with a winning option, which attains, if you like, the majority sanction of those who have voted.
1720

1725 Proposition 1 does not mean that if fewer than 40% turn out, automatically, the option which wins the referendum will not be implemented. I was tempted to read out the qualifying words in Proposition 1, but Deputy Ferbrache did it with such eloquence and good grace that I do not need to do that. But in essence, if the 40% threshold is not met, if Proposition 1 is successful, then the Committee will return to the States with proposals, having reflected on what the turnout was. Now, I can give the States an assurance that if the turnout is close to 40%, and the winning option in the referendum has been well supported, then it is highly likely the Committee will propose
1730 implementing that option. What the Committee is trying to guard against is requiring States' Members to be bound to implement an option which may win on a very low turnout, and having only just crossed the 50% threshold once the votes are transferred, under the alternative votes system.

1735 Deputy Dorey, I think, indicated the slight differences of opinion amongst members of the Committee which have led to the compromise set out in Proposition 1, because if Proposition 1 falls I will vote in favour of Proposition 2, and I may not be alone on the Committee – I know that is not how all members of the Committee feel, but I do think that the worst possible outcome is not to establish clarity in advance of polling day. So I strongly support Proposition 1. If it is defeated, I personally will vote for Proposition 2. I would urge the supporters of Proposition 1 to
1740 do the same

Now, Deputy Ferbrache wants me to apologise, he says that the Committee should apologise because it did not in its first policy letter put in the Propositions all the possible options and permutations. But he knows as well as I do that that is not conventionally what States' Committees do. His Committee is laying a policy letter before the States, probably at the end of this month, on
1745 making changes to the Population Management Law. Well, it may be laid before the States or it may not be, but it has been submitted. I hope, in many ways, they do proceed to lay it before the States. But his Committee has not set out Propositions which give the whole range of options. They have not said, 'If you want to liberalise the regime you could do this, if you want to make the regime more conservative you can do this, if you want to liberalise it in a different way, then we
1750 are recommending you can do something else.' His Committee has said, 'We have considered this option and, for these reasons, we recommend the States should do this, acknowledging that Members who feel differently can lay amendments.' Well, that is all my Committee did when it laid its policy letter before the States originally.

But, Deputy – I almost said Deputy Trump because I had Trump written down here – but
1755 Deputy Langlois referred to Deputy Ferbrache's attitude as cavalier. I was going to call it simplistic. The more fed up Deputy Ferbrache becomes in the States, the more simplistic his solutions become. In fact, I am tempted to pass on a book to him that I have, which is written by a chap who writes on the misuse of simplistic arguments, and the misuse of data – the book is called *I Think You Will Find It Is A Bit More Complicated Than That*. (Laughter) Deputy Ferbrache does
1760 occasionally remind me of Mr Trump – Mr Trump, 'I am going to build a wall on the Mexican Border in months', and Deputy Ferbrache was going to revive Guernsey's economy in a matter of months. To misquote the title of the book, I think you will find it is a bit more complicated than that, and this issue is a little bit more complicated – not as complicated as what Deputy Ferbrache is admirably trying to do in relation to the economy, but it is a little bit more complicated than
1765 Deputy Ferbrache's speech may have implied. So, I am sorry to disappoint him – well, I do not think I am disappointing him actually, because he did not expect me to apologise, but he was right in that forecast that I would not apologise, even if he was wrong in everything else.

Deputy Paint was critical that there had not been a question inserted on the ballot paper at the 2016 General Election, 'Do you want Island-wide voting, yes or no?' That was a suggestion put
1770 forward by Deputy Lowe at the time, but of course that would have been an advisory referendum, or a form of a referendum held on an advisory basis – basically Proposition 3, which today Deputy Lowe has told us is a complete nonsense. So I am pleased that in the intervening period I have managed to persuade Deputy Lowe that holding a referendum on an advisory basis would be a very bad idea indeed, and the States ought to commit to implementing the result.

1775 Deputy Le Pelley said that the Committee was seeking a second bite of the cherry, because the decision has already been made. But in a way that is the problem, because the decision was not made in June, the States did not establish clarity about how the result of the referendum would be treated, and that is what the Committee is trying to achieve today. He has a legitimate fear about the States finding it too easy to resort to referendums in the future. But all I can say is that no referendum will be held unless the States decide to hold one, and those are arguments that can be put and heard and decided upon, if in the future any Committee or any Member of the States proposes holding a referendum on this or any other issue.

1780 Deputy... No, I do not think that was a question, I do not think there is really anything else to reply to.

1785 So, I have said I will vote for Proposition 1, but if it is defeated I will vote for Proposition 2. I really do hope that we do not end up in the position of only having Proposition 3 left, because I think that, as Deputy Kuttelwascher has said, to hold the referendum on an advisory basis would be pointless, and I am not sure that it would be worthwhile even proceeding to a referendum on an advisory basis, bearing in mind the whole point of the referendum arises out of the States not having been able to reach any kind of consensus on electoral reform previously. Clearly, though, the effect of all three Propositions losing is that no clarity is established at all about how the result will be treated, and to hold the referendum on that basis would be nonsensical.

1790 I would encourage Members who are going to vote for Proposition 1, and who believe quite strongly in the setting of a threshold, that if Proposition 1 is defeated, they do not ... I will not use terms about footballs and running away, but I do not think it would be sensible for Members who believe in Proposition 1 then to go on to vote against Proposition 2 if 1 falls, because, I think, the general prevailing view of the States is that it would be a waste of time to hold an advisory referendum, and that holding a referendum which we have already decided to do, without having established clearly how the result will be treated would be the worst option of all.

1795 So, on that basis, sir, I hope Members will vote in favour of Proposition 1, if it loses in favour of Proposition 2. Thank you, sir.

1800 **The Bailiff:** Well, the way that the Propositions are laid out, the first vote will be on Proposition 1, and there has been a request for a recorded vote. So we have a recorded vote on Proposition 1.

There was a recorded vote.

Carried – Pour 23, Contre 14, Ne vote pas 0, Absent 3

POUR

Deputy Gollop
Deputy Parkinson
Deputy Le Clerc
Deputy Fallaize
Deputy Inder
Deputy Laurie Queripel
Deputy Hansmann Rouxel
Deputy Graham
Deputy Green
Deputy Dorey
Deputy Le Tocq
Deputy Dudley-Owen
Deputy De Lisle
Deputy Langlois
Deputy Soulsby
Deputy de Sausmarez
Deputy Roffey
Deputy Oliver
Alderney Rep. Jean
Alderney Rep. McKinley
Deputy Tindall
Deputy Brehaut
Deputy Tooley

CONTRE

Deputy Lester Queripel
Deputy Leadbeater
Deputy Mooney
Deputy Trott
Deputy Le Pelley
Deputy Merrett
Deputy St Pier
Deputy Stephens
Deputy Meerveld
Deputy Lowe
Deputy Paint
Deputy Prow
Deputy Ferbrache
Deputy Kuttelwascher

NE VOTE PAS

None

ABSENT

Deputy Smithies
Deputy Brouard
Deputy Yerby

The Bailiff: Well, the voting on Proposition 1 was 23 in favour with 14 against, I declare it carried.

We therefore do not need to concern ourselves with Propositions 2 or 3.

POLICY & RESOURCES COMMITTEE

V. Schedule for Future States' Business – Approved

Article V

The States are asked to decide:

Whether, after consideration of the attached Schedule for future States' business, which sets out items for consideration at the Meeting of the 29th November 2017 and subsequent States' Meetings, they are of opinion to approve the Schedule.

The Senior Deputy Greffier: Article V – Schedule for Future States;' Business.

1810

The Bailiff: Chief Minister ... sorry, Deputy St Pier. *(Laughter)* Turn the clock back!
Deputy St Pier.

Deputy St Pier: Thank you, sir.

1815

The schedule, as ever, I believe, is self-explanatory. I would perhaps draw attention to the fact that, as I think Members are aware, there are two policy letters relating to the Population Management Law: one entitled 'Amendments to Population Management Law' from the Committee for Home Affairs; and one entitled 'Proposals for Revisions to the Population Management Law' from the Committee for Economic Development.

1820

Sir, it is the Policy & Resources Committee's intention, if it remains the case that both policy letters are likely to be debated, to submit an amendment to the Committee for Home Affairs policy letter, importing all of the Propositions from the Committee for Economic Development's policy letter, in order that they all can be debated together in one debate. We see little merit in their being two successive debates. That is, I should make clear, sir, without expressing any view on the value of ... we are not passing any value judgement on the Propositions in the Committee for Economic Development's policy letter. It is merely a matter of co-ordinating the affairs of the States, and we believe that would be a better way in which they could both be debated.

1825

The Bailiff: Well, there is no provision for any debate at this stage.

1830

Deputy Roffey: No, I was hoping he would give way, but he did not.

The Bailiff: He did not give way. No. All a Member can do is lay an amendment at this stage – which nobody has done.

1835

So, we vote then on the Schedule for Future Business. Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.

I would just remind Members that that meeting will follow a meeting of the States of Election. That concludes the business for this meeting.

The Assembly adjourned at 12.23 p.m.