



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Royal Court House, Guernsey, Wednesday, 26th February 2020

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Present:

Richard McMahon, Esq., Deputy Bailiff and Acting Presiding Officer

Law Officers

R. M. Titterington, Q.C. (H.M. Comptroller)

People's Deputies

St Peter Port South

Deputies P. T. R. Ferbrache, 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, J. S. Merrett, G. A. St Pier,
T. J. Stephens, C. P. Meerveld

The Vale

Deputies N. R. Inder, M. M. Lowe, L. B. Queripel,
J. C. S. F. Smithies, 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 A. H. Brouard, A. C. Dudley-Owen, E. A. McSwiggan,
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 S. Roberts and A. Snowdon

The Clerk to the States of Deliberation

J. Torode, Esq. (H.M. Greffier)

Absent at the Evocation

Miss M. M. E. Pullum, Q.C. (H.M. Procureur); Deputy D. A. Tindall (*indisposée*), Deputy P. R. Le Pelley (*indisposé*); Deputy M. J. Fallaize (*absent de l'Île*)

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States of Deliberation

*The States met at 11.06 a.m. in the presence of
His Excellency Vice-Admiral Sir Ian Corder, K.B.E., C.B.
Lieutenant-Governor and Commander-in-Chief of the Bailiwick of Guernsey*

[THE DEPUTY BAILIFF *in the Chair*]

PRAYERS

The Greffier

EVOCATION

CONVOCAATION

The Greffier: To the Members of the States of the Island of Guernsey, I hereby give notice that a meeting of the States of Deliberation will be held at the Royal Courthouse on Wednesday, 26th February 2020, immediately after the meeting of the States of Election, convened for 9.30 a.m., to consider the items listed in Billets d'État V and VI, which have been submitted for debate.

Statements

General Update – Statement by the President for the Environment & Infrastructure

5 **The Deputy Bailiff:** Well, Members of the States of Deliberation, good morning once again. We begin this meeting with the first of two general update Statements, the first one being from the Committee for the Environment & Infrastructure and therefore I invite the President, Deputy Brehaut, to deliver the Statement.

Deputy Brehaut.

10

Deputy Brehaut: Thank you very much, sir.

As this is my last update to the Assembly, and as a music lover, I was going to see how many song titles I could slip in and finish perhaps with a drum solo and cymbal splash! You will be happy to hear I will not be doing that. Instead, I will make one musical reference and that is Times 15 They Are a-Changin'. Or should it actually be, on reflection, Cars They Are a-Chargin' possibly?

However, those words that reflect the seismic changes we are starting to see in the world – words that have often been used by younger generations to challenge their governments to embrace the changes that are needed at a quicker pace. This world is changing and Guernsey is contemplating how to prepare for these changes. So the challenges will include: the most 20 obvious, of course, climate change itself; changes in how motorised vehicles are powered;

changes in how homes are heated; the need to find alternative sources of energy; and people are once again seeing the value in the environment and nature – so how do we embrace this?

25 I just wonder, 10 years ago, would we be contemplating end of coal and wet wood on our fires and petrol vehicles on our roads? Did we really believe that that timeframe was so limited? But that time is in sight with bans on the horizon in the UK and in European countries. These changes will undoubtedly follow through to Guernsey as we are supplied by larger countries.

30 So, we need to adapt, Guernsey needs to adapt, this small little Island needs to adapt to those changes. The policy letters on the Island's Energy Policy and climate change that the Committee will bring before the end of this term will allow the States to agree their strategy and, I hope, demonstrate their commitment to meeting these challenges.

35 Through the Future Guernsey Plan, the States have recognised that climate change has reached a critical point and that Guernsey must work urgently to support the climate and ecological crisis at both local and international levels. The States will also have an opportunity to contribute positively to the global response to climate change and acknowledge their previous commitment to Kyoto targets when considering the Committee's policy letter, that is on Meeting Guernsey's Energy Needs.

40 There is firm scientific evidence to show that climate is changing because of greenhouse gas emissions resulting from human activity. The bulk of emissions derive from our demand for energy. The largest contributor is carbon dioxide (CO²), emitted when fossil fuels are burnt to meet those demands. I think we all understand well the problem that is presenting. With the world moving away from hydrocarbons, most of Guernsey's energy supplies will need to come from clean, low carbon sources and residual emissions will need to be offset. Energy will need to be used wisely, so as not to waste precious resources.

45 Conscientious use of on-Island natural resources will safeguard our healthy environment and clean air, whilst protecting Guernsey's unique surroundings, biodiversity, and natural beauty. Generation of on-Island renewable, clean, affordable energy is supported by implementation of the Energy Policy and will provide value and choice for everyone and will play its part in helping Guernsey to mitigate climate change.

50 Guernsey's energy supply will be resilient and secure, as well as sustainable to meet reasonable demands for energy. Guernsey will be aligned with global efforts to reduce emissions and development of renewable technologies. Not only does Guernsey contribute to global climate change but, as an Island, it is already feeling the impacts of climate change.

55 We need to plan for the future and will not always be able to rely on the current way of doing things or our current infrastructure. We are experiencing more unpredictable and intense weather patterns – stronger storms, greater frequency of storm damage, flooding, hotter summers and milder winters.

60 So, in accordance with the States' Resolution of June 2019, the Committee will present a Climate Change Policy and a Climate Change Action Plan in May. The Committee will identify several potential policy options developed from studies of the baseline and forecast data relating to Guernsey's carbon emissions. A recommended policy direction will be outlined within this policy letter, with a supporting draft Climate Change Action Plan which, subject to the agreement of the States of Deliberation, will be the basis for consultation with the community.

I digress briefly from this prepared Statement that we have in mind, for example, citizen assemblies.

65 In line with the Energy Policy that will be considered by the Assembly, and with the steps being taken by other jurisdictions, the Committee will ask the States to agree its target for carbon neutrality.

70 My Committee is also progressing other key workstreams. Since the Biodiversity Strategy was adopted in 2016, the focus of its delivery has been on education and awareness, which has yielded significant benefits. However, it has also identified gaps in the delivery of the Strategy. An amendment to the 2020 Budget was agreed, providing funding for the 'appropriate model and

ongoing funding requirement for matters relating to the Biodiversity Strategy' which will allow more effective delivery of the Strategy.

75 Work is under way to identify and prioritise the objectives for delivery of the Strategy for the next five years, and identify resources required. The plan will demonstrate how its objectives support the States' policy priorities and other strategies and fulfil extant resolutions. Whether it is the Island's schools, utility networks, roads, ports, or the provision of community healthcare, infrastructure is vital to this Island. It has considerable influence on community wellbeing and our economic performance.

80 Whilst Guernsey's infrastructure broadly meets current requirements, the Island faces a number of long-term challenges which will impact its infrastructure needs and asset management practices. It is proposed that a Long-Term Infrastructure Framework be developed, occupying a similar policy level as the Fiscal Policy Framework. The framework would set out the Island's highest level infrastructure policy and establish the parameters within which other, more detailed
85 policies should operate. The framework would help the States to look ahead when making infrastructure decisions and ensure that investment is aligned and delivers the greatest value to the Island.

A working group has been established which includes Members of the Policy & Resources Committee and the Committee for the Environment & Infrastructure. This working group will be
90 undertaking work in the upcoming months to support the further development of the focus area in the new term.

I hope that this, my last update to the Assembly, demonstrates that we have spent this term working to deliver the priorities of the States. It has not always been easy. Often there have appeared to be competing interests. But we have always striven to find a balanced solution. I
95 hope you will think that we have done so successfully.

I recognise that much of our work represents only the beginning of some of those challenges I mentioned earlier and, most of all, I hope that the next Assembly takes up the baton we are passing to them and ensures that, over the next four years we really do see some great things
100 happen in Guernsey.

Finally, I should like to take the opportunity to thank the members of my Committee for their support and hard work over the past four years. And never have so few endured quite so many
105 puns around the Committee table, so I thank them very much for their endurance!

Thank you, sir.

110 **The Deputy Bailiff:** Thank you, Deputy Brehaut.

Now, Members of the States, it is an opportunity to ask Deputy Brehaut any question on a matter within the mandate of the Committee.

Deputy Roffey.

115 **Deputy Roffey:** Thank you, sir.

The President made a number of references to new technology, for achieving carbon neutrality, but will he accept the other side of the coin is large-scale forestation and re-wilding? With that in mind would he agree with me that, with their agreement, and given our fiscal union, Alderney provides an absolutely superb template for large-scale forestation in a way that
120 Guernsey does not and would his Committee consider talking to the States of Alderney to see whether they would be mindful to co-operate and participate in such a scheme?

The Deputy Bailiff: Deputy Brehaut.

125 **Deputy Brehaut:** I thank Deputy Roffey for his question and, I suppose, prompt, because he has written to the Committee before today and it will be on our agenda, certainly before the end of this term. But I think it does make absolute sense, with our proximity to our sister Island to do something positive locally, rather than rely on some offsetting scheme in another country. So yes,

125 I think it is a positive suggestion and I hope we can work constructively with Alderney to deliver that type of project.

The Deputy Bailiff: Deputy Gollop.

130 **Deputy Gollop:** Sir, most of us Members know there is no more committed team for green and environmental issues than the current Environment & Infrastructure Committee, but I would ask has the President of the Committee re-thought their view about whether it would not be politically wise to state that we need, perhaps, more of a climate change emergency motive, because that would be more in-keeping with other Assemblies and parliaments elsewhere and would express, perhaps, our overwhelming commitment to the cause?

135

The Deputy Bailiff: Deputy Brehaut.

140 **Deputy Brehaut:** I think the two words crisis and emergency have different weightings, depending on the political environment you are working in. If you are working in a large country, to get the environment on the agenda can take months and years of action and even direct action. We are fortunate on Guernsey, as we know, from a relatively slow amount of lobbying, you can get the environment front and centre of the political agenda and also, bearing in mind the political system we have, I think Committees with emergency powers feels very different to a Committee dealing with the environmental crisis and I think it is a useful distinction, but it does not stop us pressing on with some of the products that we have.

145

The Deputy Bailiff: Deputy Oliver.

150 **Deputy Oliver:** Thank you, sir. Looking at infrastructure, going forward, how is the Fermain Wall progressing?

The Deputy Bailiff: Deputy Brehaut.

155 **Deputy Brehaut:** The Fermain Wall is not progressing. That is the short answer. I am sorry for the repetition. Superficially the wall has failed. Thank you very much for putting on my microphone. Superficially it would appear the wall has failed. The wall has failed because of the movement of material behind the wall. You cannot say entire, but the cliff face close to the beach and above suffers terribly from surface water run-off, which means that the cliff is slipping forward. In slipping forward it is pushing the wall over.

160

It would take a serious amount of re-profiling the cliff, possibly redirecting the cliff path. That project went out to tender. Nobody responded. So we have gone out again to see if we can secure the services of, I have to say, maybe skills that currently are not on Island to manage the project, oversee it and get the wall sorted. Because it does look awful at the moment, I will acknowledge that.

165

The Deputy Bailiff: Deputy Leadbeater.

Deputy Leadbeater: Thank you, sir.

170 I would like the President to tell me ... first of all, I complained, I had some representations from parishioners living in Brock Road back in January 2017, concerned about the safety of people crossing from Rosaire Avenue, across the zebra crossing. I contacted Environment & Infrastructure. I was told by a member of staff that they were aware that it could be potentially dangerous and they were scoping out the works to rectify that.

175 This was more than three years ago now and, funnily enough, the original complainants probably have outgrown and they have moved out of the area, but we see traffic changes like the

courtesy crossing at the bottom of the Val des Terres. Can Deputy Brehaut give me some commitment that these works will progress, since we are more than three years down the line?

The Deputy Bailiff: Deputy Brehaut.

180

Deputy Brehaut: Just on the bottom of the Val des Terres, it was opportunistic because road resurfacing was taking place at that time, so it was timely to put in a crossing there, bearing in mind the amount of development that had taken place in close proximity. I suppose I need to be clear here. We are not the traffic committee and I think that sometimes people believe, and I use that expression, that politicians sit around tables of the traffic committee and decide where pedestrian crossings go or not.

185

Very few decisions like that will be taken at political level. The staff decide on each individual project, on its merits, and progress them. This is not an excuse, this is a genuine reason. We have so many people writing policy, the Vienna Convention dealing with Brexit, it has meant that some of those who would ordinarily be having oversight of this area have not had because they have been doing other workstreams. Certainly, it has been raised today, it is on Hansard, and I will take it to senior staff at Traffic to see what we can do in relation to that particular crossing.

190

The Deputy Bailiff: Deputy Lester Queripel.

195

Deputy Lester Queripel: Sir, I did ask Deputy Brehaut and his Committee in a previous debate to give serious consideration to introducing road safety measures on roads that are in need of them, a priority. I did cite the Coutanchez as one of those roads. Can Deputy Brehaut give me an update, please, on whether or not his Committee have been able to have a discussion about accelerating proceedings regarding introducing road safety measures on roads, such as the Coutanchez?

200

The Deputy Bailiff: Deputy Brehaut.

205

Deputy Brehaut: Yes, I thank Deputy Lester Queripel for his questions. The Coutanchez is a problematic area because people speed through. That is the nature of the problem. When we did the speed limit review, the criteria we had was proximity to centres and where there is, if you like, mass footfall, for want of a better description.

210

As you can appreciate, so many areas on Guernsey fall out of that description, it is not a clear-cut case. The only thing I suppose, in the interim, would be to say that sometimes we could do with a little more proactive policing, with regard to speed limits but this issue was raised at the last integrated transport strategy meeting, which was after the last States' meeting, so staff are reporting back to that group, specifically on the Coutanchez.

215

Can I just say that, although there appeared to be opposition to 25mph speed limits, more people have consequently/subsequently written in, demanding that that road is a 25mph limit, which may surprise a number of Members in the room.

The Deputy Bailiff: Deputy de Lisle.

220

Deputy de Lisle: Thank you, sir.

I note the adoption of electric vehicles by States' bodies and can I ask the President when we can see electric buses on our roads and modernisation, if you like, of the bus fleet? Even if it is just one or two in order to test the suitability of electric buses on our roads?

Thank you, sir.

225

The Deputy Bailiff: Deputy Brehaut.

Deputy Brehaut: I think when TRP has risen to a certain level, over and above what it is now, we might look at investing in electric buses. The facts are that the ULE vehicles we have, the ultra-low emission buses, have I think in excess of 98% more fuel-efficient and emissions efficient than anything before them.

We should not overlook the fact that commercial vehicles could be moving very soon to biofuels, which puts the emission from, certainly, diesel vehicles in a different light. But the short answer to your question is we do not have the Budget or the funds to source such vehicles if they were out there.

Every time we have gone out and looked in some depth, because everyone has been to another place, another country, and seen smaller electric vehicles, but generally they are minibuses or even buses that run to and from airport terminals. But to find, if you like, bespoke vehicles for Guernsey, of the size we need, and electrifying them, the technology is not quite there at the moment and the funds, either, are certainly not there at the moment.

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: I had to ask this question. I am perhaps renowned, in caricatures of myself in the newspapers, with little plastic carrier bags, so I was intrigued to hear that the States of Alderney are about to embark, thanks to Mr Snowdon and other Members, to maybe banning plastic bags from retail establishments within a year, which will inevitably involve H.M. Law Officers, I would assume, should that go through. Have Environment & Infrastructure any such plans, as part of climate change or other initiatives, to finally outlaw the classic retail plastic carrier bags, perhaps excluding lifetime ones, from the retail and other establishments of Guernsey?

The Deputy Bailiff: Deputy Brehaut.

Deputy Brehaut: Yes. Deputy Gollop did make a distinction there between plastic bags and single use plastic bags and there is a conversation, no pun, wrapped up in all that. We met with Plastic Free Guernsey. They actually handed me the petition. There is a small team and it is a team actually shared with STSB, who oversee waste and are looking at the possibility of banning plastic bags.

That said, again, and this is not an excuse, we are not well-resourced enough as a Committee or a department to do each and every workstream or have these workstreams running parallel. So when you want to progress one area, invariably, you have to move someone from somewhere else. So we are not progressing, ideally, at the pace we would like, but we are heading to the same destination, ultimately, as Alderney.

The Deputy Bailiff: No one else is rising. That concludes the questions to the President of the Committee for the Environment & Infrastructure.

General Update – Statement by the States' Trading Supervisory Board

The Deputy Bailiff: Our next general update Statement will be on behalf of the States' Trading Supervisory Board and I invite Deputy Ferbrache to make that Statement.

Deputy Ferbrache: Sir, thank you.

There are many words to say, so beginning with those words, in 2016, the newly formed STSB set out its vision for the States-owned trading operations. It was to be consistently well-managed,

to be an efficient group of companies that deliver a return in the long-term best interest of Islanders.

275 The progress the group has made towards achieving that vision, was reflected in our first consolidated annual report, published last December. In that report, we no longer refer to our various operations as 'trading assets'. Since then, as a whole, the group as a whole has evolved considerably, to the point where we now refer to them as businesses.

280 More importantly, the development of clear business performance objectives, built around customer needs and expectations, appropriate governance and more commercial mindsets are now evident right across the group.

Much of the credit must go to the management and staff within the group, who have risen to the challenge. I emphasise that sentence. I also acknowledge the contribution of our two excellent STSB non-States' Members, who have brought extensive private sector experience to the Board and have committed considerable time and energy to each task. That was strengthened just last year by the recruitment of business advisers, who now bring additional commercial experience to the boards of each of our businesses and again give their time generously and unpaid.

285 Later on in today's agenda, Members will be asked to agree to the new succession planning arrangements for the STSB. It will extend the appointments, if approved, of the current non-States' Members, to allow time for the next Board to become properly established. This will provide much needed continuity at the start of the next political term. We believe that is important, and I hope my colleagues will agree it.

290 Now, turning to last year's progress, undoubtedly one of the most notable achievements of the current States' term has been the roll-out of the Island's new Waste Strategy. This reached its conclusion last year, with the completion of the new facilities at Longue Hougue and the introduction of the new charging arrangements.

295 The parishes deserve enormous credit for the role they have played, as do their collection contractors. We also acknowledge – and I must do – the small team at Guernsey Waste, who planned, co-ordinated and communicated what was a very large and complex programme. Change is seldom welcome and never easy, but a measure of their success is how quickly Islanders have adapted to and embraced the new systems. Guernsey's recycling rate has increased significantly, and I am advised is on a par with, if not better than the very best in Europe and possibly the world. I am sure that is a source of some pride for our community.

300 Such has been the success of the strategy in reducing waste, the amount households have spent under the new pay-as-you-throw system is considerably less than envisaged, and last year was below what was needed to meet our costs. That leaves us with what some in this Assembly previously described as a nice problem to have. However I hope I can give the public some reassurance that we do not anticipate the need for any sudden sharp rises. This is a long-term strategy, so it needs a long-term pricing strategy, which our team is working on.

310 Another important project successfully completed last year was the replacement of the undersea electricity cable to Jersey. I commend Guernsey Electricity for the excellent work in which they progressed it and, I can say now, that electricity imports are restored to their desired levels – and all from renewable sources. On-Island generation is again providing a predominantly back-up capability.

315 I now turn to Aurigny: 2019 also saw the arrival of Aurigny's new ATR, which we are informed will result in much lower maintenance costs. The STSB again played a key role in this and provided oversight of the subsequent business case for the new airplanes in 2018.

320 As Members are aware, some time ago the STSB set Aurigny the objective of achieving a break even position on its UK routes. Well it was just £400,000 shy of achieving in 2018. However not in 2019, which was another difficult year, as all local operators adapted to the new open skies policy, and with the position on the loss-making Alderney services still unresolved.

Nevertheless, recent developments concerning other operators have once again underlined the wisdom of the previous States' Assembly as to why we own an airline. Aurigny remains critical

325 to the security of our air links and, given the concerns that some outlying communities within the UK are facing, we should not underestimate its importance.

Last year we published a completely independent efficiency review of Aurigny. That concluded that it is efficiently well-run and generally well-managed but, of course, there is always room for improvement.

330 We also carried out an efficiency and benchmarking review States' Works last year, which again has produced very encouraging results. Again, ideas and areas for improvement were identified and we are working towards those.

335 Returning to airplanes and aircraft, we continue the progress in relation to the refurbishment of Alderney's runway. We know how important that is for community in Alderney. Following approval by the States last year, the detailed design is being progressed and a number of specialist airfield contractors have expressed interest in the construction contract. I am advised that we expect to award that contract by the fourth quarter of this year, subject of course to P&R's approval of the business case.

340 Other continuing projects and ongoing projects include the future plans for managing the Island's inert waste and for Guernsey Dairy, both of which we expect to bring proposals to the States soon. We are also progressing the detailed review of harbour requirements and, separately, an environmental impact assessment on a potential future land reclamation project east of the QE2 Marina.

345 These are all good examples of where STSB continues to assist other committees to deliver their mandates. For instance, the harbour investigations will inform the work being undertaken by the Seafront Enhancement Area programme and the DPA is looking at the broader development opportunities around the eastern seaboard.

350 We also work with E&I on matters related to the dairy industry, waste, and energy policy; and will be assisting P&R and Economic Development in establishing a co-ordinated and coherent framework for our air routes. Similarly, the efficiency review was jointly commissioned with Scrutiny, and our Lottery staff continue to support Health & Social Care in their valuable work to assess the extent of problem gambling and measures to tackle this.

355 But I would like to reflect at this stage on two key challenges the STSB has had to deal with. The first relates to delivery by other Committees, and the second is an historic issue. STSB operates within the framework of legislation, regulation and Government policies. Where there are Government policy gaps, or where Committees have been unable to deliver aspects of their mandate, that has major impact on us. These remarks are not meant as a criticism of anybody but it is just a statement of fact.

360 For example, delays in agreeing an energy policy and progressing new regulatory arrangements for the States-owned utilities have had a material impact on Guernsey Electricity. The uncertainty has made it harder to plan effectively – particularly around major investment in infrastructure and the evolution of tariff structures, as we transition to a lower carbon future. These are critical issues for both Guernsey and the STSB, and we cannot perform our role effectively unless the policy direction set by the States is clear.

365 Similarly, the delay in awarding a PSO contract for the Alderney routes continues to impact on Aurigny. This will continue well into this year, whether or not the airline is awarded a contract. The uncertainty is now impacting on the people of Alderney, through a reduction in the airline's ability to service these routes. I only offer and I do offer my sincere apologies to everyone in Alderney, to that effect.

370 We recognise these policy issues are not straightforward, but we also have to acknowledge they impact on our businesses. It is not within the gift of the Board to be able resolve this, but we will continue working with all other States' bodies to assist wherever we can.

The historic issue that I mentioned pervades many aspects of the States and relates to the lack of infrastructure investment in the past. Guernsey Dairy is a prime example, and maybe the prime example. We also have a considerable backlog of essential maintenance in our harbours.

375 I spoke earlier about the transition to a more commercial mindset. That has included dispensing with the public sector funding approach, where major capital projects compete for funding priority from a central pot.

The focus is now on properly funded, long-term strategies for asset replacement – including buildings and other infrastructure. Unfortunately we will, despite my earlier words, need to look to the capital reserve to help address some of the historic underinvestment.

380 I will end on a positive note. The Board is very proud indeed of the achievements that it has achieved, particularly those last year. Guernsey Dairy, Guernsey Post, Guernsey Electricity and Guernsey Water – note, all Guernsey – all scored highly in a survey where Islanders were asked to rate 75 leading local companies. They all ranked among the top 20 businesses. As well as being placed in the top three overall, Guernsey Post was also the local company that Islanders trust the most.

385 Similarly, an independent audit of Guernsey Water's customer service saw it again significantly outperform the benchmark for UK utilities and for all sectors. And readers of consumer magazine Which? again voted Aurigny best short-haul airline – a further testament to the company's 'get you home' philosophy.

390 STSB began as a brand new body this term and was not properly established, due to the death of the first President, until the end of 2016. Since then, the important groundwork has been done, ably led for 18 months or so by Deputy Parkinson, and while there is room to improve, that should not disguise the considerable progress that has been made. I am confident the Board will continue to evolve in the next States' term and continue working in the best interests of the Islanders.

The Deputy Bailiff: Thank you, Deputy Ferbrache.

400 Now, it is an opportunity to ask questions on any matter within the mandate of the Board. Deputy Inder.

Deputy Inder: Thank you.

405 I thank Deputy Ferbrache for his updates. I notice in his speech he mentioned the EIA for the east of QE2 and this must reference his and Deputy Parkinson's successful amendment to, effectively, the Inder Requête. I am wondering, do we glean from that, with no mention of St Sampson's, that his Committee is starting to focus on St Peter Port as a preferred option and also, second, the same question, is the future committee likely to make the December 2020 date to report back to the States? Effectively, is it on track and are we looking at St Peter Port?

410 **The Deputy Bailiff:** Deputy Ferbrache.

Deputy Ferbrache: No, sir, that would be a presumption, which it would not be reasonable to make. I cannot predict what a new post-June committee or board will come back with. But what we will discharge and I am sure that our successors will discharge, are the extant States' Resolutions in relation to such matters.

The Deputy Bailiff: Deputy Mooney.

420 **Deputy Mooney:** Yes, sir. I would like to ask Deputy Ferbrache, when will the fog-busting technology in our three new planes, when will it be fully operational? Do you have any idea in relation to timescale?

The Deputy Bailiff: Deputy Ferbrache.

425 **Deputy Ferbrache:** Well, sir, I will come back with a more authoritative answer, and I will circulate it, I have no doubt the civil servants are listening and they can circulate it later on, make

sure I am accurate. But my understanding is that it will be some time during the course of later this year that the technology will be more readily available. But I know I cannot be more precise than that at the moment. But I am grateful to Deputy Mooney for asking that question and, as I say, I will flush out what answer I can give.

The Deputy Bailiff: Deputy Lester Queripel.

Deputy Lester Queripel: Sir, I appreciate what Deputy Ferbrache said in his update, that Aurigny came up smelling of roses in a recent review. 'Well-run', I think was the phrase that was used. Sir, as a custodian of the public purse, I cannot see how a company that lost £7 million last year and is predicted to lose £9 million this year, can possibly be considered to be well-run. Can Deputy Ferbrache then tell me, please, if STSB have been doing anything recently, in an attempt to reduce the losses for Aurigny in the long-term?

The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: The simple answer to that question is, yes, sir, it is constantly under review. We are in regular discourse with the executive at Aurigny. But in relation to the preamble to Deputy Queripel's question, it reminds me of the old adage, a little knowledge is a dangerous thing. That is why we went out to independent experts, who independently concluded that Aurigny is a well-run company and those who are chortling or who will criticise it, will never be convinced by these facts.

The Deputy Bailiff: Alderney Representative Snowdon.

Alderney Representative Snowdon: Thank you, sir.

I think the President referred to the Aurigny air service's efficiency and benchmarking report review 2019 and, for Aurigny, it made a few recommendations in that report. Would the President agree that we should maybe be looking at some short and long-term aviation vision or solution for the delivery of aviation for Alderney and what that might be.

Thank you.

The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Well I think, sir, I may be misunderstanding and if I do I apologise, that what Alderney Representative Snowdon is primarily talking about is the short-term problems in relation to Alderney. But I will deal with the longer-term segment. There are short-term problems but, as I said in my Statement, they are due to the delay in the PSO. Because Aurigny came to us some time ago and said, 'We can re-wing a Dornier, it will cost £0.5 million. We do not think until we know what the result of the PSO is that we can genuinely spend that money.'

We considered it carefully but had absolutely no hesitation in agreeing with them. Nobody knew that the PSO, or could reasonably anticipate, would still not be resolved now. As part of the overall picture. Aurigny, in my view, and I believe in the Board's view, must have good air connection, air connectivity. That will be debated more fully when we come back, I think in April – not we come back, but the report comes back, due in April, it may be delayed – who knows, as to air connectivity generally. But, as I say, my own view, and the view of the STSB as presently constituted, is that there should be this maintained connectivity for Alderney.

The Deputy Bailiff: Deputy Brehaut.

Deputy Brehaut: Thank you, sir.

480 Just on the development of the Port, could Deputy Ferbrache clarify for me that the investigation is being overseen by the Commercial Ports Investigation Board, who will then in turn report back to both STSB and E&I?

The Deputy Bailiff: Deputy Ferbrache.

485 **Deputy Ferbrache:** I give that absolute confirmation, sir.

The Deputy Bailiff: Deputy Laurie Queripel.

Deputy Laurie Queripel: Thank you, sir.

490 I would just like to ask Deputy Ferbrache about the waste water charges being levied by Guernsey Water. I have heard from some Islanders, and Members might say they would say this, but they feel that the charges are disproportionate, because these are households that are quite efficient in their use of water and they could use very little waste water. It is appreciated and understood that there is a fixed cost to processing waste water but are the STSB aware, are Guernsey Water looking at a fairer way to charge for the waste water processing?

495 Thank you, sir.

The Deputy Bailiff: Deputy Ferbrache.

500 **Deputy Ferbrache:** I am grateful to him for that question, sir. Yes, they are. I appreciate it is a concern. I have heard it from sources other than Deputy Laurie Queripel. Guernsey Water are looking at that. They have that under consistent review and, if you can remember, the issue was mentioned in the States just some months ago.

The Deputy Bailiff: Deputy Gollop.

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Deputy Gollop: Thank you, sir.

510 We were pleased to hear in the speech about the success of the Guernsey Dairy as one of Guernsey's flagship business companies and also I support the idea that the Capital Reserve can be used to finance long-term infrastructural needs. But would the President and the STSB acknowledge that the slightly negative health review, or less than perfect, shall we say, in terms of cleanliness, the establishment in the broadest sense, needs to be remedied, possibly by a brand new state of the art dairy, to ensure environmentalism and the herd continues?

The Deputy Bailiff: Deputy Ferbrache.

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520 **Deputy Ferbrache:** Sir, you can only score runs with a broken bat up to a certain time and that is where the Dairy is now. The people who work there are working with equipment that is by and large, to use perhaps a local phrase, clapped out. Now it needs major capital investment. We met as recently as yesterday with Policy & Resources, at a very constructive meeting, we are in the early stages of discussing it and it is high on our agenda and it is on their agenda. So it is being constructively dealt with, both by the STSB and Policy & Resources.

The Deputy Bailiff: Deputy Trott.

525 **Deputy Trott:** Thank you, sir.

The STSB have, I believe, been undertaking interviews for the post of non-executive chairman of Aurigny air services. Is the President in a position to be able to advise this Assembly whether a successful candidate has been appointed and if he is available to advise us at this time can he advise us when such an announcement will be made?

530 **The Deputy Bailiff:** Deputy Ferbrache.

Deputy Ferbrache: I really am grateful to Deputy Trott for giving me that opportunity. Yes indeed, we have offered an appointment, it has been accepted, to a new non-executive chairman. It has then got to go through a process and it is going through that process. But the intention is that he will take up his office in early September but well before early September he will be both shadowing the current Chairman, meeting the Board, meeting the staff and I think that is likely to happen in the next few months.

540 **The Deputy Bailiff:** Deputy Roffey.

Deputy Roffey: Thank you, sir.
While the last thing I would want to be is a Jonah, would the President accept that there has to be some question mark over the long-term future of Flybe and, as a result, I know with open skies we cannot expect Aurigny to take up all of the responsibility for that situation, but is game-planning going on? Is consideration being given by Aurigny in the event that it were to happen how they could try to maintain that crucial connectivity that Guernsey presently enjoys?

The Deputy Bailiff: Deputy Ferbrache.

550 **Deputy Ferbrache:** Again, sir, because Flybe were saved, snatched from the jaws of bankruptcy at the last minute, and Aurigny was going to do its best. It would have, undoubtedly, needed considerable further resources. It would assist, and speaking to the Chief Executive and the Chairman as we did at the time and over a period of time, they were going to do their best, they were not going to be able to fill every gap, but they would have made sure that the aircraft would continue to fly and that the services would have been met as best they could.

The Deputy Bailiff: Deputy Inder.

560 **Deputy Inder:** Sir, would the Deputy agree with me that, as part of any refurbishment or rebuild of the Dairy, the base point would be starting looking at the actual market. At the moment I think we have something like 1,500 cattle and it may prove that, an eye on the size with this extra capacity, might only need, let us say, 1,200 head of cattle. Would it be better not if he starts there, at the basic point of working out the size of the market, the size of the herd, before we start looking at what we are going to build.

565 **Deputy Gollop:** We need the Guernsey herd.

The Deputy Bailiff: Deputy Ferbrache.

570 **Deputy Ferbrache:** Sir, what we intend to do, when we bring, hopefully in April, a policy letter in relation to the Dairy, is to ask the States to endorse or otherwise, so we will be asking them to endorse the previous policy of the States to keep our countryside as it is, to make sure that there are cows in our fields etc. That comes at a cost. I can say, and again we made the point in relation to some very pertinent, probing questions from P&R yesterday, that we are looking at alternative markets, we are speaking to farmers, we are doing everything that we can to address that issue. But it is a difficult one.

The Deputy Bailiff: Deputy de Lisle.

580 **Deputy de Lisle:** Sir, with respect to electric energy imports, through the cable, all from renewable sources, we were told and I have heard that somewhere else, too, perhaps from

Guernsey Electricity. But the grid, the European Grid, is 75% nuclear, 17% renewable and 8% fossil fuels. The contract that we have with EDF calls for 30% renewable imports from hydro, essentially. So I would like some clarification there because I feel that nuclear is certainly not renewable, sir.

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The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Well, sir, it is not appropriate, I think at the moment, to get into an argument or a definition of what is real and what is not real. I can only say to the experts that run Guernsey Electricity and, in my view, run it extremely well in difficult circumstances, that they have advised us, and there was a public pronouncement made recently, that currently the electricity that comes through when we switch the lights on, etc., is from a renewable source. Indeed. I am grateful to Deputy Brehaut for his interjection. That is all I can say. It is the intention, both of STSB and I know of E&I, to ensure that that is maintained as best we can.

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The Deputy Bailiff: Alderney Representative Roberts.

Alderney Representative Roberts: Thank you, sir.

Last month I asked the President of the STSB if he could tell us whether Aurigny considered any options to lease a Dornier or an alternative aircraft, to maintain capacity on the Alderney-Southampton route for 2020. If any options have been considered and rejected, what were the grounds for rejecting them and who was consulted, as the system projected for 2020 will fail Alderney, even more than before?

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The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Yes, sir. The Alderney Representative asked some written questions, we have given some written answers. I am not going to repeat those, I am just going to precis them. It would have been too expensive. It was looked into; the cost was horrendous. It would not have been achieved, it would not have been affordable. It was just not achievable.

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What Aurigny hoped was two things: it hoped, firstly, that the PSO process would be concluded by now; and, secondly, that it would be awarded that contract. Neither of those have materialised.

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The Deputy Bailiff: Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, sir.

I wonder if the President of STSB would agree with me that there is a guarantee of origin scheme that would quite possibly allay Deputy de Lisle's fears in terms of the source of the energy that is coming through the cable.

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The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: I am happy to agree with somebody who knows far more about it than I do!

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The Deputy Bailiff: Alderney Representative Roberts.

Alderney Representative Roberts: Thank you, sir.

He only partially answered the question in which he did not indicate whether the wet lease or any alternatives to the Dornier had been considered. Can you answer this and can you indicate whether the wet lease of 33,000 euros per day would have applied to a 210-day charter?

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The Deputy Bailiff: Deputy Ferbrache.

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Deputy Ferbrache: I thought we had indicated but, if not, then I sincerely apologise. All options were considered and the costs were given. Now I cannot remember precisely but it is in written form, so therefore the record says what it says. But whether it was 33,000 euros, or 60,000 euros, it was a heck of a lot of money for a long period of time, it would run into millions of euros, which was not affordable.

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We would have had to go to P&R and then ultimately the States, 'Can you agree to underwrite this for perhaps, £3 million, £4 million, £5 million for the summer?' I think I know what Deputies St Pier and Trott and their colleagues would have answered.

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The Deputy Bailiff: Deputy Trott.

Deputy Trott: Thank you, sir.

I cannot recall the extent of the per passenger losses on the Southampton-Alderney route. Is the President able to remind me and the Assembly?

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Thank you, sir.

The Deputy Bailiff: Deputy Ferbrache.

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Deputy Ferbrache: Deputy Trott used to quote, and I agreed with him some time ago, £75 per passenger per flight. I think, through no fault of his, because I agreed with him that it was accurate; it was in fact inaccurate. But it is still something like, I believe and I will be corrected if I am wrong, £40 per passenger per flight. It may be higher but it is at least that. That is a vast sum and that needs to be addressed.

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The Deputy Bailiff: Deputy Gollop.

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Deputy Gollop: Deputy Ferbrache is rightly proud of the STSB waste programme, which has been extremely successful in terms of catching public interest and recycling and so on, but is it not therefore the case that the more successful the buy-in is by the communitarian public, the greater the potential financial loss in terms of the waste recovered and therefore the viability of the scheme?

The Deputy Bailiff: Deputy Ferbrache.

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Deputy Ferbrache: I think I covered that. I hope I covered it in my Statement because, of course, that is exactly correct. Because it has been so successful, there has been less money spent on it. But can I say, in relation to that, and again I said in my Statement, we are looking at that, or officers at looking at it. Now I would like to say just one thing. I think I have answered Deputy Gollop's question but I would just like to add this sentence. I would like to pay, personally, credit to all the people, all the civil servants involved in bringing forward that strategy, but in particular to Richard Evans, who has led it. I think the work that he has done has been innovative and it has helped us bring forward, very successfully indeed, the Waste Strategy.

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The Deputy Bailiff: Alderney Representative Snowdon.

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Alderney Representative Snowdon: Thank you.

I appreciate the question I asked a little bit earlier, but I would just like a little bit more clarification because we are talking about the losses for the Alderney routes. If we look at a long-term vision and solution of aviation, you have even got in your own report potential use of ATR – I have got no idea if that is an option or is not an option; surely if we look at the long-term, there

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might be reductions in the losses and it is something that this Assembly should be looking at in my view. Would you agree?

The Deputy Bailiff: Deputy Ferbrache.

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Deputy Ferbrache: It seems to me, and I think this is the view of the Board, it is a wider issue for the States. The type of service, the frequency of service, how much it is subsidised, because that is what it is, it is greatly subsidised at the cost of £2.83 million per annum, will depend on the PSO and the decision of this States, as an Assembly, either later, during the lifetime of this Assembly, or early, during the lifetime of the next Assembly.

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The Deputy Bailiff: Deputy Merrett.

Deputy Merrett: Thank you, sir.

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I just wish to get some more clarity from Deputy Ferbrache, please, sir. My question is partly in response to Deputy Lester Queripel's question. It is not when the technology will be available for the fog-busting; will actually people be able to use that technology and actually land our plans on the Island using that technology. It is not just about technology being available, it is when the people are actually available, fully trained, to actually use technology. Sorry, it was Deputy Adrian Mooney, I do apologise. But that is my question to Deputy Ferbrache please, sir.

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The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Again, I apologise if my words were not clear last time. There is no point in having a piece of kit unless you can use it and it is being used, that is what I was trying to answer. The answer I gave, therefore, deals with the point raised by Deputy Merrett.

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The Deputy Bailiff: As no one else is rising, we will move into Question Time but, before we do so, can I just say that, by convention in this Assembly, civil servants are not named, even if you are praising them. It is perfectly permissible to refer to somebody by their title rather than by name. I just thought I would clarify that for the benefit of what might arise later in this week.

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Questions for Oral Answer

POLICY & RESOURCES COMMITTEE

Agilisys and storm outage – Cause and preventative measures now taken; penalties and compensation; indication of outsourcing issues

The Deputy Bailiff: Question Time, proper, as we will call it, starts with three Questions posed by Deputy de Lisle, to the President of the Policy & Resources Committee.

720 Deputy de Lisle.

Deputy de Lisle: Thank you, sir.

The Questions are with regard to the outage on 9th February. The first Question is what was the cause of the outage and technical online system breakdown for the full day on 9th February and what measures have been put in place to stop this happening again?

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The Deputy Bailiff: Thank you very much.

I understand that, on behalf of the Committee, it will be Deputy Le Tocq responding. So Deputy Le Tocq, please.

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Deputy Le Tocq: Thank you, sir.

First of all, I would like to acknowledge the hard work of IT staff that ensured that services were substantially restored by 5 p.m. on the day of the outage, a Sunday, and so were available for the start of the working week. Whilst we await the formal reason for outage report, from Agilisys Guernsey, the Chief Information Officer, his team and staff from Agilisys Guernsey, have already met for a post-incident review.

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We are aware that it was a Cisco switch failure, within Edward T. Wheadon House, that was a source of the issue. It is rare for such a component to fail and it had significant impact, including the loss of access to emails and gov.gg It is important to note that no data was lost and there was no data breach. The formal report will identify interim measures to reduce the risk of a recurrence, but the IT transformation that will be delivered in the next couple of years, including new networks, data management and cloud storage, is designed to ensure we have a robust and resilient network that is fit for the future.

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Deputy de Lisle: Can I ask a supplementary on that, sir?

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The Deputy Bailiff: Supplementary question, Deputy de Lisle.

Deputy de Lisle: I note that Agilisys appear to be expecting more technical issues and outages during the contract period, which is over the next 10 years. They say, and I quote, 'In the meantime we will focus on mitigation impact when they occur'. Can I ask, are we to expect more outages and technical online system breakdowns in the future?

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The Deputy Bailiff: Deputy Le Tocq.

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Deputy Le Tocq: Sir, the whole Future Digital Services project and now Smart Guernsey, was designed because we foresaw that there would be increases in problems, which we have had in the past, that would be difficult to resolve, with expectations particularly that such issues should be resolved outside, particularly if they could, outside of nine-to-five, Monday to Friday. In the

760 past, sir, our staff has only worked nine to five, Monday to Friday, in order to deal with these things. As I pointed out in my response, this was something that happened on a Sunday. It was resolved on a Sunday. Because we now have a contract with Agilisys.

It is therefore correct that they intend, in the future, through the means that I mentioned in my first response, to improve things so that when they occur in the future, they will be dealt with very
765 swiftly.

The Deputy Bailiff: A second supplementary, Deputy de Lisle.

Deputy de Lisle: Supplementary, please, sir.

770 I do not recall, actually, these serious outages in the past. Did we have this type of disruption in the past? You are mentioning the fact that we have. Can you provide some detail of that?

The Deputy Bailiff: Deputy Le Tocq.

775 **Deputy Le Tocq:** I cannot provide some detail off the top of my head here, but I am willing to come back with details of that from the past. But the fact remains that we had staff very often running after themselves, dealing with both hardware and software that was out of date and likely to collapse, both in Health and Education and indeed in Home. As a result of which, we foresaw that it was necessary to undertake our IT provision in a different way and that is certainly one of
780 the pillars of the partnership with Agilisys. So I certainly, for one, am more confident now that we have better means of dealing with such issues in the future, as this one demonstrated, because it was resolved within a day.

The Deputy Bailiff: Deputy Inder, supplementary.

785 **Deputy Inder:** I think I can possibly help Deputy Le Tocq out. I have been to many meetings over the past where the Chief Information Officer – not to be named – has effectively told any Member who has been to his presentations, that ultimately many of the systems in Guernsey are sitting on, effectively a burning platform.

790 Would Deputy Le Tocq agree with me that the outages are probably not unexpected and would he also agree with me that the Chief Information Officer and his team have got an extremely difficult job to work out which is the most important and how to prioritise them?

The Deputy Bailiff: Deputy Le Tocq.

795 **Deputy Le Tocq:** I would totally agree with Deputy Inder and, furthermore, I think some within this Assembly, who understand how IT works and also have seen, perhaps, some of the complicated historic silo systems that we have got in the States, will know that the situation could not have continued without increased expenditure and our staff would have been just firefighting
800 all the time.

The Deputy Bailiff: Your second Question, then, please, Deputy de Lisle.

Deputy de Lisle: Yes, thank you, sir.

805 What penalties are in the Agilisys £200 million Digital Transformation contract, to provide compensation to the States for major technical outages such as this one?

The Deputy Bailiff: Deputy Le Tocq to reply.

810 **Deputy Le Tocq:** Agilisys Guernsey took responsibility for the provision of the States' IT services on 9th September 2019. It is important for Members to recognise that they took over the

services in their current state, including contracted response times from all sub-contractors. The States has never had 24/7-365 response to system failure, apart from those that directly support blue light and acute hospital services.

815 Many other systems are covered by contracted support, nine to five, weekdays. The IT transformation programme includes the introducing of enhanced service levels. Should any of these service levels not be met then there are penalties associated with that, including financial penalties, by placing their profits at risk over a measured period of time.

820 **Deputy de Lisle:** Can I ask a supplementary on that, sir?

The Deputy Bailiff: Yes, Deputy de Lisle, supplementary.

825 **Deputy de Lisle:** Given a number of key States' websites went down during the storm, including: the Airport, there were no flight details; the weather site, there were no wind reports; the Harbour site was down, so there was no sailing information and Beau Séjour website and tickets stopped working and the bookings were down. So, given all that, is a claim being made to Agilisys for the losses to Government business and disruption?

830 **The Deputy Bailiff:** Deputy Le Tocq.

835 **Deputy Le Tocq:** Sir, I can only reiterate what I have said before. It is not Agilisys' fault that a Cisco switch broke. That would have happened, and has happened indeed, in the past. It is rare, but it has happened and it could happen in the future. But with the sorts of transformation that we are putting in, with regard to cloud, better hardware, etc., those sorts of things should be mitigated in the future.

The Deputy Bailiff: No further supplementaries, so your third Question, please, Deputy de Lisle.

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Deputy de Lisle: The third Question, sir, which is: is the outage an early indication of problems for the States of Guernsey, through outsourcing the States' IT system to a digital partner leading the £200 million Digital Transformation of all States' services?

845 **The Deputy Bailiff:** Deputy Le Tocq to respond.

850 **Deputy Le Tocq:** This outage is certainly not an early indication of problems. On the contrary, this outage is indicative of why the States were wise to undertake the Future Digital Services project that resulted in the strategic partnership with Agilisys Guernsey. Despite a range of recovery and stabilisation programmes, this outage is a symptom of years of under-investment and the silo development of our IT. We could not just continue to put sticking plasters on this strategic risk to the operations of vital public services.

855 IT transformation that has already begun will deliver the infrastructure the States needs to meet its ambitions. However, it is unrealistic and, if I may say so, disingenuous to suggest that in the short few months since contract signature that all the very issues that drove this project would be resolved.

860 What is clear is that on Sunday, 9th February, on a weekend and in atrocious weather, staff from Agilisys Guernsey, alongside the retained IT function of the States of Guernsey and a range of subcontractors, were deployed early. The States' senior management team were kept informed and the problem was resolved as quickly as possible. I cannot guarantee another problem will not occur, until we complete the IT transformation programme but by then this type of problem should be a thing of the past.

865 **Deputy de Lisle:** If I can ask a supplementary on that, sir?

The Deputy Bailiff: Supplementary question, Deputy de Lisle.

870 **Deputy de Lisle:** Deputy Le Tocq says that it is not an early indication of problems by outsourcing all States' IT and digital services, yet it went down on their watch. Is that not correct? Did you consider the risk in depending entirely on outsourcing such a vital States' service?

The Deputy Bailiff: Can you answer Deputy de Lisle's two supplementary questions, please, Deputy Le Tocq?

875 **Deputy Le Tocq:** Yes, sir. Absolutely, and I underline what I said before, that had this happened under our previous in-house system, the likelihood of it being resolved within a day, and on a Sunday, at a weekend, out of office hours, was zero. So the fact that it was and that, by a Monday morning, systems were back to working order is indicative of the fact that we made the right decision to go with this partnership.

880 Whilst I am on my feet, sir, I would like to say there is huge misunderstanding about £200 million contract. This is not new money, this is money that we were spending anyway. In fact, it was meant to increase by 5% each year, over the 10 years of the contract. So this is a huge misunderstanding in the community and I would like to put that right, while I am on my feet. Thank you.

885 **Deputy de Lisle:** Can I ask another supplementary sir?

The Deputy Bailiff: No, Deputy de Lisle, because you have asked your two supplementaries, because there were two questions last time. Anyone else got a supplementary question?

POLICY & RESOURCES COMMITTEE

Transparency of Public Accounts – Modern corporate accounting standards; States' property assets; costs incurred by Principal Committees; transformation of the Scrutiny function

890 **The Deputy Bailiff:** In that case we turn to the second set of Questions, which are being posed by Deputy Gollop, for the President of the Policy & Resources Committee.

Deputy Gollop: Thank you very much, sir.

895 My first Question to the President of Policy & Resources is: can the President of the Policy & Resources Committee advise the States at what point or timeframe the published accounts of the States of Guernsey Principal Committees will fully emulate and reflect modern corporate accounting standards, including for example, depreciation of material assets?

The Deputy Bailiff: Deputy St Pier, the President, to respond.

900 **Deputy St Pier:** Sir, Deputy Gollop will be aware that the States have embarked upon a transition to International Public Sector Accounting Standards, with the changes being made on an incremental basis. One of the most significant areas of work in this project is to be able to account for all assets on the balance sheet of the States, from which point the value of those
905 assets will of course then be depreciated over their useful life.

The timeframe being pursued for this element of the project is that 2021 will be the first year of capitalising assets and depreciating through the ledger. However, those figures would be used to create comparators and will not be formally reported until 2022. The accounts for 2022 would contain fixed asset values and depreciation charges for both 2021 and 2022.

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The Deputy Bailiff: Supplementary question, Deputy Gollop.

Deputy Gollop: Yes and I thank Deputy St Pier for his answer. I recall at the last Budget Deputy Merrett and other Members of Scrutiny raised this point and there was an indication it would start at the beginning of next term. Has there now been an extra year of slippage?

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The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: No, I do not believe so, sir. As set out in the response in my previous statement to the previous question, it will begin from 1st January 2021, albeit reported at a later date.

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The Deputy Bailiff: Your second Question then, please, to the President, Deputy Gollop.

Deputy Gollop: My second Question is: will consideration be given as soon as possible to creating a workstream that allows accounts that have been made available to States' Members and the public to incorporate notional rental from the utilising of States' property assets?

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The Deputy Bailiff: Deputy St Pier to reply.

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Deputy St Pier: Sir, States' property services has recently been transferred by the States to be under the control of the Policy & Resources Committee. Since that time, the Committee has initiated a transformation programme, which is initially looking at creating a new target operating model for the function, consolidating elements of the service, which are currently carried out at Committee level and consolidating all property related budgets.

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Once the latter piece of work has been completed, consideration of the best approach for internally charging a rent can then be properly considered.

The Deputy Bailiff: Deputy Gollop, a supplementary question.

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Deputy Gollop: Yes. I asked that question partly because it appears to me that if such information was readily available, it would significantly alter some business cases and costs of services, particularly now we have moved more to a matrix management, rather than a form of silo committee budget. Would the President acknowledge that States' Members should be made more aware and trained in analysing these accounts to ensure wise decisions are made?

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The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: Sir, yes, I agree with Deputy Gollop. I have been a supporter of the idea of some kind of notional rent, sometimes referred to as wooden dollars, in accounting for the use of assets. As I say, there are some significant challenges in doing so. I think one of the flaws in our system is that we do not fully understand, across the system, not just to those in this Assembly but those at officer level as well, the cost of using assets; and, of course, one of the other areas that Members will have heard me speak about before is the fact that we do not either recognise the true cost of capital and that, as a result, I think, can lead to the misallocation of capital in some of our decision-making.

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The Deputy Bailiff: Your third Question to the President, Deputy Gollop, please.

960 **Deputy Gollop:** My third Question is: will consideration also be given in the foreseeable future to informing Members and the public, via published accounts, of the cost Principal Committees may incur in relation to central policy, legal advice, human resources, staffing and the secondment of professional staff, including project staff, central Treasury money managers and supernumeraries?

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The Deputy Bailiff: Deputy St Pier to respond.

Deputy St Pier: Sir, this is not something which has currently been contemplated by the Policy & Resources Committee and I think careful consideration would need to be given to the benefits derived from such an approach and such an allocation of overheads, versus of course the potentially substantial costs of doing so.

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The Deputy Bailiff: Supplementary question, Deputy Gollop.

975 **Deputy Gollop:** My supplementary is: bearing in mind the previous answers about the misallocation of capital, allocation of overheads, when Committees work well with financial partners and policy officers drawn from the able, professional central headquarters, is that not a cost that States' Members and the public should be aware of? For example, a workstream in analysing the merits or otherwise a new Law or a new policy may incur, in real terms, the use of a
980 £250,000 of staff time if a private law firm, for the sake of argument, was employing similar or the same people?

Perhaps this Assembly and future Assemblies should be given information as to the real cost of workstreams. Would the President agree that that would be useful for candidates and for the wider public?

985

The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: Sir, at the highest level of principle I do not disagree with Deputy Gollop, but I think one does have to acknowledge, in the sense that data can always be utilised, one does
990 always have to bear in mind the costs of obtaining that data and presenting it in a way that is useful to decision-makers, wherever they are and for whatever purpose.

So that is why we have not currently given consideration to it, really because we do have other priorities, at the moment, not least of which is actually getting the adoption of the International Public Sector Accounting Standards implemented as the higher priority. But certainly I do not
995 dismiss the idea in due course but I would not regard it as being the highest priority in terms of the data collection and dissemination of information.

The Deputy Bailiff: Your final Question then, Deputy Gollop, please, to the President.

1000 **Deputy Gollop:** Has the Policy & Resources Committee given further thought to accelerating a meaningful transformation of the Scrutiny function, in order to provide greater transparency and analysis of States' assets and accounts, including involving private sector expertise to facilitate the possible creation of a parliamentary public accounts committee, and/or an audit commission, with audit commissioners, or a professional auditor general, independent of the Civil Service?

1005

The Deputy Bailiff: Deputy St Pier to reply.

Deputy St Pier: Yes, sir. Following consideration of the policy letters of the States' Review Committee during the last term, the States decided to establish the Scrutiny Management

1010 Committee in order to provide co-ordinated scrutiny of policy and services, financial affairs and expenditure and legislation.

This model deliberately moved away from separate financial and policy scrutiny functions. The Policy & Resources Committee has not formally reviewed or considered this matter during this term of operation or the new system.

1015

The Deputy Bailiff: Supplementary question, Deputy Gollop.

Deputy Gollop: Yes, having signed a requête that was very much wanting to open the door to that, would therefore the Policy & Resources Committee be supportive of that becoming a significant workstream early in the next term of this Assembly?

1020

The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: Sir, again, I think it is not entirely a matter for the Policy & Resources Committee to initiate, given that we are the Committee that is responsible for leading the accounting for the States' finances across all committees. This is principally an issue on which I would expect the Scrutiny Management Committee themselves to have a view. There are opportunities for that to be expressed through their handover documents to the next States, through the Policy & Resource Plan update and indeed with that debate and the appropriate resolutions that will follow from that.

1025

1030

If the States is of the same view as Deputy Gollop that it is a matter that should be considered then, clearly, it should be accorded the appropriate priority in order that that work is undertaken during the next term.

1035

The Deputy Bailiff: Second supplementary, Deputy Gollop.

Deputy Gollop: My second supplementary is: has work at any stage been done by the political or senior management leadership team to evaluate that the not insignificant costs of an auditor general or audit commission could, and hopefully would, be offset by significant savings in revenue, capital and efficiency budgets? Spend to save.

1040

The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: Sir, to my knowledge, no such work has been undertaken.

Procedural – Order of business

1045 **The Deputy Bailiff:** Well, Members of the States, with no one else rising that concludes Question Time. Before I ask the Greffier to announce the next item of business, Deputy Dudley-Owen has indicated that she wishes that a motion be put, so Deputy Dudley-Owen.

Deputy Dudley-Owen: Yes, sir. Thank you very much.

1050 I wish to propose a motion from the floor of the Chamber today that we re-order business, please, in regard to the items of other business, so that we would take the Requête for determining the best model of secondary education first, before other items.

1055 The reason being for this is that it was obviously clear from a majority decision being made at the last States' meeting to pull the debate closer and therefore I suspect that there may be some Members who are happy to re-order. If this suggestion fails, does not get the requisite amount of

votes, may I suggest that we agree that we sit at this debate until we complete the debate and if we can do that now, rather than waiting until 5 p.m., 5.30 p.m. on a Friday afternoon, I think everyone would be a little bit more happy to do that now, rather than leave it. Thank you.

1060 **The Deputy Bailiff:** So the motion that is potentially going to be put, that Deputy Dudley-Owen is advancing, is to bring Article X, the Requête – Determining the Best Model for Education, up so that it precedes Article VI, which is the Capacity Law one. So I will invite the Presidents of those Committees whose business would be pushed backwards if they have any comments about whether any of those matters are time-critical. So Deputy Soulsby.

1065 **Deputy Soulsby:** Sir, yes, I cannot support the motion. For our Committee, the Capacity Law is our number one legislative priority. We had to bring the policy letter today and we need it debated today in order that we can get the legislation through before the end of this term. Whilst it might not be people tying green ribbons around the lamppost, in terms of the Capacity Law, a lot of people will directly benefit from this legislation.

The Deputy Bailiff: Deputy Lowe, in relation to Sexual Offences.

Deputy Lowe: Thank you, sir.

1075 My Committee are unanimous in their support to allow the Requête to go beforehand. It is not time-critical and indeed I suggest that any of the reports, if we are focussed, they would still be debated in this term.

The Deputy Bailiff: Deputy St Pier.

1080 **Deputy St Pier:** Sir, the view of the Policy & Resources Committee is there is no need to re-order the priorities. There is not a significant amount of business. With discipline it can be despatched with quickly and therefore we should stick with the order, sir.

1085 **The Deputy Bailiff:** Deputy Ferbrache.

Deputy Ferbrache: Sir, I leave it to the good sense of the committee. It is not going to disadvantage what we are bringing forward. But I hear the comments.

1090 **The Deputy Bailiff:** And Deputy Le Clerc.

Deputy Le Clerc: Sir, I asked my Committee at a meeting this week and they were not in favour of debating the Requête on Education first. It may not be time-critical but the Committee has a significant number of policy papers coming back to the States before the end of this term and we would like to get this dealt with and out of the way before the Education Requête.

Thank you.

1100 **The Deputy Bailiff:** Well, Members of the States, you have had the benefit of hearing from the five Presidents of the Committees whose business will be pushed backwards, if it were to be re-ordered. I am not going to put to you the motion –

Deputy Leadbeater: Can we have a recorded vote, please, sir?

1105 **The Deputy Bailiff:** Yes, Deputy Leadbeater. I am going to put a motion to you that the Requête determining the best model for secondary education be taken as the first item of other business and therefore inserted before Article VI in the Billet. There is a request for a recorded vote. Greffier please.

There was a recorded vote.

Not carried – Pour 13, Contre 20, Ne vote pas 1, Absent 5

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Brouard	Deputy McSwiggan	Deputy Ferbrache	Deputy Tindall
Deputy Dudley-Owen	Deputy de Lisle		Deputy Mooney
Deputy Prow	Deputy Langlois		Deputy Le Pelley
Deputy Gollop	Deputy Soulsby		Deputy Fallaize
Deputy Lester Queripel	Deputy de Sausmarez		Deputy Inder
Deputy Leadbeater	Deputy Roffey		
Deputy Trott	Deputy Oliver		
Deputy Meerveld	Alderney Rep. Roberts		
Deputy Lowe	Alderney Rep.		
Deputy Laurie Queripel	Snowdon		
Deputy Smithies	Deputy Brehaut		
Deputy Green	Deputy Tooley		
Deputy Paint	Deputy Parkinson		
	Deputy Le Clerc		
	Deputy Merrett		
	Deputy St Pier		
	Deputy Stephens		
	Deputy Hansmann		
	Rouxel		
	Deputy Graham		
	Deputy Dorey		
	Deputy Le Tocq		

1110 **The Deputy Bailiff:** Well Members of the States, on the motion to move the order of business, proposed by Deputy Dudley-Owen, there voted Pour 13, Contre 20, one abstention, five absentees, as a result of which that motion has been lost. Are there any other motions to take business in any different order at the moment?

Deputy Oliver: Sir?

1115 **The Deputy Bailiff:** Yes, Deputy Oliver.

Deputy Oliver: Could we follow out Deputy Dudley-Owen's second proposition that we finish all business within the three days?

1120 **The Deputy Bailiff:** I am not minded to put that motion to the States at this early stage of the meeting. We have only been going for an hour and a half. Let us see how we are doing. It runs the risk, I think, of dictating quite how long everyone is going to be here.

Deputy Laurie Queripel?

1125 **Deputy Laurie Queripel:** Sir, I hear what you are saying. Could I just say that I think Members, especially Members with children, would quite like to know quite early if we are going to sit late or not on certain nights so they can make their arrangements. I think, it is up to you, sir, of course, but it would be a wise thing to put to the Assembly because then Members can make arrangements in regard to their families and things. So I just wondered if you would consider that?

1130

The Deputy Bailiff: I will consider it, Deputy Laurie Queripel, but I will not do it now. (*Laughter*) Can we at least see who wants to be elected to the States' Trading Supervisory Board? So shall we call that item of business before lunch?

Billet d'État V

ELECTIONS AND APPOINTMENTS

STATES' TRADING SUPERVISORY BOARD

I. Election of one Member of the States' Trading Supervisory Board – Deputy Roffey elected

Article I.

The States are asked:

To elect, in accordance with Rule 16 of The Rules of Procedure, a sitting Member of the States as a Member of the States' Trading Supervisory Board, to complete the unexpired term of office of the late Deputy J. Kuttelwascher (that is to the 30th June 2020).

1135 **The Greffier:** Election of one Member of the States' Trading Supervisory Board.

The Deputy Bailiff: Deputy Ferbrache.

1140 **Deputy Ferbrache:** Sir, I nominate Deputy Peter Roffey and the nomination will be seconded by Deputy Smithies.

The Deputy Bailiff: Deputy Smithies, do you formally second that nomination?

1145 **Deputy Smithies:** I do, sir.

The Deputy Bailiff: Are there any other nominations? In that case I will put to you the proposal that the vacancy on the States' Trading Supervisory Board for the remainder of this term be Deputy Roffey. That is proposed by Deputy Ferbrache, seconded by Deputy Smithies. Those in favour; those against.

Members voted Pour.

1150 **The Deputy Bailiff:** I declare Deputy Roffey duly elected. Congratulations.

COMMITTEE FOR HOME AFFAIRS

**II. Police Communications Commission –
Resignation Mr Stewart Chisholm as Chairman and Member;
appointment of Mr Robert Steven Jordan as Chairman –
Propositions carried**

Article II.

The States are asked to decide:

Whether, after consideration of the Policy Letter dated 20th January 2020, of the Committee for Home Affairs, they are of the opinion:

- 1. to note the resignation of Mr Stewart Chisholm as Chairman of the Police Complaints Commission with effect from 1st January 2020 and as Member of the Police Complaints Commission with effect from 1st March 2020.*
- 2. to appoint Mr Robert Steven Jordan as the Chairman of the Police Complaints Commission with immediate effect, for a period of four year.*

The Deputy Bailiff: Can we also deal with the next item of business, as well, before lunch, please?

1155 **The Greffier:** The Committee for Home Affairs, Police Complaints Commission, appointment of Chair and notification of resignation.

The Deputy Bailiff: I invite the President, Deputy Lowe, to speak.

1160 **Deputy Lowe:** Thank you, sir.

The Committee would like to place on record its wholehearted thanks to Mr Stewart Chisholm, for serving as the Chair of the Police Complaints Commission, since the commencement of the Law in 2011. I would also like to express the Committee's thanks to the other commissioners who sit on this panel and commit their time to providing independent oversight of the Police complaints process – an important role.

1165 It may at this stage be helpful to Members to be aware of the process, which is followed in the recruitment and appointment of people to the various independent panels for which Home Affairs has oversight. These panels are administered at arm's length from the Committee, to ensure their independence. But it is for the Committee to decide upon and where appropriate recommend to the States the membership and chairmanships.

1170 With this in mind, advertisements are placed periodically, inviting members of the public to join the various panels. The recruitment is, however, managed slightly differently when it comes to the appointment of the Chairman. In this respect, the Committee recognises the benefit of on-the-job experience and so, for our first approach, it is to consult the outgoing chairman and existing panel or commission members, to see whether one or more of those currently serving would be interested in putting their name forward for consideration.

1175 If they do, the prospective post-holder is invited to meet with the full Committee for a discussion, following which the Committee decides whether or not to recommend the person be appointed. If there is no clear candidate, the chairmanship role will be advertised externally. On this occasion, sir, the Committee was pleased to receive an expression of interest from Mr Jordan, which was supported by the outgoing Chairman and the other commissioners.

1180 Having met with Mr Jordan to discuss the role and how he might fulfil it, the Committee was wholly satisfied with his suitability. This is based not only on what he brings as an individual but also from having seen the way he has discharged his duties as a Commission member for over a year and a half.

1185

Finally, I am obliged to Deputy Tindall, who has pointed out to me a typographical inconsistency between the title of the Propositions, which is Police Complaints Commission – appointment of a Chair and notification of resignation, and the title of the policy letter, with the abbreviation regarding, or re, has slipped in.

1190 Sir, the Committee for Home Affairs unanimously asks the States to approve the appointment of Mr Jordan as the Chair of the Commission and to note Mr Chisholm's resignation as the Chair and as a member of the Commission.

Thank you, sir.

1195 **The Deputy Bailiff:** Does anyone else wish to speak in this matter? Deputy Gollop.

1200 **Deputy Gollop:** Whilst not commenting on what I assume will be an excellent choice for an excellent predecessor, I am sure Deputy Lowe and other Members of the States are aware of the recent initiative launched by various individuals promoting women in public life, which one can applaud, and to include people from diverse backgrounds. Will Home Affairs, along with every other committee of the States bear in mind that sometimes the best person for a job could be a woman, as well as a man, which Deputy Lowe knows in any case, and that therefore efforts will be made to advertise such positions in public life to the widest possible audience?

1205 **The Deputy Bailiff:** Deputy Lowe, do you wish to respond to that?

Deputy Lowe: Yes, I can do, sir.

1210 Deputy Gollop may have seen we have recently put in an advert. It has also been on social media, for several positions on various panels and, of course, it is up to those to apply and put themselves forward for the positions and there are some very interesting positions and I would encourage anybody, male or female, to take the opportunity to sit on these panels.

The Deputy Bailiff: Members of the States, I will put to you the first Proposition, which is to note the resignation of Mr Chisholm. Those in favour; those against.

Members voted Pour.

1215 **The Deputy Bailiff:** I declare that Proposition duly carried. The second Proposition is to appoint Mr Jordan as the Chairman for four years. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare that duly carried and therefore Mr Jordan appointed. We will now break for the luncheon adjournment and resume at 2.30 p.m.

*The Assembly adjourned at 12.35 p.m.
and resumed at 2.30 p.m.*

LEGISLATION LAID BEFORE THE STATES

**The Republic of Maldives (Repeal of Restrictive Measures)
(Guernsey and Sark) Regulations, 2019;
The Nicaragua (Restrictive Measures) (Bailiwick of Guernsey) Regulations, 2019;
The Health Service (Benefit) (General) (Amendment) Regulations, 2019;
The Income Support (Guernsey) (Amendment) Regulations, 2020;
The Data Protection (General Provisions) (Bailiwick of Guernsey)
(Amendment) Regulations, 2020**

1220 **The Deputy Greffier:** The following legislation is laid before the States: 109 of 2019, The Republic of Maldives (Repeal of Restrictive Measures) (Guernsey and Sark) Regulations, 2019; 110 of 2019, The Nicaragua (Restrictive Measures) (Bailiwick of Guernsey) Regulations, 2019; 111 of 2019, The Cyber-Crime (Restrictive Measures) (Bailiwick of Guernsey) Regulations, 2019; 125 of 2019, The Health Service (Benefit) (General) (Amendment) Regulations, 2019; 1, of 2020, The Income Support (Guernsey) (Amendment) Regulations, 2019; 2, of 2020, The Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment) Regulations, 2020.

The Deputy Bailiff: Members of the States, we note that all those Statutory Instruments have been laid before the States today.

LEGISLATION FOR APPROVAL

POLICY & RESOURCES COMMITTEE

**III. The Income Tax (Guernsey)
(Approval of Agreement with Isle of Man) Ordinance, 2020 – Approved**

Article III.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreement with Isle of Man) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

1230 **The Deputy Greffier:** Article III, Policy & Resources Committee – The Income Tax (Guernsey) (Approval of Agreement with the Isle of Man) Ordinance, 2020.

The Deputy Bailiff: Is there anything you wish to say on this, Deputy St Pier, as the President of the Committee?

1235 **Deputy St Pier:** No, sir.

The Deputy Bailiff: Deputy McSwiggan.

1240 **Deputy McSwiggan:** Sir, may I just ask Deputy St Pier for a quick explanation of how these pieces of legislation fit with the policy letter relating to those pieces of legislation that have been recently lodged?

1245 **The Deputy Bailiff:** Does anyone else wish to speak on this item? Deputy St Pier, are you able to answer that query from Deputy McSwiggan?

Deputy St Pier: I think I would need to revert to her. I am seeking to do it.

1250 **The Deputy Bailiff:** Members of the States, this is a draft Ordinance for your approval, entitled the Income Tax (Guernsey) (Approval of Agreement with the Isle of Man) Ordinance, 2020. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare that duly carried.

POLICY & RESOURCES COMMITTEE

IV. The Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2020 – Approved

Article IV.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

The Deputy Greffier: Article IV, Policy & Resources Committee – The Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2020.

1255 **The Deputy Bailiff:** Deputy St Pier, anything you want to say about this one?

Deputy St Pier: No, sir.

1260 **The Deputy Bailiff:** Nobody is rising to speak and therefore I will put to you the draft Income Tax (Guernsey) (Approval of Agreement with New Zealand) Ordinance, 2020. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare that duly carried.

POLICY & RESOURCES COMMITTEE

V. The Income Tax (Guernsey) (Approval of Agreement with Estonia) Ordinance, 2020 – Approved

Article V.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreement with Estonia) Ordinance, 2020", and to direct that the same shall have effect as an Ordinance of the States.

The Deputy Greffier: Article V, Policy & Resources Committee – The Income Tax (Guernsey) (Approval of Agreement with Estonia) Ordinance, 2020.

1265

The Deputy Bailiff: Once again, Deputy St Pier, anything to say on this one? No? Thank you. Nobody is rising, so I will put the draft Ordinance to you for your approval or otherwise. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare that draft Ordinance duly carried and therefore made.

COMMITTEE FOR HEALTH & SOCIAL CARE

VI. 'Capacity Law' – Supplementary Policy Matters and Potential Financial Implications arising from the Appeals Process – Propositions carried

Article VI.

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled "Capacity Law' - Supplementary Policy matters and potential financial implications arising from the appeals process", dated 20th January 2020 they are of the opinion:-

- 1. To agree the supplementary matters of policy as described in section 3 of this Policy Letter and direct that the Projet de Loi entitled "The Capacity (Bailiwick of Guernsey) Law, 2020" is drafted accordingly.*
- 2. To agree that legal representation at Mental Health and Capacity Review Tribunal hearings (primarily in relation to protective authorisations) is to be provided under the Legal Aid Scheme generally on a 'no means, no merits test' basis; whilst reserving the right for the Legal Aid Administrator to exceptionally apply a 'means test' to an application, where reasonable and in conformity with human rights obligations.*
- 3. To agree that legal representation for appeals from a Mental Health and Capacity Review Tribunal to the Royal Court or Court of Appeal may be provided under the Legal Aid Scheme on a 'means and merit test' basis.*
- 4. To note that, upon enactment of "The Capacity (Bailiwick of Guernsey) Law, 2020", there are anticipated to be additional ongoing funding requirements of:
i. £25,000 per annum for the Guernsey Legal Aid Service; and
ii. £75,000 per annum for the future Mental Health and Capacity Review Tribunal and that requests for additional budget will be submitted as part of the annual budget process.*
- 5. To direct the Committee for Health & Social Care to report back to the States with proposals for the introduction of an advocacy service.*

1270

The Deputy Greffier: Article VI, Committee for Health & Social Care. Capacity Law – supplementary policy matters and potential financial implications arising from the appeals process.

1275

The Deputy Bailiff: And I invite the President of the Committee, Deputy Soulsby, to open the debate. Deputy Soulsby.

Deputy Soulsby: Thank you, sir.

1280 Whilst the news recently has been dominated by other issues, which we will be trying to tackle later in this States' meeting, I am sure, the approval of this policy letter today will pave the way for one of the most important pieces of legislation for our community to be passed this term.

As I said earlier, whilst people have not been tying ribbons on lampposts over it, this legislation will not only protect the most vulnerable people in the Bailiwick but also those who look after them. Any one of us today could benefit from this legislation, whether we know it or not and, who knows, by the end of this States' meeting!

1285 Anyway, that is the point. The Capacity Law will enable us to hope for the best but plan for the worst. In March 2016, back when the previous States was debating whether to have four schools or three, that Assembly did resolve that the Capacity Law be drafted. The development of the legislation has been the Committee's top legislative priority and is also an important part of the Disability and Inclusion Strategy.

1290 The timeline was severely impacted by Brexit, with key drafting resources being sucked into what was urgent work at the time. However, on behalf of the Committee, I am grateful to all those organisations and individuals who have helped to shape the proposals, based on their knowledge and experience of these often complex issues.

1295 The drafting of the *Projet de Loi* itself is at an advanced stage and if the Propositions in this policy letter are approved, the Law will be published imminently in order that it can be approved before the end of the political term.

The policy letter in front of us today highlights a number of supplementary policy matters that have arisen during the preparation of the legislation, which need further support from the Assembly in order to finalise the Law. It also fulfils a resolution, from 2016, for the Committee to report back to the States with further information about the financial implications for the legal aid service.

1300 I will just briefly set out the supplementary matters. Lasting powers of attorney (LPAs) will enable people to register their wishes in advance and to nominate one or more people to act on their behalf in relation to property and financial affairs and/or health and welfare matters if they lose capacity.

1305 The Committee has received many enquiries about these new measures and considers that the ability for individuals to plan ahead to nominate someone to act on their behalf, if needed, is an important part of the proposed legislation. It was also something that the late and former Deputy Roger Perrot campaigned for when he was in the States, as some of us here will recall and who led a successful requête to, at the time, direct Policy Council to investigate the introduction of lasting powers of attorney, back in 2014.

1310 Now suitable safeguards will be put in place to ensure that any concerns about any misuse of these LPAs can be tackled, and offences will be established in the Law to protect individuals if or when this proves not to be the case. The Law will also enable advanced care planning decisions to be made, which allow a person to express their wishes about their future care, whilst they have the capacity to do so. This may include preference to move into residential care or to remain at home with carers, if the time comes.

1315 An advance decision to refuse treatment may also be expressed in writing. This allows a person to record their decision to refuse specific treatment at a time when he or she no longer has capacity to consent to this.

1320 The Capacity Law will also enable individuals, who may not have capacity and who are without the support of family and friends, to be represented when decisions are taken that affect them by establishing the role of independent capacity representatives. A protected authorisation scheme will be introduced to safeguard the interests of individuals who no longer have capacity to consent to the arrangements for their care, which comprise significant restrictions of their personal rights, amounting to a deprivation of their liberty.

1325 The Law will also allow for adult safeguarding arrangements to be formalised, including establishment of an adult safeguarding body, to protect vulnerable persons in the Bailiwick. The

1330 Committee signalled its intention to improve the governance arrangements around adult safeguarding in an update to the P&R Plan in 2019.

Finally, there is a specific Proposition that directs the Committee to return to the States with proposals for an advocacy service, which was also highlighted as a gap in service provision, following a review of mental health and wellbeing services carried out by the Committee in 2019. It is hoped that we can work with the third sector to develop such a service.

1335 I think it is worth pointing out, given the nature of this subject matter, that the Law has been drafted to ensure that it is compliant with Article 5 of the European Convention on Human Rights and includes a legal right of appeal. And on that note, we are asking the States to agree to allocate additional funding to the Guernsey Legal Aid Service, to ensure that, in due course, those who may wish to appeal decisions taken under the proposed protective authorisation schemes to the Mental Health and Capacity Law Tribunal are able to receive legal aid funding to support them to do so.

We estimate this will cost an additional £25,000 *per annum*, plus an additional cost of £75,000 required to convene the tribunal to hear these additional appeals.

1345 Now the principal purpose of the Capacity Law is to empower people to make their own decisions wherever possible, to allow them to plan for the future and, if they lack capacity, to ensure that decisions made on their behalf respect their basic rights and freedoms. Such Laws are especially important for people with dementia, learning disabilities and mental disorders, to help to protect their freedom and right to make decisions about their own life.

1350 The Capacity Law will allow individuals to hand over decision-making responsibility to a trusted person and provide sensible checks to make sure they are not being exploited and that personal preferences and best interests are not forgotten. It will include a statutory test to decide whether a person has the mental capacity to make a specific decision and establishes the best interest principle in relation to decision-making on behalf of persons assessed to lack capacity.

1355 If the Propositions are approved today, the *Projet de Loi*, will return to the States for approval, shortly. An implementation plan will be developed to ensure that across Health & Social Care, and with our key partners in the community, we are ready to support the implementation of the legislation on a phased basis, starting in 2021. A code of practice will be developed to support the detailed implementation of the Law, secondary legislation will be drafted and, importantly, a training plan will be put in place.

1360 So, whilst it is the Committee *for* Health & Social Care leading this policy letter, as I said four years ago now, what we are talking about here is not a health issue at all, although it is most applicable in health and care settings, it is a human rights issue. It is about how we protect the liberty and dignity of those citizens amongst us who are the most vulnerable in our community, when they have their freedom of choice taken away. Supporting this policy letter today is about freedom. Freedom from fear and freedom to live a dignified life, and I urge Members to support it.

The Deputy Bailiff: Deputy Fallaize, is it your wish to be relevéd?

Deputy Fallaize: It is please, sir.

1370

The Deputy Fallaize: We will mark you as present now. Deputy Inder.

1375 **Deputy Inder:** Sir, back in May 2018, we had a debate about assisted dying and back then that was marginally defeated. Health & Social Care were directed to improve palliative care. But I do remember specifically in that debate, and I think it was Deputy McSwiggan at the time, made a great point, we did not have Capacity Law in place to effect, had the assisted dying requête been successful, to effect the, I suppose, security and safety for the public who may or may not have wanted to go down that route.

1380 Now, what I have not seen in this document, unless I have missed it, which is not impossible, is a direct reference to assisted dying. The closest I have got to it, and I think it is related to that

debate that we had, was the lasting powers of attorney. Now it does say, and it is on the executive summary, 3.2, page nine, and it reads, I will read the last bit of it:

LPA's will allow an individual (the grantor) to plan ahead for a time when they may no longer have capacity, by appointing another person as the "attorney" to make decisions on their behalf.

1385 So I think my question is, even though assisted dying is now not currently on the table. We do not know what is going to happen in the future. There has been a directive for Health & Social Care to concentrate on palliative care. If assisted dying ever comes back on the table, has this covered off the criticism or the fears for, potentially, a future debate relating directly to the lasting powers of attorney. In short, if a well person makes a decision that they want something to happen at the end of their life, does this section cover off that requirement?

Thank you.

1390

The Deputy Bailiff: Deputy Lester Queripel.

Deputy Lester Queripel: Thank you, sir.

1395 I always get concerned when I see the word 'reasonable' in policy letters, due to the fact that it is subjective, open to interpretation, misinterpretation, depending on how its actual definition is to be considered, of course. If we look at paragraph 1.21, we are told in that paragraph that it is 'recommended that a right should be reserved for the Legal Aid Administrator' to apply a 'means test to an application, where reasonable'.

1400 If we look at paragraph 4.8, we see the last sentence also employs the word 'reasonable' in the same context, telling us that:

... exceptional circumstances ... point to the necessity for an applicant to be subject to a means test where this is reasonable ...

1405 Now, sir, the dictionary definition of the word reasonable is to be moderate and fair and 'in accord with logic'. Of course, that does not help me at all with my dilemma because those are all subjective. So I need to know what the legal definition of the word reasonable is. I did actually ask for that definition in a previous debate, but I cannot remember what that debate was, so I have not been able to look it up on *Hansard*. Anyway, it might have been updated by now.

So, through you, sir, could I ask H.M. Comptroller, please, to tell us what the legal definition of the word 'reasonable' is?

1410 **The Deputy Bailiff:** Mr Comptroller, I will give you some thinking time, but we will ask you before the debate concludes.

Deputy Oliver.

Deputy Oliver: Thank you, sir.

1415 Thank you for putting on the presentation about the Capacity Law. It was really helpful, but it did get me thinking on one of the questions, that it was a bit of a side-product really, regarding the lasting power of attorney and regarding what a person can say about their health wishes and everything and they could say they do not want pain relief.

1420 I do not even know if you can give the reassurance, if a young person such as myself, young and naïve, says 'No, I do not want any pain relief', and then they get to that stage and it is excruciatingly painful and actually it is almost cruel to let them go through that, will the doctors actually almost override that decision of no pain relief and say, 'This person is crying out for it now,' even though it was in their lasting power of attorney? Can that decision be overruled, where it makes a lot of sense to say that pain relief is actually needed?

Thank you.

1425

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: Sir, I am sorry, I missed the presentation. I think I was at a Women's Achievement lunch at the time. I should have looked at my emails. Actually, of course I was a member of the MIND committee for nine years and have been a Mental Health Service User Group at Open Mind and so on. I certainly have met people in the services who are very keen to see this legislation enacted as soon as possible and, indeed, it was a hangover from my period as disabled people's champion and even before that, that capacity legislation was on the to-do list. I remember in particular an impassioned speech by the then Deputy Ellis Bebb to get things going, as well as the late Deputy Perrot.

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So it is long overdue, and we welcome the intentions of the Law, very much to give a springboard. I think the assisted dying that Deputy Inder has raised is a little bit of a red herring because, although it may be essential, I think Capacity Law has its own reasons to exist and it is part of the updating and upgrading of Guernsey's mental health situation.

I would comment on a few points. On page 21 it says:

Where the particular circumstances of a case are such as to lead to the deprivation of a person's liberty, Legal Aid is granted automatically to the applicant, enabling them to have the services of a lawyer, or suitably qualified person, to represent themselves before the Tribunal.

1440

Well often, of course, legal aid is means-related and there is a very strictly, and rightly so, test of accessing the service. Of course, on some of these issues, maybe the actual process will override that. So how far, as Deputy Lester Queripel almost asked, there will be a definite right to legal aid and how far it will be discretionary, I think remains to be seen.

1445

There is a lot of emphasis on page 23 about protective authorisations applying to people with dementia, but of course Deputy Soulsby referred to issues of mental disturbance or learning difficulties and perhaps, in the views of Deputy Lester Queripel, defining what applies in those circumstances is sometimes a sensitive task and clearly it is a medical matter, it is a social work matter, it may be a legal matter, and there are issues relating to that.

1450

I agree with the extension of legal aid and, of course, the costs are surely based upon the quantum of cases. Resourcing the implementation of the Law is essential. I note on page 26 that the:

... the Law will introduce the new role of Capacity Professional to oversee the Protective Authorisation process and to act as an independent reviewer of cases, including particularly complex cases, as well as assessing certain cases where there may be an appeal to the MHCRT. It is proposed that social workers, occupational therapists, nurses and psychologists should have the opportunity to train as a Capacity Professional to enhance understanding ...

I support that and the urge for law firms, of course, to be as knowledgeable as possible on this, because I think when the tribunals first started there was a comparative shortage of lawyers who wished to specialise in this area.

1455

On page 27, we also have:

The Capacity Law will introduce the role of Independent Capacity Representatives (ICRs) to represent the interests of those who lack capacity and who do not have family or friends to offer such support.

Now it goes further. They:

... would have a role in respect of both the Protective Authorisation Scheme and the legislation in genera ... in respect of decisions taken for medical treatment, a change of accommodation or where there may be safeguarding concerns.

1460

Now I know representatives of MIND are very keen that the safeguarding concerns and the empowerment are taken on board. But I suspect in a society where you will see, in both Guernsey and Alderney, more and more people who do not necessarily have many close friends or family, that that role will gain importance.

I think there has been sufficient consultation and I hope there will be further presentations on the implications. I remember going back 12, 15 years to when I was on the MIND committee, we were concerned there was not enough advocacy. Advocacy is an unfortunate word in Guernsey.

1465 No, it is a fortunate word. The word advocate has a particular connotation of learned friends and Members, like Deputy Ferbrache and Deputy Green, in the Chamber, and of course H.M. Comptroller; whereas this kind of advocacy is more the rights of a spokesman for those who require safeguarding and representation.

1470 One concluding point I would make on the work is that it is important that capacity is put in a context of human rights and empowerment, as Deputy Soulsby said, because we have ... perhaps two points I draw attention to here.

On page seven, 2.2, it is based on the English Law and the English guidelines to a degree and it says:

a person must be assumed to have capacity unless it is established that they lack capacity;
a person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success;
a person is not to be treated as unable to make a decision merely because they make an unwise decision;

Whether politicians make unwise decisions remains to be seen. And so it goes on to ...

... act done, or decision made ... on behalf of a person who lacks capacity must be done ...

1475 The other point. I know it is always a little bit invidious to quote cases that are put for reference and for example, but there is an interesting case study included within the policy letter – where is it now? – about, not Mrs B, Mrs A on page 16. It says:

Mrs A is living in her own home but has been diagnosed with dementia. She is becoming very forgetful and her family are concerned about how she is coping.

Then it goes on to box two, saying:

Over the following months, Mrs A becomes increasingly forgetful and refuses help from her carers. She is found wandering in the night without appropriate clothing. Her social worker assesses Mrs A to lack capacity with regard to her accommodation, care and treatment needs ...

1480 Now that picture is a very moving one of an elderly lady who is perhaps struggling. But do we not see, sometimes, people wandering around the streets at night without appropriate clothing? There could be a 21-year-old who has been to a nightclub. The point I am saying is you should not necessarily make assumptions just because somebody is registered with a disability or is of a certain age range and I think all of this needs to be introduced for the benefit of everybody and it does need financial resource, does need training, it does need legal professionalism and so, of course, I support the Law but, at the same time a degree of care is necessary too.

1485

The Deputy Bailiff: Deputy Merrett.

Deputy Merrett: Thank you, sir.

1490 I will be quite brief because I have every intention of supporting this policy paper and I thank HSC for it. But I did have some questions I posed Deputy Soulsby already and she has answered them adequately, so I do not need to repeat any of those. But really, Members have been questioning the background to the Guernsey Legal Aid Services and it says quite clearly on page 14:

The Administrator is an independent statutory official and has full discretion to grant or refuse Legal Aid within the terms of the scheme which the States prescribes.

1495 So, if Members are concerned about that then, clearly, they need to get involved in what the States are prescribing. And the full certificate, the only slight query I do have is that GLAS, Guernsey Legal Aid, they base a means test on your household income but also allowable expenses. Now I am not sure if Deputy Soulsby can answer this question and, of course, I can find

in due course, but allowable expenses, I do not understand what that actually is defined as and how often that is re-established or revisited or reviewed.

1500 The other thing I am slightly concerned about is we are advised that legal aid will be given, automatically in fact, if there is a risk of a custodial sentence. In my mind, sir, I read that 'custodial sentence' as also being, if you want, your liberty may be affected and if we can get clarity on that, that would be appreciated. Because if your liberty may be affected and, in theory, in my mind, that says you will be in some sort of situation, it relates to custody.

1505 My biggest question of all, sir, because I think this is something that we as a Government let our community down on, and that is how this will be communicated to our community, going forward. How we ensure that our community are aware of this, that there is an access to this, and that legal aid is available and how we signpost them to this. That, to me, I do feel, and I do struggle – I think many Members do, or members of the community use the gov.gg website – but
1510 how are we going to communicate this to everybody in our community? How will we educate them?

That, to me, is quite key because I am very supportive of the policy paper, but I do think how we communicate it out to our wider community is really important. So, if Deputy Soulsby can help me in a public forum to explain some of those questions and answer them, I would be very
1515 appreciative.

Thank you, sir.

The Deputy Bailiff: Deputy Graham.

1520 **Deputy Graham:** Thank you, Mr Deputy Bailiff.

I have not got any wisdom at all to contribute to this policy letter, but I just wanted to put on record that I was very pleased that Deputy Heidi Soulsby acknowledged the work of my late
chum, former Deputy Roger Perrot, in this regard. I could scarcely meet him, once I had been
elected as a Deputy, without him saying, 'Come on, what is happening about the Capacity Law?'
1525 As the years ticked by he said, 'Why is it taking so long?'

I said, 'This is not my field, I need a bit of guidance.' He gave me a bit of paper, with about eight or nine points on it. I have still got it at home. He said, 'Look, I will make it easy for you. Check this against the policy letter when it comes up and make sure it is okay.' I have done that. The policy letter ticks all the boxes, Deputy Soulsby, so almost *in absentia*, I record his thanks to
1530 you.

The Deputy Bailiff: Deputy de Lisle.

Deputy de Lisle: Yes, sir, thank you.

1535 I certainly support the general tenure of this policy letter, particularly that where the States are providing some support. At the Forest Douzaine on Monday night, there was some interest in the policy letter and particularly in terms of the financial side of it all, because it was not quite clear, in terms of a number of issues, as to the power of attorney, for example, as to how much might be available there. Because some people were saying that the power of attorney could cost in the
1540 region of £5,000, particularly when you get down to the financial affairs and property and so on and so forth, and it could be a long-lasting affair to deal with those financial affairs and the property matters.

When I look at this, I see legal aid funding and then I turn to page 24 and it mentions there funding of a maximum of £1,670 and then, down here, it talks about £25,000 *per annum*,
1545 calculated at a maximum cost of 10 hours of assistance per case. Obviously I can now, as a result of reiterating those pieces of the Report, realise that there can be some confusion out there as to what the financial side of this is, particularly when a person has to have a power of attorney to deal with property and financial affairs and how far legal aid will go and is it a matter of means and merits test with regard to obtaining these services? So I would like some clarification, please,

1550 with respect to that, that I can then deliver to people that were questioning this at the Forest Douzaine, and perhaps the general public.

Thank you.

The Deputy Bailiff: Deputy McSwiggan.

1555

Deputy McSwiggan: Sir, this is a happy moment in the midst of what is going to be obviously quite a challenging debate. I do want to enjoy that. The first time that Deputy Soulsby and I worked together was just before the last election, when the States agreed to the principle of introducing capacity legislation. So, for us, it is an important decision, this one.

1560

But I am standing, particularly, because Deputy Inder name-checked me and said that I had suggested that there was a close relationship between Capacity Law and the decisions that we need to make around assisted dying. He asked, I think, if assisted dying came back on the table would the existence of capacity legislation address certain criticism and fears around it and, without wanting to say this is the position of the Committee for Health & Social Care, or this is the general position in relation to assisted dying, my personal view on it is that capacity legislation is what you would call necessary but not sufficient for the introduction of assisted dying.

1565

So, without capacity legislation in place, we knew that there were not adequate protections for a vulnerable group of people in our society. He and I think that, you know, any mature jurisdiction would have wanted to have that in place as part of the absolute baseline of necessary safeguards around assisted dying, but there are other safeguards, which are specific to assisted dying, which this States would have to think through, in due course, if that were to come back on the table. So this is not an on/off switch for assisted dying, but it is part of the baseline of essential safeguards that any jurisdiction would want to have.

1570

But Deputy Gollop touched on the fundamentals of it. He said you should not make assumptions about somebody just because they have a disability or they are at a certain age and he is absolutely right and that is the heart of what Capacity Law is about because, in decades and centuries of society's dealings with disabled people and people of a certain age, we have taken it upon ourselves to make decisions about what they can and cannot do, where they should and should not live, what they can eat, when they can get out, all that sort of thing.

1575

The principle of Capacity Law is that you recognise that individuals have a right to make their own decisions, however unwise, however ill-judged you might think those decisions are. Whatever silly suit of clothing they decide to go out in, it is their right and their prerogative to make those decisions for themselves and it is only in the instances where it has been demonstrated that they do not have the capacity to do that that people like us have a right to interfere. So it is absolutely, fundamentally about protecting that individual freedom.

1580

Deputy Oliver asked about pain relief and whether, if a person had made an advanced decision to refuse treatment, which excluded pain relief, that could indeed be of course over-ridden. Deputy Soulsby was not able to be at that presentation, so I opened that, so I think it is fair if I try and respond to that based on the conversation that we had there.

1585

In general terms it is worth pointing out that advance decisions to refuse treatment, we are advised, have to be quite specific about the treatment that is being refused, so a blanket refusal of pain relief might not fit within that definition in the first place. It is also far more likely, just in general numbers terms, that a person might say, 'I do not want treatment. I do not want you to prolong my survival any longer; I just want pain relief.' So the situation is far more likely to be flipped.

1590

But when we were at the presentation the clinicians talked us through the kinds of circumstances that Deputy Oliver was envisaging and we know that issues relating to capacity often make some of the hardest and most heart-wrenching cases that end up before a judge and I think in court somehow, because they are these really difficult decisions that you have to make about what is in a person's best interests, medically and emotionally and so on, after a point where the person has ceased being able to communicate what those best interests are.

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1605 So, the message that we had from clinicians was, in the rare circumstance where they might find themselves in that position, and it was clearly in the best interest of the person to receive the pain relief, they would challenge that and would try to work out a way through that protected, not only the person who has made the decision, but the person that they had in front of them at that point of time.

1610 None of this stuff is easy and a lot of it is not clear cut and remains un-clear cut, even after you have introduced capacity legislation, but we know that capacity legislation gives more of us more tools to provide our future selves and the people who work with us in future more certainty about how we want to be treated around some very difficult decisions that we will have to make in future.

1615 I think, just the last point I want to make in relation to Deputy Merrett's question about how this will be communicated, we know that organisations like the Citizens' Advice Bureau are absolutely hungry to have something like that in place. It is a lacuna in our current legal provision and something that they are ... so we know that will work with us to get the message out there, but actually I think we had a much bigger task in front of us when we used to have to communicate that this is something Guernsey does not have and it is something you have got to make alternative provision for.

1620 Again, in a grown-up jurisdiction, this is a right people expect to already have and to already have protected. So we are much more in line with people's expectations and much better able to protect their dignity and freedom at all stages of their life once we have finally got this legislation through.

1625 **The Deputy Bailiff:** Deputy Ferbrache.

1630 **Deputy Ferbrache:** Sir, following on from the good news story that Deputy McSwiggan says, and she is right, it has taken too long – that is not a criticism of Deputy Soulsby or her team – it has taken too long for these lacunas and, frankly, omissions for them to be missing. Now Deputy Graham has referred to my former long-standing legal partner, Deputy Perrot, and he always used to say to me, 'Ferbrache,' because that was the term he used affectionately for me, 'Ferbrache, keep the civil servants and the lawyers out of it.' He said, 'If you do that, you are doing something.'

1635 Well, I have not managed to achieve that in the last four years. But in relation to lasting powers of attorney, as a practising advocate of many years, somebody would come to you and they would have a power of attorney but the years had passed on and it was always extremely difficult to know when you draw that line, to say, 'I am sorry you can no longer rely on the power of attorney because we do not think the person that gave the attorney 10 years ago is now capable of really allowing ... of making decisions.'

1640 Lasting powers of attorney will deal with that. Deputy McSwiggan has dealt with the assisted dying point. There is a provision in the policy letter, in any event, which talks about amending the procedure by ordinance, in relation to lasting powers of attorney. That is the process, rather than the substance. But I understand the point.

1645 Where I am in total agreement is Deputy Lester Queripel's point about what does the word 'reasonableness' mean. Now one would expect, what the law says normally, law, generally, wide-term says, it should mean what the normal dictionary definition of reasonable is, unless there are other contexts.

1650 But then I cannot ignore the fact that, in my experience, very learned, clever academic lawyers, far cleverer than me, have interpreted, for example under the old Housing Law, there was a provision that the Housing Department, Housing Authority, could not act *ultra vires*, that means outside of its powers, or unreasonably. We have got a provision in our Royal Court Civil Rules, Rule 83, which deals with when you can award indemnity costs. You can award indemnity costs, amongst other things, if a party has acted unreasonably.

1655 Now you would have thought that is common sense. You know it when you see it. But oh no, there is a case here, which says what it means; there is a care, which says what it means. So it will be very interesting to hear, and I will write it down, it will be in *Hansard* anyway, what the learned Comptroller is going to say in the context of this what 'reasonableness' means. Because, and I do mean it genuinely, he is a better man than I am Gunga Din, but in relation to that it does need some concern.

1660 Because, when you look, and I just look at paragraph 2.2 of the policy letter, which talks about reflecting the approach of section one of the English Act of 2005, and it lists then five bullet points. All of those are exceedingly important because I am a lawyer that does not like law. It has been very kind to me over the last 47-and-a-bit years that I have been a practising lawyer in two jurisdictions, but I do not like the state interfering unless it has got to interfere.

1665 So therefore the ground rules ought to be very clear indeed when people's civil liberties and rights are affected by statutes. I believe the balance has been struck very well in what is proposed, so I do not mean that as a criticism, but I just highlight those matters, so that they are dealt with in the future.

1670 The last point I would make is that, although professional advice has been taken about what the cost will be to the Legal Aid Fund, I would bet a dollar to a doughnut that these figures will be exceeded in a couple of years.

The Deputy Bailiff: Deputy Le Tocq.

Deputy Le Tocq: Thank you, sir.

1675 I just rise briefly to underline some of the things, comments that Deputy McSwiggan made before. If this particular legislation was to in any way enable assisted suicide then I, for one, would not be supporting it. I do support it because I have seen from the other perspective, where it has been lacking, how much stress and strain and difficulties this has caused individuals and their families at points of near death and extreme situations. Even one in my own family – it is years
1680 ago and I know it would be treated differently today – but nevertheless this legislation would much improve the communications where a DNR request for someone, I was executor to their will and responsible for the person in my family, was not adhered to.

1685 In that position I think there was a lot of unnecessary stress and strain caused when the person was not able to die peacefully as they had requested. So there are a number of reasons why I support it but that is certainly one of them and I think this Assembly should enable, should pass these Propositions, so that we can enable our community to respond appropriately in such circumstances.

The Deputy Bailiff: Deputy Le Clerc.

1690 **Deputy Le Clerc:** Sir, I will just make a couple of points, just really on the legal aid. My understanding of the legal aid is that legal aid will only be available for appeals. So it would not be, necessarily, I think Deputy de Lisle was asking whether it was available for writing the powers of attorney. My understanding is it is not, it is just only if it goes to appeal.

1695 That is where, on pages 16 and 17 of the Report, the walk-through of the scenarios is quite useful, because that is where it is clear, it is only for the appeals situation. Actually, on page 24, it gives the number of appeals hearings over the last few years, where legal aid has been provided to give support. So I just wanted to emphasise to Deputy de Lisle it is only on appeal that legal aid, there will be some eligibility for that.

1700 Thank you, sir.

The Deputy Bailiff: Well, Mr Comptroller, the time has come! (*Laughter*) You have had a big build-up here. Deputy Ferbrache is waiting for your words of wisdom, so what are they?

1705 **The Comptroller:** May I say first of all I am grateful to Deputy Ferbrache for making the points that he has made because I do not think this is a particularly easy topic to deal with. It is one of those things that you could write a thesis about – and no doubt people have and there are no doubt text books and chapters of text books, which deal with the issue or the concept of what is reasonable and reasonableness.

1710 As Deputy Ferbrache mentioned, I think the first port of call is the dictionary definition. Like any good lawyer, I went straight into Google in the time available and quickly Googled 'reasonable'. There are a number of phrases and words that were thrown up. 'Being in accordance with reason'; 'logical'; 'not extreme or excessive'; 'moderate'; 'rational'. These are all words I think we understand, and we understand the sentiments behind them. 'Common sense' is another phrase that perhaps comes to mind.

1715 Certainly, courts, lawyers, administrators, are familiar with deciding when something is and is not reasonable. We have, or it has to be determined in court often, whether somebody is proved beyond reasonable doubt. It is something that is done regularly within courts; our Jurats do it, our judges do it. Whether reasonable force has been used, when it comes to self-defence – again, these are concepts that people are familiar with, the courts are familiar with and justice, I believe, is usually done because people are able to understand these concepts, argue about them and decide whether, for example, where force is used in self-defence, whether that force is reasonable.

1720 Now, I think Deputy Lester Queripel referred to a particular paragraph of the policy letter when he was talking about reasonable. Rather unhelpfully, I have shut my folder, so I will endeavour to find it, but I think it was in the context of paragraph 4.8, where the word 'reasonable' is used, 4.8 which says:

It was acknowledged by the States that, irrespective of an individual's financial circumstances and the strength of their case, there were important legal reasons for ensuring that those detained under the 2010 Law were able to challenge their detention should they wish to do so, and to ensure that there were no barriers to doing so. This is, however, subject to exceptional circumstances which point to the necessity for an applicant to be subject to a means test where this is reasonable and in conformity with Human Rights obligations

1730 Now just taking reasonableness in that context, I imagine this is in that context, it is a concept that would have to be applied by the administrator and she would have to weigh up, I would suggest, a number of factors, such as: access to funding of a particular individual, the needs of that individual, the circumstances of that person's detention, the time available within which to review the detention of that person.

1735 So I think it is really a matter of weighing up a variety of factors and coming to a reasonable conclusion and with a professional administrator, such as we have at the moment, I think that it is reasonable to expect that person to come to a reasoned conclusion that would ensure that the liberty of the individual, which is the key thing in this, is protected. But where that individual perhaps has the means to fund an advocate to put their case before a tribunal that a proper decision is taken as to whether or not that funding should be accessed in the circumstances.

1740 I also add that I think I am correct in saying there will be codes of practice that will be available that will enable those who are going to administering the legislation, again, to form a reasoned view as to all the issues that are likely to arise under this Law. I hope that helps. I do not think it will have answered Deputy Lester Queripel's question completely but I hope it perhaps will help him and I am not sure that I can add very much more without repeating some of the concepts that I have referred to already.

1745 **The Deputy Bailiff:** And if somebody was dissatisfied with another person's understanding of whether it is reasonable or not, would that be challengeable?

The Comptroller: I think it would be subject to judicial review before the courts.

1750 **The Deputy Bailiff:** So it is not entirely subjective?

The Comptroller: No, sir.

The Deputy Bailiff: Thank you, Mr Comptroller.

1755 I do not see anyone else rising, so I turn to the President of the Committee, Deputy Soulsby, to reply on the debate, please.

Deputy Soulsby: Thank you, sir.

1760 I think H.M. Comptroller has just demonstrated how the words like 'reasonable' are the reasons why lawyers get very rich! I thank Deputy McSwiggan and Deputy Le Clerc for their input into this, so there is very little I have to do to finish here. We have gone through reasonable, so I am not going to go through all that again.

1765 I thank Deputy Gollop for tiptoeing through the tulips that are the policy letter. Deputy Merrett, in terms of the questions over legal aid, I think they are probably best answered by Deputy Le Clerc, possibly through email later, because there are genuine questions on legal aid, but she does make a very important point in terms of communication and we kind of touch on this within the policy letter. We have already spent a lot of time putting information together, but absolutely what is key is ensuring that people are aware of what their new rights and entitlements will be and how the new process will work.

1770 That is something that we are factoring into what we do. We also say that we are trying to absorb the costs within our budget, but we also say if there are any additional requirements, we will be seeking extra funding from P&R.

1775 Deputy Graham, I am very pleased that we have passed the Perrot test, I really am, and I am sure he would be delighted if he could hear us today. Deputy de Lisle, I think Deputy Le Clerc has just talked about how LPAs are not covered off in terms of legal aid but, in terms of what the costs are, I think it probably will vary depending on the requirements and more generally, probably, the assets that the person is trying to deal with. But it will not be covered from a legal aid point of view.

1780 I do thank Deputy McSwiggan, in particular, and thank her for chairing the meeting last week, as well. As she mentioned, the first time we met, and it was actually virtually, through email, was on Capacity Law and at the time it was quite a fraught time. It was when there was not harmony on the Health Board at that particular time and there were calls to stop the whole area of us looking at the depth of what was called deprivation of liberty standards. A lot of work we needed to put in to give assurance and to explain what we would be doing, which we have stuck to in here and we have been true to our word. We are not using the phrase deprivation of liberty safeguards; we are using protective authorisation.

1785 We have listened and I thank, as I say, everybody who has contributed and in particular Deputy McSwiggan because it was on the back of that I thought 'I definitely want Deputy Yerby' – at the time – 'to be on Health & Social Care' and I am glad I did and all the support she has given since so I would like to ask all Members to support the Capacity Law policy letter.

1790 Thank you.

The Deputy Bailiff: Members of the States, there are five Propositions. Unless there is a request that any be taken separately, I was going to put them all to you together. So those in favour; those against.

Members voted Pour.

1795 **The Deputy Bailiff:** I declare all five Propositions duly carried.

COMMITTEE FOR HOME AFFAIRS

**VII. Sexual Offences Legislation –
Supplementary Policy Matters –
Five Propositions (as amended) carried**

Article VII.

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled "Sexual Offences: Supplementary Policy Matters" dated 6th January 2020, of the Committee for Home Affairs, they are of the opinion to: agree to the inclusion in the projet de loi entitled "the Sexual Offences (Bailiwick of Guernsey) Law, 2020" the offences set out in this Policy Letter including –

- i. specific offences in relation to complainants under 13, as set out in section 3.3.1 of the report;*
- ii. breach of trust offences to protect 16 or 17-year-old complainants, set out in section 3.4.1;*
- iii. an offence of sexual communication with a child, as set out in section 3.5.1;*
- iv. an offence of possession of extreme pornographic images, as set out in section 3.6.1;*
- v. an offence of malicious disclosure of private sexual photographs, as set out in section 3.6.3;*
- vi. specific offences to deal with "upskirting" and voyeurism more generally, as set out in section 3.7;*
- vii. offences in relation to the possession of paedophile materials and child sex dolls as set out in section 3.8.*

2. direct the preparation of the necessary legislation to give effect to the foregoing.

The Deputy Greffier: Article VII, Committee for Home Affairs – Sexual Offences Legislation, supplementary policy matters.

1800 **The Deputy Bailiff:** I invite the President of the Committee, Deputy Lowe, to open the debate.
Deputy Lowe.

Deputy Lowe: Thank you, sir.

1805 The purpose of this supplementary policy letter is to request approval for the inclusion of additional offences in the draft Sexual Offences (Bailiwick of Guernsey) Law, 2020, which the Committee for Home Affairs hopes to place in front of this Assembly in the coming months.

1810 The Committee consulted widely on the draft Law in 2018. Regrettably, external pressures, primarily Brexit, impacted on legislative drafting and resulted in the development of this Law progressing a little slower than we had originally hoped. However, as a result of that earlier consultation and acknowledging changes and legislative developments in comparable jurisdictions, since the original policy letter in 2011, we have taken the opportunity to include further offences, which are detailed in the policy letter before you today.

1815 The offences detailed in the original policy letter were predominantly based on the UK's Sexual Offences Act 2003, which has in itself been amended in the intervening years. This policy letter proposes the inclusion of offences relating to voyeurism and upskirting, extreme and revenge pornography, grooming, possession of paedophile materials and the abuse of a position of trust.

1820 These offences are not detailed in the original policy letter. However, the Committee, with the benefit of advice, considers these should now be included in the new Law. The Committee would like to provide a reassurance that, in the absence of these targeted offences, it has not been the case that defendants have been able to evade justice, as more general offences have been used to ensure that criminal behaviour has been prosecuted. The Committee hopes that this Assembly will show full support to this policy letter.

Thank you, sir.

1825 **The Deputy Bailiff:** Deputy Inder, you have submitted an amendment. Do you wish to lay it at this point?

Deputy Inder: I do sir.

1830 **The Deputy Bailiff:** In that case I invite you to propose the amendment to this set of Propositions.

Amendment 1.

To insert a new proposition 3, as follows:

"3. To direct the Committee for Home Affairs, as part of its ongoing review of Justice Policy, to consider the appropriateness of introducing legislation enabling pre-charge bail conditions to prevent a suspect from failing to surrender, offending on bail, interfering with prosecution witnesses or otherwise obstructing the course of justice and to report its findings to the States no later than 28 February 2021."

Deputy Inder: Could I ask for the proposition to be read out, please? Thank you.

The Deputy Greffier read out the amendment

The Deputy Bailiff: Deputy Inder.

1835

Deputy Inder: Thank you for that. I am just going to read, effectively, the explanatory notes and try and pad it out a bit at the end. The explanatory note reads:

States' Members were recently informed of the problems caused by the absence of sufficient provision for pre-charge bail conditions in Guernsey, in the context of a case of alleged sexual assault.

1840 Now part of the role of a Deputy is, as I tell everyone who will listen, actually, some people think that we have got some sort of magical power, but I have always told them that all we have got is, effectively, more access than other people. We do not necessarily have the power to sort anything out.

1845 There are occasions like this, when we received that email, an event had been alleged and the victim was not satisfied with the outcome and it appeared that the person who had been accused had effectively left the Island. Not knowing much personally about how Police bail works, I have been watching the old US cop TV films and when a cop tells you not to leave town, it usually means you do not leave town. What I did not personally realise, the conditions are normally related to, once you have been arrested and charged and the court maybe put some of those conditions on something, stopping you from leaving town.

1850 Now Guernsey being a very small Island, I was not aware that pre-bail conditions were even a thing and that they did not exist and an arresting officer, via I believe the custody officer, which is the inspector, I am sure Deputy Prow will help me out later on, because he knows more about this stuff than I do, I had no idea that once you have been arrested that the Police do not actually have the ability to stop you from potentially leaving the Island. The only ability they seem to have is to ask you to come back to a station at a certain time and that seems to be it.

1855 The problem, and it is fairly new to me, and it is not just about sexual offences and I am sure Deputy Lowe is not going to be overly happy that we have tried to wedge in an amendment which is related to the Justice Policy, and I do not blame her, but it is all about timing. It does not warrant a requête and when this knowledge is given to us, what else can we do with it? There happens to be something related to legislation that turns up and this seems to be the only place we can try and drive it into the States.

1860 We could have sat back, waited for it to come off the radar, probably all forgotten, so this is the only opportunity for us to try and wedge it and be taken as a serious point. So the problem

currently is that a police officer can actually bail a suspect who has been arrested but not charged and they can bail them, even if they have not been charged, to report back on a certain date.

1865 That seems to be all that can happen, as I understand it, but no conditions other than that can be applied, unlike a court system: once you have been arrested, once you are charged, you are in front of the beak, he is either going to put you on remand or tell you not to leave the Island and all these kinds of things.

1870 So that seems to be the problem and all this is going to do, if, I hope, the Home Department agrees with this ... I know I am going to get sort of a lashing about trying to wedge this into the sexual offences policy but this is not just about sexual offences, this is about any serious crime. All this is doing is asking the Home Affairs Department, when they come back with the Justice Policy, to consider whether pre-bail conditions ... to consult I suppose with her own officers at the Police department, to consider whether pre-bail conditions are worth considering. There is nothing new in this, this is exactly as the similar powers that are enjoyed by law enforcement in the UK. I am hoping the Home Affairs Department will agree with that.

1875 Thank you.

The Deputy Bailiff: Deputy Soulsby, do you formally second the amendment?

1880

Deputy Soulsby: I do, sir.

The Deputy Bailiff: Deputy Ferbrache.

1885 **Deputy Ferbrache:** Sir, it is wholly meritorious, this amendment, and I will support it if it is allowed to go forward, but does it not go beyond the policy letter? The policy letter refers to amendments to the sexual offences legislation. This is a general application. It has much to commend it. Again, it is a matter of ruling, sir, for you, after taking such advice as you may require from the Comptroller, but to me if it does go beyond it, it should be dealt with at a different time. If your view, sir, is to continue, then I will support it.

1890

The Deputy Bailiff: Deputy Ferbrache, are you requesting that a motion be put that the amendment be not debated and no vote taken thereon?

1895 **Deputy Ferbrache:** Yes, sir.

The Deputy Bailiff: Well, I will rule, and I think Deputy Inder has conceded as much that this goes beyond the terms of the original Propositions in opening the debate on it, that it does fall foul of Rule 24(6) and therefore I will put to Members the motion that the amendment not be debated and no vote be taken thereon. Those in favour; those against.

1900

Members voted Contre.

The Deputy Bailiff: On that basis, that motion is lost and the debate on this amendment will continue. Deputy Prow.

Deputy Prow: Thank you, Mr Deputy Bailiff.

1905 I was not going to speak until Deputy Inder made a suggestion that I might know something about arrest. Could I just make it clear that I had a career in Law Enforcement, and it is not because I have been subject to arrest! (*Laughter*)

1910 The only thing that perhaps I can add is that I am aware, from my previous life, that under the PACE legislation, in fact sections 55 and 54 of that Law as amended does refer to bail after arrest, so we are talking here about not court bail, we are talking about, as Deputy Inder said, a custody officer. Under 55.1(b) a custody officer, which would be not below the rank of inspector, can bail

somebody to attend at such police station or designated place of detention at such time as the custody officer may appoint.

1915 But what 55.1.2 says is that no conditions shall be imposed unless that person has been charged with an offence. So that is, as I understand it, sir, the current position. That therefore means, unlike the provisions of the UK Act, as I understand them, where the custody officer can impose conditions, one of which, in the case I think Deputy Inder is referring to, would prevent people from absconding from the jurisdiction.

Thank you, sir.

1920

The Deputy Bailiff: Deputy Leadbeater.

Deputy Leadbeater: Thank you, sir.

1925 Deputy Inder, in his opening, asked if the Committee would consider this in part of the Justice Policy piece of work. But the only thing is the Justice Policy Review is being done by independent experts and not by the Committee, so the recommendations and the Justice Policy green paper that is coming to the States, are not those of the Committee *for* Home Affairs. One thing I will say is this is on our radar. Obviously, because we are all aware of one individual case, Home Affairs are alive to this and it is on our radar. That is all I can say.

1930

Thank you.

The Deputy Bailiff: Deputy Soulsby.

1935 **Deputy Soulsby:** I will just be brief. In relation to what Deputy Leadbeater just said, while the green paper is one thing, we do actually talk about review of Justice Policy and hopefully that review does not end with the green paper and the green paper will be a starting point for doing work that the future Committee needs to do to modernise the Justice Policy, justice arrangements.

1940 **The Deputy Bailiff:** Members of the States, before I call Deputy Fallaize, if anyone wishes to remove their jackets, their outer garments, then they are at liberty to do so.

Deputy Fallaize: My speech was not going to be that tiring, sir!

1945 Can I just seek some clarity, based on what Deputy Leadbeater has just said? Is it that there is a report being carried out by an independent body, which will result in a green paper, and then subsequent to that the Committee *for* Home Affairs, at some point, will lay a policy letter before the States, which will be effectively the recommendations of that Committee? Or is it envisaged that, at some point towards the end of the process, a set of policy recommendations from an independent body will come to the States? Because I just think there needs to be some clarity.

I will give way to Deputy Lowe. She can clarify.

1950

Deputy Lowe: If I can help you, you are right with the former rather than the latter. The report that will be coming forward is a green paper and the Committee will be listening to States' Members here to have their feedback on the Justice Policy, and then we will bring a report back on the recommendations that the Committee have decided, rather than the recommendations that are in the report.

1955

Deputy Fallaize: Okay, so that clarifies the position. Thank you.

1960 **The Deputy Bailiff:** No one else is rising, so I will turn to Deputy Lowe if she wishes ... Oh, Deputy Smithies, then.

Deputy Smithies: I just wanted to say a few words.

1965 What we are talking about here is an innocent person. An offence is alleged, and a person is put under Police bail. Pre-bail conditions do not exist, as Deputy Inder quite rightly said, but there is a reason for that, because you are actually dealing with someone that has not been charged.

1970 It just seems to me to be going a little bit too far on the basis of one case, which has been brought to our attention, to seek to overturn centuries of common law, which says that you are innocent until proven guilty. To impose conditions on an innocent person seems to be a fundamental imposition on their human rights.

The Deputy Bailiff: Deputy Green.

1975 **Deputy Green:** Well, sir, I almost certainly was not going to speak on this debate until the contribution of my colleague, Deputy Smithies, because Deputy Smithies is right in the sense that he is arguing from first principles, but that perhaps ignores the fact that England and Wales have a regime for imposing some bail conditions pre-charge. As I understand it, that has been the position for quite a long time.

1980 I support this amendment, absolutely. There is clearly merit in it and it is purely for the Committee to go away and consider the appropriateness of whether new legislation or amendments to existing legislation, the Police Powers and Criminal Evidence Law, should be pursued. But I think part of that analysis should involve proper consideration of the potential length of time that people might end up being on bail pre-charge, because I think that could be a particular issue.

1985 It would become unreasonable – we know what that means now, do we not, Deputy Queripel? – it could become very unreasonable very quickly if people are on pre-charge bail conditions for an unreasonable length of time. Typically somebody would perhaps be in that situation if they had been arrested but released pending DNA testing or fingerprint testing or other forensic testing. We know that can take a long time and I think that is something, specifically, the Committee *for* Home Affairs should look at in terms of whether that is acceptable, whether there are ways to balance that.

1990 But there is a regime from the north of this Island, which the Committee can look at. So it can be done. I think it should be done. But some care needs to be done in analysing the issues as best as you can.

1995 **The Deputy Bailiff:** Now I will turn to Deputy Lowe, as the President of the Committee, for anything she wants to say on this amendment.

Deputy Lowe: Thank you, sir.

2000 I am going to be gentle on Deputy Inder, because it does go further than, and I was not going to actually oppose that. It was a case of frustration, I think, because Deputy Inder, his amendment, covers exactly what he has already put in email and we put in reply to him, which all States' Members would have seen. So there is not anything new here today than what you are all aware of.

2005 I am not going to read the response in full because I am obviously conscious of the time; we need to get onto other things. But I will read out a couple of bits that you will have all read if you have read the reply that we gave to Deputy Inder. We put in here that:

Amending the bail laws among the range of legislative changes the Committee *for* Home Affairs intends to bring to the States. I am advised however that it would not just be a case of a simple one-line adjustment to the bail law and furthermore it is also likely to require changes to the Police Powers and Criminal Evidence Law. As indicated, we are looking to see if these changes can be brought together and dealt with as a package at the same time as legislative drafting for the Domestic Violence Protection Orders and, as the Committee is still reviewing the policy letter, I cannot at this stage confirm whether it will be submitted in time for the States' debate this side of the election or after. In the meantime officers have made contact with the Law Officers for an indication of the likely timeframe and availability of drafting resources to be able to achieve pre-charge bail in isolation in order to address concerns about individuals who leave Guernsey.

2010 So that was what we actually put in the email. Deputy Inder came back at me and I said, 'It is on our radar.' He did not like that. That is why he wanted to actually say, 'It is finally on your radar, but I want it done.' So I do note that Deputy Inder has sought to create a link by referring an incident where pre-charge bail might have been used but I would suggest to the States that going about things like this is certainly not the best or most responsible way for the States to be determining how legislative drafting priorities are assessed and determined.

2015 The Committee *for* Home Affairs already has a number of States' Resolutions requiring various pieces of legislation be progressed, including terrorism, vetting and barring to protect children and vulnerable adults, gambling consumer protection, domestic violence, sale of knives, parole and several others.

2020 These have to be prioritised, following an informed debate and internal prioritisation by weighting these against the wider community. So I do believe that, yes, we can put this on the list, Deputy Inder, but I think we also have to recognise that this is not the right way to do it. But we will put it on the list, and we will look at it for you in the future, as we said in the original email.

The Deputy Bailiff: I invite Deputy Inder, as the proposer of the amendment to reply to the debate.

2025 **Deputy Inder:** Thank you, sir.

2030 Emails are fantastic, are they not, but they give a hell of a lot less clout than a States' Resolution. I think it is important, the whole thing about 'on the radar'. This is the problem with emails and texts. I think things are said in a genuine way but sometimes when they are received by the recipient, 'on the radar' seems a little bit flippant to me when, within the last two months, we have had someone who – admittedly third party – expressed an incident, which I am not entirely sure if we had spoken to this person who had made this accusation, just us saying, 'Sorry love, it is on the radar, you will get it in between knives, terrorism, Brexit, borders, boats and fishing.' I just simply –

2035 Am I giving way? I think I am.

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

2040 The 'on the radar' came after all the information that had been given, that we were actually looking at. I think that is taking it out of context, really. We explained about how it would need changes to the Law, and it was something we were looking at and we are also trying to see if we could fit it under the domestic abuse legislation.

2045 **Deputy Inder:** Again, making changes of law is what we do. It is not much of an argument to say you cannot make a decision because it might need changes of law, we might have to do a little bit more work than we planned over the last couple of years or so. I am trying not to pick a fight, but it is so hard, it is just the nature of myself, really. 'On the radar', which is mentioned a couple of times, I think that is really the point. We do not want them on the radar. If someone has made an accusation, they are 'on the radar', they are too far away.

2050 We want them in the Island to ensure that Police have the powers to, whatever the circumstances are and I am not going to make any up because only the Police will know, and it may be the case that once this has been wedged into the Justice Policy – by Resolution – it may come back, as Deputy Smithies seemed to suggest, that there is no need to do it.

I would be surprised because it seems that in the UK and in Wales, there are similar powers that are going to be enjoyed by law enforcements ...

2055 Sorry, I thought Deputy Smithies wanted to interject there. He is welcome to. Are you going to interject? No. Deputy Queripel wishes to interject. I will give way.

Deputy Laurie Queripel: Sir, I am grateful to Deputy Inder for giving way. It is still something I am struggling with because, although I can see why it is being put forward, and the reason for it,

2060 as we all know, as politicians, has been made very clear to us over the years that once something is agreed to by politicians, it becomes an operational matter. How can we ensure that at operational level this will be applied in a proportionate fashion? That is the question I would ask: how can we, as politicians, ensure that would happen?

2065 **Deputy Inder:** Okay, I will try, and I am genuinely not being facetious. The Proposition says to 'consider the appropriateness of introducing legislation enabling pre-charge bail conditions to prevent a suspect from failing to surrender ...' If in that consideration it is found that it is not appropriate, then something else will happen. We are not actually asking people to ensure that by, in a year's time, the pre-charge bail will be in place. We are asking them to give it some consideration, firmly putting it on the radar, for want of a better ...

2070 Anyway, sir, I have said what we can, and I do apologise to the Home Department for trying to wedge it in through another policy letter but the reality is, as I said when I opened this speech, we only come across things when we come across things and that has happened in the last two or three months. The clue is in the name. We are People's Deputies, we have been asked to give this some consideration and as a People's Deputy I am here asking this Assembly to give it some consideration. We are effectively doing our job and I will be asking for a recorded vote, please, sir.

2075 **The Deputy Bailiff:** Well, Members of the States, we go to the vote on the amendment marked number one, proposed by Deputy Inder, seconded by Deputy Soulsby, to insert a Proposition 3, and a recorded vote has been requested, Deputy Greffier.

2080 *There was a recorded vote.*

Carried – Pour 31, Contre 1, Ne vote pas 1, Absent 6

POUR

Deputy Brouard
Deputy McSwiggan
Deputy de Lisle
Deputy Langlois
Deputy Soulsby
Deputy de Sausmarez
Deputy Roffey
Deputy Prow
Deputy Oliver
Alderney Rep. Roberts
Alderney Rep. Snowdon
Deputy Ferbrache
Deputy Brehaut
Deputy Tooley
Deputy Gollop
Deputy Lester Queripel
Deputy Le Clerc
Deputy Leadbeater
Deputy Mooney
Deputy Trott
Deputy Merrett
Deputy St Pier
Deputy Stephens
Deputy Fallaize
Deputy Inder
Deputy Lowe
Deputy Graham
Deputy Green
Deputy Paint
Deputy Dorey
Deputy Le Tocq

CONTRE

Deputy Smithies

NE VOTE PAS

Deputy Laurie Queripel

ABSENT

Deputy Dudley-Owen
Deputy Tindall
Deputy Parkinson
Deputy Le Pelley
Deputy Meerveld
Deputy Hansmann
Rouxel

The Deputy Bailiff: Members of the States, my understanding is that H.M. Greffier has received two other amendments to this set of original Propositions, to be proposed by Deputy de Sausmarez. Is it your wish that they be capable of being laid next, Deputy de Sausmarez?

2085 **Deputy de Sausmarez:** Yes, please, sir.

The Deputy Bailiff: Then I will ask for the two amendments to be provided to you in paper form while the votes are being counted. Members of the States, the voting in respect of amendment 1 to these original Propositions, the amendment proposed by Deputy Inder, seconded by Deputy Soulsby, was as follows: there voted Pour, 31; Contre, 1; one abstention and six absentees. Accordingly, the amendment is duly carried.

Do you all have amendment 2 and amendment 3? Deputy Inder.

2095 **Deputy Inder:** Sir, in fairness to both the Home Affairs Committee, probably those who have submitted the amendment and the rest of us, can I suggest we have a 10-minute recess to actually give this some consideration. Unless Home Affairs have seen it themselves, I suspect the President will have a job to sum up, more than that she might need some advice from her civil servants. It looks fairly complicated to me, some of these, and I am just wondering is it worth considering just a 10-minute recess for us to give this a fair crack.

2100 **The Deputy Bailiff:** Deputy Lowe, is that something that you would support?

2105 **Deputy Lowe:** Thank you, sir, and that is kind of Deputy Inder to say that. We have not had any consultation, nobody has been to see us, we have not even had this in the lunch time. We have had this electronically at 14.46, it arrived on my pack. That is not the way to actually work forward on taking something as complicated as this and I would suggest that these amendments are ignored and that the two people who put them forward actually come and meet Home Affairs. It is complicated, it is not straight forward.

2110 We could have a recess now and I would not be able to give you any more advice. We need legal advice and we also need staff advice on this one. I have tried sending an email and that is the information that I have got back, it is too complicated to do on the floor of the Assembly, to be able to give us that advice and we need to invite these two, the proposer and seconder, to come and meet with us and discuss it with us.

2115 **The Deputy Bailiff:** Deputy de Sausmarez, in the light of what Deputy Lowe has just said, would it still be your wish, along with Deputy Tooley seconding these two amendments, to be able to lay them during the course of this debate?

2120 **Deputy de Sausmarez:** Yes please, sir.

The Deputy Bailiff: Now I am going to put to Members of the States that there be an adjournment of 10 minutes or so. Those in favour; those against.

Members voted Contre.

2125 **The Deputy Bailiff:** I think we are going to declare that lost. So we will proceed now, with Deputy de Sausmarez laying amendment 2, please.

Amendment 2.

To insert a new Proposition 3, as follows:

"3. To direct the Committee for Home Affairs, as part of its ongoing review of justice policy, to consider how consent might be defined as an affirmative action (not simply a passive belief in the

absence of explicit dissent) in the context of a single sexual act and/or a continuous series of sexual activities, and report its findings to the States no later than 28th February 2021."

Deputy de Sausmarez: Yes, sir. I think it would be helpful if the Deputy Greffier would please read it.

The Deputy Bailiff: Yes, Deputy Greffier, can you read the amendment please?

The Deputy Greffier read out the amendment

2130 **Deputy de Sausmarez:** Thank you, sir.

I start by apologising for the late notice. I could not circulate them before lunch, because we had not finalised them before lunch, but we did seek legal advice before lunch and were advised that this was probably the best format to bring them forward. There was some toing and froing with our Law Officers on that.

2135 I would like to reassure people that we are not asking the Assembly to make a complicated decision today. I have shamelessly plagiarised from Deputy Inder and Deputy Soulsby's amendment and have asked for this to be looked at over the course of the next year and reported back on. So we are certainly not asking Members for a decision on what I admit is an important and complex issue today and I should also just clarify, before I forget, that the numbering is
2140 nothing against Deputy Inder's Proposition, which was comprehensively passed via his amendment, there would, I imagine if this is successful, be some consequential renumbering.

So that is a little bit of background. But I would like to reassure the Assembly that we are not asking for policymaking on the hoof, far from it. We are asking for a consideration of a serious and complex issue in the time that that would take.

2145 When I think back to my teenage years, I could not have possibly imagined a situation more awkward than talking about sex in the presence of my parents and I think all those years ago, I could not possibly have envisaged a situation where, actually, I would be talking about sex, in detail, not just in the presence of you, sir, but also His Excellency the Lieutenant Governor, 30-odd colleagues and the media listening in, potentially broadcasting to tens of thousands of Bailiwick residents! (*Laughter*) Or maybe tens – I did say potentially.
2150

So it is something awkward to talk about, but it is also really important that we do. I would also say, what I meant to say to start off with, I was not in the majority of people in the last States' meeting who voted in favour of amending the States' agenda for this States' meeting. So I think everyone in this room will understand that it has been a particularly busy run-up to the States' meeting and priorities were shifted around so I regret that we did not get to this in better time
2155 but I think it is better late than never. It is something that we are bringing to the Assembly's attention now so, hopefully, we can deal with it in a timely way.

I think I will just read the explanatory note, as Members probably have not had a chance to read that. Part of the problem, also, has been that this policy letter is a sort of iterative thing. This
2160 policy letter refers to a policy letter that was brought in 2011, which in turn refers to a UK Act that was passed in 2003. So there has been so much kind of digging back through the layers and I think actually the way in which this policy has been brought, I understand, I think it is completely legitimate and right that the Committee *for* Home Affairs has brought these updates to the Assembly's attention, that is great.

2165 But I have to say that, from our point of view, we were not the Assembly that debated this policy and it does shine a light on Deputy Merrett's favourite subject that this policy has taken the best part of a decade between being approved and legislation being drafted. That is way too long and one of the reasons that Deputy Tooley and I have chosen this format for raising these issues is because we are keen that the legislation is not held up and so we are keen that it can progress
2170 because, frankly, we have been waiting far too long.

Just to run through the explanatory note:

It is proposed that consent is defined in our Sexual Offences Legislation as per the UK's Sexual Offences Act 2003. Here is an excerpt from the 2011 policy letter that summarises that definition:

The 2003 Act contains an objective approach as stated in these offences: a defendant is guilty if he "does not reasonably believe" that the complainant consents. Section 74 defines "consent" as where a person "agrees by choice" and "has the freedom and capacity to make that choice" (s. 74). In addition, it has set out the situations in which there is an evidential presumption that consent was not given (which the defendant can seek to rebut: s.75) or conclusive presumption that it was not given (which cannot be rebutted: s.76). The evidential presumptions include where a person submits because of violence or fear of immediate violence against themselves or another, where a person is asleep or otherwise unconscious, and where a person submits because they are being unlawfully detained. The conclusive presumptions are where a person was deceived as to the purpose or nature of the act and where the person was deceived as to the identity of the person.

So:

Consent under this definition can therefore depend on a subjective interpretation of what constitutes a reasonable belief on the part of the defendant. This has led to situations, for example, where silence and/or non-resistance on the part of a claimant – both of which are common reactions to rape – have been wrongly construed as consent, distorting the very concept of sexual assault.

Other jurisdictions have moved to a model of affirmative consent, where consent is framed as positive, unambiguous, and voluntary. In Sweden, for example, people need to receive affirmative verbal or physical action demonstrating consent before initiating sexual contact. "Sex should be voluntary," the Swedish Prime Minister explained when the legislation was introduced. "If it is not voluntary, then it is illegal. If you are unsure, then refrain!"

Typically, models of affirmative consent assert that consent should apply at all times and during all phases of any act of sex, especially if different types of sex act are introduced. Consent can be withdrawn at any time, including during a sexual activity. Willingness should be clearly communicated.

And it finishes by stating:

The Istanbul Convention defines all non-consensual sex as rape.

2175 So I will also start out by saying that the UK Law, compared with other laws, it is not my area of expertise, this is just some research that I have done. It definitely seems to be better than many, but it is still problematic. Really, it comes down to this. Should it really be legally acceptable that a defence should rely on the lines of, 'She did not say no, so it was reasonable for me to believe that she consented' – that kind of emphasis?

2180 During the Capacity Law debate that we have just had, actually, there was a lot of focus, and rightly so, on the definition of reasonable and I think that ambiguity is what is at the very heart of the problem with the model of consent that is being proposed in this policy.

2185 So if we agree that sex should be by mutual consent then why do we sanction ambiguity? There is a really fantastic video, that I am sure Members could look up on YouTube if they have not seen it, which likens consent to a cup of tea, and if people have not seen it I really would recommend watching it. I think it is fantastic. It explains it in a way that people can really understand.

There is a reference in this amendment to a continuous series of sexual activities and Deputy Tooley and I wanted to explicitly include this because there are many situations where sex is consensual to begin with.

2190 Oh, I give way to Deputy Lester Queripel.

2195 **Deputy Lester Queripel:** Sir, I thank Deputy de Sausmarez for giving way. I do not have my iPad, I cannot access YouTube. I cannot see what Deputy de Sausmarez means by likening consent to having a cup of tea. So could she elaborate on that please so that I can understand clearly what she is referring to?

2200 **Deputy de Sausmarez:** This is where I need to call on my colleague, Deputy Hansmann Rouxel, to do the whole thing in interpretive dance. It is a cartoon that uses the analogy of a cup of tea for consent and so the general premise is that, if you are trying to establish whether someone would like a cup of tea, the kinds of cues that tell you that they would like a cup of tea, and the kinds of situations where it really is inappropriate to be pouring a cup of tea down their

throat, for example. It really is a fantastic video and I think it explains some of the issues around consent very well.

2205 So, to continue, we have included this reference to a continuous series of sexual activities because it is clear that there are many situations that have been brought to light where sex is consensual to begin with and that is fine, it is clearly an act of mutual consent, but as things progress, consent is not necessarily sustained, and that is a real issue.

2210 There are some really worrying trends around this and actually it ties in with something that a campaign group called We Can't Consent to This focuses on and that is the issue of rough sex being used as mitigation, effectively. I am just going to quote a little bit from what they say:

Recent cases of women killed in claimed rough sex have been getting a lot of press attention ...

I think this was released around the time of the Grace Millane tragedy, who was the British graduate killed in New Zealand in 2008.

... but this is not a recent problem. We found 62 people in the UK who have been killed in claimed 'sex gone wrong' and many more injured. All the suspects in these killings and injuries were male, 57 of those killed were female and five were male.

2215 So it is clear from that it is not a problem exclusive to women, but it does affect them disproportionately.

Many of the accused men were previously abusive to their partners or had convictions for serious violence. A third of the dead women just met their killers that day; two thirds of dead women were strangled. Deaths and injuries of women claimed rough sex were two a year in 1996. In 2016, there were 20 women killed or injured.

These are UK statistics just gathered by this particular campaign group.

The Law should be clear but to claim sex games gone wrong gives a chance of a lesser charge, a lighter sentence or a death not being investigated as a crime at all.

2220 They cite a case study, which was a man was cleared of a '50 shades assault', as it is known, of his partner. She had at first consented to sex involving some pain, but he chained her and whipped her. It is terrible to have to go into detail. She texted a friend to call the Police. He was found not guilty. He was jailed the next year for ABH of his new partner and that was his seventh conviction for domestic violence and abuse.

2225 So this campaign group says that the Law should be clear. You cannot consent to serious injury or death. But if a man can claim the woman was injured accidentally, as a consensual act, he may see the following outcomes: that he is believed and they charge as assault, the prosecution pursue a manslaughter charge, mitigation in sentencing – i.e. no intent to kill, extreme sexual violence is not treated as an aggravating factor in sentencing, the jury find him not guilty of murder and guilty of manslaughter, or found not guilty of all charges, all charges are dropped. It goes on to say:

Notably two young women killed recently were said in court to have not consented to being strangled or choked. Despite this, the men who killed them were convicted of manslaughter.

2230 So, obviously, it is not all about consenting. Consent would not necessarily stop these cases, but it is our belief, those of us who are bringing this amendment, that a model of affirmative consent would help. The way we frame consent in Law shapes our cultural attitude towards consent and that in turn is going to have a material impact on people's lives.

2235 So this amendment asks for the concept to be investigated and reported back on. We are not asking this Assembly to make policy on the hoof. We are asking for this very serious issue to be investigated. We know there are jurisdictions, increasing numbers of them, that are using this approach, because it does reduce the ambiguity. So we are not asking Members to make a rushed

decision now, but we do actually think it is an area where we have an opportunity to make our Law clearer and, I think, better.

Thank you.

2240

The Deputy Bailiff: Deputy Tooley, do you formally second the amendment?

Deputy Tooley: I do, sir.

2245

The Deputy Bailiff: Deputy Leadbeater.

Deputy Leadbeater: Thank you, sir.

Deputy de Sausmarez opened with saying that sex is awkward to talk about on the floor of the Assembly but I find this amendment and the other one is going to be impossible for us to debate properly because, as a Committee, we have not had chance to discuss this with our officers. The early advice we get from the officers is they should be opposed, both of them, because they complicate matters and go beyond the tried and tested legislation on which the proposed Law is based.

2250

So even a 10-minute recess would have given us nothing. We need to sit as a Committee, with our officers, and discuss this properly before we can form an opinion and we certainly have not got the time in the Assembly today, sir.

2255

The Deputy Bailiff: Deputy Gollop.

2260

Deputy Gollop: Sir, in many ways I am not a great believer in following officer advice, because I think that raises the point of what are you doing as a parliamentarian or as a Member of the Assembly? I often think we would have a better Assembly, in some ways, if you the Deputy Bailiff, sir, were able to dismiss all the elected Deputies and just appoint chief officers and professionals. Because it would be a more learned Assembly and it would be perhaps a more eloquent Assembly, perhaps. But it would not be a democratic Assembly, it would be more like somewhere in Hong Kong or somewhere like that.

2265

I think the point is we have to sometimes work on our feet. We have got things a bit back to front, as an Assembly, as well. Not only, as Deputy Merrett and others have pointed out, are we a bit slow at legislation and reform, but what is the big debate this month? Some would say it is the sea wall, but for most people it is yet another debate on the education model that we have already had umpteen debates on.

2270

But the education model is vitally important for thousands of people and our future. At its rawest it is about discussing the locating of two or three or whatever secondary schools. That would be done by local authorities or other bodies in the UK. This legislation is at the highest level of what we do.

2275

The capacity legislation is primary legislation. This is primary legislation. Again, we actually come back to the word capacity here. I think in this context, I know there have been issues raised in the past by one distinguished former States' Member about the capacity of elderly people with Alzheimer's, for example, to necessarily give consent. It is an issue that has maybe led to a lack of safeguarding. And people have other kinds of disabilities. But capacity here might refer to people who have been completely unfairly and wrongly given drugs or other inducements.

2280

I actually support in principle the work Deputy de Sausmarez and Deputy Tooley are doing here. I think there is a debate about what consent means in the 21st Century in the third decade. I think there are other models we can look at. I am sure Deputy Leadbeater is absolutely on the button when he says the professional advice the Committee have had would want a lot of time and consideration to look at this on case law in the UK, case law elsewhere, and the ramifications of it.

2285

2290 We have been fortunate, I think, that our authorities have prosecuted cases where there have
been rapes and alleged rapes, but sometimes people are found innocent. Perhaps they are
innocent. Sometimes they are found guilty. But I think like many other jurisdictions, there has
been a tendency for arrest rates, based upon initial information to the law authorities, to be
comparatively low, and conviction rates to be even lower. And that is a point of concern across
the British Isles, not specific to the Channel Islands.

2295 As this amendment does not call for an instant decision to be made today on this important
matter, but basically puts it as a priority for a report back to the States within, effectively, a year, I
think we should bear that in mind and see it as an instruction, not just to this Committee *for*
Home Affairs, but its successor Committee from next June.

2300 So, within that context, even though we perhaps could argue about what constitutes consent
in every situation, I think we should support the principles outlined today. At least get the debate
going and consult all relevant stakeholders.

The Deputy Bailiff: Deputy Ferbrache.

2305 **Deputy Ferbrache:** Let me preface my remarks by saying I am going to support this
amendment and, if it is tabled, I will support the next one. But I do think that Deputy de
Sausmarez and Deputy Leadbeater both protest too much. Deputy de Sausmarez could have
brought this amendment well before today, so we should have considered. The fact that we could
not get it done before lunch time before we had to take legal advice, they could have taken that
legal advice before. So it has been sprung upon us.

2310 But Deputy Leadbeater saying, 'We have not had time to consider it as a Committee, we might
want to oppose it', I do not know why. Because, although we are a separate jurisdiction, we would
not want to think that our behaviour in such matters should be any different from people in
England, people in Wales – although people in England and indeed people in Wales are different
to us Guernsey people. But we should not think there is any difference in relation to that
behaviour. So I have no objection to that, the points raised by –
2315 I give way to Deputy Leadbeater.

Deputy Leadbeater: Sir, I thank Deputy Ferbrache for giving way. I would just like to clarify the
initial advice from the officers was to oppose these amendments. I have not said if I am going to
oppose these amendments yet.
2320

Deputy Ferbrache: Well I have dealt with Law Officers over many years and I have disagreed
with them on many occasions and I will on this occasion. In relation to it, I am probably the only
advocate in Guernsey that has spent some years in England prosecuting people for sexual
offences, albeit under different legislation, and spent many years defending people charged with
serious offences in Guernsey. He was the only one that voted for it, but I commend him, Deputy
Smithies last time said, on the previous amendment, consider the individual who is charged.
2325

Guernsey is a very conservative place when it comes to most things and they want people not
quite hanged and flogged, but they want them prosecuted with the full vigour of the Law. Until it
is their brother, until it is their father, until it is their husband, until it is their best friend and then
the Police turn from being holier-than-thou to being the devil incarnate. I have had that
experience so many times, and it is not limited to people from a particular social class. It can be
the Hampstead socialist, that we have some Members of the States here that are of that type, and
it can be the people from Charrot rie, and we have people in the States from that type.
2330

2335 So in relation to all of that, we have that. So bear in mind civil liberties. It works both ways. I do
not understand, because England has conducted, over a period of time, a significant review of its
sexual offences legislation, why did we have to do something particularly different in Guernsey?
Why could we not have enacted all of these in a much more timely basis and called it a Bailiwick

2340 Law rather than an English Law? Because in matters such as these it is not part of our code, it is not part of our customary law, it is something we can do.

But we have also got to bear in mind this: when we do it and it really does anger me – I am not saying this is that, by the way – we bring in pro-prosecution legislation in criminal matters before the States and we sometimes and often forget the rights of the accused. Deputy Gollop just said yes to that.

2345 But I do not recollect anybody, over the past years, for example, saying under the English legislation, and it is still our legislation, there used to be a provision that if you believed somebody was below a certain age when you had sexual intercourse with them and they consented, that you had a defence if you were aged up to the age of 24, but you did not have a defence if you were aged about 24. How ludicrous. So, if you were 23 years and 365 days you had a defence. You had
2350 to establish it. If you were 24 years and one day, it was an absolute offence.

Now think about that. That is bonkers. That is completely unfair. So in the English sexual offences legislation, they changed that. It is a matter of looking at the overall circumstance. Why do we not do that? We have got appeals laws, as regards if you are convicted of an offence, whether it is in the Magistrates' Court or the Royal Court, but I warn you they are an abomination
2355 in the 21st Century. No States' Member, no Law Officer, no judicial officer has recommended over the years that they be changed.

In England they got rid of the standards that we have to address in relation to any appeal on a question of fact, in 1968. We decide we are still happy with that. It is an abomination. It is contrary to any kind of justice. So let us have a balance. These amendments are good, I will vote in favour
2360 of them, because it gives a year to consider them. But if we are going to consider them and if the Home Affairs or its successors are people that want to look at things in the round, and I believe that they are and will do, and the Law Officers are the same, let us look at these other things.

We have had ample time – not we, the States of Guernsey – to bring in legislation a few years ago, because magistrates did not like being called magistrates, they wanted to be called Judges of the Magistrates' Court. An abomination, a ridiculous waste of States' time. Let us do something
2365 productive.

The Deputy Bailiff: Deputy Fallaize.

2370 **Deputy Fallaize:** Thank you, sir.

What Deputy Ferbrache is saying really is that there is a lot of scope for us to develop justice policies, but I think the States are in their infancy in doing that. These things have tended to be tackled in a very piecemeal way. I would say to Deputy Ferbrache that what comes with a Government or a Legislature that is more interested in justice policy is possibly some of the things
2375 which he has in the past resisted.

For example, sentencing guidelines, which I have spoken about previously. If you get legislatures and governments involved in that kind of thing then probably Guernsey is going to end up with an approach to justice policy that is more consistent. I do not mean that the policies will be the same, but the general approach might be more similar to the way justice policy tends
2380 to be dealt with elsewhere. Typically in Guernsey, the legislature has been much less interested in it than other legislatures have been, unhappily I think. But it would be interesting to see how that would develop.

Now I agreed with the first few points that Deputy Ferbrache, I was going to refer to him as the Charrot rie socialist, made in his speech, both about the laying of the amendment and the Committee's response. I support the amendment and the ante-penultimate paragraph in the explanatory note – explanatory notes are very rarely helpful; this one is probably a little bit more
2385 helpful than they normally are – I agree with the point that is made about Sweden. It says:

In Sweden, for example, people need to receive affirmative verbal or physical action demonstrating consent before initiating sexual contact. "Sex should be voluntary," the Swedish Prime Minister explained when the legislation was introduced. "If it is not voluntary, then it is illegal. If you are unsure, then refrain!"

2390 That kind of sums up the legislative approach I think we should adopt, in the fullness of time. What I think it would be useful to know, and I do not know whether Deputy Lowe is going to be able to advise the States on this or whether possibly H.M. Comptroller could, is whether, if this amendment is adopted he or she could envisage circumstances in which a change of Law in this area could actually have a practical effect in terms of changing cases that come before the Courts or the actions of the Courts.

2395 What is encapsulated in the amendment really is a kind of belief. I share it but I would be interested in knowing, even if in principle, could Deputy Lowe or H.M. Comptroller, envisage circumstances in which the Law could actually be changed in a practical way, which would change the application of the Law by the policy or by the courts?

2400 Because, if not, then we are just having a very kind of interesting but philosophical and pointless debate. But if those parties can envisage some change in the way the Law is applied by the Police or by the courts then I would enthusiastically vote in favour of this amendment and hope that it would lead to some material change in the Law when the Committee *for* Home Affairs comes back with their report in due course.

2405 **The Deputy Bailiff:** Deputy Merrett.

Deputy Merrett: Thank you, sir.

2410 I will be quite brief. Obviously, well not obviously, but I will commend what Deputy Ferbrache has said and I agree with him wholeheartedly with his very good points. I really wanted to ask the President of Home Affairs, has Home Affairs considered this? Is there any assurance that, actually, when they bring forward this green paper for the justice policy that actually they have shown consideration to this, that it has been part of the deliberations so far to date?

As far as I am aware, and I stand to be corrected, a Member cannot amend a green paper. So when the green paper comes before us we can deliberate and debate it, but we cannot actually give –

2415 I will give way to Deputy Leadbeater.

Deputy Leadbeater: Sir, I thank Deputy Merrett for giving way.

2420 The question that Deputy Fallaize asked previously about how this would pan out and, I think, Deputy Lowe confirmed that there will be a green paper that is for debate but then there will follow a policy letter with recommendations from the Committee, probably a series of policy letters, who knows? Certainly these kinds of things have been debated and discussed at a Committee level and I assume the next Committee that will bring the policy letter to the States will be highlighting and including issues like this as part of the recommendations.

2425 **Deputy Merrett:** So I think, if I can continue, because Members cannot amend a green paper, we could have a debate in due course and deliberations in due course, but as we cannot amend it there will not be a States' Resolution to say this is something we want you to look at and certainly want to direct you to do.

2430 I am just trying to stick to the amendment. I think I am, sir, sticking to the amendment. There were gaps in the policy paper which I think this amendment tries to help fill. I think I am sticking to the amendment still. Therefore I commend this amendment to the States. I intend voting for it and I commend my two colleagues for working under intense pressure at the moment and within a very tight timeframe, and I was a little bit concerned and was making signals to one of the Deputies, saying, 'When am I going to see this?', because I was concerned that it would not be submitted even in time to debate today.

2435 If I am correct, sir, that you cannot amend a green paper, I am more comfortable with directing this now, whether it is the current Committee or whoever it is, to come back and to take this into consideration. So I commend this amendment to the States, and I thank the two Deputies for bringing it forward.

2440 **The Deputy Bailiff:** Deputy Tooley.

Deputy Tooley: Thank you, sir.

I am going to be brief because I will try not to stray onto the other amendment or indeed into general debate. I just wanted to say something briefly about timing, which is, yes, there are aspects to which Deputy Ferbrache's comment about how this potentially could have been brought sooner, might have some weight to them. When we first read the policy letter I think Deputy de Sausmarez and I both thought, 'Gosh there are lots of things in here that we would really like to see addressed, and so on.' But time has a habit of filling itself up. We all know what has filled up a great deal of the time recently.

2450 I spent last week at a conference of the Commonwealth Women Parliamentarians for the British Isles and Mediterranean region, where we spoke at some length about issues and legal policy, which is affecting women disproportionately to men, and the way in which it is affecting women.

2455 That brought me home thinking there are lots of things in here that we need to address. There are lots of things we need to do something about. Literally, over a conversation last night, which I believe began during pancake eating time and then continued through the evening and into the small hours, these amendments began to form themselves in the form in which you see them.

2460 They are not brought the way we would have probably brought them. They are brought in a way that we felt it was possible to insert them at what we accept is quite a late point. But there are various things that, given time, we would have wanted to look in more detail at. The two things I want to say, on from that are: one, to make very clear yet again that what this amendment is asking is that we make the decision of this Assembly clear that we would like these things reviewed and considered, ahead of being brought back to the Assembly in approximately a year. And the other thing is to just read, very briefly, something about what might be the effect of this.

2465 So a move to a model of affirmative consent, if that is what is advised and what the States decides at some point in the future, when there has been time to properly consider this, will not shift the burden of proof. But it will strengthen the burden of explanation. Perpetrators will have to be able to explain how they checked that the other person wanted to voluntarily participate in sexual activity. They should be able to point to verbal and physical cues.

2470 The reason the law was changed in Sweden was after the backlash surrounding a case, which occurred in 2013, which I will not describe in much detail at all, but a defence was given that a teenager's refusal could reasonably be assumed to have been shyness and, although on appeal, the three men who were later found guilty were convicted, they were initially found not guilty on the basis that she might have chosen not to open her legs because she was shy.

2475 We genuinely believe that this legislation, this Government, this States, this Island, should be at least considering a move to a model of affirmative consent and that is all this amendment is asking for.

Thank you, sir.

2480 **The Deputy Bailiff:** Deputy Brehaut.

Deputy Brehaut: Thank you very much, sir.

Can I just say, with regard to late amendments, I do not really think it is an adequate defence, if you are opposing something? I have been on my feet proposing and summing up and had amendments put under my nose, so it is not uncommon, especially with the workload that we have had, to get late amendments.

But in the wording of the amendment:

To direct the Committee for Home Affairs, as part of its ongoing review of justice policy, to consider ...

Sorry? Does somebody else want me to give way? No.

... how consent might be defined as an affirmative action (not simply a passive belief in the absence of explicit dissent) in the context of a single sexual act ...

2490 The question is for Home Affairs Members, is that a fair and reasonable request? It would be interesting if they believe that it is essentially the right thing to do. I am sure all of us believe this is the right direction, it is the right thing to do. If Home Affairs are opposing the timing only and advice they have had is not sympathetic to this amendment, that is all well and good and those are common arguments against amendments. But I would like to hear from them individually, as to where they sit on this amendment, and if they did not have the restraints they are under at the moment, whether they would support it in principle anyway.

2495

The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: Sir, I think the question of sexual offences legislation is immensely complicated and the question of consent as a sub-sect of that topic is a complicated topic on its own. I think that is probably one of the reasons why it has taken the best part of eight years to move from the policy letter to the legislation, which is expected before the end of this term.

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I think the previous Home Department, followed by the Committee *for* Home Affairs, have taken their time to take the English legislation and seek to move it on in the context of Guernsey's requirements and that is, I think, to be welcomed. This is a topic on which I have engaged with the Committee and indeed the legal draftsmen and it is something that I will speak at, at some length, when it does come back to the Assembly as legislation at that time.

2505

Again, like others, obviously this amendment has come at relatively short notice and therefore I am not in a position to do that, unprepared, today. But the observations I would make is that I think that the Justice Review is a very big beast. To which it goes far broader than just criminal justice and I think probably the attempt by a number of Members to graft onto the Justice Review a number of wider criminal law issues perhaps does highlight the absence that we have in our system, for criminal law review and I think that probably echoes Deputy Fallaize's comments about the nascent development that we have in being able to look at these areas.

2510

So I think my instincts share a caution around seeking to graft something else onto the Justice Review. But I think, like Deputy Inder in relation to the previous amendment that was passed, I think I can understand why those moving this amendment would want to have this issue turned into a Resolution to ensure that it is progressed and it is at least thought about in a serious way, with the support of the Assembly, by turning it into a Resolution. It is, opportunistic was the word I think Deputy de Sausmarez used when she presented the amendment, in terms of her borrowing the language from Deputy Inder's amendment. I think that makes a lot of sense.

2515

2520

This is an incredibly important topic and it is certainly one that I think is well worth further investigation through this process. Deputy Fallaize asked a question about what practical impact it would have and I do not know whether the Comptroller or Deputy Lowe will comment on that but my comment would be and Deputy Ferbrache, as an experienced criminal law advocate, did not seek to comment on, my expectation would be that seeking to amend the Law to reflect this policy objective would change, potentially, the evidential burden and it would therefore change the way in which complaints were investigated by the Police.

2525

But I would also go on to add, and something that I again will perhaps speak at later in the Assembly when legislation is presented, this whole topic goes far beyond the criminal law. It is much more, if you think about the number of offences that are ever reported, far less those that are ever investigated, far less those that are ever prosecuted and far less those that are ever convicted, then you realise that actually this is a challenge for us as a community, in terms of culture, and I think that actually developing an understanding of consent, which is more akin to this as presented in this way, will be, as much as anything else, about changing cultural expectations than actually changing the way a particular complaint is investigated.

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2535

I hope Deputy Fallaize will agree the objective of this amendment goes far beyond merely amending a piece of criminal law, but actually it is with a far bigger objective in mind. Certainly

2540 that is the reason that I will be very willing to support this amendment and thank those bringing it.

The Deputy Bailiff: Mr Comptroller, another interesting question for you, if you are minded to try and answer it?

2545 **The Comptroller:** It is a question I really was not prepared for at all, and at quite late notice of this amendment as it stands. What I would say is that I think the words of the Swedish Prime Minister, sex should be voluntary, I think the Law of Guernsey is designed to ensure that that is indeed the case.

2550 But I do not think I can comment very much further because I am not familiar with the law of Sweden. I do not think I am qualified to practice in Sweden or express a view on it. So I do not intend to express a view. It is a matter, I think, for the States. What I would be concerned about would be a knee-jerk amendment to legislation or to criminal justice policy. That I would be very concerned about. I do not think this is what this amendment seeks to do. I am not intending to comment any further.

2555 **The Deputy Bailiff:** As I understood Deputy Fallaize's question, effectively it was will this achieve something if it is looked at and will it lead to a substantive change in the Law so that the aspect of proof in an offence involving sexual activity might be dealt with differently. That was effectively the question. Would you agree with that, because I think it is likely that that is the case, is it not?

2560

The Comptroller: I think there would have to be an amendment to legislation.

2565 **The Deputy Bailiff:** It will not change until they have looked at it and they come back, but if they were to propose a change so that there were affirmative actions, rather than the existing Guernsey Law on consent, would it make a difference to how offences are dealt with? It seems likely that it would a little bit, at least. I think that is all he was asking.

2570 **The Comptroller:** In what way? Are we talking about the investigation, the prosecution, decision to prosecute?

The Deputy Bailiff: In just terms of how you piece together an offence.

2575 **The Comptroller:** If the recommendation was to adopt something along these lines and it was accepted by the States, I think yes it would.

The Deputy Bailiff: That is the answer. Thank you.

2580 **The Comptroller:** I am sorry if that took some time. It is quite a difficult area of the law to deal with and I am simply not familiar with Scandinavian practices and law in relation to this area.

2585 **The Deputy Bailiff:** Going to Ikea does not mean you are an expert on Swedish law, I accept that, Mr Comptroller! Thank you for your assistance. Nobody else is rising, so I will turn to Deputy Lowe, as the President for the Committee, if she is minded to say anything in the debate.

Deputy Lowe: Yes, thank you, sir.

I will pick up some of the points that have actually been raised but I think there is a prime example with the advice that has been sought from H.M. Comptroller that it is not that straight forward and indeed Deputy St Pier, who was the last speaker, has acknowledged it is complicated.

2590 I thank Deputy St Pier because he has worked with the Home Affairs for the last three weeks,
both with setting out what it is he would like to achieve, making it very clear he wanted this policy
letter to go through, so he did not want to amend it, he wanted to work with us. He has worked
with the legal team and he is coming in to meet with the Committee, with the legal team and the
staff, to be able to assist to see what we can do to accommodate what Deputy St Pier is trying to
2595 achieve with this legislation.

I just go to Deputy de Sausmarez because she has covered a few things in her speech and I
think the first thing for me is that I would want reassurance from Deputy de Sausmarez that part
of her amendment is in no way going to prohibit the legislation that we are hoping to bring
forward this side of the States, to hold it up for going away and revisiting, because that would be
2600 an absolute disaster and we would not be too chuffed about that at all because this has been
outstanding for some time. So, providing you can give assurances that your amendment is not
going to get in the way of that, and that we will still be able to bring that forward, I do not see
where the objections can be against what you are trying to achieve.

But also we have to put a marker out that although you are trying to achieve, from your
2605 amendment, to have us look at those things, I ask that you still come in and see us. We need to
understand what it is you are trying to achieve because these things are not that straight forward
and we want to know whether you are talking about either theoretically or whether practically,
especially on the consent notion as well. So we do need to understand what you are trying to
achieve and that will save time, as well, and save you doing another amendment when the
2610 legislation comes through.

We have gone out to consultation. We went out to consultation previously and in fact I notice
that your seconder is Deputy Tooley, it went to Health and we asked for the consultation, we
asked if you wanted any changes to the Report that you have got in front of you today and Health
came back and did not look for anything. This was in March 2018, so you do not need a last-
2615 minute one, you have had plenty of time to be able to come up and bring something forward.

I am happy to give way to you Deputy Tooley.

Deputy Tooley: Thank you, Deputy Lowe.

2620 As Deputy Lowe has just pointed out, that policy letter came to Health & Social Care in March
2018. There has been a lot of water under the bridge since then and many cases brought to the
attention, through the media, of incidents, which may have been different had the law in other
places been shaped differently.

Deputy Lowe: Thank you, Deputy Tooley.

2625 Again, that was one of the reasons why it is better to have come and spoken to us, as things
have happened, so we can see what we are trying to do with the legislation and you might not
have had to wait. It could be included in the current legislation that we are hoping to bring. So
there might not have been a delay, which will now happen, if you had actually engaged with us.
That went out to many people. Not only Health, it went out to Employment & Social Security, it
2630 went to the Bailiwick of Guernsey Bar Convenor and many more. So the letter did go out to you
all.

Deputy de Sausmarez has also mentioned consent quite a bit and about the harm, with
consent. But it should be recalled that the SOA, 2003, in the draft Law, includes the following:

Penetration is a continuing act, from entry to withdrawal.

2635 This point is therefore covered. So consent to receiving harm is a completely different nature
and, again, that is the thing we are actually saying to you, we need to talk to you, you need to
come and speak to us. What one thing might mean to somebody does not mean to somebody
else. So please engage with us, come and see us.

I think Deputy Fallaize's question has now been sorted. Deputy Merrett asked a question about
can she amend – she cannot amend the report that is coming forward and I have mentioned that

2640 before and my Vice-President stood up and did that. But the point being is that the report that will be coming on the Justice Review is for us to listen to what States' Members are actually looking for.

2645 So that is your opportunity, or anybody's opportunity, to say, 'I would like this considered,' because the Report will actually say 'to note' and to 'direct the Committee to go back and report back' and bring back proposals on the development of justice policy. So if there is something really burning, that you really want to get involved with that, that is the time to do it. Home Affairs will be listening and then it will be part of the next report, which is what I explained to Deputy Fallaize just before.

2650 Again, when that report comes back, if there is still something you are not happy with, you have still got the opportunity to engage with Home Affairs and you have also got that opportunity to place an amendment if it was something else you wanted to actually do.

2655 So I do not think, sir, there is anything else that I can actually add. As I say, if I can get that assurance from Deputy de Sausmarez, and she is nodding quite happily that that is the case, she is not going to hold us up, I cannot see any problem in going ahead with this amendment, but she must be fully aware that by engaging with us we will understand what it is she is trying to achieve and it might not be that it is going to be that straight forward, but we will try and do what we can, if you will come and meet with us, please.

2660 **The Deputy Bailiff:** I invite Deputy de Sausmarez, as the proposer of the amendment, to reply to the debate.

Deputy de Sausmarez: Thank you, sir.

2665 I will start by addressing Deputy Lowe's questions and I can absolutely assure her, categorically, that the reason Deputy Tooley and I decided to bring this amendment in this rather ill-fitting format was precisely so that we did not hold up legislation. That was a key concern of ours. So, yes, I would also say I would ordinarily, as Deputy Lowe knows, I am not shy in coming forward, and when I have questions I do get in touch and I always get in touch with committees first. I do not go through formal Questions, or the media or anything like that. I do not want to suggest Deputy Lowe is a horse, but I do go to the horse's mouth when I have a question and that is how I operate.

2670 I have not seen the legislation. I have not been in the position that Deputy St Pier and others have in seeing the legislation two years ago, so I did not get that opportunity, and I will be completely transparent and say that the way that I tend to approach Billets is that, when policy letters are published, I read them through, and then I read them through again before the debate.

2675 Unfortunately, because this States' meeting agenda has been busier than we were anticipating, I did not get around to going through that detailed reach, which did involve lots of digging back through layers, so digging back through to the 2011 policy letter, and digging through the Sexual Offences Act, 2003, which was not something I was very familiar with, until later than I would have liked.

2680 So I can only apologise that I did not have the opportunity. But it is not for want of trying and I am very keen to take Deputy Lowe up on the offer of talking with the Committee and setting out exactly some of the issues that we would like them to begin to ...

2685 So I accept that the mechanism is not ideal, and I accept that the timing is not ideal. But, as has been agreed, I think, in the Chamber, we are not asking Members to make a policy decision on the hoof. If Home Affairs ultimately decide that this is not something that Guernsey should be adopting, and they have plenty of time to make that case and bring forward that recommendation, I look forward to engaging constructively with the Committee in the event that this is, as I hope it will be, passed.

2690 I think Deputy St Pier touched on the nub of the issue, really, which is that how we frame our laws around consent, shapes our cultural attitudes and expectations. As Deputy Gollop said, it is a

very high-level thing and it is important. So I very much hope that the Committee *for* Home Affairs will take the opportunity to look into it.

2695 To quickly address Deputy Fallaize's question, I think the simple thing from my point of view – I am no legal expert – but I think a good place to start would be to look at places where this model of consent has been introduced and see what changes it has brought about. That would seem to me to be the most obvious approach. So I hope this will find support in the Assembly. I hope people will support it, thank you.

2700 **Deputy Gollop:** A recorded vote, please, sir.

The Deputy Bailiff: Yes, Deputy Gollop. So this is the amendment, which is simply to insert another Proposition, which will now be numbered four, if carried, proposed by Deputy de Sausmarez, seconded by Deputy Tooley, and there is a request for a recorded vote, please, Deputy Greffier.

There was a recorded vote.

Carried – Pour 34, Contre 0, Ne vote pas 0, Absent 5

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

2705 **The Deputy Bailiff:** Well, Members of the States, that amendment was clearly carried and there will now be a fourth Proposition, when you come to general debate. There voted in favour 34 and there were five absentees and therefore the amendment was duly carried.

Amendment 3.

To insert a new Proposition 3, as follows:

"3. To direct the Committee for Home Affairs, as part of its ongoing review of justice policy, to consider whether the definition of extreme pornographic images as set out in section 3.6.1 and referred to in Proposition 1(iv) should be amended as 'those which portray in an explicit and realistic way acts which could threaten or take a person's life or might result in serious injury, acts which include sexual interference with a corpse, acts of sexual intercourse with an animal, and "rape porn" showing non-consensual sexual penetration of a person's vagina, anus or mouth by another person's penis or another item,' or wording that captures that slightly broader definition, and report its findings to the States no later than 28th February 2021."

2710 **The Deputy Bailiff:** Deputy de Sausmarez, do you wish to move amendment 3 now?

Deputy de Sausmarez: Yes, please, sir, and at the risk of the Deputy Greffier never speaking to me again, can I please ask that it is read?

The Deputy Greffier read out the amendment

2715 **The Deputy Bailiff:** Thank you very much, Deputy Greffier.
Deputy de Sausmarez to speak to this third amendment.

Deputy de Sausmarez: My eternal gratitude to the Deputy Greffier for reading that out! Again, I have to start with apologies, along all the same lines, which I am sure the Chamber will appreciate, it is exactly the same reason in terms of why this is being brought so late and why the mechanism might not be the most appropriate mechanism.

2720 This was one, actually, where Deputy Tooley and I, this was the one that actually took the time, in terms of discussing with the Law Officers, because we thought at first that it might be quite a straight forward case of just amending the wording, where there could be a consequential change to the legislation, which I understand is in a fairly complete state already.

2725 But the Law Officers did advise that it would not be that simple and to do that would have held up the legislative process and Deputy Tooley and I are really keen not to hold that up. So that is why, again, we have used a slightly ill-fitting mechanism, to bring this issue to the attention of the Committee for Home Affairs and the States' Assembly.

2730 Really, in its most basic level, I know it seems like a very narrow and pedantic or semantic thing, but actually it is quite simply about looking into whether we should be quite so specific about what constitutes extreme pornographic images, because at the moment it relates to certain body parts. This is something that again has come out of many high profile cases and it seems to be – I am sorry this is anecdotal, there is some evidence but I am not going to stand here and quote it – this seems to be a growing trend. Whether that is a growing trend, just in terms of convictions, or whether it is a growing trend in terms of practice, I would not like to guess.

2735 There does seem to be a very strong correlation between acts of sexual violence in real life and related content of extreme pornographic imagery. I am just concerned that this definition is perhaps slightly too narrow, because it does not capture things like, and I am sorry to be graphic, like erotic asphyxiation – well it might not. I am worried that actually, by focussing so narrowly on certain parts of the body, it excludes other kinds of violent portrayal, violent acts during a portrayal of an erotic act.

2740 There is a strong correlation between this kind of imagery and real world harm and I just think, again, it is something that I would like the Committee for Home Affairs to investigate, to see whether it might be beneficial to adopt a slightly broader definition of extreme pornographic images.

2745 So I hope that is clear. It is difficult without going into graphic detail, which is not an easy thing to do in this context, to put much more detail on it than that, but at the heart of it, it really is my

2750 concern and the concern shared by Deputy Tooley that the current definition is perhaps a little narrow and perhaps excludes some things that we are beginning to see more and more of in recent trends. So I will leave it there.

The Deputy Bailiff: Deputy Tooley, do you formally second the amendment?

2755 **Deputy Tooley:** I do, sir.

The Deputy Bailiff: Nobody is rising in respect of this amendment? Deputy Gollop.

2760 **Deputy Gollop:** I support the amendment and, yes, it all gets quite graphic with the definition and I take on board Deputy de Sausmarez's point that it will not seek to alter the Sexual Offences Law, because actually the Legislation Select Committee Members, of which I am one, have already had a copy of one of the drafts and also the Capacity Law. So things are moving forward on many fronts.

2765 The only caveat I have is it comes back to something Deputy Smithies and Deputy Laurie Queripel and Deputy Ferbrache said: everything is about reasonableness and proportionality. Deputy Laurie Queripel and Deputy Smithies were perhaps the only slight dissenters from the successful Inder amendment earlier. The point is that, I think Deputy de Sausmarez has a very clear vision in her mind of what is totally offensive and what is unacceptable in our society or any other, but of course how far that goes to censorship of something that might be considered more of a drama, I do not know.

2770 I mean we can all see videos any day, every day, of people being killed. Is that a James Bond, is it news, is it acting? That is a parallel I am drawing. So I think we do have to look very carefully at what other jurisdictions are doing and understand the context because, I will make a confession here, amongst other things, I went to one of the screenings here of *Fifty Shades of Grey* at the Mallard Cinema. I do not think that would have been shown in the good old days of the Odeon or
2775 the Gaumont, perhaps when the Town Constable censored such entertainment or whatever. But what surprised me was that it was a full house of predominantly women who one would say were respectable ladies. There were far more women there than there were men.

2780 The point is *Fifty Shades of Grey* would be seen as 'vanilla or not' and that is a Hollywood piece. It is not what Deputy de Sausmarez is talking about. Nor is it included in the legislation. But my argument, and I do not wish H.M. Comptroller to necessarily to contribute at this point, is that defining what is acceptable and what is not is a difficult task for any Border Agency or Court and I think one has to bear that in mind.

2785 **The Deputy Bailiff:** I am going to turn next, then, to Deputy Lowe, as the President of the Committee, to see if she wishes to speak in the debate?

Deputy Lowe: Thank you, sir. I can only add what I said previously, please, and just get that reassurance that this will not hold up the legislation and that Deputy de Sausmarez come and speak with us please.

2790 **The Deputy Bailiff:** Therefore I invite the proposer of the amendment, Deputy de Sausmarez, to reply to the short debate if she wishes to.

Deputy de Sausmarez: Thank you, sir.

2795 Yes, I can again give Deputy Lowe that reassurance and I would be very happy to. I can also, hopefully, reassure Deputy Gollop that it is not about deciding what is acceptable, we are deciding what should be categorised as extreme. I think that is an important distinction because I am only concerned in what real world effects it might have. That is really what is driving this and so I hope, again, that the Assembly will support this.

2800 Thank you.

The Deputy Bailiff: Members of the States, we go to the vote on amendment 3, proposed by Deputy de Sausmarez, seconded by Deputy Tooley. Those in favour; those against.

Members voted Pour.

2805 **The Deputy Bailiff:** I declare that amendment duly carried. Can I simply say that what we will do is we will make amendment 2 Proposition 4, now, and amendment 3, Proposition 5, and we will move into general debate on the five Propositions.
Deputy Lester Queripel.

2810 **Deputy Lester Queripel:** Sir, thank you.
I rise to commend Deputy Lowe and her Committee for progressing this vital piece of work and also to commend Deputies de Sausmarez and Tooley for their input today. As we are told in paragraph 1.1, the purpose of this policy letter is to request further approval in relation to the draft Sexual Offences (Bailiwick of Guernsey) Law, 2020, and that during the drafting process, further offences have been proposed and changes have been made from the recommendations,
2815 which were originally approved on the basis of the Home Department policy letter of May 2011.
The last sentence of paragraph 3.1 echoes all of that by telling us that:

Further sexual offences have been introduced in England and Wales since the 2011 Policy Letter and it has therefore been necessary to examine whether they should also be included in the draft Law.

And then paragraph 3.2 tells us:

In preparing the draft Law it has therefore been necessary to be both cognisant of the issues that have arisen as a result of continuing societal changes and look at the amendments made to the 2003 Act since the drafting of the 2011 Policy Letter to ensure that these are appropriately captured in the draft Law.

2820 As we all know, sir, there are those out in our community who like nothing better than to take a pop at the States and unjustifiably criticise the States for not keeping up with the times. Of course, the reality is we do keep up with the times in most cases and here is a prime example of us doing just that.

Not just an example of our keeping up with the times, but also an example of a States' Committee being proactive. I say that because, if we look at paragraph 3.3.1 we are told in that paragraph:

As drafting has continued and after the consultation took place, the Committee has re-considered whether the fair labelling of offences should prevail over concerns for young complainants and now proposes that specific offences should be introduced in relation to complainants under 13.

2825 If we look at paragraph 3.4.1 we see that the Home Department, responsible for compiling and delivering the 2011 policy letter, did not see the need to propose that specific offences should be introduced where consensual sexual activity had taken place between an adult and a 16 or 17-year-old.

2830 But, on reflection, the Home Affairs Committee considers that current procedures are not sufficient to protect 16 or 17-year-old complainants and therefore proposes that offences are introduced in the Bailiwick.

2835 If we look at paragraph 3.5.1, we see that further consideration had been given to acts of grooming, after comments made by the Youth Commission, and that the offence relating to grooming, as set out in section 15 of the 2003 Act, only criminalises meeting a child after the grooming has actually taken place.

We also see that a further offence of sexual communication with a child was inserted into the 2003 Act, as section 15a, which came into force in England and Wales on 3rd April 2017. We are told that the draft Law therefore includes the new offence of sexual communication with a child at section 26.

2840 However, it was not felt that this would necessarily deal with all types of grooming and so the Committee considered legislation in other jurisdictions and, as a result of that, section 27 has now been included in the draft Law. So there is now a section in place, which does criminalise communication by a person over 18 but with a child under 16, or a person with responsibility for that child, with the intention of facilitating the child's engagement in or involvement with a sexual

2845 offence.

One final example of the Committee being proactive can be found at paragraph 3.6.2, where we are told:

The Committee has closely monitored the proposals in the British Islands in relation to extreme pornography (including "rape porn") and proposes that the possession of such materials should be prohibited at section 59.

2850 So there are more examples of the Committee being proactive in this policy letter. I have just read a handful. I have read them for the benefit of those listening to the debate on the radio, who may not be aware of just how proactive our Home Affairs Committee have been, whilst working on the sexual offences legislation.

I do have a question for Deputy Lowe, sir – a two-part question, in relation to the Common Travel Area Law, which allows sex offenders to travel freely between certain jurisdictions, including the Bailiwick. But before I ask the question, I feel it important to say that I realise Home Affairs issued a media release recently focussing on the CTA laws, but there was no specific mention of sex offenders in that release. Hence my asking my question.

2860 So first of all, is Deputy Lowe able to tell me please, if the CTA Law relating to sex offenders is still as robust as it was prior to Brexit? And is she able to give me an assurance that her Committee will keep a close eye on any attempts to relax the Law and, if necessary, react in the same proactive manner her Committee have displayed in their efforts to strengthen the sexual offences legislation that is in front of us today?

2865 I was talking to someone out in our community last week who said they felt this legislation was over the top. Their view is that we are relatively safe here on the Bailiwick and surely these sorts of things do not happen. I explained to this person in my capacity as a Deputy I have worked with people whose lives have been completely destroyed due to their being sexually abused. I have worked with families whose lives have been completely destroyed, because a member of the family has been sexually abused.

2870 I finished by saying I am sure I am not the only Deputy who has worked on cases where people have been sexually abused and their lives completely destroyed, which is why it is absolutely essential we have these deterrents in place. Because this is the real world and these sorts of things do happen here.

2875 I ended by saying that this is a good news story for the Bailiwick and the person I was talking to then said, 'I see what you mean.' I know that for some reason there is a real reluctance in this Assembly, as there was in the previous Assembly, and a reluctance in the media, to talk up good news stories. But I really hope everyone can see what I mean when I say this is a good news for the Bailiwick and I really hope everyone can see what I mean when I say the Committee *for* Home Affairs deserve credit for being so proactive, as of course do Deputies de Sausmarez and Tooley for their efforts today.

2880 Of course, with all the other items on the agenda to be debated, it would be easy for items like this to slip under the radar and go unnoticed by the media and by the community, because we know what everyone else is waiting for. They are waiting for another debate, the education debate.

2885 So I think it is really important to talk this up as much as possible because, after all, what is more important than protecting the people of the Bailiwick, especially our children, from sexual predators?

The Deputy Bailiff: Deputy Tooley.

Deputy Tooley: Thank you, sir.

2890 I will not speak at any great length, but I just wanted to mention a couple of things in relation to this. As I said earlier, I spent last week at a British Islands and Mediterranean Region Commonwealth Women Parliamentarians' Conference where much of the discussion that we held was around the way women, in particular, are treated in the judicial system when they are both the accused, the victim and so on.

2895 There was a statement that came out of that meeting that is relevant to this. It is quite short, so I will read that and then I want to say a little more. That statement is this, that the group:

... recognises the right of a woman to fair treatment in the criminal justice system, citing the treatment of an alleged gang rape victim in Cyprus and other cases across the region. We wish to add our voice to those international organisations in condemning the failure of systems to protect women. We are alarmed about the increasing cases of violence against women and femicides in different jurisdictions we represent, and we commend the mobilisation of women and men in support of the rights of victims.

We confirm our commitment to work with other organisations to protect women in the criminal justice system, through legislation, scrutiny and awareness-raising.

I wanted to read that because, actually, one of the things that we spent quite a lot of time discussing this week was around the fact that most of the jurisdictions which are represented in the BIMR region are pretty good at legislation and I would include us in that. We are pretty good at making sure we have legislation in place, which should protect the vulnerable, which should protect women, which should protect men who are vulnerable, which should protect children and so on. Obviously the very people who are covered by this policy letter before us.

2900 Where things often fall down is in the administration of that justice, either by the courts or by the Police or by the other authorities, health services, the other authorities that pick up victims of crimes such as this. We spent quite a lot of time discussing cases where, particularly women, but individuals who have been subject to violence, whether that is sexual violence or other violence, are further let down by the system.

I am mentioning this because this legislation going through is critical. It is absolutely critical that we get this through. But it is even more critical that the response to that is then that our police teams and our health teams and so on are skilled to deal with these issues in the right way and that we are resourced to enable them to be skilled to deal with these issues in that way.

2910 So I am absolutely supportive of this policy paper. Going through the 2011 policy paper, which led to this year – Deputy Lowe would like some more money please, sir! – going through the 2011 discussions that led to this and so on, there are other things that I would like to see us explore further. We did not have access in the timeframe we had, at least, to the legislation that has been drafted. So I am really looking forward to seeing that and I am really hoping that there will be the time for us to have proper conversations with Home Affairs in advance of that, about things that actually perhaps also need to be added.

2920 So there are places in here, reading through the 2011 policy letter, where boys are referenced in ways in which girls are not. So where we are talking about consensual – for want of a better word – sexual activity between two children who are legally below the age of consent, boys are referenced in a different way to girls and there are things that perhaps need to be dealt with.

2925 But I have not brought that today because, actually, it is entirely possible that that actually has already been dealt with through the legislative process. So I am really looking forward to seeing the other ways in which this has been updated in the gap between 2011 and 2019. So absolutely I am supportive of the policy letter, absolutely I am supportive of us looking and making sure that

it does exactly what we need it to do for the decade we are now in and the one we are going into and the ones on from there.

2930 But I just want to place a marker in the sand. We need to be absolutely certain that we are properly resourcing the forces who will administer this kind of justice to, for and on behalf of our people, because that has got to be critically important.

Thank you.

The Deputy Bailiff: Deputy Inder.

2935

Deputy Inder: Sir, just briefly. Clearly I am going to support the policy letter because it has got one of my amendments attached to it. I am grateful for the Home Affairs Department, who have got us to this point. The only thing I am going to talk about, briefly, and it is Deputy Tooley that has reminded me to get to me feet, is the role that the internet has in what clearly is some of the problems that society has experienced.

2940

There is enough research out there to show that the exposure to pornography makes men likely to be six-and-a-half times or seven times more sexually aggressive than they would have done normally. It talks about addiction. It does not take long for us to do a little bit of research and I will not bother going into all of it.

2945

It is all out there for people to see that the internet, for all the things it has done for society, it does teach, the internet does teach. But it teaches the good things and it teaches bad things as well. It has given us incredible resources, incredible facilities to share information but, unfortunately, a downside of it in the early days, if not still, pornography effectively has driven the internet as one of the greatest earners on the pages out there.

2950

So, just briefly back to what Deputy Tooley says, great to have the Law but I am afraid at some point not only do officers, possibly, need to be resourced and people ... there needs to be better resources, possibly, at Law Enforcement level. I would suggest there is a big piece of work that needs to be done at education level as well, not necessarily related particularly to Education, Sport & Culture, but generally, there needs to be a piece of work and it seems to be a little bit more sporadic. It is a conversation I do not think society in Guernsey is really having on the effect of pornography, and I can include gambling and general behaviours that the internet is having and affecting our children.

2955

It is not like when we were a kid. If that was your thing it was probably something that your older brother might have had somewhere. It is so damned ... pardon my language. The internet has given everything so much access nowadays, I would encourage and Deputy Tooley says leave a marker in the sand, at some point it is something that society I think needs to address, the problems that the internet is causing for our young children and people moving into their young adult years and – I am not picking on them – probably older people as well.

2960

Thank you.

2965

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: Sir, yes, I have been a supporting member, shall I say, of a group that has been looking into ways of tackling and supporting and publicising the issues of addiction to gambling, through the internet, as has another States' Member. We were recalling when the group started and I know Home Affairs have been very supportive of that group in terms of time and, to a degree, funds. I hope that continues.

2970

Likewise, I know the States as a whole have taken pride in being involved with the Safer Internet day that this year was expanded by the Digital Greenhouse and other parties to more of a digital awareness day and I think that is something that is also useful, because there were leading teachers and internet experts there who were pointing things out in a friendly way to families, along the lines Deputy Inder was talking about.

2975

2980 I still come back, though, to my earlier point I raised with Deputy de Sausmarez and others, that it is all very well and justifiable to ban extreme pornography, especially anything that would lead to any physical act of harm of any kind. But the issue is always defining what is pornography and what is extreme.

2985 It is like an elephant. You know if you see it, it is threatening a person's life or might result in serious injury to a person's private parts, and we can define or we have added, possibly, vagina to that for the future. But I think it does raise issues, to a degree I suppose, we are reliant on UK case law or maybe case law from other countries.

I wanted to bring, though, the States' attention to one or two slight anomalies in this. The first is the Propositions on the first page have a whole load of offences there, some of which are extremely serious and we would all support introducing them as quickly as possible, such as offences in relation to the possession of paedophile materials and child sex dolls, malicious disclosure, maybe upskirting, sexual communication.

Others are a little bit more ... for example we have here, under 1iii:

An offence of sexual communication with a child ...

When you actually turn to the paragraph, the paragraph actually reveals the phrase grooming and I think we have to be clear that we are talking, probably about both here. The specific process and behaviour that you could define as grooming and also inappropriate sexual communication.

2995 Perhaps the one offence where I think we are not as clear as we could be is the one Deputy Lester Queripel read to this Assembly in his opening, which I thought was pretty full, which was on page four, 3.4.1, abuse of position of trust. Now the then Department of Home Affairs, which was the one I believe the then minister Geoff Mahy was minister for:

... did not at the time propose that specific offences should be introduced where consensual sexual activity had taken place between an adult and a 16 or 17-year-old where that adult was in a position of trust ...

3000 Now we know all the issues, how a 16-year-old can vote, how a 16-year-old can get married in certain circumstances and give consent. But:

On reflection, the Committee considers that such procedures would be insufficient to adequately protect 16 or 17-year-old complainants ...

3005 I accept society moves on. This law has been in place in the UK for 20 years. As with all laws, and I do support many of the comments Deputy Fallaize made about the philosophy of justice, is the attempt here to change people's behaviour. Is it to reform society? Is it to punish? Is it to add extra cost to the judicial system? There are lots of issues with this. The abuse of position of trust came out of a strange set of circumstances involving an MP and the then government, which I think John Major led. It led, initially, to some difficult cases about dubious relationships between, let us say, a teacher and a teenage person.

3010 My point is, when you look at the wording in the policy letter, which is all we have to go on, on reflection the new Committee, 'considers that such procedures would be insufficient to adequately protect 16 or 17-year-old complainants'. I support that up to a point, but my argument is this: not only in the UK, they have the old argument of marriage being a defence, but the phrase complainant is used.

3015 That implies and we have already had many Members say there is an issue about people coming forward to complain and being perhaps frightened or alienated by the system. But it implies they have to be complainants. In the United Kingdom, people have been prosecuted where a third party has informed the authorities and the authorities have done an appropriate investigation and found there was a case to answer.

3020 The devil is in the detail and I support all of these measures with certain reservations to scrutinise them further when they come back in legalism form, legislation.

The Deputy Bailiff: Deputy Merrett.

Deputy Merrett: Thank you, sir.

3025 I found this policy paper quite difficult to read because, and I think Deputy Gollop referred to
this, it references not only different parts of the paper, which do seem to have, when you read into
it, different connotations to ... Proposition 1, 2, 3, etc. but also because it is referring to a 2011
policy paper, when I was not in the States at the time, so I do not recall that. It is a duty on
3030 Members to look at that policy paper and to try to cross reference with *Hansard* and try to come
to see what has happened. But, you know, it is a nine-year period and of course the world does
move on.

It was difficult to read not only from the emotive point of view because, clearly, there is some
very emotive content, when we discuss sexual offence legislation; particularly, for me, around 3.3,
which is the non-consensual offences against children under 13. I had lots of questions on that
3035 and I am very thankful, I wish to place on public record, that the Law Officers did take my
questions.

They were not questions of political opinion, they were questions on the interpretation of that
Law and how it would affect a 10-year-old, a 12-year-old and what the age of criminal liability
was, etc. So I wish to place on public record my thanks to the Law Officers because they did
3040 respond to me and, when I went back with further questions, they did come back to me before
debate and I do really appreciate that.

The bit I want to end on, sir, is that this is not just about having the ability to criminalise or
persecute members of our community, this, to me, says quite strongly that as a Government we
take this seriously, that this kind of behaviour is not acceptable and there will be the potential of
3045 prosecution and criminalisation, be that upskirting, for example, or be that other elements that
this policy paper contains.

But I was pleased to be nodding away when Deputy Inder was speaking. I do not want to
misquote him so I will use my own words, but I was agreeing with him. This is about educating
and understanding the effects of our behaviour, of one element of our behaviour on another, and
3050 the life-changing or challenging effects that can have.

That is why I was a bit concerned when Deputy Lester Queripel said it was life-destroying. It is
life-changing, it is life-challenging. When some of this happens, we as human beings have an
ability to evolve and adapt and when these things happen to members of our community, I would
prefer to use terminology of life-changing and life-challenging than life-destroying. Because I
3055 think, sometimes, people believe that if this has happened to them that their lives have been
destroyed and that is just a bit that ... I was a little bit uncomfortable with that terminology.

So I will have tedious repetition on this occasion, sir, and I will admit to it. I think what this
paper says is, as a Government we take this seriously and as a Government we care and that we
need to ensure that vulnerable members of our community, especially regarding this emotive
3060 issue of sexual offences, will be protected under the Law.

Before I stand, that is my other slight disconnect, because maybe this happens more often but
I am not aware of it, we have a policy paper before us today but the Law has already been drafted
and it has been to the Legislative Review Panel. That is my belief? (*Interjection*) It is coming to the
Legislative Review Panel (LRP) and what would have been helpful, for me anyway, and I think
3065 Deputy Tooley alluded to this, is that if it is in that final stage of drafting, I could have asked for it,
I admit that I did not, it would have been helpful for me to have seen that so that it could help
with my understanding of what is in this policy paper in line with that. That would have been really
helpful.

When I spoke to the amendment I said about gaps or holes in the policy paper, and what I was
3070 referring to was there is a lot of cross-referencing for Members to try to be able to come to an
informed, intelligence-based decision on this policy paper. So, with that, I think I was not as brief
as I would like to be –

I will give way to Deputy Lester Queripel.

Deputy Lester Queripel: I thank Deputy Merrett for giving way.

3075 Deputy Merrett picked me up for using terminology that she was not comfortable with. She said she would have preferred to hear the term 'life-changing'. Sir, I am not exaggerating when I say that the people I have worked with in this Island, who have been sexually abused, have told me and I have witnessed it, their lives have been destroyed. I am sorry if the terminology of the truth ... and she cannot handle the truth, I am sorry if that offends her, but that is the truth. That is
3080 the reality. Their lives have been destroyed. So what am I supposed to do? Stand up and water it down? No.

Deputy Merrett: I have finished, I will take my seat.

3085 **The Deputy Bailiff:** No one else is rising so I will turn to the President of the Committee, Deputy Lowe, to reply to the debate on these Propositions.

Deputy Lowe: Thank you, sir.

3090 There is a question, which I had from Deputy Lester Queripel, and before I answer it I would just like to thank you for your support, Deputy Lester Queripel, and the kind words that you actually said about Home Affairs. Very much appreciated it.

I am pleased to be able to advise you that the Common Travel Area remains in place and any person who has entered the Common Travel Area can move freely within it, i.e., not just the UK nationals, but checks continue to be carried out, for example, when the person wishes to reside or
3095 work in a particular jurisdiction.

I can also provide assurance that, within the term 'free movement within the Common Travel Area', registered sex offenders are required to report their arrival into the Bailiwick and that failure to do so is a criminal offence. A combination of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, and the Sex Offenders (Prescribed Jurisdictions) (Bailiwick of Guernsey) Regulations, 2015, make it an offence for any person subject to equivalent notification or requirements in any of the British Islands not to notify the Guernsey
3100 Police within 24 hours of their arrival in the Bailiwick.

Finally, I can assure Deputy Lester Queripel and the Assembly that the Committee, together with Law Enforcement officers, is determined and vigilant in this area, and we remain proactive in ensuring the Bailiwick remains safe and secure, something for which this legislation is intended. So I hope that assists Deputy Queripel in his question that he had for me.
3105

Deputy Tooley is absolutely right about we have to have resources. We know this States is pretty good at accepting all these various reports and yet, if the resources are not there, we then face criticism from the public because the States approved something and yet we are not doing it. Resources are vital. I can add that, in the draft that we have seen of the Justice Review, much is made of that, about resources must be made available if this is to work. So I think it is something that P&R are going to have to consider, because we have got this as a priority, as part of the P&R Plan, and we also promote the Island as being safe and secure and to be able to do that we do need those fundings.
3110

The other thing that was raised by Deputy Gollop, he was talking about addiction to gambling. Absolutely right, we have been supportive of that. It is now with Health & Social Care, because it was transferred across to them and they have got their review, which is taking place, which is good news for that as well.
3115

I thank Deputy Jennifer Merrett for thanking the Law Officers for their assistance because, as has been said, and even some of the queries that she is raising now, it is complicated. It is not that straight forward and if she had difficulty repeating the report, or understanding the report, that offer is still open to you, come and talk to us. Like anybody else in this Assembly, we say it plenty of times, you are welcome to come and talk to the Committee any time you like and we will fit you in on the agenda.
3120

3125 I ask Members to support this Report, sir.

The Deputy Bailiff: Thank you very much. Members of the States, there are now five Propositions. I am proposing to put all of them to you together, unless anyone makes a request for any to be dealt with separately.

3130 **Deputy Lester Queripel:** I just rise to ask for a recorded vote on them all, please, sir, *en bloc*.

The Deputy Bailiff: If there are no requests for any of the Propositions to be taken separately, we will move to a recorded vote on all five Propositions, so that is the two original ones and the three that have been added through the three amendments. Deputy Greffier.

3135

There was a recorded vote.

Carried – Pour 37, Contre 0, Ne vote pas 0, Absent 2

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

The Deputy Bailiff: Well all of those Propositions were clearly carried and therefore I declare them duly carried. The voting on Article VII and the five Propositions on the Home Affairs policy letter, there voted Pour, 37, two absentees and that is why they were carried.

3140 Now I have had a request that I put to you a motion that the States continue to sit until no later than 6.30 p.m. or until the next two items have been completed, if that is sooner. I will do so, because I have been requested to do so, and therefore that is the motion, that we sit for up to an

hour to take the States' Trading Supervisory Board's Succession Planning, and Uprating Policy for States' Pension in that time. Those in favour; those against.

Some Members voted Pour, others voted Contre.

3145 **The Deputy Bailiff:** I think we will have to have a recorded vote on that one, I am afraid. Deputy Greffier please.

There was a recorded vote.

Carried – Pour 19, Contre 15, Ne vote pas 2, Absent 3

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Dudley-Owen	Deputy Brouard	Deputy de Sausmarez	Deputy Tindall
Deputy McSwiggan	Deputy de Lisle	Deputy Inder	Deputy Leadbeater
Deputy Soulsby	Deputy Langlois		Deputy Le Pelley
Deputy Roffey	Alderney Rep. Roberts		
Deputy Prow	Alderney Rep.		
Deputy Oliver	Snowdon		
Deputy Ferbrache	Deputy Parkinson		
Deputy Brehaut	Deputy Mooney		
Deputy Tooley	Deputy Merrett		
Deputy Gollop	Deputy St Pier		
Deputy Lester Queripel	Deputy Stephens		
Deputy Le Clerc	Deputy Fallaize		
Deputy Trott	Deputy Smithies		
Deputy Meerveld	Deputy Graham		
Deputy Lowe	Deputy Paint		
Deputy Laurie Queripel	Deputy Dorey		
Deputy Hansmann Rouxel			
Deputy Green			
Deputy Le Tocq			

3150 **The Deputy Bailiff:** Well on the motion that we continue sitting, there voted Pour, 19; Contre, 15, two abstentions, three absentees and therefore the motion is carried. So we will continue sitting to deal with the next two items, or until 6.30 p.m., whichever is earlier. Therefore we will call the next item please.

POLICY & RESOURCES COMMITTEE AND STATES' TRADING SUPERVISORY BOARD

VIII. States' Trading Supervisory Board – Succession Planning – Propositions carried

Article VIII.

The States are asked to decide:

Whether, after consideration of the policy letter 'States' Trading Supervisory Board - Succession Planning' dated 20th January 2020, they are of the opinion:

1. To agree that the Rules of Procedure of the States of Deliberation and Their Committees should be amended with immediate effect as follows –

(a) for Rule 16(6), substitute:

(b) "16 (6) On a proposition to elect members of a Committee (other than members of the States' Trading Supervisory Board who are not sitting members of the States), the Presiding Officer shall first invite the President of the Committee concerned, and thereafter other Members, to propose eligible candidates. Candidates must be proposed and seconded. Nobody shall speak about a candidate at that stage; and if no more candidates are proposed and seconded than there are vacancies the Presiding Officer shall put the election of the candidate(s) to the vote without speeches. If there are more candidates than vacancies the Presiding Officer shall invite each proposer to speak, for not more than three minutes in respect of each candidate proposed by that person; and each candidate to speak, for not more than three minutes, before voting takes place. No other member shall be entitled to speak.",

(b) immediately after Rule 16(6) insert the following paragraph

"(7) On a Proposition to elect members of the States' Trading Supervisory Board who are not sitting Members of the States, the President of the States' Trading Supervisory Board shall have the exclusive right to propose eligible candidates and the Presiding Officer shall invite the President of the States' Trading Supervisory Board and no other Member to propose eligible candidates (who must then be seconded) and to speak, for not more than three minutes in respect of each such candidate. The Presiding Officer shall thereafter put the election of the candidate(s) to the vote without further speeches.", (c) re-number existing paragraph (7) of Rule 16 as paragraph (8), and

(d) for Rule 37(1), substitute:

"37(1) The term of office of all Presidents and members of all Committees (excluding members of the States' Trading Supervisory Board who are not sitting members of the States) shall expire at the end of a States' term. Where an office is required to be filled by a sitting Member of the States the said office shall be deemed to have been vacated upon the office holder ceasing to be a sitting Member of the States.

(2) The term of office for members of the States' Trading Supervisory Board, who are not sitting members of the States, shall expire at the end of the December of any year in which the end of a States' term occurs.",

(e) re-number existing paragraphs (2) to (7) of Rule 37 as paragraphs (3) to (8),

(f) in Rule 46(3), for "37(3)" substitute "37(4)".

2. To direct the States' Trading Supervisory Board to report back to the States no later than the 16th December 2020 States' Meeting with its proposals to either retain or replace one or both of its Non-States' Members .

3. To direct the States' Trading Supervisory Board, subject to the States' approval of the proposed changes to the Rules and the resultant establishment of the principle to extend the terms of office for the STSB's Non-States' Members, to report back to the States no later than the 26th May 2021 States' Meeting with its longer term succession planning proposals for the STSB beyond 2020. These could include a limit on the number of terms served by an individual Non-States' Member (as is the practice of the incorporated entities) and/or varying the periods of office to stagger the appointment cycle, thereby reducing the possibility that all members of the Board would be required to stand down in close succession in the future.

The Deputy Greffier: Article VIII, Policy & Resources Committee and States' Trading Supervisory Board – States' Trading Supervisory Board – succession planning.

3155 **The Deputy Bailiff:** I invite the President of the Policy & Resources Committee, Deputy St Pier, to open the debate.

Deputy St Pier: Sir, Deputy Ferbrache was going to open the debate.

3160 **The Deputy Bailiff:** I am going to invite Deputy Ferbrache to open the debate!

Deputy Ferbrache: Sir, I am grateful both to you and to Deputy St Pier for allowing me to make the introductory remarks on this particular matter. It is a joint policy letter, but it really is led by STSB, albeit I am grateful again, fully supported by Policy & Resources. Now the STSB was set up as a new baby of the States only from May 2016. It originally consisted of two Members, elected by the States, two Deputies, and two non-States' members. As a result of a requête that I led with Deputy Kuttelwascher, the mandate was changed, or the composition was changed, and it is now three elected States' Members – Deputy Roffey is thrusting, waiting to make his debut in relation to that – and two non-States' members.

The wording of the Board, because it is not a committee of the States, it is a Board of the States, says it all. It is a supervisory trading board, or a trading supervisory board. It supervises the assets of the States, the unincorporated and incorporated assets of the States. Indeed those are set out and the different roles, as it were, of them all, are set out in paragraph 3.2 of the policy letter. It talks about:

The policy letter of 2015 drew a distinction between the role of the STSB in respect of the incorporated and unincorporated trading assets. The former ...

– that is the incorporated assets –

... are made up of Guernsey Electricity, Guernsey Post, the Aurigny Group and Jamesco 750 Limited ...

– which of course deals with the tankers that bring in the oil –

and, in their case, the STSB's role is to act as shareholder.

Now the others include: the unincorporated ones are Guernsey Ports, States' Works, Guernsey Dairy, Guernsey Waste and Guernsey Water and there the role of the STSB is to effectively act as a board of directors and that is how it has approached its role.

We have been greatly – and I am the third President, the first one sadly died and then Deputy Parkinson released his office in about June 2018 ... and we have all benefited from the considerable assistance given by the two non-States' members, because we are a technical institution. We are in a technical body of work that we do, and we have got to rely on corporate expertise.

Now the continuity and the rock, really, in connection with the STSB over the last nearly four years is the Vice-President, Deputy Smithies. He has been excellent as a Member of the Board and has been there to give continuity, and that is the whole purpose of this policy letter – to give continuity.

Now it has got various proposals. Otherwise, on 30th June this year, Deputy Smithies, I and Deputy Roffey will cease to be Members of the STSB. But it will still continue. It still has day-to-day work to do. Now what is proposed in the policy letter is not that there will be any change of power or emphasis, because the mandate and the composition of the Board needs to have, so it is quorate, two elected States' Members, so that it can conduct business.

But it will still need guidance, post the end of June and up until the time that the new STSB gets its feet under the table and starts understanding the considerable number of assets that it has to manage, look after and consider.

That is going to take time and, if the whole board of directors were to be vacated as at midnight on 30th June, it would not be in the best interest of the States. You would not, with a normal board of directors, except in a case of *extremis*, change all your directors at one go. Those with commercial experience know that. Boards change over a period of time and, indeed, there is a paragraph in the policy letter that refers to the fact that in the corporate world somebody stays as a director for a period of time, six, seven, eight, nine years. And then they are refreshed. However able they are, they move on, so that new people can come in and new ideas and new governance can be considered.

3205 What we are proposing here is a variety, a melange of things, really. Firstly, we are proposing that the States, the non-States' members, that is therefore the consequential amendment to the Rules that is provided in the initial part of the Propositions, are nominated by the President of the STSB. The reason for that is that he or she will have worked with the non-States' members for a period of time and he or she, and his political colleagues in the STSB, will be able to say, 'We think Joan, or Fred, are the best candidates,' and then we will put them to the States and the States will be able to say, 'Yes, we agree', or 'No, we do not agree'.

3210 Therefore, it is simply a change of emphasis, but an important change of emphasis, within a unique board. I am not talking about the talent of the board, I am talking about the unique role that the STSB has to discharge, that it is dealt with in that particular way. Now, as I say, the States will have the final say as to whether somebody is approved or not.

3215 Now, what we want to do, so there is continuity, is to allow the two existing non-States' members, who are people of the highest quality and give expert guidance and knowledge on an almost daily basis to the STSB, to be able to continue in their role no later than the end of the year, in other words six months beyond the life of this particular States.

3220 What would happen then is that in the December sitting of the States, the STSB, the President, whoever he might be or she might be, will come back and say, if the two people who agreed are willing to stay until the end of the year, if they want to be re-nominated and if the STSB thinks they are the people to be re-nominated, they will re-nominate them. Or, if not, if either, (a) they do not want to be re-nominated or (b) the STSB does not want to re-nominate them, they will put forward the names of two other people for the States to consider.

3225 Then that will continue on that six-month extension, subject to the comments I am about to make, going forward. So there is this continuity. The officers have people to look at, take advice from, so that the board of the unincorporated associations can continue to function in a sensible, business-like and commercial way.

3230 What we also added last year, and they have really been ... I sit as a Member of the Ports Board, it is chaired by Stuart Falla and I am the political Member on it, and I can just speak from experience of the two business advisers, as we call them, who now sit on that Ports Board. They are truly excellent, they bring a vision and guidance to the board that, frankly, is of immeasurable worth and value, and they do so free of charge and they give their expertise. When I say a good man, a good woman, they are good people, with considerable experience who assist us.

3235 What we also propose, if the policy letter is accepted, is that, by May of the first States, in other words 11 months after the new States has got its feet under the table and it is functioning, is come back with more detailed proposals as to how the system should work going forward. So we are looking at an interim solution and then we are looking at bringing proposals before the States, or at least our successors are, in May 2021. The proposals are no more complicated than that and I would commend them to the States and ask them to vote for them accordingly.

The Deputy Bailiff: Deputy Gollop.

3245 **Deputy Gollop:** Everybody was saying, 'No drama, we do not need to speak about it.' I thought the same, to be honest, this is probably the least controversial policy letter of this bundle this month. That said, I had the honour, as I do sometimes and this I was by myself, of going to the St Peter Port Douzaine and they like to engage about things and, strangely enough, they focussed more on this than on some of the other issues.

3250 At least one senior Douzenier, I would describe them as, obviously has concerns that if we are not careful, the STSB will have a very strong voice for people who are very distinguished and able, people with business experience in the community but less of a political voice. That view is kind of out there and I represent that view without necessarily agreeing with it myself.

3255 I think the proposals here are extremely measured and Deputy Ferbrache is right. It is unsatisfactory for a Board, especially one with commercial leanings, to have this potential gap when not much happens. I have to point out that, at one time, Social Security and the Income Tax

Authority when it existed, had an arrangement, Deputy Ferbrache may recall, that Members had six-year terms, precisely to avoid that and, of course, we had staggered elections in those days.

3260 But we did not go for that option in the Referendum. Potentially, all 38 Members here could change in the twinkling of an eye, that might cause chaos for Policy & Resources and other illustrious bodies but at least the STSB can have a degree of continuity and get on during the interregnum. So I support the Proposition.

The Deputy Bailiff: Deputy Parkinson.

3265 **Deputy Parkinson:** Sir, I rise only to say that I think these proposals are entirely sensible and I will be supporting them all.

The Deputy Bailiff: Deputy Smithies.

3270 **Deputy Smithies:** Thank you, sir.

I would like to thank Deputy Ferbrache for his very kind words. I very much appreciate it and I have nothing to add to what has been said so far, in that I wholly support the Proposition.

The Deputy Bailiff: Deputy Lowe.

3275

Deputy Lowe: Thank you, sir.

I think Deputy Ferbrache would be surprised if I did not stand up and say something on this one. Deputy Ferbrache has made quite a lot of play about the continuity and everybody will be going at the same time. That applies for every Committee that we have got in this States. It is not any different. So at election time it will be all new Members. In fact there is a void until, I think, it is 13th July before all the committees are actually elected with their full members.

3280 If I remember rightly, and I cannot remember the Rules exactly – the gentleman on my right here remembers the Rules inside out – there is something where if there is an emergency you can call on a Member of the States to be able to assist in that position if there is a decision that is urgently needed. So, if you are talking about continuity, well continuity across all the committees, including STSB, planning and everybody else, if we are going to do that. Otherwise I cannot support this Report.

The Deputy Bailiff: Deputy Oliver.

3290

Deputy Oliver: Thank you, sir.

I am just wondering what type of decision ... I understand that it is all continuity, but they are non-States' members, so they are not elected by the public and I just want to know what they will be allowed to say yes and no to during this time. Because we could have them making some very big decisions while there is no States and therefore, I know it is a – sorry, I am not explaining myself very well here.

3295 I know that it is more of a commercial Board and I get that. But I am just worried that non-States' members will be making decisions and I am also worried it is going to be a bit of a boys' club, this committee, as well. I am just worried about non-States' members making their decisions without elected Deputies.

3300

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: Thank you, sir.

3305 It already is a boys' club, is it not, because Deputy Ferbrache, Deputy Smithies and Deputy Roffey are all boys and we elected them onto this Board, which incidentally is a committee of the

States, under the definition of the Rules. But I do not think it is quorate unless at least one of the elected Members is present.

3310 So I do not think, in answer to Deputy Oliver's point, it can make the sorts of decisions that she is talking about, in the event that only the members of the committee or Board who are not Members of the States are present. So the eventuality that she suggests just would not arise and, in the event that decisions did need to be made, and the Board was not quorate because it did not have one of its States' Members present, or for whatever reason, then the Rules, which Deputy Lowe referred to, would come into action and it would be possible, in the way the Rules stipulate
3315 for the other Members of the States to sit on that Board for the purpose of making that decision.

3320 So that is the way it would operate. As far as I can see, these proposals are limited in their effect, only to ensuring that the members of this Board who are not members of the States can continue in office for a certain period of time after the General Election before, in effect, the voting Members of the States' Trading Supervisory Board come to a view on who they want to sit alongside them.

3325 It has not got anything to do with decision-making, it has got to do with ensuring that there is some kind of continuity in their term of office, which given the different, peculiar – I do not mean that in a critical sense – but unique responsibilities of the States' Trading Supervisory Board, seems to me to be a perfectly good idea and I am surprised it has taken 20 minutes or whatever for this debate to roll on. I just think we need to vote in favour of it and get on with the more important stuff.

The Deputy Bailiff: I invite Deputy Ferbrache, as the President of the Board, to reply to the debate.
3330

Deputy Ferbrache: Sir, I thank Deputy Fallaize, I do not always do that, but I thank him now for making the point in relation to Deputy Oliver's point. What I also said, in the course of debate and it appears in the policy letter, is that to be quorate there would have to be two elected Members of the States, i.e. two Deputies or a Deputy and Douzaine Representative, whatever it may be.
3335

3340 But you need people for advice, you need people for continuity. I know Deputy Lowe was going to make that speech and, is it not nice that, in the world that is changing all around, Deputy Lowe's views on such matters do not change? So, other than that, I ask the States to vote overwhelmingly for these Propositions.

The Deputy Bailiff: Members of the States, there are three Propositions before you. I propose to put all three to you together. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare the Propositions duly carried.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

3345

**IX. Uprating Policy for States' Pension –
Debate commenced**

Article IX.

The States are asked to decide:

Whether, after consideration of the policy letter entitled 'Uprating policy for States pension', dated 20th January 2020, they are of the opinion:

- 1. To rescind resolution 1 on Article VIII of Billet d'État XVIII of 2015, setting the guideline for the annual uprating of the old age pension (soon to be renamed "States pension").*
- 2. To approve that the guideline for the annual uprating of the old age pension/States pension, is an increase of RPIX plus one third of the real increase in median earnings.*
- 3. To set, from 1st January 2021, the contribution rates for employers at 6.9%, as set out in Table 5 of that policy letter.*
- 4. To set, from 1st January 2021, the contribution rates for employees at 6.8%, as set out in Table 5 of that policy letter.*
- 5. To direct the Committee for Employment & Social Security to report back to the States no later than the last quarter of 2021, with further proposals to secure the financial sustainability of the Guernsey Insurance Fund.*
- 6. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.*

The Deputy Greffier: Article IX, Committee for Employment & Social Security – Uprating policy for States' pension.

3350

The Deputy Bailiff: I invite the President of the Committee, Deputy Le Clerc, to open the debate.

Deputy Le Clerc: Thank you, sir.

3355

The Committee for Employment & Social Security is asking that the Assembly approve a guideline uprating policy for the States' pension, previously known as the Old Age Pension. We are recommending that the guideline be to continue to increase pensions by RPIX, plus one third of the real increase in median earnings.

I emphasise that this is just a guideline as ESS will still, each year, bring to this Assembly its Propositions to uprate benefits and it is within the gift of the Assembly to approve or amend that proposal each year.

3360

Why are we rescinding the previous proposal to uprate only by RPIX from 2025? At the time of the original Proposition, we expected that secondary pensions would be up and running and retirees would then have had an opportunity to accumulate a small private pension in addition to the States pension. However, we know that this will not be the position and this, combined with the fact that many people do not have a full contribution record, in fact only 25% of retirees currently receive a full pension, will mean that many pensioners will continue to live in income poverty.

3365

We currently have over 900 pensioners receiving some level of Income Support. Therefore we ask Members to approve our guideline uprating policy, giving pensioners who rely on this income some level of comfort that we understand their income pressures and with the knowledge that pensions will at least keep in line with inflation and some level of earnings.

3370

With regard to the increase in contribution rate, the Committee was split. The split was mainly over the timing of the increase. Even if we were to increase the States' pension by just RPIX in the future, there is a certain need for an increase in the contribution rate. With that in mind and also aware that the earlier the move is made, the more effective it is, by a majority the Committee

3375 propose, from 2021, contribution rates for Class 1 are increased by 0.5%. We propose splitting this between 0.3% for employer and 0.2% for employee.

We are not proposing an increase to Class 2 or Class 3, self-employed and unemployed rates as those classes already pay a higher contribution rate than Class 1 employee contributions. In the 2015 Personal Tax, Pensions and Benefits Review, it was acknowledged that any increases to contribution rates in the future would take into account this inequality. We must also remember that non-employed contributors are not eligible for sickness, incapacity, parental and unemployment benefits. Self-employed contributors are not eligible for unemployment benefit.

3380 P&R, in their letter of comment, are asking us to wait for the outcome of the fiscal review, agreed in January of this year. But that will only delay the inevitable. We also know that an actuarial review of the fund is due this year, as indeed it has been every five years. This is important but this is a business-as-usual report that should not stop us from applying a stitch in time.

3390 In addition to predicting the future, the results of the actuarial review will not be available for the Up-rating Report, presented to this Assembly by a new Committee for 2021. It is likely that the earliest any Proposition, as a result of the actuarial review and the fiscal review, would only feed into Propositions from January 2022, a loss of potentially two years' income to the fund, when all indicators as set out in table 4 of our Report indicate that some form of increase will be required, whatever the up-rating policy in future years is and whatever the outcomes of the Fiscal Review are.

3395 P&R in their letter of comment, by accusing us of silo working ... we have been imploring P&R since almost the beginning of this term at our various joint meetings and oversight meetings, to help us address the problem of funding and the impact on the economy, of contribution increases to fund our policy propositions. We have sought their guidance on timing and prioritisation of our policy letters for the exact reason they outline in their response. Yet it was only in January 2020 that they brought a policy paper addressing the Fiscal Policy Framework.

3400 Sir, I will close on that note and I am happy to answer questions.

The Deputy Bailiff: Deputy Lester Queripel.

3405 **Deputy Lester Queripel:** Thank you, sir.

I find myself in something of a dilemma on this issue. First of all because I do not want to add even more cost to employers and employees. I say that because whenever an employer incurs more expense they usually pass that expense on to their customers, which pushes up the cost of living, to state the obvious.

3410 And secondly, because I am mindful of what we are told at the end of paragraph 6.1, where we are told that:

The value of the States Pension can only diminish so far before it becomes unacceptable. Care must be taken to retain financial constraint while not pushing people into poverty.

So for me this really is one of those difficult decisions the States are sometimes faced with. The Committee themselves say that, in paragraph 8.1 of this policy letter, where they say:

It is a difficult reality to confront, but it is one which cannot be ignored.

3415 Another thing I am mindful of is the fact that, in general, the average employee gets all the money back they have paid into the system over 50 years in less than five years after they start drawing their Old Age Pension. That has been confirmed by staff at Social Security. So the reality is, in less than five years of drawing a States' Old Age Pension an employee has been paid back all the money they have paid in. So every other contributor is then contributing towards that pensioners' pension. Actually, to clarify that, a self-employed person, it takes a bit longer for them to get their money back. It takes about nine years.

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I am also mindful of the fact, and this is something that has always intrigued me and concerned me, when someone dies before they reach pension age, all the money they have paid into the system throughout their working lives stays in the system. So if someone died, say, a year before they reached pension age, all the money they paid into the system, 49 years, stays in the system. They do not get a penny of it back.

That is why I say I am mindful of that, that is something that has always concerned me. But I am also mindful of the fact that there are pensioners who cannot afford to live on their States' pension, but of course they can always apply for Income Support, should they be able to bring themselves to actually do that. I say that because I know dozens of pensioners who would qualify for Income Support, if only they could bring themselves to apply for it.

Many of them told me they feel guilty about doing that because their view is they have not contributed to that fund, whereas they have contributed, in their eyes, to their actual pension. Despite what I say to them to try and encourage them to apply for Income Support, although I have had some success in that and I have cost Income Support, tens of thousands of pounds since it has been introduced – and I am proud of that because that goes to the most needy people in the community – they just cannot bring themselves, many pensioners still cannot bring themselves to apply for Income Support.

Added to that, of course, we do have pensioners who fall between the cracks of asset rich and cash poor. They have these wonderful houses that are falling down around them. They cannot afford to maintain them, and they cannot afford to heat them. Their memories are there. They have been there all their lives. They do not want to leave them and why should they?

So this whole pension issue is a real dilemma. I honestly do not know which way to vote on Propositions 3 and 4, because the money has to come from somewhere. And on that note, as we already know, we are told in paragraph 8.7, the additional 0.5% on contribution rates will result in approximately £6 million *per annum* being added to the Insurance Fund. And we are told in paragraph 8.8 the increase in the employers' contribution rate will have a cost to the States in their role as an employer of an estimated £600,000 *per annum*.

We are told in paragraph 8.9 that the increase in the employees' contribution rate will also add a cost to the States, under Income Support, of an estimated £100,000 *per annum*. That sort of terminology always amuses me somewhat, because it is not a cost to the States, it is not States' money, it is a cost to the public, it is the public's money. And it is the public who will eventually be asked to make up that £700,000 cost, somehow or other, somewhere along the line, and that also concerns me greatly. As former Vale Deputy Graham Guille used to say, it is never about what it is supposed to be about.

So the reality of the situation is that the majority of the working public will be paying twice, once via the increase in their contribution rates, and once via some kind of stealth tax or whatever, some kind of charge to make up the £700,000 shortfall. Because governments do not give things away for nothing.

On the face of it, to bring an additional £6 million a year in at a cost of £700,000 a year, resulting in £5,300,000 a year total, sounds like a good deal. But of course we all know governments do not work like that and people will pay out somewhere along the line. And I am also mindful of the fact that this is just emphasising and elaborating on my dilemma – I do not know which way to vote at the moment.

I am also mindful of the fact that the vast majority of the working population will also be paying out once again in the not-too-distant future, when they pay their contributions towards the secondary pension scheme. So, sir, I am in dilemma here. I honestly do not know which way to vote on Propositions 3 and 4. All I can do is listen very closely to the debate. I live in hope that one of my colleagues can shed some light into what, at the moment for me, is an extremely dark corner.

Thank you, sir.

The Deputy Bailiff: Deputy de Lisle.

3475 **Deputy de Lisle:** Sir, I am also concerned with regard to the impact on the community on a number of bases. First, the reduction in disposable income that will result as a result of hiking these particular rates on employers and employees. In terms of employees, I see another £2.5 million being taken out of the economy, basically. In terms of the employer, it is going to be even more, £600,000 per year cost to the general revenue and the £100,000 we got notified a moment ago in terms of Income Support.

3480 That is £700,000 per year, which is near £1 million that will have to be found in increased taxation. So, what with the previous scheme taking more money out of the economy, in terms of secondary pensions, suddenly bringing this in now, together with the fact that I am really worried about this Coronavirus and what it could do to this community here, in terms of its economy, I think we have to really look very carefully before we add any more cost to both the taxpayers in this Island and also to the disposable income that we have to spend within the community.

3485 So, with those points, I would prefer that this was held back for a while until we see exactly how all of these health problems are going to work out, together with the fact that we are loading too much money onto both the taxpayer and also decreasing, actually, the disposable income that we have within our community for spending generally and for any economic growth here.

Thank you, sir.

3490 **The Deputy Bailiff:** Deputy Roffey.

Deputy Roffey: Thank you, sir.

3495 Deputy Lester Queripel has a dilemma, he tells us. Basically he wants big pensions and low contributions. We all want that; we really do all want that. We on ESS, or the majority of us, have no desire to play the evil part today and take money out of people's pockets. But we do need a dose of reality.

3500 I should say, actually, there are two elements to this policy letter. The first contains the uprating policy and the second contains contribution rates towards the General Insurance Fund. I think the first is fairly uncontroversial, but the latter is less so. So, actually, I am going to address the easy bit first, because I think something needs to be said on that too.

3505 In their letter of comment, P&R say that continuing with a policy of RPIX plus one third of the difference between inflation and the increase in wages is justified due to the time it is going to take for the secondary workplace pensions to be really effective. My President echoed that in her introduction.

3510 Now if that is true, the real effect of that important policy will not be felt properly and fully for decades. But personally, and I am speaking personally here, I think that is only one reason for not allowing the basic States' pension to wither on the vine, compared with our average wages. You know, not increasing it by more than inflation alone. Because these are two very separate pillars of pension provision: the secondary pension and the States' pension are different animals. Both are important but, because they are different, they are serving very different purposes.

3515 The occupational pension pillar is a great way to avoid pensioner poverty, even for those whose earnings are relatively modest, and we discussed that at length, quite recently. However, it is by way of being a personal savings plan, rather than an insurance-based scheme. So, as a result, the amount you get out relates to the amount you put in.

So it is a supplement to and not a replacement for the traditional States' pension. The States' pension itself is insurance-based and it is redistributive. If we let its real value drop, we are going to make the relatively poor pensioners relatively poorer, because it is only that redistributive, insurance-based scheme that actually evens things out.

3520 If I can just address *en passant* Deputy Queripel's concern about people who die, aged 64, or now even 65 it would be, and not get anything out, that is absolutely true. But people who live to 90 get lots more out than they put in. So you cannot have it both ways. You cannot have nobody losing out on average, unless you can say nobody is going to gain and once they reach 75 we are going to stop their pension because they have had out what they have put in.

3525 Anyway, I wanted to put on record the fact that I do not think, even when the secondary pension is fully operational and fully up and running and having its major impact that we hope it is going to have, I still do not think we should go down to RPIX and ignore any linkage to earnings at all. Otherwise we are going to increase inequality, increase poverty, relative poverty amongst elderly people who have enjoyed a smaller income through their lifetime. But I expect that is a battle that is going to be for 10 years down the road when I have gone from politics for a very long time.

3530 Turning to the vexed questions of contributions and whether to increase them by 0.5%. Of course that is entirely a matter for the Assembly. P&R do not think that we should. Neither does one of our own Committee Members, our Vice-President indeed, and, as I say, ESS themselves have no great desire to play the pantomime villains.

3535 But we, the majority of us, simply did not think it was prudent to duck this difficult decision any longer and let me explain why. The General Insurance Fund, the money has to come from somewhere, says Deputy Queripel, the General Insurance Fund, out of which pensions are paid, has had an operating deficit for several years. But now, in 2019, it became an absolute deficit, meaning that the operating deficit is larger than the investment income going into that fund.

3540 As a result, the fund is now in draw-down, or to use blunter language, the fund out of which pensions will be paid in future is getting smaller. It is shrinking in absolute cash terms, but it is shrinking much faster in real terms, just when we know for sure, absolutely for sure, that future demands on the fund are only going to grow as Guernsey ages.

3545 Now I am sure we will hear today, maybe tomorrow now, maybe from Deputy Langlois or Deputy St Pier, that the fund is not about to run out of money any time soon. And that of course is true. But it completely misses the point. The point is that if the fund shrinks, which it is shrinking now, then so do the expected investment returns.

3550 That in turn leads to the fund shrinking even faster and leads to even lower investment returns. It is a vicious circle and, as Deputy Le Clerc said, the longer we leave the corrective action, the harder it is to break out of that vicious circle and the more we will have to ask the public to pay in order to stabilise the fund somewhere down the line. Or, alternatively, the meaner we will have to be with paying pensions in order to stabilise the fund. Or probably a bit of both. The sooner that corrective action is taken, the less drastic that corrective action has to be.

3555 Now, I accept there are a lot of variables in forecasting. Firstly, we do not know what our investment returns will be in future. Nobody knows what their investment returns will be in future. At that point, maybe I want to address one of the points in the letter of comment from P&R, who make the point that, actually, if we had invested the pension fund, the General Insurance Fund, alongside some of their funds with the same investment strategy, then we would be better off now than we are.

3560 I cannot deny the reality of that. The figures are there for all to see. And I am certainly not closed-minded, and nor am I an expert in investment strategies. So, if our best minds inside the States of Guernsey, with the best grasp of the safest and most prudent but also best growth potential – and I know that there is a tension between those two – investment strategists feel that the General Insurance Fund should be invested alongside the funds invested by P&R, they are not going to get any resistance from me.

3565 They will get resistance if they try to say that fund just becomes a part of the general reserves of the States and it will be spent on nurses' pay or teachers' pay or policemen or on capital investment, because it is they who actually pay, it is there for the fund, for the reason it was put in, which was for pensioners. But as long as it is a sealed sale within that investment, they will not get resistance from me.

3570 The only thing that worries me is that I have gone through life joining queues. I join queues in the post office, I join queues for immigration, and I always see the one next to me moving far faster and doing far better, so I jump across and immediately that one stops and the other one starts going. So I do worry that, just because the investment strategy of ESS has been less

successful over the last five years than that of P&R, that that may not always be the case if we decide to merge the two funds.

3580 Anyway, there are other variables that we cannot know. We cannot know exactly what the size of our future workforce will be. That will affect what our income is. We cannot know what sort of pay rises they will get, if any. They could be healthy, they could be small. That affects how much money is coming into the fund.

3585 Or, on the other side of the balance sheet, we cannot be certain over future longevity either. We all saw the report in the last few days saying that longevity has stalled in the UK, although actually down in the affluent south it is still going up quite rapidly. Unfortunately it is balanced off by a drop in life expectancy up in the north, which many people put down to austerity and the impact that that has had.

3590 So, with all these unknowns, would it not be comforting to just kick the can down the road, just to throw this hot potato away from us and say, 'Oh, I do not like that. Actually, being mean on pensioners is not popular and putting up contributions is not popular either. So let us just kick it down the road.'

3595 We could wait for the next actuarial review and maybe that is going to solve everything. We could wait for the really vaunted Fiscal Review led by P&R. Maybe that will solve everything? No, no and thrice no. (*Interjection*) Somebody remembers Frankie Howerd! The bottom line is that even if we take very optimistic forecasts in respect of all of these variables – I am not sure it is optimistic to expect longevity not to increase, but from the actuarial point it is, and if we think the income is going to go up because we are going to have a bigger workforce than predicted and they are going to be paid more, and even if we expect investment returns to be higher than has been predicted so far, even with all of those things moving in our direction, then 0.5% looks to be the very minimum that will be required to make the funds sustainable in the long-term.

3600 I wish I did not have to say that. It is not a nice message to bring to this Assembly or to the Island. But it is just the truth and it is not me making it up, it is the best minds inside some of P&R, that come and advise us, that are telling us that as far as they can tell that is absolutely the minimum that is going to be required. It could prove to be more – maybe considerably more – but 0.5% is probably the minimum.

3605 So knowing this and knowing that the sooner that action is taken the more effective it would be, or put it another way, knowing that delay will require more drastic action, it just seemed irresponsible to the majority of ESS Members not to recommend this increase now. We know it comes at a very bad time. I am not sure there is ever a good time to propose an increase, but this is a supremely bad time for all sorts of reasons.

3610 As Deputy Queripel has pointed out, we know that more money is going to be taken out of the economy and out of people's pockets, at least in the short term; it might have a benefit decades down the road, by the introduction of secondary pensions. And I have got to be honest, this is not the last of the bad news to come. We have got to come back with a long-term care insurance scheme and that, I can tell Deputy de Lisle, through you, sir, is also going to look to take money out of the economy and out of people's pockets.

3615 But if he wants to minimise that he can vote for some of the other measures in there that would actually cut down the amount we have to put on contributions. But he is not going to like them, I can tell him that right now. You know, that is enough of a trailer, I do not want to be a spoiler. That one will come right at the end of this term and will be a real jolly thing to actually end on because there is no easy way to make that one add up.

3620 So we know it is not a good time for another reason – I think there is an election around the corner fairly soon. The point is that we know, beyond doubt, that it is the only prudent thing to do. It is down to Members to decide. If they choose to procrastinate, leading to a bigger correction being needed in a few years' time, that is down to them. We know on ESS we have done our duty by bringing this difficult decision to the Assembly.

3625 I really hope that Members will not do that. In actual fact this increase should probably have been implemented several years ago. It has been kicked down the road and kicked down the road

and it probably would have been easier to have done it in the first year of this term than it is in the last year of the term and we also would have seen the fund in a healthier position if it had happened.

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But this really has been going on too long. We are recommending prudence. We really are. I understand it is a difficult choice and I understand there are no good options. It is down to Members, but we are clear what we think is the right course of action. Over to you.

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The Deputy Bailiff: Deputy Langlois.

Deputy Langlois: This is what Deputy Inder might call blue on blue. Those who made it to the end of the policy letter or listened carefully to Deputy Roffey's speech will know I am the dissenting person on ESS. I find myself in an uncomfortable position of agreeing largely with Policy & Resources. I say I am the dissenting Member but actually I was not at the meeting when the decision was made, I only heard about it that evening. So it was more of a spluttering than a dissenting, but my President knew that I probably would not be all that pleased.

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Deputy Roffey made his usual, very powerful speech. But I am all with P&R. A lot of people are very cynical about what is going to happen during this review of our tax base and our fiscal options. But I think everybody has acknowledged now that we just cannot rely on economic growth and therefore increasing tax revenues to bail us out. We have really got to look at it and it is not just P&R, it will be the States as a whole. Because we have done things over the last 10 years or so and a lot of the contributions that Deputy Roffey was talking about, this States has been milking Social Security contributions since 2008.

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At the beginning of this Millennium, say about 2002, 57% of the money going into our States' Pension Fund came from general revenue. It was highly redistributive, well, as redistributive as things get in Guernsey. We were not just relying on this contribution based on earnings, with no personal allowances. It was coming from general revenue, i.e. mainly from Income Tax. Gradually we had been whittling away at that and, of course, come 2008, we just increased the upper earnings limit until we got enough money coming in.

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But we have done it without really thinking of the consequences and I think we are in a pretty unfair situation at the moment, regarding the tax burden, the way it is distributed in society. It really needs a good looking at. People like Deputy Roffey just standing up and saying, 'We have got to increase it by another 0.5% this year and there will be more coming next year,' this constant tinkering with Social Security contribution rates, personally I think is very unhealthy.

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I just think we should actually have a really careful look and see quite where we are going. Obviously there are aspects of the forthcoming review I do not like. For instance, that line in the sand about not considering capital taxes, I think that is completely unnecessary and I am hoping that, by the time the next P&R gets into post, the tide will have come in and washed that line away. I might do it from the sidelines myself.

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That is an explanation of why I do not agree with Propositions 3 and 4. I wholeheartedly agree with Propositions 1 and 2. But there was one aspect of P&R's letter of comment, which I just want to pick up on, which Deputy Roffey did mention, which was P&R's slight degree of hubris, regarding the details of the out-performance of the investment funds under its governance. I was wondering who wrote that passage.

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I use the word hubris because, after an 11-year bull run, any slightly high risk, more equity based fund, is bound to perform relatively better than Social Security's common investment fund. This Tuesday, the FTSE had its biggest daily fall for four years. If we were to face a coronavirus pandemic, that would be just the beginning.

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I do not think there is any need to panic, but I do not believe stellar investment performance should be relied on to replenish pension funds in years to come. So I think one has to take that whole section of Policy & Resources' letter of comment with a great deal of salt. I encourage everybody to support Propositions 1 and 2, but I am afraid I will not be able to support Propositions 3 and 4.

3680 Thank you.

Deputy St Pier: Sir, I do wish to speak, but I will be taking more than three minutes to speak.

3685 **The Deputy Bailiff:** In those circumstances, Members of the States, I think we have used the extra hour as well as we can, and I now propose that we adjourn until 9.30 a.m. tomorrow morning and we will close the meeting today.

Thank you, Deputy St Pier.

The Assembly adjourned at 6.28 p.m.