



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Royal Court House, Guernsey, Wednesday, 28th November 2018

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Present:

Richard J. McMahon Esq Deputy Bailiff and Deputy Presiding Officer

Law Officers

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

People's Deputies

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B. L. Brehaut, R. H. Tooley

St Peter Port North

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St Sampson

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The South-East

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R. G. Prow, V. S. Oliver

Representatives of the Island of Alderney

The Clerk to the States of Deliberation

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

Absent at the Evocation

R. M. Titterington, Q.C. (H.M. Comptroller)
Deputy M. J. Fallaize (*relevé à 09h 40*); Deputy D. de G. de Lisle (*indisposé*);
Alderney Representatives L. E. Jean and M. Dean (*absent de l'île*)

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States of Deliberation

*The States met at 9.30 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 Senior Deputy Greffier

EVOCATION

CONVOCATION

The Senior Deputy Greffier: Billet d'État XXV of 2018. 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 Court House on Wednesday 28th November 2018 at 9.30 a.m. to consider the items listed in this Billet d'État which have been submitted for debate.

IN MEMORIAM

Former Alderney Representative and Deputy Wendy Morgan

5 **The Deputy Bailiff:** Members of the States of Deliberation, I wish to pay tribute to former Alderney Representative and Deputy Wendy Morgan who passed away on 10th November and whose funeral was held yesterday at The Town Church.

Wendy Jean Paul was born in South Wales on 15th December 1941. She took a degree at Southampton University and then became a science teacher, rising to become the head teacher of
10 a large and successful comprehensive school, Willesden High School. During her tenure this school was one of those for some external filming of the children's TV series *Grange Hill*.

Wendy's lifelong interest in and passion for developing the very best educational system possible was to be a hallmark of her service to our community.

Wendy's connection to the Bailiwick arose through having friends living in Alderney after
15 frequent visits she moved to that Island in the 1980's. As Wendy Wolstenhome, she became a Member of the States of Alderney in 1988 a position she retained until the end of 1994. After being an Alternative Representative in 1991 from 1992 to 1994 she was one of the two Alderney Representatives in this Assembly overlapping briefly in her final year with the newly elected Deputies Lowe and Ferbrache.

20 As was largely the tradition in those days, as an Alderney Representative Wendy did not seek election to any committee but otherwise participated, as she was entitled under the terms of the States of Guernsey Representation of Alderney Law 1978, as a full Member of the States.

However, at the start of her final month she was elected as a Member of the Elizabeth College Board of Directors for six years running from 6th January 1995, no doubt as part of her planned move to Guernsey in 1995 the year in which she and then Conseiller Laurie Morgan married.

In the 2004 General Election Wendy was returned as a People's Deputy for the new electoral district of St Peter Port North, which is where she and Laurie lived. Laurie sensibly chose to seek election instead in St Peter Port South.

Wendy therefore has the distinction of being both a Representative of Alderney and of a Guernsey district in this Assembly and being in the States at the same time as her husband, a unique set of achievements. One can only imagine the lively political debates that must have taken place in their household.

Wendy was, however, unsuccessful when seeking a second term as Deputy in 2008. She attributed that outcome to her views on the subject of student loans and her inability at that time to walk the parish as fully as she would have wished.

Given her interests and background in 2004 Wendy secured election to the new Education Department and became its Deputy Minister. She was no stranger to that Committee though, having served as a non-States' member for the preceding six years. Her wealth of educational knowledge and experience was put to such good use in each of the positions she held.

Wendy was firstly opposed to the 11-plus system and so was delighted with recent developments in that regard. She maintained her keen interest in education debates in this place and was in the public gallery at the start of this year for the debate of the future structure of secondary and post-16 education in the Bailiwick, until she left to be with Laurie in his final moments.

As a Deputy Wendy was also a member of the Social Policy Working Party and spent some time as Chairman of Drug Concern.

Wendy had a reputation for being forthright even robust in the manner in which she offered her views. My own experience as a legal adviser to the Education Council and the Education Department is that she did not suffer fools gladly. She approached matters with a tenacity forged from years of holding leadership roles and honed for exposure at the highest levels of political observation.

Referring to the media she adapted for herself the old saying that she did not mind what was written about her so long as her name was spelled correctly.

All in all, as I am confident you will all agree, she was a formidable lady, whilst at the same time her nature was warm and generous. She was known for hosting splendid parties, particularly in Alderney which were enjoyed by many Islanders, she had a vivacious character, choosing to live life to the full and she revelled in bringing as much colour as she could to those around her.

Wendy was a Fellow of the Royal Society of the Arts; the walls of her home were covered in works of art, many by local artists. She also had keen interests in music, cooking, reading and especially travel.

Life after political office remained full, although as Laurie became increasingly frail Wendy devoted much care and attention to looking after him. How sad it is that we are bidding farewell to Wendy in the same calendar year as we did for Laurie and that she has now lost the opportunities to visit yet more existing destinations on trips she loved to plan meticulously.

To Wendy's daughters Amanda and Kim and to her grandchildren and her wider family we extend our sincere condolences.

Will you please now join me in rising in tribute to former Alderney Representative and Deputy Wendy Morgan.

Members stood in silence.

The Deputy Bailiff: Thank you very much Members of the States.

Deputy Fallaize do you wish to be relevé?

Deputy Fallaize: Yes, please, sir.

The Deputy Bailiff: Thank you very much.

Statements

Committee for Home Affairs – General Update

75 **The Deputy Bailiff:** We start the business of the meeting with a general update statement on behalf of the Committee *for* Home Affairs from its President Deputy Lowe.
Deputy Lowe.

80 **Deputy Lowe:** Thank you, sir.
Sir, I am grateful for the opportunity to update the States and the wider community on what has been happening within Home Affairs.

The Committee released in the last few weeks the full report on the Independent Inspection of Law Enforcement by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service. Considering the fact that Guernsey Police had not been inspected for 10 years it is not surprising
85 that there are a number of recommendations.

The report identifies 26 areas for improvement and eight recommendations, a number of which are being progressed and the Committee will be tasking the Head of Law Enforcement Designate to work jointly to identify the priorities to be achieved.

Understandably certain questions arise out of the report. It is important that these are
90 addressed in an open and constructive way. Of course the Committee understands that following publication most of the focus will be on the shortcomings.

Such an approach however neatly misses the key message of the report which is set out in the opening words I quote:

... the Bailiwick of Guernsey's population is very well-served by its police force and border agency...

No-one is suggesting everything is perfect or that there is not room for improvement, both in
95 respect of the services delivered and the governance by the Committee.

The Committee has already made it clear its commitment to address all the recommendations. These have unilaterally been given a completion date of 31st January.

Now we fully appreciate the job needs to be done properly. The Committee has already begun work on these with the current Head of Law Enforcement and will be continued with the new
100 Head of Law Enforcement, Ruari Hardy who formally starts in January. It would be unrealistic and unwise to pursue a programme expecting to have everything sorted within a month of the new Head of Law Enforcement taking up the post.

We also recognise that one of the most damning statements relates to the standard and quality of the IT which the report's authors describe as being quote:

... among the worst we have seen.

105 This is serious. We really do recognise, although IT comes under P&R, we do applaud the States' IT staff for the lengths they have gone to keep the show on the road but it is not something which either Home Affairs or the States of Guernsey can be proud of.

As stated in the report technology provision is not to the required standard and this has been recognised by both Law Enforcement and Information Support Services.

110 Following direction from both P&R and Home Affairs, a full review of the IT in Law Enforcement has been completed and a recovery and stabilisation plan put in place.

Currently there are 21 projects underway covering areas such as the network connectivity, accreditation, TETRA and replacement of desktop PCs. Indeed officers and contractors are in the Police HQ today working on some of these projects.

115 Given the legacy nature, incoherent approach to IT provision across the States and long-term underinvestment in IT there is not a quick fix. However, progress is reported to the Committee on a quarterly basis and will now also be included in our regular joint P&R and Home Affairs oversight meetings. It is also recognised that the needs of Home Affairs and Law Enforcement need to be fully integrated into the Future Digital Services project.

120 Considerable work is going on to address the Report's findings.

We recognise that it advises that during the course of the review some of those interviewed expressed views and opinions which do not fully accord with the facts as the Committee sees them and as such we, as Members, are looking to see if there is underlying evidence to support what has been said by some. That does not however change the fact that we accept fully the Recommendations and Areas for Improvement.

125 The Report is to be the subject of a Scrutiny hearing next week. If there are Members who have questions I would encourage them to talk to me directly or to the President of the Scrutiny Management Committee in order that they can be aired at the meeting.

130 While I believe the Scrutiny Hearing on 5th December will be a positive way to allow for challenge and explanation, I will of course be using the six-monthly statements in this Assembly to update Members on the progress of the areas for improvement and recommendations during 2019.

In addition the Committee has today submitted the HMIC report for inclusion as an appendix to a Billet. Further than that the Committee has agreed that we will move a motion to debate.

135 I will turn now to other matters.

The Prison population is 112, with a recent population peak at 121. There remains significant concern around the upward trend. The Prison's 'Certified Normal Accommodation' is 134 and we cannot lawfully accept more than that number.

140 Although Early Conditional Release, which would include the mandatory use of Home Detention Curfew monitored using GPS technology – more commonly known as tagging – the recent increase in the Prison population has accelerated the Committee to endorse immediate investigation with a view to implementation.

145 It is important to recognise that pure figures on capacity do not tell the whole story. First, the Prison is split into wings and multiple cells on each. Each wing can only be used for a particular category of prisoner, meaning different categories cannot be mixed on the same wing. Categories include females, vulnerable prisoners, sex offenders, ordinary prisoners, juveniles, etc.

I also need to dispel the myth that the Prison is full of short-term prisoners who could otherwise have been serving some form of non-custodial sentence. The majority of prisoners are serving in excess of one year.

150 At any one time the Prison population will typically include one third which is made up of people on remand awaiting sentencing and those who are there because they have breached parole, bail or community service, of which there are currently 22.

I now move on to the Justice Framework – during the update to the P&R Plan in June 2018, the States agreed the resolution that:

Home Affairs will work with P&R to establish appropriate governance and support for the Justice Framework Initiative by December 2018.

155 I am pleased to be able to update this Assembly on this matter. Home Affairs has been working closely with P&R since June through the forum of the Oversight Board which comprises the Presidents and Vice Presidents of both P&R and Home Affairs. At this stage the Oversight Board is providing the appropriate governance and support, both in terms of finance and human

resources. It does however recognise this governance will need to evolve in the light of the work that is currently in train.

Reviewing 'Justice' offers the potential for transformational changes to be considered. In previous debates in this Assembly even the word 'Justice' means different things to different people. To one it means that everyone is entitled to equal economic, political and social rights and opportunities, whereas to another the term justice might be thought of as being primarily the work of the courts, and of course there are many other perspectives.

Our starting place is to recognise 'Justice' is a large piece of work. It is about doing what is right for society, it is about the right interventions and family support from early childhood years to support those in chaotic or dysfunctional environments which are damaging. It includes the whole criminal justice system and leads us through to the effective rehabilitation and reintegration into society of those who have been imprisoned. As part of it we need to ensure that we provide structures, processes and safeguards that are equitable to all.

We need to aim to ensure we have a framework for justice that avoids people entering the 'criminal justice system' in the first place rather than solely focusing on what we do with them once they are in it.

This is not a quick fix policy area but it is a critical one. Home Affairs, with the support of the Oversight Board has engaged Mr Nick Walker to undertake the first phase of the three-stage review of the Bailiwick Justice Policy.

Mr Walker is the recently retired Clerk of the House of Commons Justice Committee. He has had extensive involvement in reviews such as Youth Justice; Transforming Legal Aid; Prison and Probation, Bribery & Money Laundering; Compliance with EU Justice requirements; and many others. So we are grateful that he has agreed to support us, at least with the first phase.

Phase 1 of the proposal, which it is hoped can be completed by the end of this year, will establish the scope of the review and the governance structure and resources required to facilitate it. In this respect Mr Walker has been interviewing key stakeholders, primarily but not exclusively those involved in the criminal justice arena.

While Home Affairs is taking the lead we fully recognise that Justice spans our society and services and its effectiveness depends on and impacts many other parts of the States including Health & Social Care, Education, Sport & Culture, Employment & Social Security as well as the Law Officers, the Courts and many third sector organisations. It remains our hope to bring the findings of this review to the Assembly by the end 2019.

I now turn my attention to Brexit. The Committee remains heavily involved with this at both political and staff level, particularly in relation to the rights and movements of EU nationals, maintaining the common travel area and in ensuring that trade agreements and new customs arrangements are in place when Brexit occurs. This has been placing, and continues to place, a particularly heavy workload on officers within Law Enforcement.

I am pleased to announce that on Monday this week I signed a new Customs Agreement with HM Government, along with Jersey and the Isle of Man. This agreement will be presented as an annex to the Assembly with a subsequent legal establishment of a Customs Territory/Union with the UK.

The Committee is managing a wide and challenging portfolio and I could of course talk much further on many issues under its mandate, but time does not allow.

So, sir, that concludes my update and I am happy to take questions.

The Deputy Bailiff: Thank you very much.

Does any Member have a question to the President of the Committee *for* Home Affairs in relation to that Committee's mandate?

Deputy Roffey.

Deputy Roffey: Thank you, sir.

210 Some months ago the President told the Assembly that the report following the Resolution from March of last year on the treatment of Alderney and Sark youngsters under the Population Control Regime would be brought to this Assembly by the end of this year. Can she give me, give the Assembly rather, the latest estimate of when we are actually going to debate that?

215 **The Deputy Bailiff:** Deputy Lowe.

Deputy Lowe: Thank you very much, and I thank Deputy Roffey for the question.

Yes indeed, we are still working on that one, we prepared a draft which we shared with Sark and Alderney and asked for their feedback and currently we have had that feedback and we are in the next stage, so it is quite imminent, I cannot give you exact date but it is very imminent, it is not something that we have left, we have actually got on with and we are pleased with the progress that it has made.

225 **The Deputy Bailiff:** Deputy Lester Queripel.

Deputy Lester Queripel: Sir, can the President tell me please does her Committee have any suggestions as to how to address future overcrowding in the Prison? (*Interjection*) Overcrowding in the Prison.

Shall I repeat the question, sir?

230 **Deputy Lowe:** I did not catch the question, sorry.

The Deputy Bailiff: Can you repeat the question then please, Deputy Queripel.

235 **Deputy Lester Queripel:** Can the President tell me please does her Committee have any suggestions as to how to address future overcrowding in the Prison?

The Deputy Bailiff: Deputy Lowe.

240 **Deputy Lowe:** I apologise, Deputy Lester Queripel, I did not quite catch the last bit.

Yes, I mean obviously we have serious concerns at that, we are looking to see if Jersey would be able to assist us, but all these things require changes in legislation as well. It is not going to happen overnight but equally we are looking at all the different options along with the Prison Governor on what will be the best route to be able to do that. It is the projection of the numbers for in the future rather than what it is actually current that we are looking at at this moment in time. It is manageable at the moment we are sort of looking, if the projections are right, we could be talking about in the 18 months two years where we could hit the crisis point. So a lot of work is going on with that one as well.

250 **The Deputy Bailiff:** Deputy Merrett.

Deputy Merrett: Thank you, sir.

Just some clarity please from the President. I believe the President said that she *hoped* the Justice Policy would be with us by end of 2019. It is the intention of Home Affairs to indeed bring a Justice Policy paper to this Assembly by the end of 2019.

Thank you, sir.

The Deputy Bailiff: Deputy Lowe.

260 **Deputy Lowe:** Yes, that is what I said in my statement.

The Deputy Bailiff: Deputy Inder.

Deputy Inder: Sir.

265 Deputy Lowe, the criticism of Home Affairs seems to revolve around the perception of
influence in the work of particularly Police Force and today's *Press* clearly relates to Harbours and I
assume the subject was JESCC. Now has there been any meetings with Law Enforcement staff
where non-Home Affairs Deputies have had meetings with the Head of Law Enforcement where
there has been an attempt to influence their operational focus?

270

The Deputy Bailiff: Deputy Lowe.

Deputy Lowe: I thank you for the question Deputy Inder.

As far as we aware, we ... well, we are not aware of any influence that we have tried to carry out
275 regarding the Head of Law Enforcement. We have reported back instances where members of the
public have contacted us and in the same way where Deputy Roffey in one of his Rule 11
questions asked us at Home Affairs to actually chase up the Law Enforcement for pavement
surfing. So that could be seen as political interference as much as us raising things under AOB,
passing on the public's concerns on a public area.

280

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: Sir, I was interested to hear from the President about Mr Walker's
appointment and the work being done to review criminal justice, but will this review hopefully
285 include why we have a situation of at least 22 people who found themselves back in Prison having
initially been given alternative forms of sentencing that clearly have not worked in the way
originally intended?

The Deputy Bailiff: Deputy Lowe.

290

Deputy Lowe: Sir, people that break their bail, or parole, or any of the directions of the court,
are dealt with accordingly, and we have 22 in there at the moment. It does fluctuate but that is
sort of the normal number. It ranges between sort of 15 and the number we have got currently. I
know that many of these people they have been given those opportunities hence they were given
295 either a communities servicing order, or parole, or bail. It is down to the courts: if they decide that
actually these people are taking the mick and not complying with that, they have no choice but to
follow through the other sentencing that they could have done in the first place. So we have 22
currently.

300 **The Deputy Bailiff:** Deputy Tindall.

Deputy Tindall: Thank you, sir.

The definition of interference is basically the process of deliberately becoming involved in the
situation and trying to influence the way that it develops although you have no right to do so.
305 Would Deputy Lowe agree with me that Deputies do have a right to actually discuss matters, as
do her Committee, although no right to actually influence the way the process develops to the
extent of a particular defence or approach?

Thank you.

310 **The Deputy Bailiff:** Deputy Lowe.

Deputy Lowe: Thank you, sir.

I agree it is every Committee's right to be able to raise areas of concern that have been expressed by the public. That is not political interference. In fact I am just quickly looking here to see if I can find for you a quote which was part of the HMIC Report where it was made very clear and I will read it. This is from Matt Parr HMIC and it was on the television and on the radio and I will read his quote: 'I think it is fair to say that in our report we do say that there could be greater clarity about the what the roles of the Committee Members and Chief Law Enforcement or Head of Law Enforcement, but I think that would simply match some of the lessons that have been learned in the UK mainland over the last few years since we have had Police and Crime Commissioners; but no, I do not think it is political interference, I think it is quite appropriate, there has got to be oversight and the Committee *for* Home Affairs do just that.' That is from the HMIC.

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: Thank you, sir.

The report also does not propose any structural change in the governance arrangements of Law Enforcement in Guernsey but they were at one time going to be modernised, or codified more clearly, in some form of Law Enforcement legislation that was an intention of a previous committee. I wonder whether the President could update the States about whether there has been any progress on that legislation and whether it will be laid before the States in this term?

The Deputy Bailiff: Deputy Lowe.

Deputy Lowe: Thank you, Deputy Fallaize, for the question.

No, there has not been any progress on it, and as we have said before, we are inundated with Brexit and every resource is going into Brexit, rightly so, and everything else has had to be put aside. We have to prioritise and Brexit is very important for our Island and our economy.

The Deputy Bailiff: Deputy Brehaut.

Deputy Brehaut: Thank you, sir.

The presentation given to, I think, nine States' Members who attended, Deputy Lowe said it would be a complete waste of time debating the HMIC report. Bearing in mind it has now been presented as an appendix with a motion to debate that introduces an element of doubt to this. Could the Home Affairs Committee just not present it as a States' report without the necessity for a motion to debate?

The Deputy Bailiff: Deputy Lowe.

Deputy Lowe: No, the Committee decided to go down this route, Deputy Brehaut. You were one that was asking for it, you have got the report that will be able to be debated, so, through you, sir, so it will be a matter of you have got your wish and if the States support it, obviously it will be debated. But yes, I can say if, because it is down the States, I have not got the authority to direct the States that this will be debated. That is what a debating chamber is here for – the clue is in the word: it is debated, and if the States *wish* to have it debated we have given them the opportunity to be able to do that and we welcome that.

The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: Sir, does the President agree with me that in the context of Prison numbers, whilst not a quick fix, the matter which she and I, and Members of the Committee, discussed last week to re-establish the Criminal Justice Working Party, which of course brings together a number

365 of interested parties in criminal justice including the Law Officers and indeed the Judiciary, may well help that matter in due course?

The Deputy Bailiff: Deputy Lowe.

370 **Deputy Lowe:** Indeed I do, sir, and I concur with everything that Deputy St Pier said. It is all part of the work that we are trying to carry out with regard to from the Prison Governor to Home Affairs to see what can actually be done. But ultimately it is for the courts to decide how they sentence these people. We give them the tools and the box and part of the new Justice Policy hopefully will give more options in the future.

Overseas Aid & Development Commission – General Update

375 **The Deputy Bailiff:** As no-one else is rising, we will move on to the second general update, this time from the President of the Overseas Aid & Development Commission, Deputy Yerby, please.

Deputy Yerby: Thank you, sir.

380 Sir, the people of the Bailiwick can take a real pride in the work of the Overseas Aid & Development Commission, and the many ways in which it contributes to the wellbeing of others in the poorest and most disadvantaged parts of our world.

Overseas Aid, through the charities we partner with, stops children dying from under-nourishment, from diseases carried in dirty water, or from the simple lack of water. It gives
385 mothers and babies a better chance of survival, through the provision of basic care during pregnancy and at birth. It gives young people hope and opportunity, through access to education – and builds schools close to communities, cutting out long daily treks through unsafe country, where young people risk violence and sexual assault. It teaches farmers the skills of sustainable agriculture, tackling economic exclusion and environmental degradation in one
390 swoop. It provides the basic infrastructure that communities need to escape the jaws of absolute poverty, and ultimately to flourish.

But I need to start on a solemn note. Earlier this year, we learned that some aid workers had used their position of power to abuse the people they were meant to be helping, in the wake of the 2010 earthquake in Haiti. Since then, we have heard that similar abuses have happened the
395 world over, and that organisations have been ineffective in preventing or responding to those that have happened on their watch. Such abuses must be condemned in the strongest possible terms, and I am so sorry to those who have been harmed. It should never have happened once, and we must do all we can to stop it happening again.

For the avoidance of doubt, to the best of our knowledge, there has been no Guernsey money involved directly in any of the scandals that have come to light. But I think States' Members would
400 agree with me that we should play our part in addressing the risks and concerns that this has identified, and in doing what we can to make things better in future.

So I would like to assure the States that we are, indeed, doing all we can. In response to the immediate aftermath of the news, we added a further set of questions about charities' procedures
405 to protect staff, volunteers and beneficiaries from sexual exploitation, abuse and harassment to our compliance checks, alongside our established questions on governance and financial probity. These checks form part of a rigorous governance process at every stage in the life-cycle of the grants we make, to ensure that the charities we support are accountable, and that we clearly understand how Islanders' money is being spent.

410 To a certain extent, we look to the UK for leadership. UK reports, including one by the Commons' International Development Committee last summer, have helped to analyse the problems and to identify the issues to be tackled. The UK's Department for International Development recently held a Safeguarding Summit, together with the voluntary sector, to explore how to improve protections against abuse. That work will gradually help to establish new best practice for the sector, and clear standards which we can demand of the charities we work with.

415 But we are not just passively waiting for change, we are making it, too. We recently organised training for the Commission, and for local charities working overseas, on improving the way we prevent or respond to cases of abuse. The work of local charities is rightly valued and esteemed in the Bailiwick, and there is an expectation that, where it is possible to do so, we will support local charities working overseas. For that reason, the Commission considers that it has some responsibility to support capacity-building within the local charity sector, together with bodies such as the Association of Guernsey Charities and the Community Foundation.

420 There are, however, limits to what we can do. We are not, and should not be, a regulator of charities. We count on existing regulators, such as the Charity Commission, to set and maintain appropriate standards. For that reason, I have also arranged to meet with Deputy Stephens and officers from P&R to ensure that our learning on this issue is linked into the work that P&R are co-ordinating on the engagement between the States and the third sector locally.

425 It would be a mistake to pretend that any amount of regulation could prevent all harm, but it is clear that there are steps we can take to reduce the risks of such harm; to keep our focus at all times on the wellbeing of the people who receive aid and those who deliver it; and to respond justly and effectively where harm is done. Those steps, which I have outlined, should help to ensure that the life-changing and life-saving work of international development is ultimately carried out in an environment of greater trust, humanity and respect.

430 Sir, in giving that matter the weight it deserves, I have left myself little time to re-tell the rest of the Commission's busy year, so I will go at a clip, and refer Members to our newly-published Annual Report for a fuller account.

435 But on that, sir, I apologise for the delay in publication, which was due to challenges in scheduling a launch event. The report itself was completed in the summer, in part thanks to the assistance of an excellent work-experience student. As ever, I would remind States' Members that the Commission welcomes contact from young people interested in international development, and will do what we can to provide them with useful insight and experience – so please never hesitate to point people our way!

440 Earlier this year, we were delighted to sign an MOU with Ille et Vilaine – as part of Policy & Resources' broader efforts to strengthen ties with our French neighbours – and that will see our two communities match-funding a small number of international development projects, in line with our basic criteria.

445 We were also delighted that, after a hotly-contested application process, we were able to appoint two new Commissioners, Bryan Pill and Margaret McGuinness, to replace Tim Peet and Steve Mauger, whose terms had regrettably come to an end. Once again, I want to put on record my thanks to Mr Peet and Mr Mauger for their loyal service to the Commission over the last ten years, and the countless hours of wholly voluntary effort they have given to the role. I would also like to thank Judy Moore for stepping up as the Commission's new Vice President.

450 Sir, when the States agreed last year to remove the ring-fence around emergency relief funding, I said that we would update our policies to make sure that there are still clear guidelines about when it should, or should not, be used. We have done so this autumn, and have also taken the opportunity to develop clearer guidelines around 'Part 2' of our mandate, which relates to community and private sector partnerships. We hope those updated policies, once seen by P&R, will be in operation from the start of the New Year.

455 This year we will also be working with P&R to develop guidelines for Impact Investment that will allow the States to invest the million pounds it has set aside for this purpose. And we are meeting in early December to plan out how to fulfil the recent Resolution that will see us

reporting back next spring with consideration of what a more substantial investment in Overseas Aid would look like in practice. I would like to involve States' Members in that process, to the extent that the timeframe allows, and I would certainly welcome thoughts and suggestions from Members at any time.

Right now, the Commission is in the middle of its annual grant-funding round. The sheer volume of applications we have received this year – nearly 300 – has required us to schedule in a fifth funding meeting, in early January. Applications are already limited to a maximum of two per charity, and we may have to consider further constraints ahead of next year's funding round, to stop the role becoming impossible to do on a voluntary basis. As ever, there are many excellent applications – many more than the funding we have available – and the process of selecting those which best meet our criteria, and which are most likely to deliver a meaningful impact for the communities they work with, remains rigorous and challenging.

Sir, our Bailiwick is a haven of peace and safety, and we are blessed to live here. But our world is still a world of wars and conflicts, displacements and refugees; a world in which toddlers across western Africa are facing malnutrition in their highest numbers in a decade; a world in which progress on tackling malaria has stalled for the past two years; a world in which international scientific bodies are telling us we have got twelve years to stop the worst of global warming, and everything we know about climate change tells us that the poorest countries are the most at risk, and the least able to withstand its shocks. It is a world where the work of Overseas Aid remains relevant – and vital.

So I thank Members for their ongoing support of the Commission, in the work that we have done, and that we continue to do. I believe most of us recognise this as an essential pillar of Guernsey's mature international identity.

In closing, sir, I must also thank the Commission's Secretary, who always gives the Commission the highest quality of service – and who this year managed the mayhem of our funding round alongside the delivery of Guernsey's very first referendum. I am indebted to her, and to each of our Commissioners, who freely give up so much of their time, effort and expertise to enable Guernsey to deliver a commitment to Overseas Aid and Development of which, I believe, we can all continue to be proud.

The Deputy Bailiff: Thank you Deputy Yerby.

Does any Member have a question to the President of the Commission on any matter within its mandate?

Deputy Gollop.

Deputy Gollop: I am sure we all very much support Overseas Aid & Development in the work Deputy Yerby and her team are doing and wish she had more money to give. But how far does her Commission, in policy terms, prioritise applications from local or locally based charities and bodies, because sometime in the past these local charities have argued that they have not had as much support as they would have wished?

The Deputy Bailiff: Deputy Yerby.

Deputy Yerby: Applications from local charities as from charities not based in Guernsey must meet our core criteria so they must tackle projects in the areas of health, education or otherwise meeting a basic need and they must be targeting the world's poorest countries, just as we would expect from any other charity. But where a local charity meets our criteria we do our best to support them. We also provide a lot of support around the grant funding process, so local charities for example we provide occasional workshops on how to apply we have provided, as I said, capacity building training this year around safeguarding policies and processes. So we recognise the importance of the local commitment to overseas aid and that includes the particular work that local charities do and we do everything that we can to support them.

515 **The Deputy Bailiff:** Deputy Inder.

Deputy Inder: Sir, I am grateful for the President's update and I am sure the people of this Island will be heartened to hear that further checks and balances have been put in place to ensure that its overseas aid is going to organisations with proper staff reviews and effectively customer protection.

520 In a scenario of a disaster that might happen tomorrow where the primary deliverer of aid would be one of the charities with slightly dubious checks and balances how would the Overseas Aid & Development get aid into a country like that?

525 **The Deputy Bailiff:** Deputy Yerby.

Deputy Yerby: There are a couple of points to be address. The majority of our focus tends to be on long-term transformational projects rather than emergency relief, so we are not first and foremost an emergency relief organisation. Where we do give to emergency relief appeals it is usually the case that there are a number of charities on the ground which are capable of scaling up their support in order to meet the needs.

530 We have reviewed our support of DEC appeals and individual charity appeals in light of the record that individual charities have and we are making sure to focus our giving on those that do not have, as Deputy Inder put it, dubious checks and balances.

535 **The Deputy Bailiff:** Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, sir.

540 In terms of the long-term: much of the funding goes to long-term intentions. Obviously the short-term impacts are easily measurably. I was wondering if the President could please tell us whether any monitoring over longer periods for particular interventions, say the development of a health centre or whatever it might be, what kind of long-term monitoring arrangements might be in place, of it the President thinks that those might be enhanced in future?

545 **The Deputy Bailiff:** Deputy Yerby.

Deputy Yerby: There are fairly rigorous checks within the life cycle of a propjet, but beyond that as Deputy de Sausmarez probably already knows the long-term monitoring is fairly unstructured.

550 Commissioners will from time to time travel to visit projects that Guernsey has supported and maybe supported many years ago and see how those are flourishing or otherwise in the field, and more often than not they are still flourishing and we can see a really positive impact of Guernsey's investment.

555 I fully agree with Deputy de Sausmarez that it would good and useful to us and to the community to enhance the long-term monitoring of projects and I think if the Island were to increase its investment in overseas aid that would be almost essential as a pre-condition. But that necessarily comes with an overhead in terms of officer time and ongoing commitment from the charities that we work with, and it would be a question of working out what we can do that is both appropriate and proportionate, so it is an area that the Commission still needs to give more thought to and will do so.

560

The Deputy Bailiff: Deputy Dudley-Owen.

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

565 I very much support the work that the Overseas Aid & Development Commission does, but I
am still very concerned about the misinformation that is peddled by a certain number of charities
that receive or have received funding in the last five years. Would the President please let us know
whether they might consider revisiting their decision some years ago that certain charities who
570 apply for funding would no longer receive funding on the basis of peddling misinformation about
our jurisdiction, yet still receiving aid from it, but also their scandalous behaviour in regards to the
vulnerable that they have been involved with as well?

Thank you.

The Deputy Bailiff: Deputy Yerby.

575 **Deputy Yerby:** Deputy Dudley-Owen conflated two issues there. Charities that have behaved
scandalously towards the vulnerable will not be receiving funding from us. However, charities that
have campaigned on matters of considering Guernsey or Jersey or other Islands to be tax havens,
that is a separate matter and does not involve the abuse of beneficiaries. I personally believe
580 strongly in the importance of freedom of conscience for charities, whether that is charities
receiving overseas aid or charities being supported locally by the States, but that is my personal
view.

The States historically has wanted Overseas Aid, the Commission, to be non-political in its
decision making. If the Assembly changes its view on that then I would submit that that should be
585 a decision of the Assembly as a whole rather than a policy change for the Commission to make on
its own.

I think it would be reasonable either for the Commission or the Policy & Resources Committee
to bring that to the States as a matter for debate, perhaps it is something that we should be doing
jointly, but as I say I think that is a decision that this Assembly needs to make rather the
590 Commission acting on its own authority.

The Deputy Bailiff: Deputy Oliver.

Deputy Oliver: Thank you, sir.

595 Can the President advise me on the new Impact Investment Fund, whether they are seeking
specialised advice or actually using in-house advice, please?

The Deputy Bailiff: Deputy Yerby.

600 **Deputy Yerby:** Sir, the development of criteria for Impact Investment will be something that
the Commission does jointly with the Policy & Resources Committee, drawing on the investment
advisors that support the Policy & Resources Committee, so I believe it will be a combination of
specialist and in-house expertise that ultimately fits those criteria together

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

Deputy St Pier: Sir, I share Deputy Dudley-Owen's view that Oxfam and Christian Aid's tax
justice position is one that is highly misguided in relation to Guernsey. However, does the
President agree with me that the policy guidance to the Commission is clear, that the funds are
610 for specific projects rather than for the general funding of any particular charity, and also there is
further guidance that any charity which risks bringing Guernsey into disrepute, that is one of the
factors which does need to be considered by the Commission in considering any applications?

The Deputy Bailiff: Deputy Yerby.

615 **Deputy Yerby:** Yes.

The Deputy Bailiff: Once again, I do not see anyone else rising to ask questions of the President of the Overseas Aid & Development Commission.

620

Questions for Oral Answer

COMMITTEE FOR ECONOMIC DEVELOPMENT

Cessation of Aurigny flights to Dinard in January 2019

The Deputy Bailiff: So we now move into Question Time proper. Deputy Gollop has questions to the President of the Committee for Economic Development.

Deputy Gollop.

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

Oh it has disappeared on me. I wish we had the old written questions where you could actually ... Thank you very much, sir.

630 The first is does the President of Economic Development, on behalf of the Committee and Department, agree and accept that the loss from January 2019 of the last remaining regular, near daily, all-year-round link to France and the continent of Europe is a significant blow to States' policy goals of connectivity, tourism, French links and the development of the importance of the late Senator Victor Hugo and his connection to Guernsey?

The Deputy Bailiff: Deputy Parkinson to respond on behalf of the Committee, please.

635

Deputy Parkinson: Sir, clearly the announcement by Aurigny that it will cease operating the Guernsey/Dinard service from 7th January 2019 is disappointing. It is our only direct year-round scheduled airlink to France and indeed to Europe. It is worth noting that Guernsey's air routes to Europe are subject to an Open Skies approach under the States' of Guernsey's Air Transport Licensing policy statement and have been for some time, even before the recent changes agreed by the States in July.

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645 Although users will be inconvenienced by the loss of the Dinard route, alternative connections still exist by sea with the year-round service to St Malo operated by Condor Ferries and the seasonal service to Diélette operated by Manche Iles Express. Our passenger survey data indicates that last year the Dinard route carried 367 visitors, that is 3% of French visitors and 952 residents, 5% of Guernsey resident trips to France.

Therefore while the loss of the Dinard airlink is regrettable, the impact on the Island's connectivity in tourism will be relatively modest.

650 **The Deputy Bailiff:** Is this a supplementary question, Deputy Gollop?

Deputy Gollop: Yes, sir.

The Deputy Bailiff: Supplementary.

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Deputy Gollop: Having accepted some of the logic of the answer, I would now ask whether it was the fares policy of the incumbent airline that has led to structural decline over the past 10 to 20 years on the French links?

660 **The Deputy Bailiff:** Deputy Parkinson.

Deputy Parkinson: Well, sir, the operators both by air and by sea have to make a return, they are all commercial operations and it is not for the Committee *for* Economic Development to tell them what they can charge.

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The Deputy Bailiff: Deputy Soulsby.

Deputy Soulsby: Sir, I do not know if the President can advise – given he has not been given advance notice – on the amount of advertising spent on promoting the Dinard route from Aurigny?

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Thank you.

The Deputy Bailiff: Deputy Parkinson, are you able to answer that question?

Deputy Parkinson: No, sir, I do not know how much was spent by Aurigny on advertising that route.

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The Deputy Bailiff: You can always put the question in writing, Deputy Soulsby.

Deputy Parkinson: Well, sir, it would be outside my mandate, I have no responsibility for Aurigny.

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The Deputy Bailiff: She can still put the question.

Anyone else with a supplementary before we turn to Deputy Gollop's second question?

685

Deputy Gollop.

Deputy Gollop: Thank you very much.

Will Economic Development be working closely with other relevant States' Committees, such as the States' Trading Supervisory Board and the Policy & Resources Committee, to rectify the situation and restarting therefore credible and useful French, and indeed European, airlinks?

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The Deputy Bailiff: Deputy Parkinson.

Deputy Parkinson: Sir, the States of Guernsey Policy & Resource Plan identifies developing air and sea links to the UK and Europe as one of the States of Guernsey's 22 overarching priorities. This is backed up by the States of Guernsey's Economic Development Strategy as approved by the States in June and also by my Committee's recent policy letter outlining what it believes should be the States of Guernsey's investment objectives for air and sea links.

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Investment objective No. 6 with respect to airlink connectivity is to broaden UK and European connectivity for both scheduled and charter services. Therefore developing airlinks to France and Europe continues to feature very high on the agenda for my Committee. The opportunity to develop new direct and sustainable air routes to Europe is being actively investigated and analysed as part of the strategic review of air and sea links infrastructure.

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Notwithstanding this major strategic review programme, as part of our ongoing air route development work we engage regularly with a range of UK and European airlines to seek and pursue opportunities to launch new routes through our Open Skies policy. We are exploring opportunities to generate new airlinks to France with relevant carriers and we will continue to do so over the coming weeks and months in partnership with our colleagues from the States' Trading Supervisory Board, the Policy & Resources Committee and Guernsey Airport.

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The Deputy Bailiff: Deputy Gollop, supplementary.

715 **Deputy Gollop:** My supplementary is: given that the President on behalf of the Department has already expressed the view that it is not their role to dictate advertising or to dictate or structure what kind of fares potential airlines will offer, what mechanism can you actually do to ensure that the wise words of the Committee do not end up in further failure and reduction of service?

720 **The Deputy Bailiff:** Deputy Parkinson.

725 **Deputy Parkinson:** Well, sir, it must be borne in mind that Guernsey does have airlinks to Europe. It has a seasonal air route to Chambray through Aurigny, it has summer seasonal routes from the Netherlands, Germany and Switzerland and one of the operators that currently operates to Guernsey is actively exploring launching a new route to Luxembourg, and obviously we work with all of the carriers that currently serve the Island, and indeed a range of carriers that do not currently serve the Island, to try and improve airlinks and where we can assist them, which we can do, with for example grants to support new routes in the development phase and with our colleagues at STSB in reduction of Airport landing charges we will do so.

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

735 **Deputy St Pier:** Sir, does the President agree with me that the situation in relation to the European routes and indeed Dinard and others is a very good example of the trilemma which he and his Committee have set out in their report which will be due to be debated next month of seeking to balance affordability, connectivity and reliability, that is the challenge which we as a community have?

The Deputy Bailiff: Deputy Parkinson.

740 **Deputy Parkinson:** Well yes, indeed these routes are mostly primarily tourist and visiting friends and family routes, which means that affordability will tend to be the uppermost consideration. The suggested new route to Luxembourg would be primarily a business route and therefore schedule and reliability will take more priority than affordability. But in each case, on a route by route basis, we assess what the need is for the market and what we can best do to support it.

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COMMITTEE FOR EDUCATION, SPORT & CULTURE

Traffic impact assessments for new school sites

The Deputy Bailiff: Well, Members of the States, I have given leave for Deputy Dudley-Owen to pose a question to the President of the Committee for Education, Sport & Culture pursuant to Rule 12, so I now invite Deputy Dudley-Owen to pose the question to Deputy Fallaize.

750 **Deputy Dudley-Owen:** Thank you, sir.

At the Scrutiny Hearing for ESC on 22nd November 2018 Deputy Fallaize informed the Panel that traffic impact assessments had been undertaken by the previous committee regarding his new committee's proposes two school sites, adding that these reports had been published in the public domain.

755 I can reveal in fact that only a high level traffic study report was conducted at the time, circulated to Deputies and was based on a previous traffic impact assessment prepared by the

same consultants, Arup in 2004 in the case of Baubigny Schools and a highways and transport report produced in 2008 for Les Beaucamps School.

In light of this information and against the backdrop of growing concerns regarding the constraints of our current infrastructure to support planned real estate developments can the President confirm if detailed up-to date traffic impact assessments have actually been prepared or are intended to be prepared for the nominated schools to ensure their viability as suitable sites for enlargement, and if so, when will they be published for public inspection?

Thank you.

The Deputy Bailiff: Deputy Fallaize, President.

Deputy Fallaize: Thank you, sir.

Deputy Dudley-Owen's question does not accurately describe the traffic reports on the two school model which were commissioned by the Committee when she was a Member of the Committee a year ago. In fact Deputy Dudley-Owen's committee commissioned traffic studies on all four sites. These studies ran to well over 200 pages. Deputy Dudley-Owen's Committee undertook to publish all of the reports it had carried out on all matters relating to the two school model and to the best of my knowledge they fulfilled this commitment.

One company studied three sites and advised, to quote directly from their report: 'All three schools perform well in this analysis, although it is worth noting that the studies assumed a total number of students at each site of up to 1,800 which of course is well beyond the actual numbers projected'.

A second company studied the fourth site and concluded that: 'there were no material traffic related issues to cause the site to be unsuitable for use.'

I can confirm that there will be further work carried out concerning transport in and around the sites which we propose to develop.

My understanding is that such studies would ordinarily be published as part of the planning application process, but if not I can assure the States that the Committee will be open and transparent about any such studies.

The Deputy Bailiff: Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, sir.

Would the President of Education, Sport & Culture agree that traffic impact assessments might not be applicable at – sorry, I will rephrase – that certain different types of studies more applicable at different stages and actually the travel planning process is the more important piece of work to establish the preliminary parameters of what you are dealing with, before you can go into the detail that a traffic impact assessment becomes really useful?

I am not sure if that question makes sense. *(Laughter)*

The Deputy Bailiff: Deputy Fallaize, are you able to answer the question?

Deputy de Sausmarez: I can summarise the question. Would the President agree that the travel planning process is one that should be prioritised ahead of traffic impact assessments?

Thank you.

The Deputy Bailiff: Deputy Fallaize, can you answer that summary question?

Deputy Fallaize: Well, that is two questions, sir.

I can confirm that the reports which were commissioned by the previous committee which were mis-described in the original question recommended the carrying out of active travel plans, if that is the correct term, in relation to the two sites proposed for use, and that the Committee

will be carrying those out if necessary in conjunction with the Committee *for the Environment & Infrastructure* which of course has some transport policy responsibilities in advance of the development of the two sites.

So in short the answer is yes.

The Deputy Bailiff: Deputy Yerby.

Deputy Yerby: Has the Committee had to carry out further studies in respect of any other part of its ongoing work where it has turned out that the previous committee has provided them with out of date or inappropriate reports on the subject?

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: Yes, although without notice of the question I am not sure I could go through an exhaustive list.

Certainly the original studies which the previous committee commissioned to be carried out in relation to the four sites were, and we had said at the time that we thought that they were based on incorrect information, which later proved to be the case. In particular in relation to the space requirements at each of the sites. I think there may be other examples but I cannot immediately think of them, but I could provide Deputy Yerby with a full list at a later date if that would help.

The Deputy Bailiff: Deputy Dudley-Owen.

Deputy Dudley-Owen: Point of correction, sir.

The Deputy Bailiff: You cannot have a point of correction, Deputy Dudley-Owen. You can ask a supplementary question.

Deputy Dudley-Owen: I am not quite sure how to phrase it where there has been some misinformation.

I will leave it then, but it is just there was an inaccuracy given by Deputy Fallaize.

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: Sir, whereas La Mare de Carteret site for example is on the coast more or less and the Grammar School Les Varendes is on a main road, both Les Beaucamps and St Sampson's are down secondary roads one on a way system. How far will the travel planning necessary to accommodate additional use include restructuring and regenerating a public transport network that will facilitate pupils transferring from one campus to the other for example?

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: Clearly there will need to be changes to the arrangements in relation to public transport in order to facilitate the number of students planned for each site.

Although Deputy Gollop has summarised the physical location of the sites in fact he will probably be aware because the reports were published by the previous committee that those reports indicated that the site which scored best of the traffic study was actually Les Beaucamps which was perhaps slightly surprising, but that was finding on the experts, if indeed they were experts, who were commissioned by the previous committee in advance of the debate in January.

The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Sir, as somebody who is getting a little fed up with the old Committee and the new Committee having disputes over what was said and would rather get on with a new education system – I am not blaming anybody; I am blaming everybody ... But the question is can Deputy Fallaize assure the States so I understand it as a simple Guernsey boy from Charroterie that the traffic arrangements for both Beaucamps and St Sampson's when these new schools are built will be satisfactory and we will not have any major problems in relation to them?

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: Sir, in relation to Deputy Ferbrache's preamble, Deputy Dudley-Owen asked me questions seeking to justify information which was commissioned by the previous committee, that is why I referred to the previous committee.

The answer to Deputy Ferbrache's question is, yes all of the work that is necessary to be carried out either in studies before the capital developments are proposed, or subsequently before the construction is carried out, that work will be carried out to ensure that traffic and transport can circulate appropriately and be accommodated appropriately around each of the developed sites.

The Deputy Bailiff: Deputy Oliver.

Deputy Oliver: Thank you, sir.

From memory the high-level traffic assessment report said that if some of the schools were actually to be feasible they would have to actually make new roads. Have the Committee actually accounted for that in their choices that they have chosen?

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: No. I do not think any of the studies suggested that in order to make the sites feasible in terms of traffic new roads would be needed. I think they did indicate that some mitigating measures would be necessary, and the Committee is already investigating those. But I have to stress that as I said the study was carried out based on 1,800 students at each of these sites, which is vastly in excess of actual number of students who will be there. Also as I said in the answer to Deputy de Sausmarez they indicated that there would need to be some shift in the way in which people are being transported to and from school which is encapsulated in the need for the active travel plan which was referred to earlier.

The Deputy Bailiff: Deputy Meerveld.

Deputy Meerveld: Can the President confirm that the report produced on something from November 2017 looking at Les Beaucamps and Baubigny Schools actually mentions 1,450 students as the amount of students assumed, and also that it also points out that to facilitate this there may need to be a new junction and a new road from Route Carre across the new car park area at Oatlands opposite Les Gigands can he please confirm that?

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: No. I think the first part of Deputy Meerveld's question is not correct, but the second part of his question is correct in the sense that one of the options suggested by the study was as he sets out, but that was not the only option suggested and I think it is not going to be the preferred option of the Committee to make very significant structural changes to infrastructure. But any changes which do need to be made to infrastructure will be incorporated in the policy letter which the Committee will put before the States in the timeline already indicated.

The Deputy Bailiff: Deputy Inder.

915 **Deputy Inder:** Just briefly, sir.

Through you, sir, I think in response to Deputy Ferbrache and it is just really if he could confirm this, he may have answered it in his last response. I think in June or July he is coming back with casual costs and there was an indication in response to Deputy Ferbrache that the traffic impact assessment and planning might come after effectively the cash grab. I think the expectancy would
920 he agree is that we are going to see everything in June/July transformation, transition, traffic impact assessment, building costs in one fell policy letter and it will be unacceptable for this Assembly to have any more nonsense about this whole drip, drip, drip, 'we will tell you tomorrow, we will tell you tomorrow'.

925 **The Deputy Bailiff:** Deputy Fallaize.

Deputy Fallaize: Well, sir, in fairness, previous proposals which have been put in relation to the development of schools have not included the kind of detailed information which Deputy Inder is now seeking. What I will say is that the reports that will be before the States in the
930 summer of 2019 will contain the information necessary to support the Propositions which will then be before the States. There will be further work between now and then carried out in relation to traffic and other issues of infrastructure around the sites to enable the States to make informed and objective decisions in the summer of 2019 which if the States provide the approvals which will be sought will allow the Committee to get on with the construction work.

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The Deputy Bailiff: Deputy Tindall.

Deputy Tindall: Thank you, sir.

Would the President confirm that it is not his intention to come back to the States with a planning application for a decision before this States that that will actually be submitted to the
940 planning service.

Thank you, sir.

The Deputy Bailiff: Deputy Fallaize.

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Deputy Fallaize: Yes of course that is true because that is the conventional way of proceeding. So in any capital project of any kind of scale if the States provide the approvals that the States need to provide there are further processes in relation for example to gateway reviews overseen by the Policy & Resources Committee and planning applications overseen by the Development & Planning Authority and that will be no different in the case of these two developments.
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The Deputy Bailiff: Deputy Inder.

Deputy Inder: With that response in mind, sir, will the President then confirm that there is
955 unlikely any building to start before the end of this term.

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: No. I can confirm that based on the timeline which the Committee is working
960 to construction work will commence before the end of this States' term, but clearly that would require the approvals of the States in the summer of 2019, so no construction work will begin before Deputy Inder and other colleagues have had an opportunity to vote on the proposals I can confirm that.

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

Deputy St Pier: Sir, does the President agree with Deputy Ferbrache and me that who commissioned what, where and when is perhaps less relevant than actually delivering the decision of the States? (**Several Members:** Hear, hear.) Also does he also agree with Deputy Tindall and me that actually seeking to manage traffic through questions in this Assembly is less appropriate than leaving the Committees that are entrusted to make those decision – namely the DPA and others – and we should allow the respective Committees to do their jobs within the mandates that they have been given?

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

The Deputy Bailiff: Deputy Fallaize, can you answer both of Deputy St Pier's supplementary questions, because I will treat those as – ?

980 **Deputy Fallaize:** I can. I think clearly the focus now needs to be on delivering the Resolutions of the States and indeed has been since the Committee was elected and will remain the focus of the Committee. I do not think personally it is particularly helpful to get into very detailed issues of traffic movements around schools on the floor of the States, but I respect that Members have the right to lodge these sorts of questions, and I have an obligation if they do, and you allow them to
985 be put, sir, to answer the questions, which I have tried to do to the best of the knowledge available to me since this question was submitted at 10 to 11 last night.

The Deputy Bailiff: Deputy Dudley-Owen.

990 **Deputy Dudley-Owen:** Yes, sir.

Would Deputy Fallaize President of the Committee confirm his understanding that my question was merely put in relation to rectifying some misinformation that was stated in the public domain during a Scrutiny Hearing and not with the intention of getting any detailed and deep-dive-level debate on the floor of this Chamber? It was merely to correct some
995 misinformation that has been put out in the public domain. Please will he confirm his understanding of that.

The Deputy Bailiff: Deputy Fallaize, are you able to answer that question?

1000 **Deputy Fallaize:** Well, I think Deputy Dudley-Owen is asking me to speculate about the motives of her questions and I do not think I really want to go there. So I respect –

Deputy Dudley-Owen: Point of correction, sir.

I am merely asking him to confirm his understanding.

1005

The Deputy Bailiff: Deputy Dudley-Owen, you cannot have a point of correction in question time. It is a simple as that.

Deputy Fallaize, please continue.

1010 **Deputy Fallaize:** I do not think that it is for me to speculate about the reasons for Deputy Dudley-Owen's question. She has put it within the terms of the Rules, you have allowed it, sir, I have answered it to the best of my ability and knowledge, and Deputy Dudley-Owen has had an opportunity to ask supplementary questions, and I think I would like to leave it there.

1015 **The Deputy Bailiff:** Well, Members of the States, that now concludes Question Time plus and we will move to the next Item of business, please, Greffier.

Billet d'État XXV

STATES' TRADING SUPERVISORY BOARD

I. Appointment of Non-Executive Directors of Guernsey Post Limited – Advocate Mark Dunster and Peter Shaefer appointed

Article I

The States are asked to decide:

Whether, after consideration of the policy letter entitled 'Appointment of Non-Executive Directors – Guernsey Post Limited' dated 4 October 2018 they are of the opinion:

- 1. To approve the appointment of Mark Dunster as a non-executive director of Guernsey Post Limited with immediate effect.*
- 2. To approve the appointment of Peter Shaefer as a non-executive director of Guernsey Post Limited with immediate effect.*

The Senior Deputy Greffier: Article I – States' Trading Supervisory Board – Appointment of Non-Executive Directors – Guernsey Post Limited.

1020 **The Deputy Bailiff:** I invite the President of the States' Trading Supervisory Board, Deputy Ferbrache to speak.

Deputy Ferbrache: Sir, as the topic necessitates brevity, and I am hopeful that we will finish all the States' business by this lunchtime, I would simply ask the States to approve the appointments of Advocate Dunster and Mr Shaefer.

1025

The Deputy Bailiff: Deputy Graham.

Deputy Graham: Thank you, Mr Deputy Bailiff.

1030 This policy letter does give me the opportunity to ask for clarity on one particular issue, and that is relating to any age limits that might apply to those seeking to be Non-Executive Directors for States' trading entities. I hasten to add, sir, that I ask this not in my own self-interest in any way at all. When I last sort of grappled with this issue a number of years ago, it was my understanding that there is a limit – whether it is statutory or by regulation or whatever, I do not know. I do not

1035 think it is statutory, that such a Non-Executive Director cannot serve beyond the age of 70.

When you couple that with the fact that the expectation is that the newly appointed Non-Executive Director will serve for a minimum of five years, you are effectively saying to anybody of 66 and over that they need not apply.

1040 Some of us thought we were in the peak of our powers in our 60's. Whether we did or not I put it to the President of the States' Trading Supervisory Board that perhaps now is the time, particularly with the demographic headwind that we keep having quoted at us and our wish to keep people being economically productive as long as possible, whether the time is perhaps right to look at that, if indeed there is such a limit, and perhaps even better to come to the conclusion that it is no longer relevant.

1045 **The Deputy Bailiff:** Deputy Tindall.

Deputy Tindall: Thank you, sir.

1050 In the interests of ascertaining how the recruitment was undertaken, I was very pleased to receive the information from STSB in that regard and together with the actual criteria, a copy of the advert, the way in which they have set up a sub-committee to oversee succession planning, and I would very much like to congratulate them on the way they are taking this approach and hoping that there will be a diverse number of applicants and I hope the other Committees will take note. I wish to add that comment to the debate.

1055 Thank you, sir.

The Deputy Bailiff: Well, Deputy Ferbrache, are you still in the prime of your life and able to answer Deputy Graham's question?

1060 **Deputy Ferbrache:** Well, sir, I am at that in-between age, between 65 and 70 and I probably passed my peak 40 years ago but never mind, I hope I have got a few more years in front of me.

Firstly let me deal with Deputy Tindall's comments, and they are gratefully received: any praise is certainly not merited by me but it is merited by those that have set up these procedures, I am grateful for it.

1065 But Deputy Graham does raise a valid point. Frankly I do not know the answer. I will find out. But in any event if it exists it should be abolished and will not be followed going forward, because you could have a poor candidate at 40, a good candidate at 75 and therefore going forward – I do not think that would have impacted upon the appointment – if the States approve it – of these two candidates who are excellent candidates and went through the process that Deputy Tindall has indicated, but certainly we will look at it and if it does exist we will abolish it.

The Deputy Bailiff: Well, Members of the States, there are two Propositions. I will put them to you separately just in case. The first is to approve the appointment of Advocate Mark Dunster. Those in favour; those against.

Members voted Pour.

1075 **The Deputy Bailiff:** I declare him duly appointed.

The second one is to approve the appointment of Peter Shaefer. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare Mr Shaefer also duly appointed.

Both of them are now Non-Executive Directors of Guernsey Post Limited.

DEVELOPMENT & PLANNING AUTHORITY

Appendix to Billet d'État No. XXV – Development & Planning Authority Annual Monitoring Report 2017 – Motion to debate carried

Motion to debate:

To resolve, pursuant to Rule 20 of the Rules of Procedure of the States of Deliberation, to debate the Appendix to Billet d'État No. XXV.

Proposition:

To take note of the Report.

1080 **The Senior Deputy Greffier:** Appendix I – Development & Planning Authority – Annual Monitoring Report 2017 – motion to debate.

The Deputy Bailiff: I invite the Proposer of this motion to debate, Deputy Tindall, to speak on it. Deputy Tindall.

1085 **Deputy Tindall:** Thank you, sir.
Could I ask for this motion to be read out, simply because I understand it may be the first of such kind.
Thank you.

1090 **The Deputy Bailiff:** I am not sure that that is within the terms of the Rules, is it?

Deputy Tindall: In that case, I will incorporate it into my speech.
Shall I continue, sir?

1095 **The Deputy Bailiff:** Please do, yes.

Deputy Tindall: Well, the motion basically is very short and simply says:

To resolve, pursuant to Rule 20 of the Rules of Procedure of the States of Deliberation, to debate the Appendix to Billet d'État No. XXV.

And that is the Development & Planning Authority Annual Monitoring Report 2017.

1100 Sir, the Development & Planning Authority is obliged under the Island Development Plan or IDP to monitor its policies to make sure they are still effective and are delivering what was intended by the States when we approved it in November 2016. Through monitoring we can identify if any adjustments that are needed to the Plan or if any guidance would help to ensure the policies are fully understood by our customers, as well as ensuring the Plan is achieving what
1105 the States set out to deliver for Guernsey.

By debating this report the monitoring process will be even more robust and transparent with the evidence being fully considered.

The Annual Monitoring Report 2017 (AMR) is Guernsey's first in-depth monitoring of the Land Use Plan which benefited from the joint training exercise undertaken with the States of Jersey last
1110 November with the Design Council UK. The AMR

contains a wealth of factual information about how the Island Development Plan (IDP) is performing in delivering its aim of creating a socially inclusive, healthy and economically strong island, whilst balancing these objectives with the protection and enhancement of the island's built and natural environment and the need to use land wisely.

[...]

This document is not just intended to be a tool for policy makers but is intended for everyone on the Island. It [helps Islanders] to directly track trends and data on key indicators that show how the Island Development Plan is affecting Guernsey's built and natural environments, the life of Islanders and the local economy.

There is very useful and comprehensive factual information in the AMR which will be of value to Committees and other key stakeholders. There are some who have said that the IDP needs to change – I am one – certainly in respect of visitor accommodation, but in order to do so there needs to be a factual analysis of how the current policies both those in the IDP and those which
1115 underpin the IDP are working. The evidence to make that factual analysis is in the AMR.

Anecdotal evidence should not be ignored as it is sometimes a precursor to the reported evidence but action to change policy can only be underpinned by evidence and by debating the contents of the AMR this factual evidence can be appreciated and areas for further evidence gathering identified.

1120 I wish to reassure Members and the public that when the evidence is there for change and a suitable alternative proposed the DPA will not be shy in recommending those changes.

I therefore ask Members to support the motion to debate the Annual Monitoring Report 2017 to ensure the facts and information are understood and disseminated as widely as possible to allow for questions and clarification on particular issues and for the monitoring process to be
1125 robust and transparent.

Thank you, sir.

The Deputy Bailiff: Thank you very much.

Deputy Oliver, do you formally second the motion to debate?

1130

Deputy Oliver: Yes, sir.

The Deputy Bailiff: Thank you very much.

Deputy Gollop as the President of the Development & Planning Authority, do you wish to
1135 speak on the matter?

Deputy Gollop: Yes, please, sir.

My speech in a way follows on very closely to the themes of Deputy Tindall and we are aware that the Annual Monitoring Report is a wide-ranging review of the most important areas of
1140 planning policy that the Development & Planning Authority is responsible for. It has been produced taking into account valuable contributions from States' committees and stakeholders, for which the DPA is grateful.

I am pleased that while it is too early in most cases to identify trends the Annual Monitoring Report has shown that the policies of the IDP remain effective and relevant and are delivering what the States intended when we approved the Island Development Plan in November 2016, and
1145 I could add there that if the States did not intend some of it that is what happened on the day.

However, although there is no evidence at this stage that the IDP policies need to be amended, no evidence, as the Vice-President Deputy Tindall said earlier, by debating this report the monitoring process will be even more robust and transparent and the facts and information
1150 understood and disseminated as widely as possible.

As this is Guernsey's first in-depth monitoring of the Development Plan it is anticipated that a level of detail provided in our annual reports will expand over time as the impact of Island Development Plan policies can be more readily examined over a longer period.

Some data was analysed for the first time in 2017 and this AMR establishes a baseline against
1155 which change can be monitored over the 10 year lifetime of the Plan.

The IDP is the first Guernsey Land Use Plan with a requirement to monitor its effectiveness. Although the States' Land Use Plan places a statutory requirement on the DPA Authority in relation to monitoring the performance of a number of different elements of the IDP, there was also a legal duty on the Authority under Planning Law 2005 to ensure the IDP is kept under review
1160 and to make alternations where necessary.

It is very important to understand that this AMR provides analysis of the effectiveness and relevance of IDP policies in delivering the approved Strategic Land Use Plan. The AMR monitors the effectiveness of the IDP's policies, not the SLUP, including its spatial side of the strategy which falls within the mandate of another Committee. The AMR therefore the scope of this debate is not
1165 an analysis of the appropriateness of the States' approach to strategic land use policy.

But at this stage I think the first hurdle to overcome is whether the States wishes to debate it, and I would argue very much that I have had a lot of response, I think, from colleagues that they do indeed wish to see this particular report debated. This is a new procedure, I regret that perhaps I was a bit tardy on another issue to deal with the Lottery and we may need to discuss that at a
1170 later point. But this has been more than properly gone into.

As the President of the Committee I was invited by you, sir, to stand, I fully support the debate personally, and indeed the whole Committee of the DPA does. Deputy Tindall and Deputy Oliver particularly always wanted to see this debated, as did Deputy Lester Queripel way back in the spring and summer, and it was perhaps the rather tortuous procedures we adopted of publishing the report in August and wanting feedback from P&R and E&I that led to this situation.

I also thank Deputy Graham and Deputy Merrett, who would have brought this, I believe, to the Assembly in any event.

So I am sure we can get on with the motion and approve unanimously, or virtually unanimously to debate it. Under the procedures though it appears we will not actually do the meat of this unless there is a change in procedure until after the close of other business.

Thank you.

The Deputy Bailiff: There is no further debate, Deputy Ferbrache, on this. In accordance with the Rules I am now required without further debate to immediately put the motion proposed (**Deputy Lester Queripel:** Sir.) by Deputy Tindall, seconded by Deputy Oliver to you for a vote as to whether you wish to debate the Appendix Report, Annual Monitoring Report 2017 later in the meeting.

Those in favour; –

Deputy Lester Queripel: Sir.

I was going to ask for a recorded vote, please.

The Deputy Bailiff: We will go to a recorded vote then, at the request of Deputy Lester Queripel.

Deputy Greffier.

The Senior Deputy Greffier: The voting this session, sir, begins with St Sampson's.

There was a recorded vote.

The Deputy Bailiff: Well, Members of the States, I will give you the formal vote in due course but I think that was carried by some margin.

In accordance with Rule 9 it means that the debate with the Proposition to take note of the report will take place after all other types of business but before the final item, the Schedule for Future States' Business. So you can hold fire for at least an hour or two.

LEGISLATION LAID BEFORE THE STATES

The Electoral System Referendum (Miscellaneous Provisions) (No.2) Regulations, 2018;
The Social Insurance (Collection of Contributions) (Transfer of Functions) Regulations, 2018;
The Firearms and Weapons (Approved Ranges) (Guernsey) Regulations, 2018;
The Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey)
(Amendment) Order, 2018;
The Electoral System Referendum (Miscellaneous Provisions) (No.3) Regulations, 2018;
The Mooring Charges (Guernsey) (No.2) Regulations, 2018;
The Harbour Dues and Facilities Charges (Guernsey) (No.2) Regulations, 2018;
The Pilotage Dues (Guernsey) (No.2) Regulations, 2018;
The Airport Fees (Guernsey and Alderney) (No.2) Regulations, 2018

1205 **The Senior Deputy Greffier:** The following Legislation is laid before the States: The Electoral System Referendum (Miscellaneous Provisions) (No.2) Regulations, 2018; The Social Insurance (Collection of Contributions) (Transfer of Functions) Regulations, 2018; The Firearms and Weapons (Approved Ranges) (Guernsey) Regulations, 2018; The Financial Services Ombudsman (Case Fee and Levies) (Bailiwick of Guernsey) (Amendment) Order, 2018; The Electoral System Referendum (Miscellaneous Provisions) (No.3) Regulations, 2018; The Mooring Charges (Guernsey) (No.2) Regulations, 2018; The Harbour Dues and Facilities Charges (Guernsey) (No.2) Regulations, 2018; The Pilotage Dues (Guernsey) (No.2) Regulations, 2018; The Airport Fees (Guernsey and Alderney) (No.2) Regulations, 2018.

The Deputy Bailiff: Members of the States, we note that all those items of legislation have been laid at this meeting. I have not received any motion to annul.

COMMITTEE FOR HOME AFFAIRS

II. The Probation (Bailiwick of Guernsey) Law, 2018 – Proposition carried

Article II

The States are asked to decide:

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Probation (Bailiwick of Guernsey) Law, 2018", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

1215 **The Senior Deputy Greffier:** Article II – Committee for Home Affairs – The Probation (Bailiwick of Guernsey) Law, 2018.

The Deputy Bailiff: Deputy Lowe, do you wish to add anything?

1220 **Deputy Lowe:** I have nothing to add, sir.

The Deputy Bailiff: Is there any debate on this matter? I put to you the single Proposition whether or not you are minded to approve the draft Projet de Loi. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare the Proposition duly carried.

POLICY & RESOURCES COMMITTEE

III. The Referendums (Enabling Provisions) (Guernsey) Law, 2018 – Debate commenced

Article III

The States are asked to decide:

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Referendums (Enabling Provisions) (Guernsey) Law, 2018", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

1225 **The Senior Deputy Greffier:** Article III – The Policy & Resources Committee – The Referendums (Enabling Provisions) (Guernsey) Law, 2018.

The Deputy Bailiff: I invite the President of the Committee, Deputy St Pier, to open debate.

1230 **Deputy St Pier:** Yes, sir, briefly.

This piece of legislation enacts following a Resolution of the States in 2003. I will respond to debate if Members have questions on the legislation.

1235 However, it is incumbent on me to draw attention to the fact that the legislation does not discharge the Resolution in one respect, which was that the referendum results should be binding. The legal advice that we have received of course is consistent with that which applied to the advice given in relation to the first referendum held, namely that actually of course the States of Deliberation remains sovereign and therefore cannot be bound and therefore that is the reason that the legislation has been drafted in the way that it is. It is consistent with the legal advice that has been received in that respect.

1240 In all other respects my understanding, sir, is the legislation does discharge that previous Resolution.

The Deputy Bailiff: Deputy Fallaize.

1245 **Deputy Fallaize:** Thank you, sir.

As Deputy St Pier said, the Resolution out of which this legislation arises dates back to 2003, long before I and most of us were Members of the States.

1250 I must say I am inclined to vote against this legislation for a couple of reasons. I say at the outset it may be that I have misunderstood the effect of parts of the legislation, and if so I am sure Deputy St Pier or the Law Officers will point that out.

1255 I have three concerns, although I agree with the point Deputy St Pier has made about binding provisions. I think there is a way actually of making a referendum binding because if the Law is sent to the Privy Council on the basis of taking effect in the event of a certain result in the referendum, I think it probably could technically become binding on the States, but I do not think it is sensible to have binding referendums in a parliamentary democracy. So I agree with leaving that out of the legislation.

But there are three things in the legislation which concern me. One is that the Law it says in the explanatory memorandum:

‘This Law creates a mechanism to provide by regulations made by the [P&R] ... for the holding of a referendum...’

1260 I am not sure that we should be holding referendums merely by the making of regulations rather than by Ordinances at least, so I would appreciate some clarification or response on that. Also the only Committee engaged in this Law is the Policy & Resources Committee, and I am not sure why it ought to be in every case the responsibility only of the Policy & Resources Committee to organise a referendum. In fact the only referendum held in Guernsey so far was not organised by the Policy & Resources Committee, and I do not think it was considered to be a sort disorderly disaster as a result of that Committee not organising it. So I am not sure why the obligation here is only on the Policy & Resources Committee rather than on whichever Committee the States have chosen to direct to organise the referendum.

1270 But my main concern is that the legislation before us provides for a referendum to be held in the event the States have resolved by a majority of two thirds or more that a referendum should be held. Now, I do not understand why it requires a two-thirds majority in the States to vote in favour of a Proposition to hold a referendum.

I generally have always opposed the idea of any action requiring more than one half plus one of Members in order for it to happen. Generally speaking in matters less serious than this the

1275 States have done away with Rules which previously required two thirds majorities in order for things to be done, and moved to arrangements whereby so long as a majority of Members voting on a Proposition vote in favour then the Proposition takes effect. That seems to be the standing position of the States in recent years.

1280 I do think particularly when we dealing not with matters of procedure, but with quite substantial matters, if a Proposition is put before the States to hold a referendum and it is supported by a majority of the States I think a referendum should be held, and I do not think it should require a two-thirds majority of the States to hold the referendum.

1285 Now, the reason I said when I started that I was not sure whether I had misunderstood the terms of the Law was because I am not sure whether this legislation is presented in a prescriptive way or in a permissive way. So in other words I do not know what would happen if the States were presented with a Proposition by a Committee, or by amendment, or by a group of Members in a requête, if the States were presented with a Proposition proposing that a referendum be held on a certain matter or asking a certain question and say there were 40 Members present and 21 voted in favour of the Proposition and 19 voted against, so it would become a States' Resolution, there might be a States' Resolution directing the holding of a referendum on a certain matter, but here
1290 is a Law which implies that it requires a two-thirds majority of the States for a referendum to be held.

Now is it that this Law provides for certain circumstances where a two-thirds majority has been obtained but the States may hold Resolutions in other circumstances where a majority but not two thirds of the States have voted that way, or is it that this legislation if it is approved would
1295 result in the States being unable to direct the holding of referendums unless two thirds of the Members voting had voted in favour of the holding of a referendum in a Proposition.

I think there is some need for clarity. Probably there are some Members of the States, I am looking at Deputy Ferbrache in his new slightly elevated position in front of me, he could probably answer the question himself and does not need any clarity, but I feel I do. I am not sure whether I
1300 am being asked to vote for a Law which, if it is approved and is registered, would mean the States could hold a referendum only if two thirds of Members voting on a Proposition have voted that way, and perhaps the Procureur or the Comptroller could provide some clarity about that. Would they be able to provide the clarity that I am seeking now, sir, please?

1305 **The Deputy Bailiff:** Have you finished your speech?

Deputy Fallaize: It depends on their advice. (*Laughter*) Shall I carry on speaking to give them time to think about it?

1310 **The Deputy Bailiff:** Let me see ... Deputy St Pier, are you content for me to ask for a legal opinion from one or both of the Law Officers?

Deputy St Pier: Sir, it looks as if at least one of them is about to leap to their feet. (*Laughter*)

1315 **The Deputy Bailiff:** Fantastic! Well, if one of them leaps to their feet, then I will ask them the question. Is it going to be Madam Procureur, are you going to take precedence?

The Procureur: Sir, if I have understood the question from Deputy Fallaize over the uncertainty, there seems to be an uncertainty whether the wording in section 1 and
1320 subsection (2)(a), that the States resolve by a majority of two thirds or more that a referendum be held, as to what that means. Sir, in my submission – and the Comptroller is entitled to stand up if he has more information – that means simply as it is said in the natural construction of the words, that there would need to be a majority of two thirds or more for the States to resolve that a referendum be held – no more, no less.

1325

The Deputy Bailiff: Is it not the case that it would be this Projet, if it becomes a Law, that is then engaged if that happens? If it does not happen but there is still a Resolution to hold a referendum there would need to be separate legislation.

1330 **The Procureur:** Sir, yes, this Law would need to be approved, indeed.
Thank you.

The Deputy Bailiff: Deputy Fallaize.

1335 **Deputy Fallaize:** Well, I thank HM Procureur for that clarification. So the position is that as the Procureur has said that the intention is that a majority of two thirds of Members would need to vote – or a majority of two thirds of those voting on a Proposition for a referendum would need to be in favour in order for a Proposition to be held.

1340 Now, I am opposed to the legislation for that reason. I do not think that it should require a majority of two thirds of the States to vote in favour to hold a referendum. I think a majority should be sufficient. But under the interpretation under the advice you have just given, sir, which is I suppose self-evident, that if the States make a Resolution directing the preparation of some legislation for a referendum to be held and that Resolution is in effect made by half of the States plus one, then the Committee directed would be expected to put the Resolution into effect, but if
1345 that is the case, what on earth is the point of the legislation being put before the States now which requires a majority of two thirds to vote in favour of a Proposition to hold a referendum?

So I think the legislation is either redundant and we could make legislation in each and every case where a referendum has been agreed, which is what happened before the Referendum on the Electoral System, or the legislation is intended to be prescriptive and establish the principle
1350 that a referendum will be held only if supported by two thirds of the States.

I think both of those positions are unsatisfactory and therefore I am going to vote against this legislation and I hope the States will vote against it.

There may be an argument put that we need some kind of primary legislation in place in case we need to hold a referendum urgently. Well if so I think the Committee responsible should put
1355 legislation before the States which provides for a referendum to be held in the event that a majority of the States have voted to hold a referendum. Because I still think the two thirds provision is objectionable and this legislation should be rejected for that reason.

The Deputy Bailiff: Deputy Roffey, then Deputy Ferbrache.

1360 **Deputy Roffey:** Thank you, sir.

I am glad that Deputy Fallaize got to his feet and made the point that he did about the two-thirds majority, because just a few weeks ago when I was suggesting on behalf of SACC that possibly terminating debate through the guillotine should be subject to a two-thirds majority he
1365 and others felt that a simple majority should always prevail in the States. I actually do not agree with that but that was very much his stance, so I was frankly surprised not to see any amendments placed to this legislation.

Particularly Deputy Fallaize has often said we do not do sufficient justice in debating legislation, we should debate it and amend it if necessary. A simple amendment I would have
1370 thought to change this from a two thirds to a simple majority would have been his way forward.

Sir, I personally would actually welcome a relatively high bar before we go down helter-skelter into holding referendums here and referendums there. I do worry that once the Webber's Law – if I may call it that, which I thought was in 2002, actually, that it was passed – comes into place, there will be a huge temptation. Should we have a referendum about the amount of development
1375 in the north of the Island? Should we have a referendum on where the school sites should be, through you, sir, Deputy Fallaize? Should we have a referendum on all sorts of things? It will be so tempting to do.

I am a strong believer in representative democracy. I get paid by the people of Guernsey because they chose me and all of the Members in here, sir, to research things, to think about things, to exercise their judgement and to come to a conclusion.

Also referendums can be usually divisive things in a community. I do not think the one that we held particularly was but I can think of one not that far away which has proved to be extremely divisive and people are now talking about how many years it will take for that community to actually heal and come back together again. So I think a significant tripwire to allow referendums to happen is actually a good idea.

I actually do not really like referendums at all. Let's just say that I am a believer in representative democracy, but I am a realist to the extent of saying that yes, the genie is out of the bottle; the question is how easy do we want it to be to revert to it?

I fully understand the logic of Deputy Fallaize's position but I do warn that I think if we can just any time we want, no need for more primary legislation, just do it by regulation with a simple 50% majority, I predict we will be having a number of referendums every year. Now some people might say goodie, that is a good thing, it is direct democracy, jolly good, and if that is what they want, fine – then I think go for a simple majority. I personally am still a believer in our representative democracy and think that it should be a real exceptional event where we hold a referendum.

The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Sir, I congratulate Deputy Fallaize because this was a piece of legislation I was simply going to nod through, and now I am going to vote the same way that he is, which I think is against this legislation.

It certainly will be prescriptive, there is no doubt about that, the advice from the Procureur is self-evident and clear.

But I am also going to vote against it because I actually think if we have a statutory piece of legislation which says 'you can referendums in certain circumstances', we are going to have more referendums. So let's not have it. Let's not have the whole statute so we do not have too many referendums or referenda or whatever the word is. Let's not have it, put it to one side. As Deputy Fallaize says, if there was a real emergency and we needed a referendum on something, it is not beyond the wit of the States, I would hope to be able to conjure something up pretty quickly and have a vote whether we should have a referendum or not.

Also, we have moved away from when this was 2002 – who was the President of ... ? Oh, it was Mr Bush I think at the time, so a precursor of President Trump. It is a long time ago and we had that other great pragmatist Tony Blair who was the Prime Minister, so it was a long time ago when two-thirds majorities were felt to be applicable.

If we were going to have something it should be 50% plus 1, as Deputy Fallaize says, but really I am persuaded that we do not need this piece of legislation at all.

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: Sir, I was always one that wanted this legislation as Deputy Green and others will remember and of course I was sometimes an ally of the former Deputy, Conseiller Webber who put the amendment, although I remember I think technically Deputy Prevel put it as well because he perhaps was likely to get more votes at the time. It nevertheless succeeded and somehow it has sat on the former Procureur's and Comptroller's desks long before the advent of these two learned friends and it did not become legislation for many a year, and perhaps it was not needed really. Now we are in a situation where maybe it is.

I know some Members of the Assembly, Deputy Le Clerc and her Committee particularly, get annoyed when I say increasingly the future of politics, which is short term anyway, has been more about grandstanding and showboating than the traditional style of going through papers and

coming up with scrutiny reviews, and regulations and procedures, and I think we are living in that era.

A lot of the time, I would be tempted, as Deputy Roffey indicates, to have referenda all the time, because there are many issues in Guernsey politics where the public, the people – I know Deputy Langlois does not like the phrase – have a view or at least a proportion of the public have a view that they express vigorously through phone-ins when they occur, or social media, or postbag letters, or lobbying Deputies at meetings.

Now I have often been in a situation that I ultimately despite the growing era of electronic voting do not know what the so called public view is, and as Deputy Roffey would argue sometimes a States' Member has to do what is uncomfortable but it calls to their conscience rather than what the largest single number of people in a district or wherever want.

I think sometimes referenda are called – they are quite common I believe in Switzerland and some European countries and California – and they occur when perhaps the political representation is insufficiently knowledgeable and inclusive to adapt to change, and I can see why referenda would be tempting in Guernsey because sometime States' Members have set themselves against an idea, or against talking about an idea, and it has taken generations of Assemblies going nowhere before a referenda comes into being. I am afraid Island-wide voting would come into that category despite Deputy Lowe and many others raising the issue over many years. I could think of other topics in our society, attitudes to some currently illegal drugs would be one, attitudes to the transport strategy might be another, whereby we have lots of opinions but very little direction as to what is acceptable to society.

But as I have implied already referenda is actually a failure of the paid elected representatives to move forward on an issue and move the drama ahead as Deputy Hansmann Rouxel might say and therefore I think the original intention of the States for the two thirds is still valid. True when they voted on this this is so long ago it is history even though Deputy Lowe and myself were Members of the Assembly at the time and a few others. But I mean of course at the time this is true there were 57 States' Members so two thirds would have been about 39 or 40, which now would be a unanimous vote. So we will have to see how it plays out.

But I would have thought pragmatically – and I do not know what HM Procureur or Comptroller would argue to this or the President of Policy & Resources – that if there was a matter of such burning importance, say greater unity with Jersey or something, I do not know what, that we had to have an Island referendum and it went to the Assembly and the Assembly by a margin of say 24 to 16 voted for it but it had failed to reach the two thirds hurdle, then surely that would be an ideal opportunity for the Committee to come back with a further view, or for the legislation to be changed in due course, or for an unofficial referendum to take place. But that would not be ideal.

I think myself that we should go over this legislation, and I can understand why Policy & Resources are the lead Committee because of course this was done back in the day of Advisory & Finance really, but Policy & Resources surely are a Committee that can delegate it to the appropriate Committee, which sometimes would be the States' Assembly & Constitution Committee; it could in other circumstances be another committee. I would be very interested to hear what the new President of SACC thinks about this.

But I support the legislation as it is, despite the arguments of Deputies Ferbrache and Fallaize.

The Deputy Bailiff: Deputy Tindall.

Deputy Tindall: Thank you, sir.

I was not actually in attendance at the Legislation Review Panel when this piece of legislation was reviewed so I wanted to check myself, and the policy letter was presented on 31st July 2002 and does include in the Resolutions for the two-thirds majority. It is also interesting that that policy, on today of all days, was by L C Morgan, President of the States' Advisory & Finance Committee. For me looking back, it is long time ago, the legislation does adhere to the

Resolutions and referendums, in my mind, are very much something that are not ordinary and therefore should not be by ordinary majority.

So I would approve the legislation.

Thank you, sir.

1485

The Deputy Bailiff: Deputy Green, then Deputy Graham.

Deputy Green: Sir, thank you very much.

1490 I was chairing the meeting of Legislation when we discussed this draft legislation and it is quite correct. Deputy St Pier said when he opened the legislation that we have before us does deviate from the original Resolutions in one respect, which is the point about the verdict in a referendum not being binding, but the other aspects of the Resolutions are replicated and reflected in this draft legislation.

1495 Like Deputy Roffey and others I believe in the two-thirds majority for this. I think a referendum is a tool that should be used very sparingly in a parliamentary democracy. In my view it should be done really only on constitutional matters. It should be very much the exception to the general rule and it should be on a matter where it is absolutely obvious that we need to take the temperature of the public on a particular matter of constitutional importance. So therefore there is a logic to having a two-thirds majority in this Assembly.

1500 On that basis, sir, bearing in mind that the legislation does reflect the original Resolutions, subject to the one deviation that Deputy St Pier has told us about, I think we should support the legislation.

The Deputy Bailiff: Deputy Graham.

1505

Deputy Graham: Thank you, Mr Deputy Bailiff.

1510 I share Deputy Peter Roffey's views on the role of referendums within the context of an elected democracy. I think Deputy Gollop made a passing reference to Switzerland, but of course the construct there is entirely different, not least where we are talking about a German bit, and a French bit, and an Italian bit, and a Romansh bit, all of whom have different histories and cultures and one can understand that on even relatively mundane issues a central government in order to have the confidence that it has the backing of the nation might resort to a referendum.

1515 Interestingly I think it was last week, Switzerland went to the polls on a referendum on three issues, one of which was substantial: it was that of primacy of domestic Swiss law over international law, and interestingly Switzerland voted to say that international law should be supreme – interesting in the context of Brexit. But one of the other issues was whether or not to subsidise farmers for the cost of allowing cattle to retain their horns: the vote came out 54 to 46 against that subsidy, much to the anguish of many cows here and there in Switzerland, but there we are.

1520 But I do not think there is any need for such a parallel device here in Guernsey, we are a pretty homogenous 60-odd thousand, and it is hard to envisage issues that really require us to go to a referendum. I suppose our constitutional position relative to the Crown, whether we should ever revive our ancient links to Normandy and that sort of thing would be pretty crucial, but as Deputy Ferbrache pointed out, I believe that there are devices available to react in the fairly short term to such a requirement.

1525 So my position is this: that unless Deputy St Pier or others can convince me that to vote this Proposition out would do damage, I am really going to vote against it. Should the Law come about, I do stick to the logic of the two-thirds majority. If we are going to have referendums let's make sure that at least there is a jolly good vote in favour of them. But I would rather there were
1530 no legislation at all, unless in declaring them otiose, one is doing certain damage.

The Deputy Bailiff: Deputy Le Pelley.

Deputy Le Pelley: Sir, I just stand really to support what Deputy Green had to say – he took the words out of my mouth really. I have been responsible for writing several constitutions in my time, the two-thirds majority is there to actually be a safeguard really from things happening too quickly and too fast, and very often they are there for actually constitutional matters to make sure that we do not have very serious changing things coming out every now and again. We could end up with five or six a year if we tried hard enough, and I do not think we need to do that.

Thank you

The Deputy Bailiff: Deputy Merrett.

Deputy Merrett: Thank you, sir.

I would first like to state – it probably seems quite obvious – but if the States decided in 2002, can we just really understand why it has taken 16 years for it to come to this Assembly and after in fact we did not have a referendum in the first place? It is just archaic that it has taken this long.

I appreciate why we might want two thirds support if it is constitutional, but clearly referendums can be things that are not always constitutional, so I actually support Deputy Fallaize and Deputy Ferbrache and I think I will be voting against this legislation, unless Deputy St Pier says something to me that changes my mind.

But of course there are questions that this Assembly bounces around for years and we never get anywhere, and I think Island-wide voting is an absolute clear example of this where in the end we decided that we would ask our community. I certainly support having that referendum and have every intention of implementing the outcome of it.

My other concern, sir, is that when we have actually had this referendum it is no longer a consultation, it is no longer us going out to our community and asking them what they think and then we actually ignore the consultation or we do not think consultation was only by vested parties. When we do a referendum, we are actually asking a question to our community which I believe we should honour, and if we cannot even ask that question in the first place because we do not have a two-thirds majority I think that is actually quite a very sad and sorry state of affairs.

So unless Deputy St Pier manages to convince me otherwise, I will also be voting against this legislation.

The Deputy Bailiff: Deputy Inder.

Deputy Inder: Sir, I have got two points and I think I am grateful for Deputy Fallaize picking this up in his speech. I suppose I have got a brief apology to make for not seeing this myself. I skimmed through it, it seemed fairly innocuous until Deputy Fallaize got up and it looks not as innocuous ... Well, probably more ...

But in short the democrat in me says half the Assembly plus one, possibly with the exception of the Electoral Reform Law, which we will be discussing at some point in the future – I think that is a two-thirds majority, because I think it is constitutional. I believe it is still, I think the Electoral Reform Law vote is a two-thirds majority. This Projet seems to be a cousin of the Electoral Reform Law and possibly any referendums going forward may well have a constitutional issue, so I can see the possible connection.

But picking up on what Deputy Ferbrache said, and there is a reason we pick Members of Committees to have certain skills – if a Member of my Committee who is a legal beagle says effectively the effect of rejecting this Projet is there is no effect, then effectively why not reject it?

Of course Deputy Merrett does raise another question: 16 years to bring something when we have already had a referendum. It does seem a little bit of a nonsense.

My apology again for not picking it up myself and possibly as Deputy Roffey said, we could have amended it, but I think the real answer is just to reject it because it just does not mean anything.

1585 Thank you.

The Deputy Bailiff: Deputy Dorey.

Deputy Dorey: Thank you, Mr Deputy Bailiff.

1590 Looking back at the original report, the original report which was from A&F at that time, proposed that it should be solely to questions of Guernsey's constitutional relationship with other jurisdictions, and obviously looking at the Resolutions it was by an amendment but it said *not* limited to that.

1595 I personally think that there are situations where we should have a referendum, and the original Proposition is a classic example of why there would be reason for a referendum. But I think they should be used very infrequently.

So I believe that we should have the legislation to be able to use it in the circumstances that we need it, but they should be used very 'frequently' and I think the two-thirds majority is a safety net to ensure they are used in only those circumstances.

1600

Deputy Le Pelley: Point of correction I think, sir.

The Deputy Bailiff: Point of correction, Deputy Le Pelley.

1605 **Deputy Le Pelley:** I think you mean 'infrequently'.

Deputy Dorey: Yes, sorry, infrequently, yes, thank you – should be used infrequently and so I will support the Law as worded.

Thank you.

1610

The Deputy Bailiff: Nobody else is rising, so I turn to the President of the Committee, Deputy St Pier to reply to the debate.

Deputy St Pier: Sir, thank you.

1615 Thank you to those that have contributed to the debate.

So my challenge is to persuade those who have said they are going to vote against the legislation to vote for it, and I will seek to explain why.

1620 I am no great supporter of referendums for exactly the reasons that Deputy Roffey has said. However, I am an enthusiastic proponent of this piece of legislation, and I do need to explain why, in an effort to turn those that have spoken against this piece of legislation.

1625 I will start with Deputy Merrett and an explanation as to why it has taken 16 years to come to this Assembly, because, sir, I believe consecutive politicians who were responsible for the prioritisation of legislation simply chose not to prioritise it. In fact, as the Policy & Resources Committee is now responsible for that role, looking at old extant Resolutions, we were on the verge of bringing a Resolution to this States to rescind that Resolution because we felt it had been left far too long and if consecutive politicians and Assemblies did not regard it as a priority we should get rid of the Resolution.

1630 All that changed, sir, on 1st May this year with the passage of the Sanctions and Anti-Money Laundering Bill in the UK. Sir, Members will recall that I gave a statement to the Assembly a couple of weeks after that and I said that in light of that particular piece of legislation and how it had ended up on the UK statue book, we felt that it was necessary to take steps to strengthen our constitutional defences and to get on with enacting the recommendations of the Constitutional Investigation Committee and indeed dealing with this Resolution. I am going to return to why I do believe it is necessary in a moment.

1635 Dealing with this question of two thirds, I think Deputy Tindall has quite correctly referred back to the original Resolution: it is of course the responsibility of those drafting the legislation to

ensure that it is consistent with the Resolution which has given rise to it, and of course that is something which is checked by the Legislation Review Panel.

The original policy letter which was in 2002, not 2003 as I incorrectly stated when I opened debate, said at paragraph 25 that a two-thirds majority was necessary to ensure that the States, and I will quote, 'did not abrogate its responsibilities to the electorate by using a referendum every time it failed a difficult or unpopular decision.' In other words it was seeking to ensure that referendums are only used for those matters which are sufficiently serious, so there was always intended to be a bar, and I think that explains the reason that the two-thirds majority is there.

Sir, I would also say that this legislation is by no means the finished article; it merely enacts the Resolutions of 2002. However, if, starting from scratch in 2018, one were to draft a piece of referendum legislation again on the advice of the Law Officers and their staff, the recommendation would be that actually we would probably create something that is more complicated, that would take into account for example questions such as how we ensure that the question is set and the question is sufficiently independently set and so on.

The view of Policy & Resources was that was actually all well and good but actually we needed to get on with having something on our Statute Books with a view to returning at some later date with something which might perhaps be more of the finished article in due course. It was better to have something that could be repealed and replaced than to have nothing at all.

In relation to Deputy Fallaize's question about whether it is permissive or prescriptive, I think the question has been answered by the Law Officers, clearly any referendum that is presented under this legislation would need to meet that two-thirds requirement, that would not prevent other legislation being passed that could enable a referendum in respect of that piece of legislation, but under this Law it would require that two-thirds legislation.

But now to the key as to why I think this is so essential. Deputy Graham said that we could react quickly and Deputy Ferbrache said in a real emergency we could respond, and that is the point which I really wish to challenge, and why we believe it is essential we have some kind of enabling provisions, because I am not sure that is always going to be the case that we can react with the speed that was implicit in their comments.

The reality is that we would need to obtain Royal Sanction to any piece of legislation – that in itself takes time. It would also require us to obtain that Royal Sanction from Privy Council, the composition of that Privy Council may well change, as of course it is doing all the time as Privy Councillors are appointed. It is Policy & Resources' view that it is far better for us to have some enabling provision on the Statute Book now than to seek to negotiate passage of some future piece of legislation at a time when it might be quite difficult to obtain the consent of the Privy Council at the time, which could then throw us into questions of again constitutional crisis in terms of petitioning Her Majesty directly and so on. That is an undesirable position in which to be placed.

Sir, in the conditions which the United Kingdom currently finds itself which are highly febrile, with the meaningful vote on Brexit legislation and the withdrawal agreement –

I will give way, sir.

The Deputy Bailiff: Deputy Inder.

Deputy Inder: I thank Deputy St Pier you for giving way.

You mentioned the connection, through you, sir, with the Ministry of Justice. The most atomic referendum we could ever possibly have is going probably madly down some independence route. So if we were going for some form of independence from our UK brothers and sisters why would we get into a position where we would actually have to ask their permission to have a referendum? That is the most nuclear possible option. I am not suggesting it but it is the most nuclear option, but I would not want us to get into a position whereby we would have to actually ask permission for our own independence.

Thank you for the two-thirds majority.

1690 **Deputy St Pier:** Thank you, sir.

Sir, I think Deputy Inder asks a very good question but of course that is precisely the position that Scotland finds itself in. It cannot legally hold a referendum without the consent of the Parliament in Westminster, and without that authority the referendum is not legal. We would never wish to be in that position.

1695 I think the nuclear option which he is describing is precisely the kind of emergency that we might at some point be in. It is not something that anybody wishes or desires at any point. But absolutely we would not be wanting to be in a position of seeking to obtain that consent at that point. But equally in international law that kind of change would require us as a community to have a mechanism by which we could test the will of the people. So it is absolutely essential that
1700 we have some kind of framework that enables that, and this piece of legislation is I would suggest part of that architecture.

Sir, I was saying before Deputy Inder rose that the situation the United Kingdom finds itself in is a febrile political environment. It is very difficult from this point to predict, as I think everybody knows, how this is going to play out. There are very real tensions within what is presently the
1705 United Kingdom that could well have an impact upon us in due course. The future political changes within the composition itself of the House of Commons could well have an impact upon us in due course. These are things which are very difficult to look into the crystal ball and determine with any certainty.

This is merely part of what I was describing as strengthening our constitutional defences. I do
1710 believe passionately that it is something that we should have as an enabling provision. I hope it is something that we never need to use.

I am no fan of referendums but I do urge all Members to support this legislation.

The Deputy Bailiff: Members of the States, there is a single Proposition whether you are
1715 minded to approve the draft Projet de Loi entitled The Referendums (Enabling Provisions) (Guernsey) Law, 2018.

Deputy Le Pelley.

Deputy Le Pelley: Recorded vote please, sir.
1720

The Deputy Bailiff: We will have a recorded vote please Deputy Greffier.

There was a recorded vote.

The Deputy Bailiff: Well, Members of the States, I will formally declare that result in a moment.

**Appendix to Billet d'État No. XXV –
Development & Planning Authority Annual Monitoring Report 2017 –
Results of recorded vote**

Carried – Pour 32, Contre 1, Ne vote pas 0, Absent 7

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

1725 **The Deputy Bailiff:** But while those votes are just being totted up, can I just take you back to the vote on the motion to debate the Appendix Report from the Development & Planning Authority. There voted *Pour* 32, *Contre* 1, there were 7 absentees, and that is why the motion to debate was carried.

**The Referendums (Enabling Provisions) (Guernsey) Law, 2018 –
Proposition carried**

Carried – Pour 26, Contre 8, Ne vote pas 1, Absent 5

POUR

Deputy Le Pelley
Deputy St Pier
Deputy Stephens
Deputy Meerveld
Deputy Lowe
Deputy Laurie Queripel
Deputy Smithies
Deputy Hansmann Rouxel
Deputy Graham
Deputy Green
Deputy Dorey
Deputy Brouard
Deputy Dudley-Owen
Deputy Langlois
Deputy Soulsby
Deputy de Sausmarez
Deputy Roffey
Deputy Prow
Deputy Oliver
Deputy Tindall
Deputy Brehaut
Deputy Tooley
Deputy Gollop
Deputy Parkinson
Deputy Lester Queripel
Deputy Le Clerc

CONTRE

Deputy Merrett
Deputy Fallaize
Deputy Inder
Deputy Paint
Deputy Ferbrache
Deputy Kuttelwascher
Deputy Leadbeater
Deputy Mooney

NE VOTE PAS

Deputy Yerby

ABSENT

Deputy Trott
Deputy Le Tocq
Deputy De Lisle
Alderney Rep. Jean
Alderney Rep. McKinley

1730 **The Deputy Bailiff:** Members of the States, the voting on whether to approve The Referendums (Enabling Provisions) (Guernsey) Law, 2018 was as follows 26 *Pour*, 8 *Contre*, 1 abstention and 5 absentees. Therefore the Proposition is duly carried.

POLICY & RESOURCES COMMITTEE

**IV. The Income Tax (Guernsey) (Approval of Agreement with
United Kingdom) Ordinance, 2018 – 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 United Kingdom) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

The Senior Deputy Greffier: Article IV – The Income Tax (Guernsey) (Approval of Agreement with United Kingdom) Ordinance, 2018.

1735 **The Deputy Bailiff:** Deputy St Pier, do you wish to speak to this? (**Deputy St Pier:** No, sir.)
Is there any debate on this item of draft legislation? If not I will put it to the vote. Those in favour; those against.

Members voted Pour.

1740 **The Deputy Bailiff:** I declare the Proposition duly carried and the Ordinance approved.

POLICY & RESOURCES COMMITTEE

**V. The Income Tax (Substance Requirements) (Guernsey) (Amendment)
Ordinance, 2018 –
Approved as amended**

Article V

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Substance Requirements) (Guernsey) (Amendment) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

The Senior Deputy Greffier: Article V – Policy & Resources Committee – The Income Tax (Substance Requirements) (Guernsey) (Amendment) Ordinance, 2018.

The Deputy Bailiff: Deputy St Pier, do you wish to open debate on this matter?

Deputy St Pier: No, sir.

The Deputy Bailiff: We have one amendment. Madam Procureur.

[Amendment](#)

In section 19 of the draft Ordinance entitled "The Income Tax (Substance Requirements) (Guernsey) (Amendment) Ordinance, 2018" (on p. 16 of article 5 of Billet d'État No. XXV of 2018) for "2019" substitute "2018".

The Procureur: Sir, yes, thank you.

This is an amendment to correct a typographical error which appears at the end of the draft Ordinance.

Very simply, sir, the Ordinance refers to the year 2019 rather than 2018. Accordingly, sir, the amendment is in section 19 of the Ordinance on page 16 of Article V of Billet d'État and literally is just to correct that typographical error of the year from 2019 to 2018.

The Deputy Bailiff: Thank you very much.

Mr Comptroller, do you formally second that amendment?

The Comptroller: I do, sir.

The Deputy Bailiff: Thank you very much.

Is there any debate on the amendment? Deputy Gollop.

Deputy Gollop: Yes, sir.

I do remember when it came before the Legislation Select Committee somebody, it may have been Deputy Tindall, did point out that the date seemed wrong and somebody made the assurance at the time that there was a lead-in period and there were various things to sort out. Now at least we know it is 2018.

But I do feel as an Assembly perhaps we have not debated as thoroughly as we might have done the wide-ranging issues of BEPS, base erosion profit shifting, and the importance of this legislation to us.

I will also say in view of what Deputy St Pier has just said about the changing landscape of Brexit we will have to know how far this will continue to have reach over us.

1775 **The Deputy Bailiff:** Deputy St Pier, as the President of the Committee in respect of this matter do you wish to speak?

Deputy St Pier: Sir, not in response to the debate on the amendment, sir, no.

1780 **The Deputy Bailiff:** Madam Procureur, do you wish to reply to what Deputy Gollop had to say?

The Procureur: No, sir, not regarding the amendment.

1785 **The Deputy Bailiff:** Thank you very much.

Members of the States, I will put to you the amendment proposed by HM Procureur and seconded by HM Comptroller to change the year in which this Ordinance will, if approved, come into force. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare the amendment duly carried.

1790 Is there any debate on the substantive Proposition now as amended?

I will put to you the Proposition to approve the draft Ordinance entitled The Income Tax (Substance Requirements) (Guernsey) (Amendment) Ordinance, 2018 subject to that amendment in clause 19. Those in favour; those against.

Members vote Pour.

1795 **The Deputy Bailiff:** I declare the Proposition duly carried and therefore the Ordinance has been approved.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

VI. The Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2018 – Approved

Article VI

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

The Senior Deputy Greffier: Article VI – Committee for Employment & Social Security – The Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2018

1800 **The Deputy Bailiff:** Deputy Le Clerc, any debate?

Deputy Le Clerc: No, sir.

I would just like to clarify for this piece of legislation and the following is just in respect of the Up-Rating Report we debated in October.

Thank you.

1805

The Deputy Bailiff: Well, Members of the States, once again a single Proposition, whether you are minded to approve the draft Ordinance. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare the Proposition duly carried.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

VII. The Health Service (Benefit) (Amendment) Ordinance, 2018 – Approved

Article VII

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Health Service (Benefit) (Amendment) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

1810 **The Senior Deputy Greffier:** Article VII – Committee for Employment & Social Security – The Health Service (Benefit) (Amendment) Ordinance, 2018.

The Deputy Bailiff: Once again any debate? No.

Single Proposition to approve the draft Ordinance. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare that duly carried.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

VIII. The Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2018 – Approved

Article VIII

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

1815 **The Senior Deputy Greffier:** Article VIII – Committee for Employment & Social Security – The Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2018.

The Deputy Bailiff: Once again any debate? No.

A single Proposition to approve the draft Ordinance. Those in favour; those against.

Members voted Pour.

1820 **The Deputy Bailiff:** I declare the Proposition duly carried.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

**IX. The Severe Disability Benefit and Carer's Allowance Ordinance, 2018 –
Approved**

Article IX

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Severe Disability Benefit and Carer's Allowance Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

The Senior Deputy Greffier: Article IX – Committee for Employment & Social Security – The Severe Disability Benefit and Carer's Allowance Ordinance, 2018.

The Deputy Bailiff: Any debate from any Member? No.

1825 A single Proposition to approve the draft Ordinance. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare the Proposition duly carried.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

**X. The Family Allowances Ordinance, 2018 –
Approved**

Article X

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Family Allowances Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

The Senior Deputy Greffier: Article X – Committee for Employment & Social Security – The Family Allowances Ordinance, 2018.

The Deputy Bailiff: Any debate from any Member?

1830 I put to you the single Proposition to approve the draft Ordinance. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare that Proposition duly carried.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

XI. The Income Support (Implementation) (Amendment) (No. 2) Ordinance, 2018 – Approved

Article XI

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Support (Implementation) (Amendment) (No. 2) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

1835 **The Senior Deputy Greffier:** Article XI – Committee for Employment & Social Security – The Income Support (Implementation) (Amendment) (No. 2) Ordinance, 2018.

The Deputy Bailiff: Once again any debate from any Member? No.

Then I will put the single Proposition to you to approve this draft Ordinance. Those in favour; those against.

Members voted Pour.

1840 **The Deputy Bailiff:** I declare that Proposition duly carried.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

XII. The Guernsey Legal Aid Service – Approval of the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 – Approved

Article XII

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'The Guernsey Legal Aid Service – Approval of the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018', dated 8th October 2018, they are of the opinion:

- 1. To note the contents, and*
- 2. To approve the draft Ordinance entitled 'The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018' and to direct that the same shall have effect as an Ordinance of the States.*

The Senior Deputy Greffier: Article XII – Committee for Employment & Social Security – The Guernsey Legal Aid Service – Approval of the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

1845 **The Deputy Bailiff:** I invite the President of the Committee Deputy Le Clerc to open debate.

Deputy Le Clerc: Thank you, sir.

1850 Sir, today the Committee for Employment & Social Security is asking the States to approve the implementation of the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, which will, if approved, come into effect on 1st January 2019. The Ordinance is made under the Legal Aid (Bailiwick of Guernsey) Law, 2003, and its purpose is to place the current arrangements to provide Legal Aid in Guernsey and Alderney on a full statutory basis.

I believe a bit of background is necessary to fully explain how we have arrived at our current position. Resolutions of the States in 2001 and 2005 described the elements of Legal Aid that should appear in legislation and directed the preparation of such legislation. To date, however, the Guernsey Legal Aid Scheme has operated on an extra statutory basis known as the Interim Scheme. The Interim Scheme for both Civil and Criminal Legal Aid has been working well but the Committee considers it preferable to codify the scheme in legislation as was the intention of the States.

Although the necessary Resolutions for the preparation of the Ordinance exist, in view of the passage of time, more than 13 years, between those Resolutions and bringing forward a draft Ordinance the Committee considered it appropriate for the Ordinance to be accompanied by a policy letter to provide some background to the legislation for the current Assembly.

The Ordinance will ensure the continued provision of access to free or reduced cost legal advice, assistance and representation in qualifying criminal and civil cases to individuals who could otherwise not afford the service of an advocate.

The arrangements operate in three main areas: the Duty Advocate Scheme which provides free legal advice 24 hours a day to any person who is detained or who voluntarily attends at the Police Station or offices of the Border Agency; Green Form Assistance, which usually provides up to two hours of advice and assistance on a means-tested basis, and can also include the preparation of a case or legal document as well as limited representation in court; and finally Full Legal Aid which covers more prolonged or complex civil or criminal court cases. This is generally subject to both a means test and a test relating to the legal merits of each case.

The Ordinance will largely maintain the *status quo* for Civil and Criminal Legal Aid and will establish the statutory schemes on substantially the same basis as the existing arrangements. This means that there will in practice be very little change to the way in which Legal Aid is currently available and administered.

A new addition to the existing scheme will be the establishment of the Office of the Legal Aid Commissioner. The Office will be independent of the States of Guernsey and Alderney and the Legal Aid Commissioner will be appointed for up to five years. If a person is aggrieved by a decision made by the Legal Aid Administrator, except for decisions about financial eligibility, they can apply to the Legal Aid Commissioner for that decision to be reviewed.

The Guernsey Legal Aid Service which has been overseen by the Committee for Employment & Social Security since 2016 will continue to administer the scheme once the Ordinance is in place.

While the Ordinance does not cover Sark, Legal Aid will continue to be made available for residents of Sark under the existing interim arrangements until the joint review into the financial relationship between Guernsey and Sark including Legal Aid for Sark residents has been completed.

Sir, this concludes my introduction and I am happy to take any questions. Thank you.

The Deputy Bailiff: Deputy Brehaut.

Deputy Brehaut: Thank you, sir.

It was a question broadly on *pro bono* work and perhaps other people in the Assembly will have a greater awareness of this than me. Is *pro bono* advice by advocates given to clients, is there more of it these days or less, and is it at a level that the *pro bono* service still provides some value to those who may otherwise assess legal aid?

Thank you.

The Deputy Bailiff: Deputy Roffey.

Deputy Roffey: Thank you sir.

I was not going to speak on this but something in Deputy Le Clerc's closing remarks has brought me to her feet.

1905 She said that the situation with Sark is that it would carry on as it is until the completion of the current review of the financial relationship between Guernsey and Sark. I may have been asleep at the wheel, I was not aware that the States of Guernsey was carrying out a root-and-branch review of its financial relationship with Sark.

Can she confirm that this is what she said and that it is going on?

1910 **The Deputy Bailiff:** Deputy Prow.

Deputy Prow: Thank you, Mr Deputy Bailiff.

I thank the ESS Committee for bringing this important policy letter to the States.

1915 I do have a few points that I wish to cover, however. Sir, these relate to sections 4.9 and 4.10 of the policy letter and section 21 of the Ordinance. I note the Administrator can give guidance on eligibility and scope of the Legal Aid provision and that the Committee's Regulations and Rules will take precedence. Sir, my question to the Committee is: do they believe that the eligibility and scope are currently sufficiently defined, transparent and robust; or is this a matter under review and work in progress?

1920 I am aware there has historically been challenge around eligibility and cost to the taxpayer, particularly around the Civil Legal Aid Scheme. Sir, this is a policy matter which is probably, in my view, best dealt with around the Committee table provided it is on their radar. Sir, I would like to know the Committee's views on this.

1925 Sir, I would also like to congratulate ESS on including natural justice provisions in the Commissioner's review in Section 20, which includes reasonableness and proportionality. This is something that, in my view, many of the States' appeal processes, particularly those that have been in place for a long time lack, and may well in the future become open to the Human Rights challenges. I have raised this matter with the Chairman of the Arm's Length Bodies Review. However, this Ordinance properly avoids that risk, in my humble opinion.

1930 Thank you, sir.

The Deputy Bailiff: Deputy Ferbrache.

1935 **Deputy Ferbrache:** Sir, I really rise to deal with the point I think very sensibly made by or the question very sensibly asked by Deputy Brehaut. There is still a lot of *pro bono* work done by all advocates' firms undoubtedly, but of course you cannot quantify it. But I think where Deputy Brehaut is right – well, he asked the question, made a statement – because people get paid for Legal Aid, there is probably less because naturally things that you would have done 20 years ago and said, 'We are not going to charge Mrs Le Page for that', well I can now charge her under the Green Form or whatever it may be. So there still is a lot done but undoubtedly there is not quite as much done as there used to be.

The Deputy Bailiff: Deputy Brouard.

1945 **Deputy Brouard:** Thank you, sir.

1950 I was just rising to pick up on Deputy Roffey's point about reviewing of financial arrangements between Guernsey and Sark, if it helps. Much the same as the review was conducted, I think in 2016, of the financial arrangements between Alderney and Guernsey to understand better where finances are spent or monies are costed, a similar exercise is being undertaken by P&R in conjunction with Sark's Policy & Finance Committee. They want to know exactly what they are receiving from Guernsey and *vice versa* from Guernsey's point of view. So it is a mutual exercise in just trying to understand where the touch points are, what the costs are, and also that both Islands can better plan for the future and be much more transparent in the way we both operate together. So if that helps.

1955 Thank you.

The Deputy Bailiff: Deputy Green.

Deputy Green: Sir, yes, very briefly.

1960 Looking at the Propositions I am not sure, whether I need to declare an interest but insofar as I do, I do that anyway.

The only question, sir, for me is why – rather similar to the question that Deputy Merrett asked about the referendums legislation – why has there been such a time lag since the introduction of the extra-statutory Interim Scheme, and now the move to a fully statutory scheme? Why exactly
1965 has it taken so long?

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: Sir, I very much welcome the 'get ahead, let's get going' attitude of this
1970 Employment & Social Security Committee, always led from the front by Deputy Le Clerc and certain things that have been ... Actually people forget, of course, that since the reshaping of Government, a lot of stuff that used to be part of other Committees/Departments – the old Commerce & Employment, the old Policy Council – has come to us and we perhaps have had a more proactive project-based approach to seeing this things through. Possibly my only slight area
1975 of dissent is I am always the one like the late Sir Bruce Forsythe who wants 'more, more, more' to be spent on Legal Aid and I think the majority of the Committee is to be very cautious with public funding and public money and to keep it very much under control.

But I am aware that over the years some quite strong decisions have been made, and it is fair to say that I know some advocates at the Royal Court still talk about Guernsey not being as far
1980 ahead as it might be in terms of access to justice and affordability of justice in that context. Therefore the Legal Aid Service, which I think is a much more sophisticated vehicle than in our sister island, is an extremely useful and important part of a mix that we offer, and it is vital for our Human Rights and for our correct administration of Home Affairs.

1985 **The Deputy Bailiff:** Deputy St Pier.

Deputy St Pier: Thank you, sir.

Sir, I rise to ask a question in relation to paragraph 3.1 of the policy letter which says that:

Legal aid is only available in legal proceedings before a court within the Bailiwick, or appeal proceedings which were dealt with initially before a Bailiwick court.

Sir, I understand, and this information may be incorrect, that there have been cases recently of
1990 Legal Aid being granted in respect of cases which are before the Children's Convener or the Tribunal, rather under the Children's Law. Section 5 of the Law deals with Civil Legal Aid and refers to specified Civil and Family proceedings subject to I think specified conditions, and I am unable ... but perhaps HM Procureur is able to draw attention to where that further detail is specified. I was unable to readily identify that.

But, sir, my understanding was that under the Children's Law, it was never intended that there would be legal representation in that particular forum. Quite the opposite: it was intended to be informal and so on. So it strikes me that if indeed that is becoming the pattern some consideration needs to be given as to whether that remains appropriate and indeed the extent to which Civil Legal Aid is extended beyond merely the courts as set out in paragraph 3.1 of the
2000 policy letter, perhaps needs some further understanding.

In relation to Sark, as Deputy Brouard has said, the financial relationship will incorporate the costs of the Legal Aid Scheme and I think the implications of that following that review will need to be considered not only with Sark but also potentially by this Assembly as well, but that is a matter for another day, sir.

2005

The Deputy Bailiff: I do not see anyone else rising.

Deputy Le Clerc, are you in a position to respond to the debate?

Deputy Le Clerc: Yes, sir, I think I can respond to most of the questions.

2010 Deputy Brehaut, a question on *pro bono* and I thank Deputy Ferbrache, I think he gave a response to that.

Deputy Roffey the review of the relationship with Sark, I thank Deputy Brouard for giving an update on that.

2015 So it leaves me with a couple of other questions. Deputy Prow regarding eligibility and scope. So during this term the Committee for Employment & Social Security will review various policy aspects of Legal Aid. It was part of the Policy & Resource Plan, and in particular we will be reviewing the eligibility rules on the grounds of low income, again the use of Legal Aid by Sark, and the rates paid to advocates. So it is definitely on our radar, and actually we are sort of looking at the scope and eligibility at the present time, so I hope that answers his questions, sir.

2020 Just looking through, Deputy Green: why has it taken so long? This has only been part of the mandate of Employment & Social Security since May 2016. So I think with regard to before, it was part of our mandate I think there were just other priorities within the States, and I think one of the things for us to remember is that we do not think that there have been any significant problems or issues as it has been running at the present time, and I think if there had been it probably would have come back to the States sooner than that.

2025 Deputy Gollop, I think I have answered his questions on eligibility and criteria.

Deputy St Pier, with respect to the Children's Youth & Community Tribunal I have an answer here. It says legal representation at the CYCT is only funded by Legal Aid in exceptional circumstances, and there may be some exceptional circumstances arising in which the Administrator deems that a full Legal Aid Certificate is justified. In order for the Administrator to consider such a case an advocate needs to justify why an advocate is necessary to allow a party to effectively participate in Tribunal proceedings.

2035 Issues that may affect an individual's ability to effectively participate may include where a person has mental or physical disabilities or has drug and alcohol issues. All advocates' costs for CYCT work are subject to usual taxation process. I think, sir, that probably covers your question, Deputy St Pier? Yes. Okay.

I do not think there is anything more, sir, and I just ask you to approve the Legal Aid paper and the following Ordinance.

Thank you.

2040

The Deputy Bailiff: Thank you very much, Deputy Le Clerc. I will invite Members to do so.

There are two Propositions. I will put them both to you together, unless there is any request to take them separately: 1 to note the contents and then 2 to approve the draft Ordinance: Those in favour; those against.

Members voted Pour.

2045 **The Deputy Bailiff:** I declare both Propositions duly carried.

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

**XIII. Amendments to Statutory Minimum Wage arrangements
to come into force on 1st January 2019 –
Debate commenced**

Article XIII

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Amendments to statutory Minimum Wage arrangements to come into force on 1st January 2019', dated 8th October 2018, they are of the opinion:

1.To approve the Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) (Amendment) Regulations, 2018 (as Appendix 1 to this Policy Letter), which pursuant to sections 1(3) and 3(1) of the Law, prescribe the hourly minimum wage rates set out below with effect from 1st January 2019:

- adult minimum wage rate: £8.10 per hour (for workers aged 18 and over), and

- young person's minimum wage rate: £7.50 per hour (for workers aged 16 and 17)

2.To note the proposals in the Policy Letter in respect of the Committee's medium term plan for increasing minimum wage levels.

The Senior Deputy Greffier: Article XIII – Committee *for* Employment & Social Security - Amendments to statutory Minimum Wage arrangements to come into force on 1st January 2019.

The Deputy Bailiff: I invite the President of the Committee *for* Employment & Social Security, Deputy Le Clerc, to open debate.
Deputy Le Clerc.

Deputy Le Clerc: Thank you, sir.

Sir, today the Committee *for* Employment & Social Security is asking the States to approve the proposed increases to the minimum wage rates for 2019 and to approve the medium-term plan for future increases to the minimum wage rates.

The proposed rates are £8.10 per hour for people 18 and over, and £7.50 per hour for 16 and 17 year olds. If these rates are approved the maximum offset for employers providing accommodation will be increased to £78 per week and to £109 per week for employers providing accommodation and food.

For clarity it is a requirement for the States to approve the minimum wage rates, but the offsets are at the discretion of the Committee.

We were pleased to receive feedback from a high number of employers during the consultation this year, which gave us an informed insight into some of the external pressures that business owners are currently facing and how rate changes would affect business viability. These have been some key considerations for the Committee. We are very aware that changes in minimum wage rates are not just affecting the small number of workers who are employed at this base line rate but actually have an impact across the whole of businesses as employers are forced to adjust pay differentials to accommodate the changes from the bottom up.

As always the minimum wage rate needs to strike a balance that is both affordable for employers and high enough to avoid the exploitation of low earners.

We are confident that the minimum wage rates stand up against other jurisdictions. However, in this current climate this may not be enough to recruit and retain staff from overseas, where many other factors are jeopardising Guernsey's appeal as a place of employment.

The current state of the economy in the UK with the strength of the pound, Brexit, income tax rates and housing prices, means that moving to the UK or Guernsey to work simply does not reap the same financial benefits as it used to for migrant workers. Appealing to this group of workers

becomes more and more critical as the industries that rely on them most, namely hospitality are feeling pressures from all directions.

2080 I think at this point it is interesting to refer to some of the work currently being undertaken in Jersey. They have resolved to implement a programme improving productivity in the sectors that will be most affected by minimum wage increases, such as agriculture and hospitality to offset the effect the minimum wage increases will have on business viability. This is something that the Committee is very willing to investigate, perhaps in conjunction with Economic Development to
2085 engage with the most affected industries and work to create strategies that will aid in improving their productivity and business success.

Following the successful amendment by Deputy Roffey during last year's debate on the minimum wage the Committee has considered options for a medium-term plan for the minimum wage rates. We recognise that there is value in providing a direction of travel so that business
2090 owners and employees would be able to plan for the future. One option considered was to link minimum wage rates to inflation figures, but on further consideration of RPIX the Committee came to the conclusion that it was important to ensure that the gap between the lowest paid workers and the work force average can never grow too wide. Something that we feel is vital for an inclusive society.

2095 The proposed medium-term plan is therefore to link minimum wage rates to median earnings with the adult rate reaching 60% of median earnings by 2023. In 2019 terms this would mean a minimum wage rate of £9.33 for adults. The plan is to move towards this over the next five years to ensure that the changes are manageable for employers.

Another part of the plan is for the young person's rate to rise to be equal to the adult rate. The
2100 gap between the two rates which is currently 60p, will be closed as the young person's rate will rise incrementally over the next five years to 2023.

With these medium term plans laid out it is important to mention that that whilst we do have every intention to continue in the direction I have just described, there are uncertainties in our Island's economic future. It would be too high risk to commit firmly to the medium-term plan
2105 without taking notice of the ever changing economic climate. I want to make it clear that each year the Committee will review the minimum wage rates, taking relevant factors into account, and will bring proposals to the States as the previous Resolution requires us to do.

Next I want to touch briefly on the idea that implementing a real living wage would be appropriate for Guernsey at this time. It was a popular suggestion among the responses to the
2110 consultation for the medium term plan. However, it is important to point out that the national living wage is purely a misleading name for the highest age band for minimum wage in the UK and is not linked to living costs at all.

If the minimum wage rate was actually linked to living costs in London, for example, it would have to be approximately £3 higher than the UK's national living wage. We should be conscious
2115 not to get caught up by the notion that paying a real living wage in Guernsey would be easy or affordable for local businesses.

A common misconception has been that increasing minimum wage would instantly lift working families out of poverty and minimise their reliance on income support. However, as much as we may wish the solution was this simple it is becoming more apparent that the rate of minimum
2120 wage is actually having very little direct impact on those working families. As very few employers are able to attract local workers at such low rates of pay. This will be discussed further early next year during the debate of the Scrutiny Management Committee's report on the results of the In-Work Poverty Review.

We do not deny that raising the minimum wage would benefit a deserving group of people,
2125 but it is important to be aware that it will be making minimal difference at bringing hardworking Guernsey families out of relative poverty and off income support.

I refer back to the P&R comments in their letter regarding our Up-Rating Report and I quote:

There is also a wider policy consideration as to whether making top-up payments to claimants who are in full time employment through the provision of Income Support which is funded from general taxation is the right mechanism

to ensure that their income is at the level deemed necessary to meet their minimum needs and prevent poverty. There could be an argument that the minimum wage should be increased to reduce the occurrence of in-work poverty.

For a long time the finger has been pointed at minimum wage as a key contributor to in-work poverty, and from now on it should be noted that other angles need to be taken in approaching this huge problem. Minimum wage may play a part in the solution but it is by no means the silver bullet.

In conclusion, we have proposed minimum wage rates for 2019 and set out a medium-term plan for rates over the next five years that we believe will continue to be fair for the employee and sustainable for the employer. There will be opportunities to review the rates annually in line with relevant factors and where financial margins are particularly tight, in industries such as hospitality, we plan to reach out and mitigate the effects.

I ask all Members to support our proposals.

Thank you, sir.

The Deputy Bailiff: Deputy Tindall.

Deputy Tindall: Thank you, sir.

Generally speaking I am content with the overall policy letter. I merely rise now as no-one else was looking to rise and I have a very minor point to make because as I say the answers to some of the questions which I had on reading this were answered in Deputy Le Clerc's opening speech.

The minor detail is really actually in the drafting of the regulations. There is a very minor typo which I have pointed out in the regulations at 3.1 for those that are interested. It is basically it should be a capitalised R in these regulations. That is not the reason, obviously, why I am standing.

It is something that I have particularly fought for long and hard starting with the Legislation Select Committee and now the Legislation Review Panel whereby not only do we look to be equal and non-discriminatory but we actually do so in our documentation and in particular in our legislation. I am pleased to say that generally speaking this is very much adhered when it comes before the Legislation Review Panel and I am very grateful for that.

It is slightly disappointing to see that these regulations are not gender neutral, and I would ask that all Committees ... because obviously the Legislation Review Panel does not see regulations, I could have obviously introduced an amendment and naturally there were a lot of other things going on and I apologise for that. So really my plea is for everyone to consider that.

As I say, it is disappointing that that this particular Committee who is leading the way on equality did not spot this. But I just raise it because it would be good as a demonstration not only in our policy letters and our documentation but in our legislation that we remember equality.

Thank you, sir.

The Deputy Bailiff: Deputy Oliver.

Deputy Oliver: Thank you, sir.

I just have one question and it is in regard to the age difference and the wage difference between the ages. One thing that I do find unfair is that a 16-year-old can be doing exactly the same job as a say 21-year-old or even a 17-year-old and their minimum wage is different when they potentially are doing the same job. I would just like to know the thinking behind the Committee, why they have not addressed that a little bit more this time?

Thank you.

The Deputy Bailiff: Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, sir.

Following on from Deputy Oliver's comment I think there is mention about a comment in the consultation which was saying well, actually, we need to retain the lower rate for younger people because it helps us to bring on inexperienced people and pay them at a lower rate.

2180 But actually my point that I wanted to make kind of follows on from that. It is about the offset rates and I just think there is a little bit of an irony there, because a lot of the problems the Committee – and I was glad to hear they intend to work with Economic Development – a lot of the problems that they are looking to address stem from the dependence on migrant workers, and I appreciate the nuances around that problem, but I think it is no coincidence that the
2185 hospitality industry in particular pay ... these offset rates allow employers to pay migrant workers, because those are the people that take up the offer of accommodation and food, at a lower rate.

I remember talking to a manager of a hospitality outlet who at the time, it was a couple of years ago, was complaining about rises to the minimum wage and explaining the impact that would have on their business, and at the same time was also airing concerns about the Population
2190 Management Regime and was raising concerns that actually it was not going to be easy enough to bring in migrant workers. I asked the question how many local employees they had, and these people were very honest and said none. I asked, why not? They again were very honest and they said, 'Well actually, because local people cannot afford to live on the wages that we pay them, because local people living not in accommodation provided by the employer, trying to live out in
2195 the market that we all live in, they would not be able to pay their rent on those wages.'

So although I do not object to anything in this policy letter, I will support it, my question is really whether the Committee is prepared to look at that issue going forward at some point in the future, because to me it seems to be two sides of the same coin. It is contributing to the problem. We are trying to deal with the problem of dependence on migrant workers who understandably it
2200 is much harder, increasingly hard to attract in the current economic climate, for all the reasons that Deputy Le Clerc explained, and yet in-built into our own system we do seem to be perpetuating that dependence a little bit. So I would ask whether the Committee is prepared to look at that particular issue.

2205 **The Deputy Bailiff:** Deputy Merrett.

Deputy Merrett: Thank you, sir.

I just wanted to highlight two things please. The first is under 3.5 where it mentions median annual earnings, not surprised clearly, but disappointed to see that in 2016 ... at the end of 2017,
2210 women are earning on average £28,900, for median earnings, but men are earning £35,510. Not surprised but fairly disappointed because clearly, I would like to work in an era were equal work gets equal pay.

But my question for Deputy Le Clerc is under 4.23 on page 13, and it states that:

Data on the wage rates of working families receiving benefit top-ups is not captured at present.

I was just wondering if it is the intention, and I am assuming it is a technological issue as to
2215 why it is not captured, but if there is an intention of the Committee going forward to indeed capture this data. So when we have debates like this and like the In-Work Poverty debate we will have hopefully as soon as possible, potentially early next year, we will actually have this data so we know how many people are on the minimum wage, we will know what the wage rates of working families are who are receiving benefits and top-ups, so we can actually have an informed
2220 intelligence led debate on such issues.

Thank you, sir.

The Deputy Bailiff: Deputy Yerby.

2225 **Deputy Yerby:** Sir, I just wanted to add further to Deputy de Sausmarez's speech that if the States today agrees a medium-term plan for increases in the minimum wage that probably gives

the Committee some latitude, (**A Member:** Hear, hear.) not to consult in such depth about the actual rate each year and so perhaps concentrate on thing like the deductions, the offsets instead through that consultation process. I completely agree with Deputy de Sausmarez that it would be timely now to look at those deductions, how they work, the effect that they have on the overall system, and I draw to Members' attention the massive contrast between the rates of our deductions and the rates in the UK. That is absolutely an area that we need to look at more closely, and I hope that we will be able to do so at some point this term.

The Deputy Bailiff: Deputy Langlois.

Deputy Langlois: I was inspired by Deputy de Sausmarez's speech too, because it is something which came up very early on in our discussions at the Committee for Employment & Social Security. When we first sat round the table the initial idea would be that the rate could be set in such a way that a single person would not have to claim income support. Now our income support requirement rates are not particularly generous they just basically allow somebody to exist in Guernsey. But when we did the calculations because of the non-monetary benefits of income support the minimum wage would have to have been set at something like £13 an hour, and that did not seem to us something which we could plausibly present. But it did –

I will give way to Deputy Yerby.

Deputy Yerby: Apologies to Deputy Langlois for interrupting. It was not only the non-monetary benefits of income support but the effect of the interaction with personal allowances and so on. I would not want Members to go away with the impression that income support was so generous in its surrounding benefits that recipients were living a good life.

Deputy Langlois: Thank you. You have reminded me, I should have mentioned the personal allowances and contributions, and I did preface my remarks by saying that our income support requirement rates are not particularly generous. I would not want anybody to go away with the idea that they are, and Deputy Yerby has underlined that point.

It does explain the problems there are at what you might call that end of the socio-economic scale, how you resolve the problems of population management, short-term workers and encouraging Islanders to take up these positions. There is that balance.

I do not think it is unique to Guernsey, if you go to London and stay in a hotel or go to a restaurant there, they too, that huge metropolis, is also reliant on short-term workers on the minimum wage. So there is an amoral question to all this as well. But that is the way the system has evolved over time, and our five-year plan is a very modest way of addressing that.

I think the Committee for Economic Development did point out that our proposal to over five years achieve a 60% of median earnings minimum wage rate might have some damage to some industries, and it is true that 60% of median earnings is towards the high-end, if you look at other jurisdictions minimum wages tend to be up to 60% of median wages. As I said it tends to be at the high end. The trend is always upwards and I do not think Guernsey really wants to be seen as racing to the bottom especially, as Deputy Le Clerc mentioned, when there are difficulties recruiting people to the Island.

So all in all, I think our proposals are quite well balanced and we will anyway be coming back to the States every year to get that year's minimum wage rate approved by the States.

Thank you.

The Deputy Bailiff: We will now adjourn until 2.30 p.m.

*The Assembly adjourned at 12.30 p.m.
and resumed its sitting at 2.30 p.m.*

**Amendments to Statutory Minimum Wage arrangements
to come into force on 1st January 2019 –
Debate continued –
Propositions carried**

2275 **The Deputy Bailiff:** Deputy Fallaize.

Deputy Fallaize: Thank you, sir.

I think this may be the last time I will speak on an ESS policy (*Interjections*) – no such luck – on an ESS policy letter as a Member of that Committee. As a sort of outgoing act of revenge for my resigning, I see that they have credited an amendment which was approved by the States in 2010 to Deputy Matthews when it was in fact me who managed to get it through the States, and that is in relation to the young person's rates, which is what I wanted to talk about.

Deputy Yerby referred to one possible opportunity that will be opened up if the States vote in favour of the Committee's medium-term plan in relation to the median wage.

2280 What is also set out in the policy letter, and this is in response to the point made by Deputy Oliver, is that if the medium-term plan is approved over the course of the next five years the young person's rate and the adult rate will be equalised over that period. It was back in 2010 when the States agreed that its policy objective would be to equalise those two rates, five years from now is 2023, so it will have taken 13 years, which is slightly quicker than some of the legislation took to get through the States that we debated this morning, but is still quite a long period of time. But I think the direction of travel that the Committee is setting out in the policy letter is quite clear. It would probably be, much to my disappointment I have had to accept this as a Member of the Committee, it would probably be slightly risky to equalise the rates immediately, but the differences between them have narrowed considerably over the last two or three years and will be eliminated by 2023 unless economic conditions change considerably.

2295 I think the Committee has made considerable progress with the minimum wage. I think the position is better than it inherited, particularly in relation to the young person's rate, but also in relation to the adult rate. I hope the Committee will continue to propose above inflation increases in the minimum wage.

2300 When the minimum wage was introduced in fact it was fought against for a long time by those who said it would contribute to unemployment, eventually it was introduced, but every time, or very often when there have been above-inflation increases there have been arguments against it on the basis that it would cause higher rates of unemployment, and that has not transpired. So I would encourage the Committee to be reasonably ambitious.

2305 It will not be possible to introduce anything which could genuinely be called a living wage, not least of all because everybody's living wage is different depending on their household and familial circumstances. So the concept of a living wage, although it has been hijacked by the UK Government in an act of desperation to make it look as if they are doing something for social policy, is not really a legitimate or genuine term.

2310 So it will always be necessary for a means-tested social welfare system to play some role in assisting those people whose earning from employment are not adequate to meet their reasonable expenses, but I do think that the Committee should continue its upward trajectory in relation to minimum wage policy.

2315 Sir, I would just like to thank Deputy Le Clerc, who it has been a privilege to serve under. She is I think an outstanding President of the Committee for Employment & Social Security (**A Member:** Hear, hear.) and I wish her and the Committee well.

The Deputy Bailiff: Deputy Gollop.

2320 **Deputy Gollop:** Maybe Deputy Le Clerc would wish I was an outgoing Member of the Committee too in a way! (*Laughter*) But the thing is, it was a mistake, an unusual mistake because

in ESS we read these policy letters three, four, five, six times and I have spotted another little mistake or maybe something I have misunderstood. On page 11 on table 4.14 in the text it says:

The outcome in year 2020 is £9.35, rather than £9.33, which is due to rounding the increment to the nearest penny.

Whereas actually in the box we do not get to the hourly rate based on the 60% of statistical median earnings until 2023, not 2020. I make that point because much as I welcome the, I think, carefully thought-out letter from Economic Development which is in support with reservations at the direction of travel, it is fair to say, I think they worry too much that we will reach a rate like £9.33 too quickly, because we are talking several years hence. They are upbeat about our economy, and they have no reason not to be, and they question perhaps the amount retailers can afford – I notice we will talk about the retail strategy a bit later today as perhaps not the highest of their priorities – but they were concerned at the current market rate somewhere around about £8.50 or £9 and it would be shocking if it got to £9.33.

Well, I do not necessarily take that view because I think you have to see the Island offering competitive wages. No sooner had we written this policy letter than we heard that the States of Jersey with their new Social Security Minister, Deputy Martin, and Deputy Southern assisting, had come out with a rate which was £8.02 compared to our £8.10. Now clearly we are in the same ballpark. We probably want to do things slightly better than Jersey. We would acknowledge on occasion that our costs of living are slightly higher than Jersey because of various factors, and I think what we put across is a very balanced view.

Deputy de Sausmarez of course was arguing passionately about the question of offsets relating to food and accommodation, but of course in Jersey they are about the same as us, but I think I have always argued strongly on the Committee that we need to retain the accommodation and food offsets, £109, £78 per week, because we are balancing two conflicting objectives. We want a more progressive social policy, we want people to earn, if you like, a living wage. I quite like the phrase 'living wage', I know it is a political gesture perhaps of the Rt Hon George Osborne, but gestures sometimes matter. We want people to earn a decent wage regardless of how different it is to a minimum wage. But we are also conscious that the hospitality sector in particular is operating in a very competitive market. They have undergone strains of currency changes, the new population and migration regime, a difficult trading environment in some respects and I think the offsets very much help that sector in particular.

I think the argument which used to be made that the minimum wage would act as a generator for artificial unemployment is not borne out by the evidence at all, because if you look at page 7, at 3.12, we have had a remarkable success under Deputy Le Clerc because in January 2017 we saw 371 unemployed, going up to 386 in February, but in January 2018 it was 299 and 300. We have 281 unemployed in July compared to a higher figure the previous year. We are actually seeing a drop in registered unemployment. True the employment market is changing. People are aging. There is a volume of jobs around in some respects but I think we are actually keeping the balance between a fair wage and realism to working with the commercial sector probably along the right lines at the moment, and the direction of travel is sustainable, particularly the UK has promised to go for this £10 living wage or whatever you call it and that of course would be in some areas significantly more in your pocket than either Guernsey or Jersey.

Deputy de Lisle: Can I be relevé, sir?

The Deputy Bailiff: Deputy de Lisle, of course you can.

No-one else is rising so I turn to the President of the Committee for Employment & Social Security, Deputy Le Clerc, to reply to the debate.

Deputy Le Clerc: Thank you, sir.

I will start with Deputy Tindall. Deputy Tindall pointed out that there were some typos and she advised us ahead of the debate of the that and I thank her for that. However, we felt they were

not significant enough to warrant an amendment at this time. I do take on board completely about the gender neutral. We will make sure in future that we are gender neutral. We are the Committee for equality and inclusion and we will take that on board.

2375 Deputy Oliver: I think Deputy Fallaize has already spoken about the 16-18 year old rate. I think there are some interesting figures on our appendix report if you look at 12.1 and 12.2 interestingly enough of the respondents the full-time students that businesses that responded 19.4% and 80.6% of their young people that they employ were actually only part-time students. Weekend and holiday work. So actually the realignment of that will actually have quite a
2380 significant cost to that business so the majority now of young people under the age of 18 are actually staying in education and higher education, which I think is a real positive sign. So predominantly the people on that rate are in fact just students and part-time workers.

Some of the feedback that we did receive from businesses because we had very positive consultation was that perhaps some of those young people that are going into the full time
2385 employment that 19.4% actually their skill set and their experience was not a match to those people over the age of 18. But we have said that we will be coming back over the next five years to equalise the rates so that is something that we will be doing.

Deputy de Sausmarez: I think Deputy Gollop has answered some of the questions there and so has Deputy Langlois. He has pointed out and I have made a note that our unemployment in
2390 Guernsey is incredibly low and so in a way we are not actually, I do not think, denying local people some of those positions. Part of the work that we are doing with the Job Centre is actually we are working with the hospitality sector on getting more local people into work, so that is something that we are actively doing, so again it is on our radar.

I think as Deputy Yerby said looking at the offsets it is something that we need to spend more
2395 time doing. I think we found when we go out to consultation it is an area that probably the employees do not really understand so some of the figures that you might see in the appendix report I think they are not entirely accurate because people think that the higher the offset the more money they are actually going to get, they do not appreciate it is actually a lower offset that enables them to have a better hourly rate. So I think we have got a piece of work that we need to
2400 do around that.

Deputy Merrett: the capture of the data. Deputy Merrett has been on the Scrutiny Management Committee and knows of one of the recommendations of the In-Work Poverty. It is difficult to capture that data because at the moment businesses do not have to provide that. So businesses themselves would have to provide us with additional information and whether that be
2405 through the tax or through the contributions system. I think we have potentially an opportunity with the combination of the new revenue services and when we implement the new IT system it may be at that time it is something we can look at, but I think in the short term it will be more difficult for us to capture that information.

We did actually in this consultation for the first time ask for more information about which
2410 businesses pay minimum wage, and what staff are on minimum wage, and what the impact of increasing minimum wage does to the other bands of employees. So we are improving our own consultation process on that.

Deputy Fallaize, I thank him for providing clarification, particularly on the 16-18-year-olds, and thank him for the support that he has given to the Committee over the past couple of years, he
2415 will be missed.

Deputy Gollop, I think that is the first time that he says he does not want to be on the Committee, which is rather concerning, but I will speak with him afterwards (*Laughter*) as any good headmistress would do.

I just wanted to emphasise to him because I think he had some concerns that we still have to
2420 return to this Assembly even though we have set out a medium-term plan, we still have to return to this Assembly every year with our Propositions and we have already noted that we will take into account the economic conditions at that time and the consultation. So although we have set out a plan and a way forward it is not written in stone.

2425 I would just ask everybody to support the proposals. Thank you very much.
Thank you, sir.

The Deputy Bailiff: Members of the States, there are two Propositions unless there is a request to take the vote separately, I propose to put both of them to you at the same time. Those in favour; those against.

Members voted Pour.

2430 **The Deputy Bailiff:** I declare both Propositions duly carried.

COMMITTEE FOR HEALTH & SOCIAL CARE

XIV. Organ Donation – Introduction of a ‘Soft’ Opt Out Scheme – Propositions carried

Article XIV

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled ‘Organ Donation- Introduction of a ‘Soft’ Opt Out Scheme’, dated 4th October 2018, they are of the opinion:

- 1. To approve the introduction of an organ donation scheme based on ‘deemed consent’ subject to the safeguards and exemptions set out in this Policy Letter;*
- 2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.*

The Senior Deputy Greffier: Article XIV – Committee *for* Health & Social Care – Organ Donation – Introduction of a ‘Soft’ Opt Out Scheme.

Several Members: *Pour.*

2435

The Deputy Bailiff: I think that is slightly premature Members. *(Laughter)*

I invite Deputy Soulsby as the President of the Committee *for* Health & Social Care to open the debate.

Deputy Soulsby.

2440

Deputy Soulsby: Sir, thank you.

The donating of an organ is a precious gift, it can be life changing, it can be life saving. Every year Guernsey residents have their lives saved or improved drastically because someone took the effort to expressly agree to allow their organs to be donated in the event of their death. Their death allowed others to live.

2445

In the last two years, three Guernsey residents have become donors and 12 have received an organ transplant. Sadly, though, the number of people requiring a transplant significantly outnumber the donors. There are currently approximately 6,000 people on the UK organ donation register, that includes Guernsey residents, with 400 dying waiting for a transplant in the last year.

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There are a number of reasons for this mismatch: firstly, the advancement of science means that more people can benefit from a transplant than ever before; secondly, the circumstances that enable a donation to be made are very precise, with less than 1% of deaths meeting those criteria – this can be due to the nature of the death but also whether an individual is found to have any underlying health issues that may preclude donation; thirdly, the fact that someone has

2455 not consented to allowing their organs to be donated; and finally, even where someone has consented the family is not happy for their loved one's organs to be donated.

In terms of the first two that relate to the practical aspects, it may be in the future that scientific advances will enable organs to be replaced without the need for human donors, or further research may demonstrate certain underlying health issues are not a barrier to donation as they were once seen to be. Every year advances are made in both areas.

2460 It is trying to increase the potential number of donors that this policy letter seeks to address and why we are proposing a soft opt out donation scheme, such as the scheme is already in place in Wales and which will be brought in in Scotland, England and Jersey in the next two years and where various consultations have shown overwhelming support to do so.

2465 Under a soft opt out scheme an individual, unless they have expressly stated their wishes either for or against, will be presumed to have consented to be a donor, unless their family express an objection, it clearly causes distress to a family or if no family can be found. Deemed consent would not apply to those under 18, not ordinarily resident in Guernsey for the last year, or those without capacity.

2470 The use of the presumed consent system was supported by the Nobel Prize Winner Richard Thaler and Cass Sunstein who developed the concept of Nudge Theory and I hope here I have not stolen Deputy de Sausmarez's thunder. In their book called *Nudge* they describe an experiment undertaken by Eric Johnston and Dan Goldstein, who found out how important a default position in organ donation was. Using an on-line survey the researchers asked people in different ways
2475 whether they would be willing to be donors. In the explicit consent version participants were told they had just moved to a new state where the default was not to be an organ donor; in the presumed consent version the wording was identical but the default was to be a donor; in the third neutral condition no mention of a default, they just had to choose. Under all three conditions the response was entered with one click. The default mattered. Where participants had
2480 to opt in only 42% did; but when they had to opt out 82% agreed to be donors; almost as many did under the neutral condition.

A real life example of this is in Germany with an opt in scheme which has a 12% consent rate, the same as Guernsey, compared to Austria with an opt out scheme which has a 99% consent rate.

2485 As advised Wales brought in a soft opt out scheme in December 2015 and the very latest news in the last fortnight actually is that Wales now has the highest consent after death rate in the UK at 80.5% against a maximum for the rest of the UK of under 67% and Guernsey's rate is just 46.7%.

I think it is worth just mentioning here what happens when a potential donor is identified. It is important we all understand this is not a run-of-the-mill situation. Remember, this is an incredibly difficult time for friends and family knowing that their loved one will die, especially if, which is the
2490 most likely scenario, it is an untimely or an unexpected death. It is something I know personally and I can say the passing of the decades does not make it any easier either.

It is important that professionals involved at such a horrid time are incredibly well trained and experienced. Due to the very small numbers involved in Guernsey it would not be possible to develop that expertise here, and the specialist nurses for organ donation, or as it is not pleasantly
2495 called but SNOD, are employed directly by UK Blood and Transplant and are free to us. When we identify a potential donor we phone them and they advise if transplantation is potentially possible. If it seems likely they fly over to speak to the family, remember all for free. Evidence is that the best consent rates are when the first contact with the family is by a specialist nurse with the ITU team.

2500 But the change in the consent system will not improve donations *per se*. What we need and hope change will do is lead people to talk about what they would or would not like to happen to them, should such an unlikely circumstance arise with their family; or better still to register their preference either for or against. So should this policy letter be approved there will be significant publicity leading up to the introduction of legislation and we will ensure that there is increased
2505 awareness in the future. Indeed this is an area we intend to work with Jersey in particular, who have already been helpful and I think them for their support.

I would like to provide the assurance that this is not about a lot of publicity up front and then forget about it. Raising awareness does not just mean broad media campaigns, but through places like doctors' surgeries, the hospital, schools and community hubs, in other words, and in support of the partnership of purpose by making every contact count.

There will always be the conspiracy theorists and those who have a natural tendency to distrust the state that will rage against these proposals, but this is not the state taking control of our organs; this is about changing lives and saving lives, this is about us as fellow human beings doing what we can for each other. Presumed consent leads to a greater opportunity for donation.

I do hold an organ donation card, but I have not always done so. I always wanted to but you know, you just do not get round to it. I actually felt guilty that I had not, but had other things going on, work, kids, stuff, ironically as for most of us life just gets in the way of donating in death. I am not bothered what happens to my body when I am dead and I am happy for any of my organs to be donated, although I doubt whether my liver would pass muster after the last few years.

However, eventually I did register and for three reasons. The first was how could I not, in my position leading a Committee that has a duty to protect, promote and enhance the health and wellbeing of the people of the Bailiwick, knowing what a difference a donation of an organ makes? What a poor example I would be giving if I did not. The second was having been thrown from my bike in a head-on collision with a car which I was lucky to walk away from just a few years ago. Thirdly and probably what made me sit up and really think was when someone asked me, 'If you were dying and needed a transplant, would you take it?' I knew my answer.

That is why I support the deemed consent system and I ask Members to please support this policy letter and help save lives.

Thank you.

A Member: Hear, hear.

The Deputy Bailiff: Deputy Stephens.

Deputy Stephens: Thank you, sir.

As a preamble I would like to say if Members consider that what I have to say is over-scrupulous, or over-particular, or conspiracy theory, then I will plead guilty and not show any remorse at all.

I have given my support for organ donation from I think probably when the schemes first began, and I still carry an ancient donor card in my purse as I am likely to cling on to my purse longer than most other things, I think. *(Laughter)* When I look at it I see that I signed it in 1982 a long time ago. Also I have informed my close relatives that I have no objection at all to others using what is no longer of use to me.

So the local BMA are in favour of the soft opt out system, HSC is in favour, but I am not and I want to explain why I will not vote in favour of this proposal.

I want to refer to comment in the recent *Guernsey Press* opinion column from 24th November, The *Press* makes the case that this policy letter is too strong in defence of the rights of people who do not want to donate their organs and express concern because in the new scheme as now even the most determined donator can be overruled by family members. I disagree with *The Press* view, I think it is entirely appropriate to defend the right of people who do not wish to donate, but it is the second point the family involvement in the decision-making process that I want to highlight.

So in terms of this proposed change, what will the future look like? To my understanding there may be one group of people who have clearly and formally opted in to the organ donation and there may be one group who have formally opted out. For these groups it is possible for the next of kin to refuse permission for donation and go against the wishes of the potential donor but I suggest that that is unlikely. The *Guernsey Press* agrees and says that 9 out of 10 families made

aware of their loved one's wishes will honour them. In most cases for most of the time I guess this will be true.

It is the situation of the group of people who make no formal or informal indication of their wishes and so are deemed to have given consent, that situation causes me concern. This is where the *Guernsey Press* and I part company. I looked for circumstances in which the States have instituted a procedure which allows for formal opt out, and I did think for a while about the auto-enrolled secondary pension scheme opt out arrangement as a sort of comparison, but pensions are financial arrangements, and maybe there are some ethical considerations there, but the ethical and moral and personal impacts of HSC's proposal for organ donation far outstrip, I think in every way, anything to do with a secondary pension decision. This proposal from HSC to act on deemed consent, even if it is a very rare occurrence, in the matter of organ removal and donation makes me very uncomfortable.

So still concentrating on the group who are deemed to have consented but not made their wishes known, if the next of kin is unsure of the potential donor's wishes and therefore decides to refuse permission, what are their options? Well, according to the policy letter at 1.4 it says:

Family members will retain a role in confirming decisions

And at 3.1 as in the current situation, if no decision is made by the donor the family *may be* asked to give their consent. But then running on to 3.2 the text says:

For organ donation to proceed, the support of the donor's family is necessary.

Now under the deemed consent regime at 4.2 if a person has not registered a decision but it is apparent that the family would be distressed and may refuse to cooperate with medical information the donation would not proceed. Paragraph 4.4 tells me that the family:

would retain a key role in the donation process.

That is the point of 'soft' opt out. And donation would not proceed if the family say the potential donor would not want it or where the donation would cause distress or conflict.

Now superficial reading of this policy letter suggests that where no decision has been publicised by the potential donor, the family's consent is required and their decision will be respected. But it takes a great deal of reading through this policy letter to find that key word '*consent*' when applied to the position of a family. But the word '*consent*' is included and I have been shown the Jersey Law which I am told our Law will be based on, and that really gives a very clear outline of who can object and on what grounds, but nevertheless I ask Members to picture the scene where a distressed family, knowing their loved one is likely to die imminently, are put in a position by this proposal where included in their decision-making processes when responding to a request to allow harvesting of organs is the need to offer a defence against the deemed consent principle.

Currently in a similar situation the donation is a gift, the organs are gifted, it is a positive act. Under this proposal it becomes a sort of obligation where the defence for a refusal might be either possibly adopting a position that the loved one would not have wanted to be a donor, whether this is known or not by the family, or a refusal to give medical information. So is this different to the current situation and how? Well, only in the burden of the defence of a refusal of the deemed consent principle that the principle lays on the relatives and the wider issues of intervention of an outside agency in a most private and personal decision.

I want to emphasise that in my view relatives would be put in a more difficult position than now if we move to a soft opt out situation.

So to be clear, I do not like the proposal, I do not want to progress the matter at all, but in any case not until the Capacity Law has been approved, and the promise of clarity in future legislation will not persuade me to vote for the Proposition because I have to vote on the words that are in the Billet in front of me and I am not convinced by them.

2605 My main objections remain the change from voluntary gifting to something that is an expectation or obligation managed by agencies outside of the family as in deemed consent, and the somewhat confused references to family rights in the decision making process outlined in this policy letter.

2610 MY wish that all needing donations can have them remain the same. I have thought this for many years, and if nothing else I agree with Deputy Soulsby that this debate should encourage conversation in the wider community of what individual's wishes are. But I would much rather that the system remains as it is, and I would appreciate a recorded vote, sir.

Thank you,

2615 **The Deputy Bailiff:** Deputy Ferbrache.

Deputy Ferbrache: Sir, I thought the speech by Deputy Soulsby was absolutely excellent and I would draw everybody's attention to one sentence in one paragraph – the last sentence in paragraph 1.2, which says:

A single organ donor can potentially save or enhance the lives of up to nine individuals.

2620 I also fully accept the integrity and the professionalism of the local BMA when they say what they say about this should be approved and it will minimise people's loss of life, it will minimise people's suffering. I accept all of that. I also do not have any fears about the bogeymen about the abuse, I do not have any fears about that. I believe it will be dealt with professionally, and I believe that everybody would do their absolute best to ensure that people's wishes whatever they might be would be respected. But I am not going to vote in favour of it.

2625 I cannot vote in favour of it, it is too Big Brother-ish. We should have education; we should encourage people to put their permission, to carry round a donor's card or to register as Deputy Tindall told me a few days ago that you can do, you can register on line or will be able to register on line. Let's do that.

2630 I have been on a similar journey to Deputy Soulsby because I can remember as a law student reading a law book – yes, I did read one in those days, I have not read one in the last 50-odd years, but I did read one in those days. I have been a lawyer since I was 21 but I have never bothered about knowing too much law because it worries me. *(Laughter)*

2635 But in relation to that I was reading a law book and one of my flat mates who was studying engineering and those exams, as Deputy Smithies will tell you are very easy, *(Laughter)* so he came round and said, 'Let's go for a pint', and I thought, 'This is a heck of a lot better than the law against perpetuity,' so off we went, but we didn't go to the pub, we went to a blood transfusion ... I felt a bit like Tony Hancock, I expected to give this amount of blood and I ended up giving a pint, it nearly caused me to pass out. But from that time all the time that I lived in England I used to regularly go and give blood, we did go for a pint afterwards – in fact it was far more than a pint, I do not remember the rest of that particular night.

2640 Also as soon as I was able, I got an organ donation card because I am quite happy if anybody wants my organs when I die if they are going to be of value to anybody so be it. So I am in favour of organ donation. I am in favour of all the things that the professionals have said. But I am not in favour of telling people ... of erring on the side of saying that people should give a 'soft' consent. 2645 You must give an absolute consent. You must have the right to say. I know you would have the right under the legislation but if in doubt do not take the organ out. That really should be the principle that we adopt.

But you encourage people and I see that 80% of the 688 whatever it was, responded were in favour of these proposals but it must be done by education.

2650 I speak as somebody ... I do not have a religious conviction, I am not doing this for any kind of religious conviction. It just does not seem right to me that you can go to somebody and take their organs without expressly knowing that that person has consented. Therefore on that basis alone I am not voting for these proposals.

The Deputy Bailiff: Deputy Inder.

Deputy Inder: Sir, probably similar to Deputy Stephens and Deputy Ferbrache's.

Deputy Soulsby was proposing the policy letter in her opening statement I was writing words like honest, decent, caring, positive and fair and I put in brackets next to it, 'Soulsby'. (*Interjection*) There is nothing controversial about that, through you, sir, to Deputy Gollop.

Having said that I can see what the policy letter is trying to do, but I am genuinely going to struggle with this. I am unlikely to vote for it. I will try and give you a couple of reasons why.

I am not entirely sure silence implies consent. It does not under GDPR by any stretch of the imagination. I will just read a few: your consent under GDPR has to be 'unambiguous' and 'a clear affirmative action'. I cannot see how we have adopted a GDPR approach – and I am afraid part of it is my background in terms of data management and all the other nonsense I have done in my life – and I cannot see why we are suddenly going to suspend this through this policy letter.

Now when we read 3.3 we have got a:

Specialist Nurse for Organ Donation will check if the patient has authorised organ donation and a sensitive discussion will take place with the patient's family.

Well okay, I understand that. And a UK team will fly over to Guernsey:

to retrieve the organs. Following the retrieval, the organs are carefully stored and transported to the hospital(s) where a separate team of surgeons will carry out the transplant(s).

[...]

If the person has opted-in, their family would be informed and with their co-operation the viability of donation would be examined.

So I suppose there are two scenarios. I understand within the document it says only 1% of Islanders who have – well, they will not be giving their consent any more – only 1% of the Islanders would be in that sort of area where their organs would be available for use elsewhere.

But it is like everything, it is almost about practical application. It sounds okay on paper but I am just going to give you a scenario. Now those of us who are mothers and fathers here, the lowest age where someone can have their organs whipped out of them and taken I assume via England is probably going to be 18 years old. So let's assume it is 18½ years old, your son or your daughter – so this is the reality of the situation – your son or your daughter – this is probably the worst-case scenario and the greatest fear for a mother and father that their child – no parent is supposed to outlive their child, and I cannot imagine a worse situation when one of your children is on the cusp of dying, or has died in certain circumstances. It has got to be the most crumpling, most crippling situation any parent can be in. Under those circumstances you are in an awful place, your world has fallen apart, and probably the next thing you are thinking about is talking to the extended family, thinking about funerals, thinking about burials, all that kind of thing, but under this scenario you are going to get a call from a doctor and he is going to want to be talking to you, reminding you that your child who has died has not opted out of use of their organs elsewhere and they want to have a conversation. That ain't the time anyone wants to be having a conversation! That is the time when the family should be on their own with their wider family. They do not want state intervention at that point and I absolutely cannot imagine the worst scenario when a son or a daughter has died and we have got teams flying over from England, specialist nurses from England –

Oh, I beg your pardon, Deputy Soulsby, I will give way.

Deputy Soulsby: I thank Deputy Inder.

Sir, under the proposals there will be really no change from the current situation when it comes to children, and it is for the professionals who are there, and they are professionals that is what they do, they speak to the parents if they think it is right. These are people who work in the caring profession who deal with life and death matters all the time and they are not just going to

2700 go in there and say, 'Right, we want to take somebody's organs away.' It is a really difficult conversation as Deputy Inder said, when it comes to children the situation will not have changed.

2705 **Deputy Inder:** I am actually glad I gave way to Deputy Soulsby, but the reality is, I think what I am trying to say if I was in that situation I do not want the state anywhere near me. I do not want to have to have that conversation and I doubt many parents will be. They do not want to know about the professionals, they do not want to know about the qualifications, they do not want that phone call. This is where I really will struggle with it. It is beyond struggling, there is something, as a parent, I just cannot imagine a situation where my child has not given their consent and I am going to get a phone call from a specialist nurse, a set of doctors –
I will give way to Deputy Victoria Oliver.

2710 **Deputy Oliver:** Thank you, sir.,
Children under age at the moment currently have that call, this is not changing. The doctor will phone up and ask the question.

2715 **Deputy Soulsby:** Sir, can I have a point of correction against an intervention.

The Deputy Bailiff: You cannot have a point of correction in respect of what Deputy Oliver has just said.

2720 **Deputy Inder:** I am happy to give way to Deputy Soulsby.

Deputy Soulsby: I thank Deputy Inder again.
It would not be a phone call. This would be a face-to-face conversation and a very sensitive one indeed.

2725 **Deputy Inder:** We have had two or three interventions on the same thing, but that really is not going to change my mind. I just do not think parents with dying or dead children want that conversation, full stop. To that end, including GDPR, if I cannot give you an email address, I am sorry you are not having my body parts, and I will just leave it at that.

2730 **The Deputy Bailiff:** Deputy Paint.

Deputy Paint: Thank you, sir.
First of all, I cannot think of anyone who would like to use my body bits (*Laughter*) or any part of me should I pass away, perhaps except my brain. But they would have to understand that it has been partly immersed for about 50 years in salt water, and perhaps slightly contaminated by *[inaudible]* and others' lip-flapping influence.

2740 Seriously though, I am very concerned about what is being proposed because of those bereaved and partly if it was their own child, they will be extremely traumatised and of course the operations are going to pass very quickly to remove the body parts. So they might be influenced or do something that they might regret in time and some time later.

2745 Personally if any part of me could help my family once I am gone I would be happy to give it. I have been a blood donor as well until a few years ago because I have a reasonably rare blood group which is 'A' rhesus positive and the doctor told me many years ago I should give blood because there are not many like me, good old Guernseyman of course.

2750 As you may know, I lost a member of my family a few years ago – in fact just over four years ago, and if it had been possible for me to exchange my life for hers I would have done it and I told her so but sadly that was not possible. That is how it affects you. It is a very traumatic part of your life. You are not thinking properly, you have just lost somebody that you loved dearly and then you are asked to give some of her body parts or their body parts away. Believe you me, it is a

very bad time to happen. So I think I do agree with Deputy Jane Stephens and Deputy Ferbrache on their stand on this.

Thank you, sir.

2755 **The Deputy Bailiff:** Deputy Roffey.

Deputy Roffey: Thank you, sir.

2760 There has been a lot of talk about how difficult this will be for parents if a child is involved. I have never had any natural children of my own, not that I am aware of anyway, that was a decision that I took early on in life. I have however lost a step child who I loved as a daughter and I think I can absolutely emphasise with what Deputy Inder says, it did not arise but if we had been asked at that time can we take your daughter's organs that would have been quite traumatic. But Deputy Inder asked a specific question, can you imagine anything worse for a parent? My categorical answer is yes, if my child was dying and they could live through an organ donation but there were none available because the system militated against donation, that would be worse. (Several Members: Hear, hear.) Now it is not an easy choice to make. I understand when you are talking about parents, but that would be worse, and I think we are to some extent. We know there are not the organs that are required for people who could – people are dying because of the unavailability of organs. So we are to some extent making a judgement here today between the rights of people who could live and the rights of people who unfortunately do not have that option and are going to die anyway.

2775 Now Deputy Inder said everything else in life we have to positively opt out of. I understand, but I think the rights of living people are slightly different to what happens to corpses to some extent. I am sorry if that is a very unfeeling way to talk about it. I think my options are limited about how my body will be disposed of, I know I can be cremated or buried, or I think put into the sea, none of those are ones that I would choose but I do not have a choice over it once I am gone, society decides to limit my choices. I would like to opt out of all of those, but I am not able to.

2780 Sir, to me, I am like Deputy Heidi Soulsby I was not – actually I did – like Deputy Stephens back in the 1980's I kept signing those damn cards but because I do not have a purse and carried it in my pocket they turned into *papier-mâché* and got worn out in no time at all. So eventually I actually signed the register, it was when I was President of the Board of Health and *The Guernsey Press* ran a campaign to try and get Guernsey people on the register and just like Deputy Soulsby I thought what on earth am I not doing on that register. I wanted to be on it but it just had not occurred to me. I just think there are so many people like that out there. The publicity is right: anybody that feels at all disturbed about it will be able to opt out, and they should opt out. Will there be the odd person who might not opt out and will die and their family say, 'Well, we know that they would not have wanted it'? That is covered as I understand it in this arrangement. In fact to some extent I think it is too well covered, because there may be people who now do not bother to sign on the register and say I do not need to I can just opt out, and for instance they may not be religious, their family may be religious and they may say no, we do not want it to happen. So I do not think there is a perfect system, so I think the balance is probably just about got the right here.

2795 But what it comes down to, to me, I am going to walk out of here either having really supported the people who need the organs who want to carry on living or having been I think overly sensitive about something which most people now regard as fairly normal, and those that do not would be able to opt out of clearly.

Sir, I understand the strength of the speeches from everybody that has been against, but I am absolutely in favour of this and certainly will be supporting it.

2800 **The Deputy Bailiff:** Deputy Fallaize.

Deputy Fallaize: Thank you, sir.

I think the quality of contributions to this debate so far has been very high and it is probably one of the most interesting debates that we are having in this term.

2805 I have one of these donor cards. I do not have any religious convictions or any sort of post-death convictions, I tend to think that once that is it that is it, and clearly the objectives in the policy letter are sound. All my instincts are to support the Propositions and in fact I am sure that if the Committee has done a tally up of who might support and who might oppose, I am in the support category because I have probably given indications that I would support anything which
2810 could increase the number of organ donors.

I am not saying I am going to vote against the Propositions, but I do have two concerns. One is slightly more minor than the other. I am slightly concerned about the principle of deemed consent. I do think it is slightly unusual, and I think it is slightly risky to adopt in law a position where consent to something is presumed in the absence of the consent actually having been
2815 provided. I am not sure if it would be unique, but it does seem to me unusual.

My bigger concern is about the role of family members. I know that Deputy Soulsby and other Members of the Committee would say well, family members have a role to play now. I, however, have a serious objection to that. In my view ideally we should have a regime in place where it is clear at the point of death whether a person wishes to donate their organs or whether they do
2820 not. I do not think that family members, other than for children or for people who do not have the capacity to make a decision, but for adults who do have the capacity to make a decision I do not think their wishes should be overridden by family members who may have their own religious convictions which are completely at odds with the views of the deceased.

I do not have anything against my family but I do have a serious objection to my family making a decision about what happens to my organs after I have died.
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Although the family members are involved in the process at the moment, as I understand it the likelihood is that going to a 'soft' opt out scheme will increase the chances of family members having to make a decision. Because at the moment, I think, unless there has been an opt in, family members typically are not involved in having to make a decision. I think the policy letter says
2830 around 10% of those who have opted in, in effect their wishes are later overruled by their family members after the point of death. Whereas if we go to a 'soft' opt out scheme as I understand it for anybody who has not opted in there is the possibility, perhaps the probability, that their family members will be invited to make a decision as I see it on behalf of the deceased person. So I think there is the possibility that the role of the family members will actually increase or there will be a
2835 role for family members in more cases with a soft opt out scheme.

In fact my view is if I can get over the problem I have with deemed consent, which I think I probably can, then actually I would rather have a 'hard' opt out scheme than a 'soft' opt out scheme because a hard opt out scheme would inevitably lessen the role of family members and it would place more power in the hands of the person who is deceased.
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I am weighing this up. My slight concern is I think if we end up with a soft opt out scheme it is a sort of halfway house, I suspect we will stay there for years and never more towards a hard opt out scheme which I think logically would be preferable if you are prepared to accept the principle of deemed consent.

So I would like to understand from the Committee why they are proposing a soft opt out scheme rather than a hard opt out scheme, because it cannot be on the grounds of deemed consent because once you have accepted any kind of opt out scheme you have accepted the principle of deemed consent.
2845

I would like to vote in favour of the Propositions and I may still because I do think the objective is so significant and noble, if that is the right word, that I may not be able to vote against the Propositions. But I do have a problem with the role of family members making decisions on behalf
2850 of people who are deceased and I fear that in a soft opt out scheme the role of the family members will be greater than it is at the moment and greater than it would be in a 'hard' opt out scheme.

Thank you, sir.

2855 **The Deputy Bailiff:** Deputy Yerby.

Deputy Yerby: Thank you, sir.

Sir, perhaps I can address to an extent Deputy Fallaize's question about whether there are other circumstances in which consent is presumed unless it has specifically been made the case otherwise, and there are other scenarios from within health. (**A Member:** Resuscitation.) Exactly. We are used to dealing with people who have critical needs to be met in situations where they might not be able to communicate their wishes, and one of those situations is precisely the giving of CPR which it is assumed that people will want unless they have a Do Not Resuscitate notice. Similarly we recognise that health is a community effort, we do not necessarily get vaccinated for example because we need to protect our own health, but because if we do not do it then more vulnerable people in our community are going to suffer for it. So health is definitely an area where you cannot just lean on your libertarian streak and say everybody should be able to make freely their own choices for their own purposes. It is absolutely an area where we recognise that the choices that we make have an impact on each other, on our family's wellbeing, and on the wellbeing of our wider community, and we do so accordingly.

In response to Deputy Stephens saying that her concern in this scheme is that we would lose the gift giving nature of organ donation, I disagree. I think that the principle that underpins the scheme is the assumption that you are the kind of person who wants to save or prolong the life of others. So it is not getting rid of gift giving but it is setting up a system that is absolutely premised on assuming the best in others.

I struggle over Deputy Fallaize's point about the greater involvement of the family because in circumstances such as his own where he has said that he does not want his family making choices for him after his death, he will no doubt have made his firm views about organ donation known beforehand.

I will give way.

Deputy Fallaize: I am grateful for Deputy Yerby doing that.

But that only applies surely, what she is saying, if I have made a positive decision to have a donor card. If I have made a decision not to, then the role of the family members becomes all important and not just one factor to take into account, doesn't it?

Deputy Yerby: Perhaps I simply do not follow what Deputy Fallaize is saying. But I think in circumstances such as we have now there will be effectively no change to the role of the family. It will extend the question about whether organ donation is likely to be in line with the deceased person's wishes in scenarios where maybe that question is not being asked at all at the moment, but surely that only results in a more favourable outcome in that more families might say yes.

We all know that all sorts of decisions have to be made about what a person may have wanted after death and often those decisions are a conversation, a negotiation between family members who have different relationships with that person and different understandings of what they would have wanted. It is invariably sensitive and difficult, and as Deputy Soulsby has said needs to be handled with the utmost care.

But I cannot see what Deputy Fallaize is asking for that is not going to be answered by the scheme. I think we would be very much alone in moving to a hard opt out scheme where we are surrounded by others who are moving towards a soft scheme.

It may be that we will be stuck in a so-called halfway house but half way is better than no way at all. I think that holding back on something good in the promise of something better that really is not anywhere on the table at the moment would be shooting oneself profoundly in the foot and not being able to donate the toes afterwards.

Sir, I would urge Members to support this scheme.

The Deputy Bailiff: Deputy Graham.

Deputy Graham: Thank you, Mr Deputy Bailiff.

Previous speeches enable me to keep this very short, particularly that given by Deputy Peter Ferbrache.

2910 For me I am not influenced one jot by religious beliefs. I am not even not going to go into the various scenarios and the various predicaments that have already been outlined in practical terms by previous speakers. For me it is a straightforward issue of the ends, do they justify the means?

In her excellent speech Deputy Soulsby at one stage said this is not about the state taking control of body parts; it is about saving lives. But with respect it is about both of those. It is just
2915 that one is the ends and the other is the means.

I do not think anybody has got any trouble at all with the ends. I do not think there is any Member of this Assembly who disputes the objective of enabling more lives to be saved, fewer to be lost, or lives to be prolonged by the availability of body parts. Nobody is disputing that at all.

My problem is I believe when it comes to the state assuming powers for itself in whatever
2920 form. There are boundaries, and I think those boundaries need to be thought through very carefully before they are transgressed.

I would not accuse this Proposition of being ill thought out; far from it, it has been very well thought out, but I am afraid it leaves me unpersuaded that really the ends justify the means, because I really do not think they do.

2925 Interestingly, we had a quick mini-debate at the Castel Deputies Surgery on Saturday and at one stage when I put forward my views the fact was introduced, is it actually morally justifiable that we here in Guernsey who might benefit from the scheme in the United Kingdom that is based on other principles than our own should actually conform with what is going on over there?

I think it would be regrettable if a sort of equivalence of valued parts was introduced in that
2930 way. Perversely you could actually argue that a United Kingdom's citizen benefitting from a Guernsey body part, if I can put in those terms, that was freely offered is actually as morally justifiable or just as welcome as a body part given to somebody in Guernsey by somebody in the United Kingdom who merely did not think to opt out.

But I do not think anybody really is seriously going to introduce that equivalence and if they
2935 are I had anticipated it.

Members of the States, I have spoken longer than I intended. In this case I do not think the ends justify the means.

The Deputy Bailiff: Deputy Leadbeater.

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Deputy Leadbeater: Thank you, sir.

I would more favour a doctor requested opt in scheme, say where the next time we visit our GP they ask us the question and our consent or not is then put on record. Because this to me would provide more clarity regarding consent than just the assumption of consent is given unless
2945 someone has expressed otherwise.

I am also following up from Deputy Stephens' speech cognisant of our lack of any adequate capacity legislation to protect those more vulnerable within our society.

I will not be voting for this.

Thank you.

2950

The Deputy Bailiff: Deputy Tooley.

Deputy Tooley: I want to start with a really brief little story. I do not know whether this is true or not but it sums up the points, so I am going to use it anyway. It may be a fairy tale. I will phrase
2955 it that way. It is not that I am trying to give you facts that may not be facts, this is not a fake news situation. I accept that this may be a fairy tale rather than reality.

One of the richest and most powerful men in Brazil made waves when he announced plans to bury his million-dollar Bentley so that he could drive round the afterlife in style. He received lots

of media attention and was criticised for the extravagant gesture. Why wouldn't he donate the car to charity? How out of touch with reality was this guy! He went ahead with the ceremony. But there is a twist – of course there is or why would I be telling you the story? Moments before lowering the car into the ground he revealed that his genuine motive was to create awareness for organ donation. 'People condemned me,' he said, 'because I wanted to bury a million-dollar Bentley. In fact most people bury something a lot more valuable than my car.'

People have talked a fair bit in this debate about as making a decision on behalf of a person about what happens with their organs following their death and removing their right to object by assuming that they would have consented.

Well, not with organs but with property, we do that already. If you die tomorrow and you have not got a will and you have not got family who are able to make a case and claim your estate, we decide that what that money should be used for is for the help of the Island and its people. That is what we do. That is what the Inheritance Laws of 2011, the 2015 Law in the UK, that is what the Law says. If you die without a will, your property becomes the property of the state to do with as it will. Actually we can use that to do useful things and we do.

But when it comes to our organs, for which there would be no use whatsoever, in fact the vast majority of people, as we discussed – or lots and lots of people as we discussed during the debate – around the cremator do not even take them with them. We literally destroy organs that would keep other people alive, that would give people long and powerful lives.

I became committed to the idea of donating my organs long before I would have been old enough to give consent to do so, because as a child I was allowed if I had been very well behaved all weekend to stay up and watch *'That's Life'* on a Sunday evening. So I became very aware of the case of Little Ben. (**A Member:** Sausages.) Yes and the dog with the sausages. I became very aware of Little Ben who needed the liver transplant and the campaign that went around that. I decided back in 1983-84 that I would want to be an organ donor.

I had a donor card and like Deputy Roffey I have had many donor cards over the years and little by little the print rubs away on them, they fall apart. I do not currently have a donor card, not because that intention is any less real but because actually there just does not happen to be one in my purse at the moment. My family know that my intention would be to donate. I know that my husband's intention would be to donate, but actually in that moment would it be the first thing that would spring to his mind, would it be the first thing that would spring to my mind? Should the fact that there is not a card in my wallet or my purse be an assumption that maybe I would not have consented; that maybe I would have preferred for my organs to be destroyed one way or another following my death. That is what we do. We make an assumption that the person would not be willing to donate something that they might have freely given. We make the same kind of assumption we are asking to be made, but we make that assumption in a way that does not help others and that damages the lives of others.

What we do with our organs following our death is a matter for each individual. But each individual will have the power to make that choice, not by giving consent but by choosing to say that they are withholding consent. The choice will still be there, nobody is removing it. We are simply making it easier for people to have the lives that they need to have.

Thank you.

The Deputy Bailiff: Deputy Le Clerc.

Deputy Le Clerc: Thank you, sir.

Sir, I would just like to point out to people if they have got a driving licence, mine is a bit old now, but actually you have got a consent form in your driving licence, so for all those people that say they have not got a form there is a consent form in your driving licence. So that is really useful.

But I will be supporting this. I hear what Deputy Inder was saying earlier on about causing distress, families at a very difficult time, but there are also many families that actually embrace this

idea and they see so much benefit and it gives them comfort at a difficult time, so I just wanted to put that point across that for some families knowing that they are giving another person another human being a life it can be very positive feeling for them. I just wanted to make that point.

Thank you, sir.

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The Deputy Bailiff: Deputy St Pier.

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Deputy St Pier: Sir, building on Deputy Tindall's comments, I dug out my organ donor card which was hiding in my wallet. You can barely read it. (*Interjections*) Sorry, Tooley, sorry, it is because they are both next to each other. I do apologise. Yes, I can barely read it. I have actually used the opportunity of being sat here to register on line organdonation.nhs.uk if anybody wishes to do that. My driving licence is sitting in a drawer at home which is completely useless.

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In relation to Deputy Inder's point these conversations will be happening anyway which I think is what Deputy Oliver was saying. With or without this policy letter those conversations will take place with the parents if the medical profession are indeed doing their job they will be finding a way to have those sensitive conversations if appropriate.

Deputy Graham has actually made my speech shorter in terms of do the means justify the end. I have reached the opposite conclusion to him. I believe the means do justify the end and will therefore be supporting the policy letter.

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The Deputy Bailiff: Deputy Oliver.

Deputy Oliver: Thank you, sir.

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As many of you know, over the summer I was seriously ill and through a few problems at MSG, actually my liver pretty much packed up, and I was yellow, very yellow. It is the first time actually that it had occurred to me that my body was not as strong as it should have been, and there are ways and means of getting better and the first time you can take medication but sometimes medication does not go that far and you just need a complete new organ. My adrenal glands are dead, but there is no – yet – opportunity for a transplant for adrenal glands. I am sure that will come one day but when you opt in to something you have got to physically go and do it. Many people, as a lot of people have said here, are very busy and it is not that they do not want to opt in; it is just they keep forgetting, life gets in the way, and with a little three-year-old my life is pretty busy, and I do not have an organ donation card and I actually welcome this because I do not have the time to register, which I know is a really appalling thing to say, but I have every minute of my day packed out. I think this is just a really beneficial thing to do. If you do not want to give your organs away that is absolutely fine, no-one is saying you have to. You can still opt out.

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I think when you feel as passionate about not donating your organs, you would make the time, make the effort to go on. But there a lot of people that sort of think, 'Oh yes, I want to donate but I am not too sure.' Well, those people can help so many lives. There are currently 8,000 people a year that die just because there are not the organs there, when quite happily people get cremated and burn organs. It is just criminal.

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So I am just so glad this paper has come and I really do hope you vote for it.

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Two Members: Hear, hear.

The Deputy Bailiff: Deputy Dudley-Owen.

Deputy Dudley-Owen: Thank you, sir.

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I was not intending to speak, I was really interested in listening to all of the arguments put forward today, and I have come from a position of being really very much in favour of this scheme to actually moving progressively away from being in favour of it. The more arguments that I have

heard bringing up anomalies, such as the ownership of the human remains and ownership of bodies, looking at family disputes and the amount that happen over death and how to dispose of the loved one's remains, and I think today's arguments have just sort of compounded a lot of the issues that I have. Deemed consent, I do not feel comfortable with, in the way that Deputy Fallaize has outlined today. I understand Deputy Jane Stephens reservations as well as Deputy Inder's.

Actually two things, one that Deputy St Pier has just said about how easy it was to log on to the NHS site and opt in, and also Deputy Oliver saying how busy people are and if they feel a bit not quite sure about whether they want to donate their organs then just go for it anyway.

Well, I think it is all about education, as Deputy Ferbrache said before. Actually I would much rather see a consolidated programme of education running through from the doctors to our Hospital, any health care schemes that we have got, through the chest and heart. Why don't we set up a data base, proper opt in, nice looking website that everyone has got access to that you do not have to carry your paper card around which wears out like Deputy Roffey's has done for many years and then he writes it on again. We are in the 21st century, we should have a digitised solution to this opt in and I think that the 'soft' –

Yes, Deputy Soulsby I give way.

Deputy Soulsby: Thank you, Deputy Dudley-Owen.

It is actually automated, it is online. That is really not the point, the point is you can opt in and opt out easily and that is what we want people to be able to do, whether we have this scheme or not. It is about making sure people express what they want before they die as much as possible.

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

But they are not expressing what they want if they have a deemed consent without having expressed beforehand what they want. So that does not make sense I am afraid. This is a soft opt out which I think will cause issues within families. If we are seeing disputes already on what to do with human remains after a loved one has died, then this will surely increase the amount of disputes about whether or not organs should be donated, if some members of the families do not believe that that is appropriate for their loved one. So in this instance whilst I strongly believe that organ donation is a fantastic and amazing gift, I think that you should have the option to opt in if you wish and not be made to just by the fact that you have silently consented.

Thank you.

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: This was actually one I was not going to speak on as well, really. But I have been somewhat surprised by the passion and intensity of this – well, I agree with Deputy Fallaize – interesting debate.

I had not given too much thought to the particular set of issues. I went to the St Peter Port Douzaine Monday night and I found a lot of highly principled arguments against it from different parts of the spectrum. From perhaps more religious concerns to more ethical concerns about the nature of consent. We have rehearsed a lot of those arguments today and indeed heard some philosophical and legal opinions.

But I do feel we are making rather heavy weight of this, because it is a classic example that we come across far too often in our politics, and we are never going to get very far unless we overcome this obstacle of reinventing the wheel. I mean a lot of the work for this has been done in other places, Wales – which is an Assembly within the British Irish Council within the framework of the Commonwealth Parliamentary Association, it is a community similar to us, many of us have met Welsh Assembly Members and Members of Parliament – has done a lot of work on this. It perhaps did not fulfil every aspect of the Nudge Theory; perhaps it was more a case of the wink theory because it did not seem to encourage more take-up but it did encourage and stimulate

more family approval, as I understood it, of the delicacy of the soft opt out option. So when the families are consulted with the families were more likely to give their consent.

We have heard a lot of very touching arguments about children, the children who need organs, the children who might pass away and cause such grief for their parents. But the policy letter, the report makes clear, I think, that nobody under 18 will necessarily be included in this. Nobody who lacked the capacity – coming back to Deputy Leadbeater and Deputy Stephens point about the capacity Act being overdue, I agree – and also nobody who was deemed to be not-resident here for less than a year.

Now, I have one or two qualms about that because it does make the point that there are certain ethnic groups that perhaps need organs and they would not get them, but we have to live with the practicalities of these things.

The only argument which I had which is a different point of concern was that Guernsey is perhaps based understandably on a network of families and most Members of this Assembly past and present have numerous members of their family or extended family, some of us do not, and increasingly I think the Islands will have populations who do not have necessarily close family, and then you have to define what the friends are. So I think a little bit of work is necessary there, because I think everybody should be equal in their ability to give organs. I have no knowledge of this but I would imagine that generally speaking younger fitter people would prove more promising if any unfortunate event of an untimely demise than people who have lived rather a robust lifestyle.

But I think where I am coming from in this is Guernsey politics and process is ultimately a two-stage event. We make a principle here based upon the evidence we get given by a States' Committee and our personal opinion and conscience, then having done that with a realistic outlook we then rely HM Comptroller in particular and the good staff at St James' Chambers in conjunction with the board to come up with legislation that is right and fit for purpose. I think many of the understandable concerns from Members today about details, about family consent, about ownership and so on, will come out in the legislation.

I personally today want to support the principles behind Deputy Soulsby's speech and reserve the right to amend the legislation should there be difficulties that come out of it. In any case by the time we see the legislation, hopefully not 15 years, but it will not be 15 minutes we will have greater understanding of how this has gone in Wales and other places.

Do not forget that our sisters or brothers in the Island of Jersey have recently passed this by, what was it, 42 votes to 1, so clearly they did not have the large number of complex concerns that we have identified here today. Maybe we are just more able, but I think that is a rash assumption to make.

The Deputy Bailiff: Deputy Trott.

Deputy Trott: Sir, once in a while a debate comes along where I feel it is important to get one's views on record and this is what I intend to do now.

I fully support deemed consent subject to the sensible safeguards and exemptions set out in the policy letter and applaud HSC for bringing these proposals forward.

Sir, for the record the idea that a single life should be lost because of a process or rather the failure of a process fills me with a combination of horror and disgust.

Now, sir, Members will know that I am big-hearted, and I would hope that notwithstanding that, after my death that particular organ would be of use. Members may be more surprised to learn, sir, that I have recently been advised that my liver remains in a useable condition as well. So let's hope when the time comes they are of benefit to some other poor soul.

The Deputy Bailiff: Deputy Le Pelley.

3165 **Deputy Le Pelley:** Sir, I rise to say that I do not actually agree with everything that Deputy Trott has just said, although I do accept that he is very big-hearted.

I actually rise to support the words of Deputy Dudley-Owen. I am very concerned about deemed consent, as a whole philosophy – there are other areas of our society where we have actually said that deemed consent is *not* appropriate. For example in sexual intercourse and things like that, you do need to have absolute consent really because if you have not you could be in big trouble. So there has to be some sort of system here, some agreement across the whole of the range of what we are talking about, what does deemed consent mean across a whole raft of situations.

3175 I personally am quite happy with the opting in that we have at the present time. I think people have spoken about driving licences and various other things. It is quite easy to opt in: Deputy St Pier has actually done it while we were talking. I think Deputy Oliver if she wanted to could actually do so now. It is easy actually to do it. It is a very different thing to actually start assuming that someone would.

3180 What are we going to open up if there are religious groups or even other ethnic groups that have a different view to us and we suddenly decide, 'Ah well, you did not actually opt out so as far as we are concerned you have opted in and there is nothing you can do about it, because we are processing.' I understand that there could be other family members that could interject and step in, but it could very well be that the actual organs are taken before those people could ... Actually in the event of an accident say a road accident or something where the organs could have been removed before the nearest relatives could actually be consulted.

3185 I would much rather that we actually go down the line, as Deputy Dudley-Owen suggested, of educating more, of actually having a rigorous attempt at getting more people to actually opt in. For that reason I will support the stance that Deputy Dudley-Owen has taken and actually I will be voting against this proposal.

3190 **The Deputy Bailiff:** Deputy Merrett.

Deputy Merrett: Thank you, sir.

I rise to my feet and I will be very brief.

3195 When I first read this policy paper I instantly contacted the Health & Social Care Committee because my concerns really relate to capacity legislation which I think ... I have had the reassurance this will not come in until we have the relevant capacity legislation in place and it cannot come in until we have that. I mean that is just absolute basic.

3200 I would like to ask Members, through you, sir, of how many Members would opt in but have not and some are doing it as we speak, and how many Members would want to opt out. It should be equally easy to opt in or opt out. It should not be a difficult or complex decision, but the decision which we are making, in my opinion, sir, when we are healthy when we are able to speak with our family and our friends. I absolutely agree that we should help people educate each other, but really, sir, I see it as almost self-determination. We should be able to educate ourselves, we should be able to have these conversations with our families and with our friends and have a good understanding of what their intentions are. I started with the intention of the adult members of my family, I will be having a discussion with the younger generations of my family in due course.

3210 I personally think this a proactive policy paper that is saying look, you will have the ability to opt out, it will be a decision you need to make, discuss it with family and friends, at the end of the day, sir, your family will be able to override that. Actually when I am dead, quite frankly I will not care, because I cannot care because I will be dead.

3215 I am in support of this policy paper. I am concerned about deemed consent, I agree that. There are several cases in law where you cannot give consent by silence. What you can do here is you can opt out, that is what you can do if you choose to do so. So when the legislation comes back if it is indeed even passed today, I will be doing exactly the same as Deputy Gollop. I will be going

over it with a fine-tooth comb, and if there is something that I am simply not happy with at that juncture I will make those concerns known to Health & Social Care, I will try to work collaboratively to actually fix those concerns.

3220 But I think this is a good thing, I think we need to move forward, we need to be pro-active, and we need to be progressive. I think this is exactly what this policy paper does.

Thank you, sir.

3225 **The Deputy Bailiff:** There being no further debate, I turn the President of the Committee Deputy Soulsby to reply to the debate.

Deputy Soulsby: Thank you, sir.

3230 I expect my summing up will be a bit rambling. I think very much it is very difficult to sum up when people have such strong personal convictions on such matters. We are talking about really deep moral and ethical questions here and people will naturally swing from one side or the other. So it is very difficult I suspect in my summing up to be able to sway anybody at the last minute.

3235 I would just like to pick up on Deputy Stephens' comments regarding family wishes. It is impossible to ignore family at such a very difficult time. I get this impression from a lot of comments people will be overridden, ideas will be overridden, and what people thought, and it is like the concept that we have professionals at that moment in time who make sure things are done in the right way. This is not about forcing family down one route in any way shape or form. That is not done now and it will not be done under a deemed consent system.

3240 So what we do know, and this is important, is that the specialist nurses are really important at that particular moment in time because evidence shows that where you have such professional input the consent rates are higher than when you do not.

3245 I hear Deputy Ferbrache and the idea of Big Brother and it is all about why can't we just have education? It is all around this idea that it is undemocratic, but I would say in either case whether you have an opt in or opt out system there could be a sense of being wrong by having your autonomy violated. It is also the case that those opposed to organ donation are more likely to opt out under a system of deemed consent than someone who wished to opt in under an explicit consent system. Those objecting the most are more likely to have strong moral or religious objections of which they are very much aware and are unlikely to neglect to opt out.

3250 In this regard we need to determine whether the moral mistake that saves other lives is preferable to an equivalent mistake that in addition costs lives. What we need is for an organ donation to be seen as the norm and we do not allow the sick to be left to suffer through a desire not to harm the potential autonomous will of the dead, which is what can happen at the moment.

3255 Deputy Merrett has answered Deputy Stephens when it comes to the capacity law. I really want this capacity law put in as soon as possible, that is already being delayed because of Brexit and something that is of real concern to the Committee, but whenever the legislation if this policy letter is passed it will not be coming before the capacity legislation, that is for sure.

3260 I thank Deputy Roffey. He is right regarding a terrible time if a son or daughter is lying there on a life support machine and they know they are going to die, but I do know personally of cases where that family feels ... knowing that there is just a bit of their child still living, and that does make a huge difference for people knowing that they are not dead but part of them still lives on. I really just cannot understate how important that really is to people.

3265 Regarding Deputy Fallaize's comment on deemed consent being unusual. Well, this is the option being adopted in Wales, Scotland, England, Jersey and the Isle of Man – the Isle of Man are consulting on it and I think it possibly may well go down that route. The only jurisdiction that is not is Northern Ireland. I think we all know the various issues in Northern Ireland. They still do not support same-sex marriage and they still do not support abortion either. So there is a very different dynamic in Northern Ireland than there is in the rest of the British Isles.

Again to Deputy Graham, this is not about state control. The family will have the final say. There seems to have been this undercurrent 'Oh, it is the state again; the family will not be ... they

will be pushed into it.' But this is not what happens. It does not happen now and it will not happen under this system.

We know that this... I think what is really important to know this that in Wales they are actually noticing a difference here. Now after all other jurisdictions who are part of the UK Blood and Transplant Service adopting a soft opt out scheme which will lead to greater donors and more organs available and yet little old Guernsey is just happy with its 12% opt in rate. What message does that give out, I would say to people?

So remember three Guernsey people donated organs in the last two years and 12 have benefited from an organ donation, and these are big donations, liver and kidneys to name just a few.

I thank Deputy Le Clerc for her positive comments and Deputy St Pier.

I would just like to say what we want people to do is express their choice before their death and this has shown, it has raised awareness, people have thought about it, and this is precisely what we hope having presumed consent system will do.

I thank Deputy Oliver very much for her heartfelt speech. I am really delighted that she was here for us today and to make it.

I quite actually understand Deputy Dudley-Owen's comments. It is not just about education. I am sorry, but I do in many instances believe we should not legislate for things, education is the answer, but the figures, the evidence shows that is not the answer when it comes to organ donation. People are dying who should not be dying because we are not providing enough organs for people.

It is a gift, it is not about being a default, it makes it not a gift, and I think Deputy Yerby put that argument across very strongly.

I do not see how it will increase disputes in any way at all. This is still the family has the decision to make.

I thank Deputy Trott very much for his support.

Again Deputy Le Pelley it seems to be a message amongst a certain group talking about not having family support.

Thank you, Deputy Merrett.

I would like to point out that the vast majority of people who took part in the consultation – I know that that will be people with strong views – the vast majority, 80%-plus want to see this scheme through. I think people need to remember that.

Members today have had a brief insight into the world we inhabit in Health & Social Care. It is of life and death and an everyday part of what we have to deal with. We know we cannot please everyone all the time, difficult decisions have to be made and more on that in a couple of weeks' time. However, today we have an opportunity to improve people's lives and save more people's lives. It is not just Health & Social Care but the whole of the community, and ultimately it is of course by working together that we will create a more sustainable health care system and improve the outcomes for the people of the Bailiwick.

I therefore ask all Members to support this policy letter.

The Deputy Bailiff: Members of the States, there has been a request for a recorded vote by Deputy Stephens, so we will move to the *appel nominal*.

There was a recorded vote.

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

POUR

Deputy Trott
Deputy Merrett
Deputy St Pier
Deputy Fallaize
Deputy Lowe
Deputy Hansmann Rouxel
Deputy Green
Deputy Dorey
Deputy Brouard
Deputy Yerby
Deputy Langlois
Deputy Soulsby
Deputy de Sausmarez
Deputy Roffey
Deputy Prow
Deputy Oliver
Deputy Tindall
Deputy Brehaut
Deputy Tooley
Deputy Gollop
Deputy Parkinson
Deputy Lester Queripel
Deputy Le Clerc

CONTRE

Deputy Le Pelley
Deputy Stephens
Deputy Meerveld
Deputy Inder
Deputy Laurie Queripel
Deputy Smithies
Deputy Graham
Deputy Paint
Deputy Dudley-Owen
Deputy De Lisle
Deputy Ferbrache
Deputy Kuttelwascher
Deputy Leadbeater
Deputy Mooney

NE VOTE PAS

None

ABSENT

Deputy Le Tocq
Alderney Rep. Jean
Alderney Rep. McKinley

3315 **The Deputy Bailiff:** Members of the States, the voting on the two Propositions from the Committee for Health & Social Care about an introduction of a 'soft' opt out scheme for organ donation, were 23 *Pour*, 14 *Contre*, 3 absentees, and therefore I declare both Propositions carried.

COMMITTEE FOR ECONOMIC DEVELOPMENT

**XV. Proposed amendments to the
Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 –
Propositions carried**

Article XV

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'proposed amendments to the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 dated 20th September 2018, they are of the opinion:

1. To approve the proposals set out in section 3 of the Policy Letter to amend the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 (the "Ordinance") as follows:

a. to increase the existing aggregate payment cap, applicable to participant banks in section 18(4)(a) of the Ordinance, from £1,000,000 to £2,000,000 in any calendar year;

b. to repeal the three year profits cap, applicable to participant banks, in section 18(4)(b) of the Ordinance;

c. to allow for negative interest rates and to protect against possible adverse effects upon participant banks and the Guernsey Banking Deposit Compensation Scheme (the "Scheme");

d. to clarify that each participant bank's duty to co-operate with the Scheme board (the "Board") includes the provision of personal data, where required, and to explicitly require participant banks to provide data promptly to the Board;

e. to amend section 18(7)(c)(i) of the Ordinance, to provide that payment by participant banks must be made within five (5) working days of the issue of payment levy notices by the Scheme; and

f. to repeal the fourteen (14) day restriction during which the Scheme is prohibited from requesting payment, from the participant banks, in respect of the second levy notice.

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

The Senior Deputy Greffier: Article XV – Committee for Economic Development – Proposed Amendments to the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008.

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

Deputy Parkinson.

Deputy Parkinson: Thank you, sir.

Guernsey's Banking Deposit Compensation Scheme is a decade old, having come into force on 26th November 2008. It is fit for purpose but to ensure it remains so we must continue to enhance it. That is the purpose of the amendments before the States today.

To set the context for the amendments I can explain the situation. The Scheme covers all qualifying deposits mainly those from personal retail depositors. In the event of a failure of a Guernsey bank after the effective date it provides compensation of up to £50,000 per qualifying deposit in respect of that bank. It aims to pay compensation within three months of a bank failure. The Scheme is operated by an independent statutory board which is separate from both the Guernsey Financial Services Commission and the States of Guernsey. It has an independent Chair, Mr Rick Denton, and the other members of the Guernsey Banking Deposit Compensation Scheme are Ms Dianne Colton, Mr Steve Hogg and Mr William Simpson.

The maximum total amount of compensation is capped at £100 million in any five-year period. If claims exceed this cap compensation will be reduced *pro rata*. The cap also means that compensation in respect of any one bank cannot exceed £100 million. The compensation is paid for by the Guernsey banks through annual charges and special charges in the event of a bank failure.

The proposals before the States follow a consultation with industry and research undertaken by the Committee's finance sector development team and the Board of the Banking Deposit Compensation Scheme. The proposals have been developed in the context of the Economic Development Strategy approved by the States on 28th June of this year and support the development, maintenance and enhancement of the local economy, including the finance sector, which is the central pillar of our economy.

The general aim of the proposed amendments is to augment this Scheme's liquidity to provide it with adequate funding to ensure prompt reimbursement of depositors claims in the event of a bank failure. In simple terms to effect prompt reimbursement requires the availability of funds and funding mechanisms and the proposed changes in the Ordinance will provide this.

The changes will provide four things: first, a modification in the current payment caps applicable to participant banks so as to ease funding pressures on the Scheme; second the appropriate treatment of negative interest rates; third the clarification of the obligations of participant banks in respect of data provision; and fourthly a modification to the payment periods applicable to participant banks so that they are required to make payment within five working days of receiving notice from the Scheme.

The above will help to ensure prompt reimbursement of depositors claims in the event of a bank failure and will augment the Island's reputation as a sophisticated international financial centre. In short, this is the right thing to do for the banks, their depositors, and the Island's reputation.

Thank you, sir.

The Deputy Bailiff: Deputy Gollop.

3365

Deputy Gollop: Sir, thank you very much, Mr Deputy Bailiff.

3370 This is the kind of issue that is one of the more subdued policy letters that comes before us perhaps, but it does raise some interesting issues and I am pleased to see that the Proposition has the unanimous support of the Economic Development Board which presumably means that includes Deputy de Lisle as well, because no-one fought harder, I think, for fair compensation post-2008. This I think is an evolution.

3375 But with the exception of the issue regarding negative interest rates whereby the Committee acknowledges that people should not be better off than before they lost their money, if for whatever reasons the bank scheme would have cost money. This package of proposals is not fantastically great news for banking institutions. To put it simply, and possibly over simplifying it, they have to pay on time as quickly as possible. They may have to go higher than the £1 million cap up to £2 million. And in fact to use the phrase, what was it:

profits cap should be repealed. The fact that a participant bank is unprofitable domestically should not restrict its duty to fund the Scheme.'

3380 Now, I can understand the reason for doing this, to maintain the viability of the Scheme, to meet our international commitments, and to yet again be one of the best if not the best regulated places of its kind in the world. But have the banking institutions to the knowledge of Deputy Parkinson and his Committee or the other States' Members generally accepted this and taken it on the chin as reforms that are necessary, that they will happily work within.

3385 **The Deputy Bailiff:** Do you wish to reply to Deputy Gollop's comments, Deputy Parkinson?

Deputy Parkinson: Yes, sir, I can confirm that the banking industry have been fully consulted in this and it is supported by all parties.

3390 **The Deputy Bailiff:** Well, Members of the States, there are two Propositions, they are buried somewhat on page 4 of the policy letter. I am going to out both of them to you together, that is to approve the proposals and then to direct the preparation of legislation. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare both Propositions duly carried.

COMMITTEE FOR ECONOMIC DEVELOPMENT

XVI. Implementing the States of Guernsey's Economic Development Strategy – Proposition carried

Article XVI

The States are asked to decide:

Whether, after consideration of the policy letter entitled 'Implementing the States of Guernsey's Economic Development Strategy', dated 8th October, 2018, they are of the opinion:

1. Pursuant to Resolutions III (3) (a) and (b) of Billet d'État XVIII of 2018, to note the content of the policy letter entitled 'Implementing the States of Guernsey's Economic Development Strategy'.

The Senior Deputy Greffier: Article XVI – Committee *for* Economic Development –
Implementing the States of Guernsey's Economic Development Strategy

The Deputy Bailiff: I turn once again to the President of the Committee *for* Economic Development, Deputy Parkinson to open debate.
Deputy Parkinson.

Deputy Parkinson: Thank you, sir.

In its policy letter of 18th May 2018 the Committee *for* Economic Development put forward a vision for Guernsey's economy and a proposed strategy to enable the States of Guernsey to achieve this vision. The Committee set out in that policy letter its intention to enable the States of Guernsey to diversify and grow the economy to secure long-term prosperity, reaffirm that Guernsey is open for business and more actively monitor and report on our economy and act on the insights.

The actions are intended to combine to build a strong brand Guernsey that is based on two principles, of defining areas of specialism and of the substance behind those specialisms. This brand will assist in marketing and promotion to enhance global perceptions of Guernsey and also in strengthening on-Island confidence in Guernsey's future. The brand will be aligned with Guernsey's values of quality, innovation and stability, and each of the actions reflects those values.

The strategy received strong support in the Assembly and also from business bodies and individual companies. Last week, sir, the *Guernsey Press* editorial referred to the reception of the Economic Development Strategy at the local Institute of Directors Annual Convention in October. Whilst being broadly positive about the Strategy itself and the Committee's approach the *Press* did suggest that the Strategy was not yet firmly in the public consciousness. Well, not many Government strategies are, but that does not mean that they are not useful and important for the way Government works. But of course we must strive harder to be better at communicating what we do.

However, I would briefly like to offer a different perspective on how that Strategy was received at the IOD Convention, because five months after the publication of the policy letter an external consultancy was tasked by the local IOD with coming up with ideas through so-called 'blue skies thinking' on how Guernsey could transform its economy and also its international brand. The gathered audience applauded these ideas as they were presented. But all them were actually included in the Strategy approved by the States five months previously. It may be of course that the external consultants had already familiarised themselves with the States' Economic Development Strategy and the commitment to developing a Guernsey brand, though if that was the case they chose not to acknowledge it.

Perhaps my colleagues on the Committee are not as fashionable as the international brand consultancy whose services the IOD chose to use, but we certainly have experience, expertise and energy and as this policy letter shows we are also focused on delivery.

The Economic Development Strategy then is both ambitious and achievable. We have been told by some of course that we have bitten off more than we can chew, that 20 actions is too many. But the 20 actions that are set out as an appendix to the May 2018 policy letter are not all for a single Committee or a single team of civil servants to deliver, as paragraph 2.5 of that policy letter set out many of the steps that will be taken will be undertaken in partnership or consultation with other Principal Committees as well as external parties, and the Committee values this collaborative approach.

It should also be remembered that not all of the 20 actions are new. Some are already ongoing and have momentum. Also not all of the 20 actions need to be completed at the same time, and indeed some will take precedence over others as this new policy letter indicates. It does not all have to be done by April 2020. We are thinking about the long-term future of the economy and the community and not just this electoral cycle. Nonetheless significant steps are now being taken

3445 and progress has been made this year, and will be made next year too, and subsequently. The Committee will of course report regularly on such progress.

3450 Sir, the policy letter was submitted for this meeting, this came as a result of a successful amendment from Deputy Merrett and Deputy Soulsby directing the Committee to bring to the States an implementation plan setting out an order of priority and time frames and to confirm which policies and strategies the Committee will submit to the States for debate. This policy letter we have submitted discharges that Resolution. However, I note that an initial implementation timetable was circulated to Deputies at the time of the last States' debate on the Strategy. So rather than dwell too much on plans and strategies I would like to take this opportunity to update the States on the progress we are making on implementing our Strategy.

3455 As set out in the implementation plan, the air route policy letter has been submitted for debate in the December States' meeting, the next meeting. It also incorporates work and objectives on sea routes. It is essential as a Government that we have an agreed policy and investment objectives before the Policy & Resources Committee concludes its strategic review of air and sea links infrastructure. It is the latest step in the Committee's logical and outcome focused approach to air transport since the turn of the year.

3460 We have started with the Air Transport Licensing policy letter and which will continue after the December debate on air transport policy and investment objectives with the public service obligation policy letter relating to the Alderney routes, and then any recommendation we may bring to the States in conjunction with the Policy & Resources Committee and the States' Trading Supervisory Board regarding the Airport runway.

3465 In the meantime we are in active discussions with airlines about new routes, with Bournemouth, Edinburgh and Gröningen the early fruits of this process. We are closely monitoring the position of Flybe with whom I met in Exeter earlier this month. It is clear that new routes will require investment of course, but the removal of a burdensome and largely unnecessary licencing framework, coupled with a clear commitment to support new routes, has helped to move the discussions on. We will keep the States informed of any further developments.

3470 As also set out in the implementation plan we have already brought policy letters on smart contracts and the preferred creditor status of the Guernsey Banking Deposit Compensation Scheme during this quarter. The first supports opportunities for our finance sector, the second provides enhanced assurance.

3475 The Skills Action Plan was published in November and it has been welcomed by business bodies. We are now getting on with the work in partnership with Education, Sport & Culture, with education bodies such as the GTA and the College of Further Education and with business bodies.

3480 The Committee said in the Economic Development Strategy that it was committed to working in partnership and the Skills Action Plan demonstrates that. This is a truly collaborative approach supported and coordinated by Government but not prescribed and owned by Government, echoing the approach being taken in the Finance Sector Strategy.

3485 With regard to the Finance Sector Strategy and further to the work on smart contracts, the Committee and its officers have been meeting regularly with Guernsey Finance to finalise the policy framework and the position statements for the priority areas of work on schedule for publication in December. The Committee is pleased with the ongoing development of the collaborative approach with Guernsey Finance and the Guernsey International Business Association on this strategy, and will welcome in particular the work being done to promote Guernsey's green finance credentials, a tangible opportunity for our industry and for the development of the Guernsey brand.

3490 Steps have been taken on almost all of the action areas over the past few weeks. I gave an update to the Assembly on 26th September on the Telecommunications Strategy and referenced then that following consultation with industry bodies the Committee has decided to investigate providing full fibre to business not just to business districts. This would ensure businesses have the connectivity they need to grow and we will be working with the IOD, the Chamber of Commerce and CICRA in order to set out a clear way forward for doing this.

We published our Telecommunication Strategy in May and I am pleased to report significant progress toward bringing a policy letter to the States in Q2 next year.

3500 On Monday of this week the Channel Island's Competition and Regulatory Authority held at 5G conference attended by politicians and officers from both Jersey and Guernsey, business bodies, the telecommunications companies and members of the public. At this conference we welcomed the support from a broad range of bodies not only on the pro-active approach we are taking to further enhancing our digital connectivity but also on our key objectives of enhancing residential broadband, delivering fibre to business, and delivering next generation mobile, what is known as 3505 5G, to the whole Island.

Importantly we also welcome the recent announcements and commitments by the telecommunication companies to deliver 5G in the Chanel Islands. Whilst this is an important milestone, a great deal of detailed technical work is still required and officers from Policy & Resources and the Committee *for* Economic Development will continue working with CICRA and 3510 the telcos over the next few months. We welcome this collaborative approach that is underpinned by first a fair market place one that enables competition and that drives deals that are good for consumers be they business, government, schools, or families; secondly by a resilient infrastructure, one that is robust and is fit for the future encouraging and enabling further innovation; and third by a high standard of oversight. A regulator can deliver a fair market place, 3515 ensure a resilient infrastructure, and balance the needs of providers with customers.

Work has begun on the development of a new tourism strategy within this stream following the very successful VisitGuernsey annual seminar last month. It will not, however, be published during Q1 of 2019 as we had planned. This is due to the fact that we understand that the P&R review of air and sea links infrastructure will not report back to the States until early next year, and 3520 of course it is vital that this work is analysed in the context of developing and finalising the tourism strategy. For that reason we now expect to come back to the States with the tourism strategy in Q2 of 2019.

The new LocateGuernsey team is now in place with a priority to promote the Open Market and the Committee is now working in a focused way with stakeholders across the community 3525 including the Open Market forum to consider the ways in which the economic potential of the Open Market can be unlocked and enhanced leading we hope to the publication of an action plan in 2019 which will build on the strategic review of population management that is currently being coordinated by P&R.

What I would like to stress on behalf of the Committee is that we are fully supportive of the 3530 Open Market as an economic enabler and that we will be communicating on and off-Island that we have stability, certainty and choice in the Open Market.

The University Working Party is now meeting again and I particularly wanted to welcome Deputy Roffey for joining the working party on behalf of the Committee *for* Education, Sport & Culture. 3535

Last week I met with representatives from five off-Island universities and this has served to confirm to me that at least the establishment of a university presence is something that we should seriously investigate. We were met with much encouragement and we have identified at least two potential partners. As a result of this trip we have also sharpened our focus for the university which will help us to develop a realistic business case. Meetings are currently taking place or in 3540 the next few days with a university in Australia also.

I hope that members of the University Working Party will forgive me that I have not yet had opportunity to fully brief them on the recent meetings but I will do so before our next meeting.

Work has now begun on assessing the economic opportunities in relation to renewable energy and med-tech. Though it is fair to say that the former is more developed than the latter. On 3545 energy there are many opportunities for us to develop economic opportunities alongside resilience and sustainability when it comes to energy, and I am pleased that the Committee *for* Economic Development and the Committee *for the* Environment & Infrastructure will be meeting to discuss this before the end of the year.

Guernsey has demonstrated that it is open for business in relation to medicinal cannabinoids, and we have been working closely and effectively with the Committee for Health & Social Care to demonstrate to interested businesses that there are opportunities in Guernsey which are permitted by the existing legislation, and supported by an incoming licencing regime.

Work too has begun by the Committee's officers on the jurisdictional economic risk appetite that will feed into the Policy & Resources Committee's work on this area. I am pleased to advise that this work is drawing upon the industry expertise.

The Committee has also now set out formally the objectives of the economic relationship with the EU post Brexit and that paper has been discussed by the Policy & Resources Committees Brexit sub-committee. The paper will now be augmented with the findings of the Brexit survey that has been undertaken and which has just been completed.

The Committee has been discussing a draft retail strategy but like the Finance Sector Strategy and the Skills Action Plan will be predicated on a collaborative approach with business. Work will shortly begin on a similar piece of work for the construction sector and the blue economy. But on both we are not starting from zero and we are confident we can make progress quickly.

The Committee is actively considering the role it and Government plays in supporting start-ups and in supporting innovation. In truth much of that work needs to be about establishing where Government can actively help, and where it needs to remove barriers, and we are in discussion with a number of parties in relationship to both. For example we are working with the Confederation of Guernsey Industry which is developing the Golden Guernsey mark.

The Committee has been working hard to do all it can to unlock opportunities for development on the Island – by which I mean property development. This would not only benefit the construction sector but also regenerate areas for social and environmental as well as wider economic benefit. We also intend to work with the Policy & Resources Committee and the Development & Planning Authority to see how we can collectively enable the regeneration areas identified within the IDP to come forward at pace.

I have had discussions with the President of the Policy & Resources Committee on this matter and we are confident that we can help reach the stage where the private sector is able to invest in schemes that will help boost our economy and deliver tangible benefits for the community. It is envisaged that the Committee will be returning to the States next year with firm proposals for some specific projects. This extends to the Committee's work in the Seafront Enhancement Area Working Party the community consultation is taking place to set a vision for the work. This is now well underway in partnership with the Design Council and businesses and community groups.

We are inviting ideas for the use of six sites and hope that Deputies have joined the many members of our community who have already registered ideas and proposals.

Sir, the Committee has been given a clear mandate by the States to take forward the Economic Development Strategy set out in the May policy letter and agreed in June. The further policy letter before the States today sets out how we have prioritised that work and the actions we will take.

What is important now is that the Committee focuses on implementing that Strategy and that is what we are doing.

Thank you.

The Deputy Bailiff: Deputy Graham.

Deputy Graham: Thank you, Mr Deputy Bailiff.

I have little to say about this policy letter other than to commend it really. The breadth of it, the comprehensiveness of it, but also the fact that as policy letters go it is relatively concise and pretty easy for a back-bench Deputy to follow. In commending the current Committee I also give a nod of respect to the predecessor Committee under the presidency of Deputy Peter Ferbrache.

I am bound to say that I am now reminded of a comment I made when we were debating the Budget, and that was to the effect that I mentioned the fact that out of about 40-odd amendments, I think barely two addressed at all the issue of growing the economy.

It is sad to say that I think the mere prospect of debating a policy letter on economic development and the strategy behind it was sufficient to half empty the Assembly this afternoon to the point where I think at one stage we were quorate by the skin of our teeth. I think personally this reflects rather badly on the priorities of the Assembly at times and I regret having to make that remark.

The Deputy Bailiff: Deputy Kuttelwascher.

Deputy Kuttelwascher: Sir, just one item in relation to the prospect of establishing a university in Guernsey.

Is the President of Economic Development and the Committee aware of an article that appeared a couple of weeks ago in *The Times* relating to the financial stress at the moment being experienced by a number of universities in England? They mentioned four but not by name, who are now being kept afloat by bank loans, two of them on the south coast, and are in danger of actually going into administration.

The reason I am bringing this up is that universities are now in the UK businesses, firmly businesses which compete with each other and they will compete with us if we go down that route. So I ask the question is this a good time to be entering that sort of business in this climate?

Thank you.

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: Well, I certainly welcome the opportunity to debate the economy, because I think it is useful for the States to do that. In fact I thoroughly endorse what Deputy Graham has said, and I would go further and say that in many ways Economic Development and its predecessor such as Commerce & Employment are the Rolls-Royce of the States. There is no Committee I would rather be on than Economic Development, with the possible exception of Policy & Resources.

I know that traditionally the social committees have the interest on the Island but Economic Development shapes the whole dynamism of the Island and maybe the fact that the States historically has not shown a fantastic amount of interest sometimes even places go a bit unfilled on Economic Development in the past. It is because we do not really seem to share the agenda Government has in developing the economy. I think that is the first hurdle we have to overcome, because I kind of take the opposite view really because in many areas like health and social care and education the professionals really can manage it and just need overall guidance and regulation and monitoring perhaps from the politicians.

But economic development – if a society does not have a mission, or a vision, or a goal at which they wish to achieve, the economy can very easily go downhill and we notice the paradox that we have spent a year or two a lot of work across committees developing connectivity, as Deputy Inder has said that is the big issue for this Assembly, Deputy Ferbrache I think has said it too. Yet we have actually seen one or two air routes like the Dinard one disappear, admittedly we are seeing other possible links to Europe on a seasonal basis, but that is the agenda.

When I hear from the President comforting thoughts that we will debate next year more on aviation, more on tourism and the retail strategy, I kind of think well okay, but sometimes people criticise planning, and no doubt will today and tomorrow, but things are not moving that quickly on Economic Development either because a lot of this work was done in 2015/2016 or by the new Committee in 2017, and it was ready to go and here we are, things are taking a little bit longer, so that is frustrating.

As regards the priorities although the policy letter is commendably short it does not particularly give the flavour I think some of us wanted. I think the task Deputy Merrett and Deputy Soulsby were putting before the Committee was really to strengthen their priorities, and they come back with not exactly a top 20 or numbered 1 to 20, but a flavour.

Critical actions, strengthening air and sea links, implementing the telecommunications sector strategy – yes, I have heard good reports about the G5 summit although it was rather a complicated summit for some people who were not perhaps technically adroit, and we have seen some delivery on the supporting the finance sector objectives, such as Dr Sloan’s work with the Green and Sustainable Finance initiative and the legislation that we have and work with the skills development plan.

By why are we putting the Seafront Enhancement Area in the critical actions when by its very nature it is a thought process, it is an evolution that will take 20 years perhaps to materialise. I am surprised at that because the critical actions by their nature are placed ahead of the rest. We see attracting high net worth individuals as an important action but less critical, and also work on the Population Management Regime is considered important but less critical.

The blue economy is there in the second division but I am afraid for beneficial actions which are by implication less urgent, the retail strategy is in the third division, and that intrigues me because the blue economy has a linkage obviously to the Seafront Enterprise Agency, but the retail strategy, the construction opportunities the med-tech are very much in the third division, and that is disappointing. I am particularly surprised to see supporting start-up and scale-up businesses being in the third sector, being in the beneficial actions rather than critical. Because I think if we really wish to grow our economy at a rapid rate we would very much prioritise Government working with the small business and potential entrepreneurs of the future, both local and imported. I will give an example, it is continuing to review what the role of Government should be, well, if the Committee do not have a clear view or consensus on what the role of Government should be in supporting start-up and scale-up businesses, we are a long way behind many other jurisdictions which have a more direct compass.

So I am not that impressed by all of this. I feel that we know there have been business leaders out there who privately and publicly expressed a certain degree of scepticism about the 20 point vision, and perhaps it is still is not as dynamic as it needs to be, or perhaps prioritised in the right order.

The Deputy Bailiff: No-one else is ... Ah, Deputy Trott.

Deputy Trott: Well, sir.

Sir, there are often debates in this Assembly where reference to behaviours and actions in the private sector are inappropriate, but this is not one such debate because one of the very first things a business would do when it was looking to the future is ascertain its risk appetite. Now I believe that Deputy Parkinson referred to this in his opening remarks and on page 11 of the report under paragraph 5.2.7 the action point to develop a clear jurisdiction-wide economic risk appetite is mentioned and work is ongoing on that.

Now it may well be that if we are to continue to grow our economy and not settle for static growth which has a zero-growth option which in itself as many have said it before in this Assembly does not mean that, but is managed contraction. We may well need to up our risk appetite. We may need to become more brave and bold when certain aspects of the developing economic climate are taken into account. So that is a particularly exciting piece of work, an initiative that I and others I am sure look forward to contributing to over the next few weeks and debating in this Assembly.

The second point I would make is that recent information that came before the Policy & Resources Committee shows that our fertility rate, we hope it is a blip, but our fertility rate has fallen to just 1.3. Now that has very material consequences, very material impacts on our population numbers and it may well be that, if that is sustained for more than a year or two, we will need to address a number of assumptions, and we may as a consequence need to be far more proactive than we are currently being in growing our work force in order to ensure that our economic dependency ratios remain manageable.

3705 Otherwise, sir, I compliment my friends and colleagues on the Economic Development Committee, who I think are doing a fine job.

The Deputy Bailiff: Deputy Soulsby.

3710 **Deputy Soulsby:** Sir, yes, I will be extremely brief.
Just to thank Economic Development for producing this report. I know it was a bit under sufferance and I apologise to them for having to do it, but I do think this is really useful. For those people who are not in Economic Development knowing quite what is going on, I find it really useful and certainly in the areas which affect the Committee *for* Health & Social Care, very supportive.

3715 Thank you, sir.

The Deputy Bailiff: I turn to the President of the Committee, Deputy Parkinson to reply to the debate.

3720 **Deputy Parkinson:** Thank you, sir.

Well, Deputy Graham's comment on the sort of relative perhaps lack of interest in economic affairs in this Chamber was prescient. We have ended up with only five speakers but nevertheless a debate worth responding to.

3725 Deputy Kuttelwascher was talking about whether this was a good time to investment in the university project, and yes certainly universities are businesses and they have to have a strong business model. We think that what is emerging from our research is that the concept of a Guernsey platform which is, if you like, used as a satellite by perhaps five or six universities overseas, mainly in non-English speaking countries, is something which has achieved a certain amount of attraction with those universities that we have been talking to, and I am sensing and
3730 encountering quite a lot of enthusiasm for the idea. So we are just going to run with it further and see where this goes. We have not definitively reached a conclusion on whether it is a viable goer, but at the moment the signs are quite encouraging and we will continue to pursue our enquiries with energy.

3735 Deputy Gollop made a rather curmudgeonly speech, he did acknowledge that Economic Development is a key committee, but then went on to sort of try and sort of pour cold water on the report. He said we will have debates on aviation next year. Well, he does not have to wait quite that long actually, he will have one in December and that is going to be the second debate on aviation matters we have brought. As I explained in my opening remarks, that is one of a sequence which will be followed by the PSO debate and then possibly a debate on a longer
3740 runway.

Members need perhaps to bear in mind that this Committee as currently constituted has not been in existence for quite a year yet.

3745 He asked why the Seafront Enhancement Area is among the critical actions. Well we just see this an enormous area of opportunity for Guernsey. It is a truism that St Peter Port is the 'jewel in the crown' and obviously we do not want to do anything that will detract from its obvious charms but at the same time there are vast areas of our eastern seaboard which frankly could be put to more productive use. Many acres are now just providing accommodation for cars that have been abandoned for the day. Frankly you do not have to be a visionary genius to think that there might be other things we could be doing with this land.

3750 So the opportunity to do something is very exciting, and actually the need to do something is also something that we should not lose sight of. Despite the views of some Members of the Assembly I believe sea levels are actually rising. The consensus of scientific opinion suggests that they could rise by up to a metre by the end of this century. Now, the water comes over the walls on the Quay and Town and in St Sampson's as things are. If the sea level rose by only 30 cms it

3755 would cause enormous flooding throughout our main population centres, and this is an issue we simply cannot ignore. (**A Member:** Hear, hear.)

Deputy Gollop also asked, why is the retail strategy in the lower priority group? That is fundamentally because it is not mainly an export industry. It is mainly concerned in our domestic economy, and while as a community we all want to have a good selection of shops on Island and so on and so forth, actually our priority to economic development is about earning a living for Guernsey and selling stuff to each other is not quite the same category of importance.

Deputy Trott well made comments about the Island's risk appetite and the fact that we may need to be bold and take a few more risks, and that is something we are thinking about very carefully with our colleagues at Policy & Resources and output from that will hopefully provide guidance to the Guernsey Financial Services Commission and other regulators.

Falling fertility rate, well, I cannot offer a solution to that, at least not in the short term. (*Laughter*) But it is certainly a real problem.

I thank Deputy Soulsby for her words of support so I think without further ado I would simply ask Members to support this report.

The Deputy Bailiff: Well, there is a single Proposition Members of the States, to note the content of the policy letter. Those in favour, those against.

Members vote Pour.

The Deputy Bailiff: I declare the Proposition duly carried.

**Motion under Rule 7(1) to suspend
Rules 9(1)(e) and 23 of the Rules of Procedure –
Not carried**

The Deputy Bailiff Now, Members of the States, I know you are champing at the bit to move to Phase 2 of the Motion to Debate the Development & Planning Authority's Annual Monitoring Report for 2017, but before we get to that, there is a further set of motions that have been lodged by Deputy Gollop and Deputy de Lisle, and I suggest we take that next.

It is in the Deputy Greffier's hand and will be circulated to you. Some people have already had notice of it, and I think it has gone round electronically as well.

Does any Member not have a copy of a motion under Article 7.1 of the Reform (Guernsey) Law 1948 to which is also appended a Motion to Debate?

Well, Deputy Gollop, we will take the Motion under Article 7.1 to suspend some Rules first, in isolation, please. Do you wish to move that Motion?

Deputy Gollop: Yes, I think we are aware of the reason to suspend the Rules. I apologise for being a little tardy with this I did send a vague letter about this over a week ago but it got lost in the amount of material we have got to work with at the moment and I hope Members will understand and will allow the Rules to be suspended.

The Deputy Bailiff: Deputy de Lisle, do you formally second that Motion?

Deputy de Lisle: I do, sir.

The Deputy Bailiff: Does anyone wish to speak on the Motion?

Deputy de Lisle: Yes, I reserve that right, sir.

The Deputy Bailiff: You might have to exercise it pretty quickly, *(Laughter)* Deputy de Lisle, as I do not actually see anyone else standing at the moment. If you wish to speak on the motion to suspend those two Rules then please do. No.

3800 I put the Motion to suspend Rules 9(1)(e) and 23 of the Rules of Procedure to the extent necessary to permit the Motion to Debate set out below to be moved, proposed by Deputy Gollop and seconded by Deputy de Lisle to you. Those in favour; those against.

Members voted Contre.

The Deputy Bailiff: Well, I declare that lost and therefore there will not be a Motion to Debate capable of being moved by you, Deputy Gollop and Deputy de Lisle.

DEVELOPMENT & PLANNING AUTHORITY

Appendix to Billet d'État No. XXV – Development & Planning Authority Annual Monitoring Report 2017 – Debate commenced

Having resolved, pursuant to Rule 20 of the Rules of Procedure of the States of Deliberation and their Committees, to debate Appendix 1 to Billet d'État XXV of 2018, that is the 'Development and Planning Authority – Annual Monitoring Report 2017'.

Proposition:

To take note of the Report.

3805 **The Deputy Bailiff:** Deputy Gollop, I now invite you as the President of the Development & Planning Authority to open the debate on the Appendix Report, the Annual Monitoring Report 2017. That is in accordance with Rule 20 paragraph 5.

Are you ready to do so?

3810 **Deputy Gollop:** I am surprised at the last vote because *(Laughter)* I thought many Members would wish to talk about it, but never mind –

The Deputy Bailiff: Deputy Gollop, that is not relevant to the debate on this matter.

3815 **Deputy Gollop:** I do not think Members understood the Rules like myself, but never mind I will pass on –.

The Deputy Bailiff: Deputy Gollop, are you going to open the debate on this Appendix Report please?

3820

Deputy Gollop: Yes.

The Annual Monitoring Report is a wide-ranging review of the most important areas of planning policy that the DPA is responsible for. It has been produced taking into account valuable contributions from States' Committees and stakeholders for which the DPA is grateful.

3825 As identified earlier we will take evidence at this stage to see whether Island Development Policies need to be amended.

The Annual Monitoring Report has shown that the policies of the Island Development Plan remain effective and relevant and are delivering what the States intended when we approved the Island Development Plan in November 2016.

As this is Guernsey's first in-depth monitoring of a development plan, it is anticipated that the level of detail provided in the annual reports will expand over time as the impact of IDP policies can be more readily examined ... Some data [was] analysed for the first time in 2017 and this AMR establishes a baseline ... against which change can be monitored over the [10 year] lifetime of the Plan.'

3830 The IDP is the first Guernsey Land Use Plan with a requirement to monitor its effectiveness. Although the States' Land Use Plan places a statutory requirement on the Authority in relation to monitoring the performances of a number of different elements of the IDP there is also a legal duty on the Authority under the Planning Law to ensure the Island Development Plan is kept under review and to make alterations where necessary.

3835 It is very important to understand that this annual monitoring review provides analysis of the effectiveness and relevance of Island development policies in delivering the approved strategic land use objectives of the States. As some Members have already heard, the SLUP has a 20-year life and the IDP has a 10-year life.

3840 The annual Monitoring Report and therefore the scope of this debate is not an analysis of the appropriateness of the States' approach to the Strategic Land Use Policy because it has a different role. The Annual Monitoring Report monitors the effectiveness of the IDP's policies, not the overarching SLUP, the Strategic Land Use Policy, including its spatial strategy which falls within the mandate of another Committee – and the other Committee, of course, as we have changed, it used to be the Policy Council but it is now of course the Environment & Infrastructure Committee –, and indeed it is regrettable that many States' Members and other people in the media and public sector do tend to get confused between these issues which certainly makes our life more complicated than it need be. Of course States' Members are open to consider that may be the current stratification of Government is overly complicated, but that is a debate for another day.

3850 The Annual Monitoring Report involves monitoring different types of developments to help digest trends and assess the effectiveness of planning policies. The report proposes actions to address any issues identified.

3855 In total the Annual Monitoring Report for 2017 proposes 82 actions including guidance, research, additional monitoring, consultation and liaison between the Development & Planning Authority and other States' services, Committees and other stakeholder organisations. Indeed only earlier today you have heard of our working together for example with Economic Development.

3860 The Annual Monitoring Report also highlights where the Development & Planning Authority will continue to work in partnership with other Committees and stakeholder organisations to help deliver the IDP, SLUP and a number of aspects of the Policy & Resource Plan and other States' strategies.

The Annual Monitoring Reports can react to emerging issues and a number of States' strategies and projects that are likely to have an implication for the [Island Development Plan] are emerging and may be debated by the States ...

next year, including as we have heard energy policy, and tourism strategy, and eventually retail strategy of course.

3865 The AMR identifies the importance of the DPA continuing to work with other committees to help them to deliver the land use aspects of their own policy work, for example the AMR identifies the need to work closely with the Committee for Economic Development to help deliver the Economic Development Strategy, and the DPA continues to liaise with that Committee to explore options for and implications of a more flexible policy approach with the change of use of visitor accommodation as part of the tourism strategy.

3870 Indeed Deputy Tindall has identified that that is one area that interests her and Members of Economic Development.

The 2017 AMR benefited greatly from the insight given by commercial agents, surveyors, builders, architects and so on and provided valuable quality to feedback through a workshop which discussed issues surrounding office, industry and storage uses. The AMR identifies that liaison with commercial agents and industry will continue particularly to establish criteria for the

3875 assessment of quality for the office sector. Indeed when we published in August there was generally speaking I think a supportive welcome from the professional community.

As a result of the analysis of the 2017 AMR, the DPA is now monitoring the number of bedrooms of residential units. In the pipeline supply as well as where development is occurring within the main centres including the proportion of greenfield land to brownfield land within
3880 those centres. Monitoring has established that in relation to industry IDP policies have increased flexibility within key industrial expansion areas, which has already had a positive effect. Overcoming previous refusals on sites and resulting in some vacant units being brought back into use, and indeed this Committee has expressed particular interest in monitoring

The AMR has determined that it is time the IDP policies of delivering what was intended by the States as set out in the SLUP, the Planning Law allows for the IDP to be amended at any point during its life *if* there is robust evidence to support why this should occur. If changes to IDP policies are proposed Members will need to present credible alternatives which must be based on robust evidence, at least in our opinion they must be based on robust evidence.

I think it should be pointed out though that a States that constantly changed its mind on
3890 planning matters would not inspire confidence in the business or professional communities and people have realistic and reasonable expectations of delivery of the plan that with amendments the States unanimously approved.

The reason why we need credible alternatives based on robust evidence, and it is important, is not only for best practice but because there is a legal requirement for the Inspector at a Planning Inquiry – and we use professional inspectors with great experience in these fields – to be satisfied that policies or changes to them are founded on robust evidence. It is not enough to say my friend who I met in the pub last night does not think the plan is worth going forward with, it has to be based on more than that.

However, we should not lose sight of the very positive things that the policies of the IDP have and can deliver. The policies have been formed taking into account extensive public consultation across the whole Island which should not be lightly dismissed.

Indeed in a presentation I think it has been explained more fully that Guernsey Tomorrow is a major event there were perhaps 1,000 responses, there was very much commitment going around to everywhere from the Town Markets, to the Friquet Garden Centre, to Beau Sejour. There was
3905 extensive dialogue and opinions from right across the age and scope of our community and the response that you got back to a very large extent mirrored that, whether it be environmental protection, greater flexibility or definition of urban centres and social centres, main centres.

However, we should not lose sight of the very positive things that the policies of the IDP have and can deliver. The policies have been formed taking into account that extensive public consultation as I identified. Indeed whenever we have had consultation over 30, 40 years going back to the era of the old UAP, IDP and indeed the Land Use Consultants Report in 1989 that some Members might remember. The feeling was very much we need it to work hard in Guernsey to conserve our countryside and not become one big scattergun ribbon development. I think our policies have to be considered with that envelope and context.

I personally welcome debate of this first AMR and ask Members to note its contents and how it may inform their own policy making and delivery. I am sure Members will not just support the report they will have views of their own as to how they think Planning can develop in future and they will doubtless bring to the table interesting insights and evidence that will inform us on the next stage of the journey.

3920 Lastly I would like to say thank you to all those who have taken the time to provide feedback for this AMR and to everyone who has taken the time to read it.

The Deputy Bailiff: Nobody is rising to make any contribution, having decided that you would debate this Appendix Report.

3925 Deputy Merrett.

Deputy Merrett: Thank you, sir. I will kick us off then.

I am pleased we are having this debate on the Annual Monitoring Report. I will refer to it in future as the AMR of the Island Development Plan the IDP, because the IDP was the first big debate this Assembly had back in 2016 when many of us were new to be Members of this Assembly. It was a monumental task with a lot of amendments, amendments that were challenged by the fear that they might undermine or contravene the Strategic Land Use Plan the SLUP.

Of course not all Members in the Assembly approved the SLUP as it was developed and determined between 2009 and 2011 with a 20-year life span so that is until 2031. So our hands, sir, and arguably our feet were tied by the SLUP when we debated it and tried to amend the IDP but now we have the Annual Monitoring Report the AMR to let us know what the IDP has or has not delivered.

Of course we cannot amend the AMR as it has been submitted as an Appendix but we should not underestimate the level of reading, digestion and comprehension of understanding that was needed back in 2016. We unanimously enacted the IDP after days of debate. I think it is fair to say that many assumed how policies would be interpreted and implemented. It is also reasonable to say that some policies may and are defined by subjective interpretation. We were told that policies would be flexible and would be responsive to change.

In 2021 we are due to review the housing policies but I am aware that the terms of reference of the review have not yet been determined. Of course a new Assembly will be in place in 2021 who will once again be given the task of deliberating and debating it.

The AMR before us is yet another long and lengthy read and of course some Members will also need to read the SLUP again, the IDP and the AMR it is indeed an unenviable task. I believe, sir, that this Assembly should take responsibility and have accountability for what we enacted and that is why debating the AMR will help us all deliberate how we consider how the IDP has delivered since its enactment.

As I said previously we cannot amend an Appendix Report, we can debate it but we cannot amend it. As far as I am aware the only parliamentary mechanism we could use to amend the SLUP and or the IDP would be a requête and that is yet another reason why debating the AMR is so important as the opportunity now to air our concerns and or our supports for the IDP we enacted thus allowing Members to proceed as they see fit.

The DPA Business Plan 2017-2020 under duties and powers as approved by the States, the first bullet point is to advise the States on land use policy and implement land use policy on development plans and any other relevant instrument. So to advise the States on land use policy and that is where it is a little tricky as E&I have the mandated responsibility to advise the States in developing and implementing policies on matters relating to spatial planning including the SLUP, general housing policy in relation to land use, spatial planning and infrastructure. There is an earlier version of the Island Infrastructure Plan during 2008-2012 traffic and transport and the road network to name but a few, but they all interlock and debating one without the other does not give us a full picture.

The AMR states it is essential we monitor the progress of how the IDP is being implemented and by doing so we are ensuring the IDP is achieving what was intended by Members. What we set out to deliver for Guernsey, with the main purpose being to establish via evidence whether the IDP policies were delivering Members' intent and whether any amendment is required for the policies to operate more effectively. It goes on to say in the AMR report:

... it is not about re-visiting the States' clear decisions of policy principle in terms of the spatial distribution of development, but is focused on how effective the IDP policies have been in delivering positive outcomes against those decisions.

Of course it should also say how ineffective or what barriers the IDP policies have been and what negative outcomes there have been. That appears to be omitted.

So the point, sir, is why do we have an AMR which is meant to be responsive to change, meant to be up to date and help us to establish evidence to help us decide if amendments are needed,

3975 but then we restrict ourselves or whoever wrote the foreword to the AMR by stating that we should not be revisiting the policy principles.

The policies how they have been interpreted and implemented are crucial to ensuring the IDP is actually delivering the expectations and outcomes of this Assembly. We cannot amend the Appendix but we can debate it.

3980 I assume that if the DPA were actually to suggest any amendments and if stated in the foreword if the DPA had established prior evidence whether the IDP policies are delivering what was intended by the States, whether there are any blockages and whether any amendments are required they would have to submit it as a policy paper with the AMR appendices to that.

3985 Further, sir, only individual Members know what they intend to deliver and as such the AMR is simply one of the many different tools that Members can use to help them further understand the policy interpretation and implementation. So guided by the AMR but not dictated by it and certainly not dictated by the foreword.

I would like to talk about six areas that the AMR touched upon, the first being development frameworks. I cannot locate within the AMR where it states the length of time from conception to completion of development frameworks. We know from bitter experience that DPA after they have released a draft development framework (DDF), for public consultation when they decide to amend it and re-release it as an amended DFF that they are not prepared or able to advise members of our community who have made a submission to support or object to the DDF and by doing so invite further comments. A media release, yes, but they have the names and addresses of everyone who has made the submission but apparently not the technological resource to simply communicate with them there has been a change. We should not underestimate the time, trouble and stress that doing a submission has on our community. Trying to get access to the relevant information, disseminating it, deciphering it and addressing it, it takes hours and hours.

4000 On page 2 of the AMR we are advised of a number of developments there which were published in 2017 but they all related to housing, there are no commercial development frameworks been done, none. Why are there none? Is there no resource? How is that going to help our economy? I have been advised that they are prioritising housing. I cannot recall if that is a States' direction, so I assume it is the DPA's. So are the DPA directing planning to do frameworks on housing sites first, but then are the DPA then prioritising brownfield sites or are they acting at the behest of developers? 'You approach us and we will use public money and resource to do a development framework for you.' But what then when a developer approaches them of a non-housing site, how are they prioritising that? Who decides the prioritisation list? I would assume DPA – after all, it is public money that is funding them.

4010 Development frameworks are a new thing I would like to ask the President when he sums up where development frameworks came from and who exactly is prioritising which ones Planning are working on first? Simply who prioritises them?

I should note that a proactive approach will be taken by the Authority regarding a development framework for Leale's Yard but not until the full permission has expired in August 2019. How long will that development framework take to come to fruition? Have conversations already been had with the existing land owner, if not, why not? The existing land owner has said repeatedly in the media that they will not be progressing the site under its current planning permissions, so when will a development framework be started and when will it be completed?

4015 Of the 15 housing allocation areas what progress has been made on which are brownfield *versus* greenfield sites? Since the IDP was adopted only 67 net units have been approved, only two development frameworks approved and only one published. Two on greenfield sites, one on brownfield. Figure 10, page 30, does not inform us which are brown- or greenfield sites.

[inaudible] is because they are all housing allocation areas. How many net units have been approved under development frameworks? Well, that is none. So we have just 67 net units approved with none under development frameworks, but we have 1,177 dwellings with permission and there may be capacity of at least another 677 with many on housing allocation

area sites, and add to that the windfall allowance and we have a whopping 2,146 dwellings that could be or have been given permission to build.

Remembering the policy paper we debated in 2018 regarding the Local Market Housing Review that between 2017-2021 the housing indicator has been approved to be set at 813 with an additional variance of 46. That is a total, sir, not a minimum ... It is a minimum, sorry, it is a minimum we need over five years, 859, but we would have permission for over 1,177, and yet we do not wish to reassess the housing allocation areas. Why not? Because they are, as I said earlier, minimums not maximums. Are we expecting a large growth in our population? Are we expecting more single occupier units? We have determined that we need 859 over five years, not per year, and we have enough dwelling with permission or under construction now but we still want to stick with 15 housing allocation areas.

The housing land indicator is still using the 300 total even though we know that this has been lowered but the comment section in the AMR states there will not be a review of housing land supply until 2021. Even though we know we have a massive excess with regard to permissions granted, to what we need, unless of course monitoring indicates a more urgent need to review land supply sooner. Arguably the fact that we have revised the housing indicator significantly downwards, that we have already got enough permissions to last five years, that we have had no development frameworks leading to any approval of any housing, and that no affordable housing was built last year, and our community's unrest regarding framework agreements on greenfield sites, but there is still no evidence. I expect it will be argued that it is still just bedding in.

Page 31 states that:

future supply requirements will be reassessed if the States approve a revised Strategic Housing Indicator.

Well, we did that in May this year, so when will it be reassessed? If the President could let us know, as the DPA has now had six months to consider this States' Resolution.

Are there so many development frameworks outstanding because they are required for sites that have a small threshold? We know that we have had complaints about the length of time involved in the production in the need for development frameworks proportionate to the size of the development. We have been told that they are, so what is the AMR's action point? Well more guidance is needed from agents, for agents rather. Agents who have worked in the industry for decades because they clearly do not understand the standard that is required for the submissions to development frameworks. Maybe it is because Planning have not made the requirement clear enough, over laborious, or too expensive for agents to produce.

The AMR does state that development frameworks have been a learning process. Learning by whom? All I should think, but the action point does not relate to the comments or consideration that may be DFs are required on sites that are too small or that there is backlog in that maybe it is a barrier to invest. Is the AMR to ignore these comments because I am concerned, sir, that developers are not prepared to wait for Planning to do a development framework. They wish to invest but they may have to wait months for a site to become a site of DF unless of course they wish to do it themselves, that is more cost, that is more time, it does not make any commercial sense.

My second point, sir, is about community plans. The SLUP required the IDP to set out clearly the specific role of community plans in informing planning decisions. But there have been none to date. Why? Community plans are meant to set out a vision for improvement and change to a particular locality. The AMR states its ambition that community plans will genuinely be produced by the community, but using what resource? Bearing in mind that any community plan needs to be produced in line with the constraints of the IDP and any other statutory plan, what if the planning does support any Committee plans or is our Committee too busy submitting concerns, planning applications and DDFs, draft developing frameworks? I would like to ask the President if there have been any public meetings been held to explain what a community plan is to our

community offering support and resource? I would appreciate if the President could answer that question as well.

My third point, sir, is Environment Impact Assessments (EIAs). When we debated the IDP little was made of the fact that all EIAs have been done between 2003 and 2006, so 10 years before we debated it. Under the 2007 Ordinance, the States had to take into account the environmental statement that arguably we did not have up to date or live EIAs. We had some that were 10 years old and some that were 13 years old. However, sir, I have been assured the EIAs will be updated before the IDP is due to be debated in 2021.

That takes me on to my fourth point which is housing allocation areas which I have already touched on. The IDP is meant to have a 10-year lifespan, in fact we are told it has. There is a requirement set out in the SLUP to review the supply for housing land after five years, so that will be 2021 a new Assembly. Maybe we should coincide, just maybe we should coincide the Guernsey Housing Market Review and the subsequent policy paper that determines development of future Island strategy to be in line with that debate, meaning maybe we should release it six months before the review of the IDP is done and not after. The IDP was debated in 2016 and the Guernsey Housing Market Review was not released until 2017. So if the housing supply is to be reviewed in 2021 surely it would be logical and informative to have any Guernsey Housing Market Review done before that date.

On page 5 of the AMR it states under housing indicator:

The Inspectors noted that any change to the housing indicator ... may require consequential amendments to the IDP.

Well, the indicator was debated in 2018 the housing requirement almost halved, so where is the amendment?

On page 22 of the AMR it lists the pipeline supply for housing for the main centres and local centres. There are a staggering 895 dwellings that have applications approved in the main centres and main centre outer areas. 533 in St Sampson and Vale and 362 in St Peter Port. With 237 under construction mainly in St Peter Port which has 172, L'Islet has 3 and St Martin's has just 41. So is this spatial policy working? The AMR says yes, because we have a proficient housing supply, well we certainly do or appear to, but more planning permissions than what the housing indicator suggests we need. In fact we have far in excess of that requirement.

What about the percentage for affordable housing that is GP11 on page 24 housing for all? Well, that objective has not been met. It states:

The requirement for Development Frameworks for larger sites may have a lag effect on permissions ...

May, well of course it does, if there is not a development framework then planning permission cannot be considered. GP11 requires that for over 20 or more dwellings there will need a proportion of the developable area of the site to be given to affordable housing. We agree as an Assembly to try to kickstart that to a smaller percentage would initially be required increasing every year. Not really an incentive, as it turned out, as there was only one. The majority were for applications between one and five dwellings; just one that was 20 plus. So was the AMR status target met? It simply says it is not applicable. So planning objective target to ensure housing fall has not been met and the planning objective to ensure access to housing is simply not applicable. What action does the AMR suggest? It states action, none, but it will keep it under review, it will continue to be monitored. It does give us a why though. It implies that planning permission will be forthcoming following approval of development framework by the time the development framework has been approved the percentage of housing that needs to be provided for affordable housing will have increased. So any benefit of an incentive to developers will be lost.

So 1,177 dwellings in the pipeline, a supply but no site, none in policy requirement for affordable housing. I think it is a miserable failure in my eyes, sir. Not applicable according to the AMR, but of course we know it will be monitored.

The areas noted as Important Open Land emphasis – that is page 26 – that brownfield sites, when taken together with spatial strategy at a high-level, place an emphasis on brownfield development. Again, monitoring is seen as the solution. We will monitor which of the greenfield sites have been developed and if there is evidence of areas that should be re-designated, if areas of important open land need to be added or removed, we will do that in the future. But we cannot add them, can we, if they have now been built on? I asked this recently and was told well, actually we could demolish houses to enable some areas of open land to be established but where would you then relocate the housing that was lost? Do we really want to be building on important open land or sites that give some relief to our community from urbanisation? Are we seriously happy with allowing these sites to be developed, monitor it, hear everyone's objections but as it does not fall foul of existing IDP policies Planning may recommend approving it, the DPA may approve if it gets as far as an open planning meeting? Then in 2021 they say, 'Actually we believe we need some of those open lands as areas of important open land or greenfield sites back, so let's compulsory purchase and demolish housing so we can achieve more green spaces.' Seriously no. No. Or do we recognise now that we should have protected more green space, had more areas of important open land?

It is worth noting, sir, that actually there are no – none, not one – areas of important open land in the main centre of the north. None, so no protection. Which areas could we protect which were suggested in the north as worthy of protected IDP debate? No, that was none. So therefore we simply do not have any. What is the action point of the AMR? We will monitor it, we will continue to monitor it to establish where these residential developments are located within the main centres and they sit at areas in terms of green and brownfield sites. But seriously it is a bit too late by then, isn't it?

How about windfall sites? St Peter Port have 17 sites of which there is a potential yield of an additional 175-302 dwellings. In St Sampson Vale 11 sites with a potential yield between 59 and 128 dwellings. That is another 234 to 434 dwellings. Where are all these people who want to buy or rent these dwellings actually coming from? Or is the mix of accommodation wrong? What would the Chamber of Commerce Land Planning & Development sub-group know, they think the development frameworks are too prescriptive, that the market should direct the unit mix. They might actually want to sell what they build, but no the IDP means the mix that is required is known and is reflective of the demographic profile of households requiring housing. The IDP will ensure that the type of housing built is what the Island requires and will stop oversupply of certain types of build sizes and types. Really? Do developers usually build something that will not sell and are thankful that the IDP will dictate to them what they need to build? Phew! Forget basic rules of supply and demand as the IDP knows much better and can react really swiftly to market trends, the change in mortgage lenders, the change in the rate of inflation, and the demographic changes. Good. It can react quickly but not until 2021 if housing policies are concerned. Why? I am assuming because it is still bedding in.

My fifth point, sir, is Harbour Action Area, that is IDP policy MC10. The Harbour Action Area notes that the detailed strategies for the development of St Peter Port and St Sampson's Harbours will be provided in the local planning brief. What it does not say is when. However, it does block any development in these areas, as it states and I quote:

In the meantime the policy supports proposals where they are of a minor or inconsequential nature or do not prejudice the outcomes of the Local Planning Brief process.

So I would like to ask the President, can he please advise us and our community what stage the local planning briefs are at now? I mean, when will they be finished or, just so I have clarity around this situation, is it that P&R have asked for the community's input and then when it reaches local planning brief stage the DPA will advise that community that unfortunately their ideas go against planning law planning policies?

My last point, sir, is retail, which is LC5 and it is retail in local centres. We saw a planning application refused in St Martin's because it was a mix of comparison and convenience retail. So

did the applicant think, 'Okay, well, Planning knows best'? Planning stated it would be an overprovision of a certain use. Luckily for the developer they did not waste their money on a site that would be an overprovision, and presumably unprofitable, and presumably of absolutely no benefit to our community. They simply find a site in one of the main centres instead, could they afford a site in the main centre, would additional costs of such a site make their business model unviable? Never mind. The IDP policy stopped them investing in the wrong area. We are told that the application has gone to appeal and the outcome will be reported in due course, but I am wondering if the President knows the outcome of that at the moment.

So is our retail policy, that was based on a retail strategy that was never debated in this Assembly, suddenly retail ... ? Should we ask retailers and developers? Have we? Well no, because the action point is:

Continued monitoring of general convenience store provision in Local Centres.

So do not let businesses develop and grow as the market determines, but say no and hope they decide to locate to one of the main centres instead and if they do not, they can just quite frankly keep their business model and go elsewhere. We are told time and again that the ongoing monitoring of the IDP will ensure it is effective and relevant. That the success and progress of policies will be monitored but how about the failures.

No development frameworks for commercial sites; no community plans. How are housing allocation areas being prioritised in regard to which draft development framework have been brought forward first? Is it the developers, is it Planning, is it the DPA or is it the community?

When the President sums up I would be very appreciative if he could answer any of the questions that I have posed today that have arisen from the AMR.

Thank you, sir.

The Deputy Bailiff: Members of the States, it has just gone 5.30 p.m.

Can I just gauge how many other people are likely to want to speak in this debate on the Appendix Report?

We will adjourn to 9.30 a.m.

The Assembly adjourned at 5.34 p.m.