



**OFFICIAL REPORT**

**OF THE**

**STATES OF DELIBERATION**

**OF THE**

**ISLAND OF GUERNSEY**

**HANSARD**

**Royal Court House, Guernsey, Thursday, 26th September 2019**

*All published Official Reports can be found on the  
official States of Guernsey website [www.gov.gg](http://www.gov.gg)*

**Volume 8, No. 26**

**ISSN 2049-8284**

**Present:**

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

**Law Officers**

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

**People's Deputies**

**St Peter Port South**

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

**St Peter Port North**

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

**St Sampson**

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

**The Vale**

Deputies, N. R. Inder, M. M. Lowe, L. B. Queripel,  
S. T. Hansmann Rouxel

**The Castel**

Deputies R Graham L.V.O, M. B. E., B. J. E. Paint,  
M. H. Dorey

**The West**

Deputies A. H. Brouard, D. de G. De Lisle, S. L. Langlois

**The South-East**

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

**Representatives of the Island of Alderney**

Alderney Representatives S. Roberts and A. Snowdon

**The Clerk to the States of Deliberation**

J. Torode (H.M. Greffier)

**Absent at the Evocation**

R. M. Titterington, Q.C. (H.M. Comptroller)  
Deputy L. S. Trott (*absent de l'île*); M. J. Fallaize (*relevé à 10h 11*);  
Deputy J. C. S. F. Smithies (*absent de l'île*); C. J. Green (*relevé à 09h 34*);  
J. P. Le Tocq (*relevé à 10h 11*); Deputy A. C. Dudley-Owen (*absent de l'île*);  
Deputy E. A. McSwiggan (*absent de l'île*); V. S. Oliver (*indisposée*)

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# States of Deliberation

*The States met at 9.30 a.m.*

[THE BAILIFF *in the Chair*]

## **PRAYERS**

*The Greffier*

## **EVOCATION**

# Billet d'État XVIII

## **COMMITTEE FOR HOME AFFAIRS**

### **V. Appendix Report – Guernsey Prison – Annual Report 2018 – Debate continued – Proposition carried**

**The Greffier:** Billet d'État XVIII, Article V,– Committee for Home Affairs – Guernsey Prison – Annual Report 2018, continuation of debate.

**The Bailiff:** Just before we resume, Deputy Green, do you wish to be relevé?

5

**Deputy Green:** Yes, please, sir, thank you.

**The Bailiff:** So who wishes to speak on the Guernsey Prison – Annual Report for 2018?  
Deputy Tindall.

10

**Deputy Tindall:** Good morning, sir.

The Guernsey Prison Report we were asked to note and there has been a motion to debate, so I wish to draw out elements of the Report, pose a few questions and basically to analyse in particular one of the starting points on the Report and that is the Vision and the Mission.

15

The Mission says:

We provide a safe and secure environment that enables prisoners to address the causes of offending behaviour and provide them with values, skills and experience to take a positive role in the community upon release.

So I start with part of what that Mission says and that it is for the Prison Service to provide a safe and secure environment. It says that whilst the annual average figure for 2018 was 100 prisoners, the highest number reached 121.

20

But it also says Guernsey Prison has a Certified Normal Accommodation (CNA) of 134. So whilst there appears to be some room for increase we are told that:

This caused some concern that the prison would run out of available space if the trend had continued.

What is of more concern is the result of an increase in those numbers even though the CNA was not reached. Again we are told:

With the increase in the prison roll there was a subsequent increase in adjudications and violence within the prison. This is being monitored closely, the prison has a zero tolerance approach to violence and, as a result, we always prosecute offenders.

The Report goes on:

The longstanding issues the Prison had with the inoperable Prisoner Cell Call System [*has been*] addressed.

Again:

It has been noted for the second year running that the reporting of accidents and injuries within the Prison has been excellent.

25 So, good and bad. The Governor's Report says:

The majority of priorities identified in the 2018 delivery plan have been achieved.

But:

Priorities that were not met, mainly due to insufficient capital funding have, in the main, been carried forward to 2019.

For example, the full inspection by H.M. Inspectorate of Prisons which was due to commence in the summer of 2019 has been postponed potentially until 2020 subject to funding.

30 Of concern, the upgrade shower facilities improvement of disabled facilities have been delayed, and we are told that this is with the States' Property Services and a new minor capital bid will be submitted in 2019.

The repair and repaint of external finishes on Prison buildings are becoming an urgent priority due to the level of disrepair.

Yet:

The allocated funding was withdrawn as a result of a review and are no longer available.

What review and who withdrew the funding and why?

35 The Prison roll, as mentioned, 120 in December and this caused concern, but saying it has reduced to 75 does not alleviate the need to monitor nor plan for this eventuality.

The Mission goes on:

... provide them with values, skills and experience to take a positive role in the community upon release.

This certainly has a very more positive Report. We are informed of the new induction procedure, a process which will assist the prisoner but also the staff. The report also says in the Governor's Foreword that:

... a significant increase in the numbers of qualifications and awards ... obtained by prisoners; increases were seen in academic and vocational awards. In addition, the CLIP Charity goes from strength to strength. The new workshop facility, which is partially funded by the Charity, will provide a better range of activities and be able to accommodate a more diverse range of prisoners than the current provision.

40 All good stuff. To assist with this aim we are also advised that all prisoners now have access to an in-cell terminal to:

... give prisoners the responsibility to manage aspects of prison life which would normally be carried out by staff, as well as allowing them to continue with education work in their cells; thereby achieving increased autonomy.

However, prisoners are not allowed to access the internet in their cells but only have supervised internet provision with the Education facility. I personally think that is a good move.

Also, an average of more than 99% of all eligible prisoners were in employment during 2018.  
45 All which will go toward that Mission statement.

Deputy Soulsby has highlighted the health and wellbeing aspects of the care within the Prison and elaborated contents of the Report. Again, I think that goes towards the Mission, but part of the Mission statement says that it wants to look at what enables prisoners to address the causes of offending behaviour. There are brief mentions to this: near the end it talks about the  
50 rehabilitation and release planning and says:

Prisoners are supported to maintain and develop relationships with their family and friends. Prisoners are helped to reduce their likelihood of reoffending ...

That is the phrase, that is it:

... and their risk of harm is managed effectively. Prisoners are prepared for their release into the community.

And then refers us to the 2019 delivery plan, something that is not before us today. It is shame that therefore this Report does not go into part of their Mission statement and explain how this element is being dealt with.

55 I will go back now to the Vision because obviously the Vision is usually the overarching, and it says:

We ensure public protection and commit to reduce re-offending ...

It says:

... the introduction of the Community Reintegration Support Officer. This post was created in May 2018. 'The aim is to encourage a strong work ethic, motivation, ability to take responsibility and work both independently and as part of a team. Additionally, the support officer works alongside the resettlement officer in transitioning prisoners into appropriate voluntary work placements in the community.'

We also are told about a new development of the Eye Movement, Desensitisation and Reprocessing (EMDR):

In the last year, we have been able to offer EMDR ...

60 – the report says –

... through the Pathways Department as a treatment option for prisoners who have experienced trauma in their childhood or adult life. Some prisoners have found it difficult to move on with their recovery from substance misuse or to engage fully with offence related work because of untreated trauma related anxiety disorders.

Whilst these are elements of looking to assist people to look at what exactly are the causes of offending behaviour and to reduce reoffending, it does seem to me that this, in both being in the Vision and in the Mission, seems to be something that is not concentrated on in the Report and I would like to have more information.

65 Thank you, sir.

**The Bailiff:** Deputy de Lisle.

70 **Deputy de Lisle:** Sir, just a couple of comments with regard to work. We are told that this is a working prison where the expectation is that prisoners who are able will be assigned jobs and expected to go to work each day. We also are told by the Prison Governor that a:

... new workshop facility ... partially funded by ... Charity, [is to] provide a better range of activities and be able to accommodate a more diverse range of prisoners than [that of] the current provision.

I think this is a very important area and I would like a few more details with regard to work in the Prison, particularly in terms of actual jobs provided. I know we have a little more detail on page 11 with regard to catering in order to work in the prison kitchen, but other jobs, skills developed, and the entry into the workforce in trades etc. on leaving prison. I think all the areas could be indicated and documented within the Report.

So all I am asking for is a little more detail with regard to the successes and the types of work that are being offered in the Prison. I was surprised to see that part of the funding of the new workshop facility was funded by charity; I think that is something that is a Government responsibility and we should be very active in promoting work in the Prison. Also we do not know whether the jobs are within the Prison or outside or where they are happening and what type of work.

I think we need more details, sir.

**The Bailiff:** Have you finished? You have finished, right.  
Deputy Hansmann Rouxel.

**Deputy Hansmann Rouxel:** Thank you, sir.

Right at the beginning of the Report there is the mention of the sky drone defence and this comes under progress against business planning and priorities set for 2018. It does concern me that it comes under priorities because there is no indication whether it came from a recognised need and how much time and resource is taken up by something that needed to have the extension of the UK Prisons Act in order for it to work. There is also no indication that it actually is doing anything. So if the President has any information on whether there were attempted drones before it was installed and what the cost of maintaining the drone defence is and whether that is built into business as usual, that would be helpful.

Then in terms of the sort of holistic look at the Report and how it fits in with the rest of the different policies of the States, looking at the UN handbook and prisoners with special needs it gives some indication on how we do look at ... well how different jurisdiction and gives some guidance on how to handle prisoners with special needs, not just those with disabilities but foreign prisoners are also recognised as those with special needs, just anybody that does not fit in with the normal side.

Of course all prisoners to some extent are vulnerable because by the very nature of incarceration all prisoners are vulnerable. When the liberty of a group of individuals is restricted and they are placed under the authority of another group of people, when this takes place in an environment which is to a large extent closed to public scrutiny the abuse of power is proven to be widespread, and I am happy to see that this is not the case in our system and we do have the Independent Monitoring Panel.

But what is not clear is how the make-up of the Prison and what is happening in the Prison in this Report is translating into wider policies.

The UN gathered data across many countries and it is surprising to note that special needs groups do not actually constitute a small part of the prison population. Foreign prisoners make up 20% of prison populations in EU countries. How that translates to our Prison is not quite broken down in the Report, so I was not able to advise that. Again, also studies from countries around the world show that between 50%-80% of prisoners have some form of mental disability. That is from across the world so I do not think that our Prison would necessarily be different but I cannot look –

I give way to Deputy Leadbeater. He has been trying desperately to interject.

**Deputy Leadbeater:** Sir, I thank Deputy Hansmann Rouxel for giving way.

First of all, touching on the prisoners with learning disabilities, mental health issues, special needs, there is a statistic which I think I mentioned in the last meeting where if you took a snapshot of 60,000 people in the UK there would probably be 1,000 on average people with



learning disabilities within that group of 60,000 people. In Guernsey we only recognise 275. So statistics on the outside of prison are not right, so the statistics on the inside of prison are not right. But if I can just touch on ... This answers a few questions actually. There are seven strategic pathways to reduce reoffending that the Committee for Home Affairs employed for its Prison Integration Service. They are accommodation support; employment and education; drug and alcohol; family and social support; life-skills and offending behaviour; health physical and mental; and financial management.

A high percentage of prisoners come into custody with complex health issues and are already under the care of HSC in the form of their GP, mental health service, community drug and alcohol teams, etc. They do not become unhealthy in prison; they arrive that way.

Before you can draw any conclusions on the amount of contact they have with health care professionals in prison you would need a comparison with what takes place in ...

Anyway we provide a holistic approach to health that the nursing element is only one aspect of others which include: obviously the Prison health care service, the detox programmes, substance misuse worker, quick line medical support, cardio and weight training and a good diet.

I think the question should not be how expensive health care is in prison but how expensive it would be to reduce it –

**The Bailiff:** Is this a second speech Deputy Leadbeater?

**Deputy Leadbeater:** I am just – (*Interjections*) No, I am just answering questions that have been raised about health care.

**The Bailiff:** Well, Deputy Lowe can do that when she replies, unless she wishes to hand over the responsibility to reply to the debate to you.

**Deputy Leadbeater:** Okay, I think I have made my point.

**Deputy Hansmann Rouxel:** Thank you for making that point that actually if we are not identifying the issues properly in the outside environment then, yes, when it comes to the Prison people arrive sick, as Deputy Leadbeater outlines. However, that brings me onto the next point.

If you look at page 13 and 14, page 13 has the health statistics and the number there which I believe is 2,000 ... sorry, I have lost my place and then compare that to the number of prisoners in the Prison, it identifies that actually the care that they are getting is proportionately quite intense, and the resources going into that.

So my question is what work has been done to analyse not only whether those prisoners are identified – a lot of the time they are not identified as having a disability prior to being in prison – as part of the process of induction are assessments being done, and particularly for autism? As we know, we have a history of not diagnosing adult autism and or having a long time ... well the system creaks at the seams and a lot of work has been done with the autism framework recently.

In terms of the prison population there are specific issues with somebody with autism who falls into the system because of the nature of their sensory environment and if we are not able to identify that the cause of somebody's bad behaviour is actually due to their sensory overload or their disability then it is very difficult for us to actually manage their person, for want of a better word.

Without proper training on autism and cognitive disabilities there can be a disconnect and a misunderstanding of the manifestations of bad behaviour from sensory overload, from issues of uniform or clothing, often the kind of shoes that you wear sometimes grate on the person constantly and it is not something that you can necessarily understand unless the person has been identified as having cognitive or sensory needs. Also the literal interpretation of language can lead to the mishandling of a situation.

175 Looking at the statistics it seems like a lot of health care is happening in the Prison. I just want  
to be assured that what is happening is there is some analysis of the kind of care and pathways  
that are happening within the Prison so that it is not necessarily being over-managed but  
incorrectly managed. So if you do not identify what the actual disability or need is then clearly you  
are going to be setting out a lot of extras which do not necessarily address the problem if you  
180 have got somebody coming back and back and taking up a lot of resource; or whether those care  
plans are being handled and actually that is just the reality of the Prison. I would hope that  
analysis is.

In terms of the Prison population make-up there is no breakdown of what disabilities or  
anything – and I would not expect that information to necessarily be made public, but I would  
185 hope that in preparing the justice policy an analysis of the offenders in ... and what has actually  
caused them to offend. Often what happens is, and one of the reasons why there are more people  
with disabilities within the prison system, is they are failed outside of prison.

Yes, people do offend and it is their choice to offend but we should be providing the most  
choice for that individual so that when they do offend and it is their choice we can say to them  
190 with hands on heart, 'You have been given the best choices in the world and you have still  
offended,' and that is how you keep a prison population down by ensuring that they have the  
choice and support outside of the environment and they do not lead to offending.

So I would hope that that would be going into the work on the justice policy and I would just  
like some confirmation from the President on how that will feed into the policy.

195 I thought I had to give way to somebody and I was just about to wrap up, unfortunately  
Deputy Green. (*Interjection and laughter*)

In closing, it is simply to try and look at the holistic picture and if we can have some indication  
that the whole picture has been looked at along with the justice policy and seeing where this fits  
in and how the health and social care fits in with the prison population.

200 **The Bailiff:** Deputy Inder.

**Deputy Inder:** Sir, just following on from Deputy Hansmann Rouxel, she has taken most of the  
things that I was going to say.

205 I am just surprised that there is no data on the population at all split between women and  
male prisoners. (*Interjection*) Is there? Have I missed it? Oh, okay, maybe it is the second time in a  
day I should sit down. Okay, well if that is the case I will sit down! (*Laughter*)

**The Bailiff:** Deputy Tooley.

210 **Deputy Tooley:** Thank you, sir.

In preparing for this debate I read first of course the Annual Prison Report and the  
Independent Monitoring Report and I think most people have spoken to both during this debate,  
so with your indulgence I will do the same and if there is a second debate on the other one I will  
215 not speak – unless somebody says something I really disagree with!

I read, too, the Prison Population Report and the business plan and the information leaflets  
which are made available to prisoners, their families, and their loved ones, all of which left me with  
pages and pages of notes and no clue really where to begin preparing to speak in debate. So I  
read some more.

220 I went back and I read the 2014 Inspection Report by H.M. Inspectorate of Prisons and I listed  
their concerns at that time and among those the ones that were most prominent for me – with  
your indulgence because actually at two o'clock this morning I managed to delete most of my  
speech so I am going back to my notes ... Their main point of concern at that point was that the  
Prison was not a suitable environment for children and it was not equipped to meet their needs,  
225 that security arrangements were appropriate but that formal disciplinary procedures were applied

appropriately; that segregation and force were rarely used but while outcomes for adult prisoners were good, for children they were not sufficiently good against this health and prison test.

At the time of that inspection there were five children under 18 years of age being held and they felt that the Prison was not a suitable environment. Clearly there has been much to celebrate in the changes that have been made since. The opening of the Compass Unit has made a big difference for those juvenile prisoners being held at our Prison and there is much to celebrate.

But I think there are still issues that were raised in that report, that going through the Annual Monitoring Reports and the Independent Monitoring Reports since do not demonstrate have been addressed, and I would like to hear about – I will go through some of them – whether they have been addressed or whether they are still on the to-do list, if you see what I mean.

There was a concern that staff lacked sufficient training and expertise to deal with this younger age group, and I think some of that has been addressed but possibly not all of it, and that older children have been assessed to live in an environment with young adults, which seems to them to be a sensible option.

There were concerns that elements of substance misuse, detoxification were inflexible and it appears to me that the 2018 report suggests that there is still a concern that this is the case so I would like to hear what is being done to change things there.

There was a concern then that management of equality and diversity had improved but still had a long way to go and again the reports since then do not highlight things that have been done to make this change, so I would be quite interested to hear that those changes have been made. Particularly as in 2014, as I think Deputy Hansmann Rouxel has touched on, the Prison was only identifying two people as having disabilities although many more were self-identifying as being in that category.

I think it would be helpful for the future if the Prison Population Report went further into detail about the population of the Prison and told us how many people identified as having disabilities – physical or mental health disabilities, or indeed learning disabilities – and there was some indication of what was being done to provide a differentiated system for them.

There were concerns around the lack of discrete accommodation for women, meaning that their needs were subordinated and in fact the ... Report said that they could not see any way at all that this could ever be solved with our Prison. I think actually, again, much to be celebrated; significant amounts of work have been done to make improvements there but there still appear to be concerns about exercise facilities for women and about different induction information for women which makes clear that the different needs of women are also handled in our Prison.

I also see mention in the Report that peer mentors have been introduced – male peer mentors working with female prisoners has been introduced which has given the female prisoners a different perspective which is wonderful but there is no mention of the reverse having taken place. So I would be quite interested to hear if that is also happening. While I absolutely think it would be useful for the women in our Prison to come to problem solve in the way that men may use, I think it would be equally useful for men to see the ways that women might use for problem solving. Again these may be happening but they are not highlighted in the reports.

There were concerns about range and breadth of education and work opportunities for women and vulnerable prisoners and for young people. I think this brings me to another issue I have with the Prison Population Report which tells us the number of prisoners who are under the age of 17 but does not tell us the number of prisoners who are under the age of 16, and elsewhere reading the report it would suggest that we have two prisoners who were 15 years old during the course that this report covers. I do think that is significant and it is something that should be highlighted in the Report because these are young people who are of school age and whose education therefore needs to be dealt with perhaps differently to the way you would deal with the education of someone who is above compulsory school age.

There was also a concern back in 2014 that the facilities that had been made available for young people and to keep young people segregated from the older prison population might leads to a huge isolation of those prisoners, and certainly that does not appear to have changed

with the income of the Compass Unit, because we understand there were two prisoners aged under 17 who – extrapolating from what I can read in the data would suggest there were two 15 year olds although I am pulling that out and making an assumption on the basis of the other information that is there – who were between them held for a total, I think, of 316 days. That would suggest it is possible that they were both there for the same length of time and had company but it would suggest to me that it is entirely possible that there are young vulnerable people who are being held almost in isolation within our Prison. I do not think that is necessarily healthy and I would like some more information about that.

I understand why it needs to be separate from the adult population and so on, but I do not think it is necessarily healthy that we are creating an environment where somebody has no contact with people of their own age or limited contact with people of their own age.

It was really promising to read in the Prison Report that early conditional release and electronic monitoring were being looked at that – that is something that many of us have felt needs to be looked at for a while – and to read the research confirmed that community penalties will lead to better outcomes than custodial sentences, so that is really reassuring.

The Purple Visits scheme, again looks like a wonderful scheme. For anyone who does not know, this is a system which will allow virtual reality visits, computer face-to-face FaceTime-type visits for people with family members, and these are funded by family. But there has been concern raised; there was an article in *The Guardian* actually which was a really positive thing for Guernsey, it spoke about this forward-looking system that we were looking at, but there were concerns that while video calls for some inmates would strengthen family ties and reduce recidivism, there were concerns that this would lead to a situation where you could buy a better connection with your family if you had the money to afford the visits. To quote Peter Dawson from the Prison Reform Trust:

... families are crucial both to a decent way of life during the sentence and successful reintegration after it.

And Frances Crook of the Chief Executive of the Howard League for Penal Reform said:

It is wrong to charge families a fee to speak to their loved ones. Any technologically enabled contact does not replicate a face-to-face visit, when people can cuddle their children and spend time maintaining family bonds ...

However, I do think with all that we are in a slightly unique situation in that people in our Prison can be geographically very distant from family and we know that travel can be complex.

Incidentally, I do have the figures on the number of the prison population who are not from Guernsey. From this year: 57 out of 80, so around 71.25% were Guernsey; 17.5% or thereabouts, 14 out of 80, were UK originally; and 11.25% come from other nations. Actually that information is in the Prison Population Report although you do have to dig quite deep to find it.

There was concern that has been raised, and again there is not an update to tell me that it has changed, that while there are really important leaflets and so on printed in a variety of languages to meet the needs of the prison population, often other prisons were used to translate for people where their English perhaps was not fantastic. I do think perhaps the Prison would be helped by some more formal translation service, because it must be quite difficult to be reliant on someone who may have potentially not the best reasons for giving you the information the way they are giving it to you. So it would be good for the Prison to have the support of translators who were independent and where we knew what was happening. That may have happened but it is not clear from any of the reports that I have read.

I would like some reassurance that the call alarm system is complete. The Report said that it was intended that it would be complete by April 2019 and I would like some reassurance that it has been because obviously the Report was printed before that date. This is important because many of the wings are not patrolled at night so prisoners once they are locked into their cells had previously no way of calling a guard other than hitting the main panic alarm, which it appears could on occasion due to electrics be not the best way of calling someone in an emergency. So I would like reassurance that that has been sorted.

325 There are records of a number of slips and trips and accidents in the Report but there is nothing telling us how severe those slips and trips were and at what level they were. I mean are we talking a bruised elbow or are we talking a broken arm? It would be helpful to know the level of intervention that was needed following those.

330 Okay, year on year it appears we do have an increase in female prisoners, so the 2017 report said that the number of female prisoners admitted to the Prison was an increase on previous years; the 2018 report says the same, so it will be interesting to know what is happening there and whether this is effectively coincidental, it is just the way it is, or whether there is a change in offending behaviour or a change in custodial sentences for women.

335 Again, the reports all raise this ongoing issue of access to bank accounts for prisoners once they leave Prison in order to reduce recidivism, so it would be useful to have some update on that because there was a suggestion in the Prison Report that this might be changing.

I do have a concern around the detox regime, so it would be helpful to know that changes are being at least investigated there.

340 The one final thing I will say is that every single report – and I read a lot of them – that was carried out by the Independent Monitoring Panel highlighted the fact that there was a lack of awareness among prisoners of the fact that the Independent Monitoring Panel was there, what they could approach them about, and how their voice could be heard through this means and also how the voice of the Prison could be heard. Every single report of the Independent Monitoring Panel says we need to raise awareness, and yet despite a new induction programme

345 having been put in place that is still what is coming through in the Report.

350 So I would like some reassurance that that is being done because these are volunteers from our community who do this so even those who have committed crimes which we might think utterly heinous are not treated in ways which we would think are utterly heinous, and it is really important that we as a society value the volunteer work that they do by ensuring that our prisoners are fully aware of their function.

So I know that was a lot and I know it was quite a ramble and I apologise to Deputy Lowe. I had intended for it to be less of a ramble than that, but there are lots of things to be celebrated in the changes that have been made since 2014 and I think the sooner the next HMIP Report comes in, which can show more fully the changes that have been made since then, the better.

355 Thank you.

**The Bailiff:** Two Members have entered the Chamber. Deputies Le Tocq and Fallaize, do you wish to be relevé?

360 **Deputy Le Tocq:** Yes, please, sir.

**Deputy Fallaize:** Yes, please, sir. Thank you.

**The Bailiff:** You are relevé.

365 Deputy Prow.

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

370 I had not intended to speak but a couple of the speeches have caused me to rise and also Deputy Leadbeater tried to use the give way rule unsuccessfully. *(Interjections and laughter)* So I am second guessing perhaps some of the points that he wanted to make, having made an excellent speech which actually did cover some of the questions that were asked later.

375 I am sure that the President of Home Affairs will very ably cover this point but I want to make it here and now. Please can we remember that this Report – in fact the two reports that are up for debate – come from the operational side of Government. It is the Prison Governor who has written this Report; it is not really for the Committee for Home Affairs to influence what he puts in it and what he does not. It is his Report it is about the operational running of the Prison and how

he operates his budget which is overseen by the Committee *for* Home Affairs. Now I think it is in that context that we need to look at this.

380 The Home Affairs Committee was criticised in what, in my view, was a very poor governance report, and I think this debate today highlights the dilemma not only for the Home Affairs Committee but all committees of the States, because, rightly – *rightly* – a motion to debate this Report was passed in this Assembly, so we can have the report before us, and we can all stand up and we can challenge the Home Affairs Committee; and I am very pleased to say that many  
385 Deputies who have spoken have highlighted that we have an excellent Prison, that they do excellent work, that they have improved since their last inspection and I am very grateful that they have done that.

In this sitting, asking the President of Home Affairs detailed questions around the running of the Prison is perhaps not entirely helpful, but it does tease out the point that we as Deputies at the end of the day are responsible for the oversight and governance of all the responsibilities that  
390 committees have, and I think perhaps when we look and we criticise ourselves as a Government about how we go about good governance that it is a very important fact that, as I said before, the Committee in this Assembly, rightly, can be held to account for what is operationally delivered and that, I think, is a message.

In Deputy Tindall's speech it was quite interesting to see how the Vision and the strategic mixes with the operational delivery and that is another point, as an Assembly, I think we need to  
395 note.

One other point is that what we are not talking about here ... what we really are concentrating on is the excellent work of the Prison. We have an excellent Prison Governor and we have got excellent staff delivering that. What we are not talking about is what the Probation Service do and  
400 what the Probation Service do in conjunction with the Prison Service, which provides, I would say, an absolutely excellent offender management which a lot of jurisdictions around the world would, rightly, envy. (**A Deputy:** Hear, hear.)

Thank you, sir.

405 **The Bailiff:** Deputy Gollop.

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

It is good to hear Deputy Prow because of course he has served for three years as the Deputy Minister for the Home Department and I think we should – no, it was Deputy Graham and then  
410 Deputy Prow, but I was just saying we have had another change recently and I think that is one of the reasons why Deputy Leadbeater has shown such zeal today, in that he has now assumed the position and is clearly doing very well.

Actually, quite a few of the topics I had considered about this Deputies Tooley, Hansmann Rouxel and Tindall have already kind of explored, because there are indeed changes afoot and  
415 although I can understand why from an operational point of view rather than a policy point view, to enhance the distinction Deputy Prow has just made, operationally the security at the Prison is often, and probably rightly so, a number one consideration and drones are a potential threat.

I cannot but not say that Living Streets, an organisation I still sit on the committee, have of course hopefully a well-used walkway linking St Sampson's School with the Grand Bouet,  
420 Pitonnerie area but it passes not that far from the Prison; and of course we have decided in our wisdom to expand St Sampson's School which happens to be right next to a prison and there are obviously possibilities of people using drones either for fun or indeed for perhaps more sinister purposes.

I think it is a good Report. The arguments about mental health have been made. Deputy  
425 Leadbeater, in pointing out that a random population in the UK might expect to have 1,000 people designated with learning difficulties whereas we are only on 251, actually sheds a light on a number of issues because we are in the middle – well, not in the middle, we are nearly at the end – of the consultation process for the equality and disability Laws and so on – 30th September

being the deadline. But that is precisely the kind of issue that we need to take on board, because certain activists and pundits have suggested that Guernsey does not have people with disabilities or the quantity suggested. Well I think it does and I think there is a need both for protection and greater health and social care facilities, and that is part of this.

As for the argument about probation, I am sure Deputy Merrett will want a probation report published so that we can debate it as well.

I think the Prison is clearly going in a good direction.

Deputy Inder pointed out the facts and figures. Well actually on page 14 they are there but in a rather disguised way, in that it is not a traditional table or bold print, it is four or five shades of grey, if you are looking at the black and white printed version, of the scales of numbers and you see in January there were ... well, February actually, there were 79 male residents, inmates if you like, which dropped to 77 but went as high as 98 in November; but the female women population varied from between 5 and 7.

Now of course Deputy Tooley is right to be concerned about their welfare and their mentoring and I am sure actually it is perfectly true the male prisoners would have a lot to learn from greater integration where appropriate from conflict resolution and so on. But if we were a county in the UK we would not be in the business of running a female ... a mixed prison probably and certainly not a female prison for between zero and 10 residents, because you cannot possibly really provide the quality and scope that that provides. We are isolated, we are a unique jurisdiction. We cannot really, if we could help it, send prisoners away, but there are particular challenges, and I know Deputy Lowe is aware of them, on the nature of the small prison for young offenders and for women, and that is just something really we have to live with. I know some radical thinkers a decade ago were saying maybe we do not need a women's prison at all across the British Isles. I do not think we are there yet, but nevertheless it is a particular issue, it is one that will not go away, because I think over the years academics, Ministry of Justice personnel, social visionaries, Home Office people will probably come over and say you are in a difficult position here, and the same to a certain extent applies to Jersey.

What is interesting though, that everybody has referred to, is the fact that the prison population actually fluctuates. As I say, it varies from 77 to 98 men in 2018. It was going high and now it has thankfully gone lower, but I wonder why that is. Is it cyclical; is it changes in judicial policy; changes in release policy; changes in demographics; changes in migration patterns? It could be any number of changes, but we need to have that in mind.

Anecdotally, there has certainly been a message I picked up in the community that mental health facilities, although provided at the Prison with all the appointments we see, could be stronger. I would personally argue a kind of non-official opinion as to why the number of appointments with health care professionals is comparatively high. I think it is because one of the factors of prison life for many people is boredom. People need stimulus in that situation and that is probably also why we are seeing a very commendable take-up in prison qualifications, because if one looks at the numbers, 92 students achieving 162 awards compared to 77 the previous year, that effectively means that most prisoners, even short-term prisoners I presume, are doing more than one qualification and most of them are benefiting.

But perhaps the next stage for Home Affairs is to look at how you can overcome boredom and fulfil Deputy Tindall's aspiration of – well it is a vision – of rehabilitating people back into society, because again little birds tell me that sometimes prisoners are released with next to no money, perhaps not the most suitable accommodation or conditions, perhaps they do not have a job to go to, and therefore although conditions in the Prison are generally good it is the integration into the rest of society that needs to be perhaps enhanced.

I would point to pages 17 and 18 where there is an incredible 30 offences against discipline identified. Some people in the community see prison perhaps in Guernsey as a soft option. I think it is quite a hard line prison despite the brilliance of the recently retired Governor and his team. I think if you compared it with some Scandinavian countries or open prison regimes in parts of England you would see that Guernsey Prison was quite traditional in its values.

Again, I am interested that we have heard such good contributions from many Deputies who have a particular interest in scrutiny or social affairs, because maybe in this term Home Affairs Committee tended to attract, well, older men as Members and perhaps in the future – apart from Deputy Oliver of course – it should have perhaps more socially interested people on it – Deputy Leadbeater as well of course. (**Deputy Leadbeater:** Hey!) (*Laughter*) But I am just saying that suddenly the States seems to be interested in Home Affairs from a social point of view.

Ironically enough, Members appear to be interested, in that the Committee should have a greater interest in operational matters.

**The Bailiff:** Deputy Lowe will reply to the debate.

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

I will start off with questions that were raised about the funding from Deputy Merrett about the maintenance. I actually covered that in my opening speech where the funding had been agreed by P&R for us to carry that forward for the inspection, but unfortunately, and this was raised by somebody else as well, the inspection is very difficult inasmuch as there is often a 12-18 month lead in. So if they can do it in the 12 months through a cancellation they would do so, otherwise it is going to be next year. So the delay has not been the fault of Home Affairs, the delay is the bookings that take place for the inspection.

Deputy Tindall actually mentioned about the average numbers and she had a whole list of questions here as well which she wanted to know and she raised about the Prison delivery plan as well: why wasn't it in the Report? Well the reason it is not in the Report is it is already on the Government website. It is there for everybody to see so there is no point in adding it into the Report when it is available in the public domain.

**Deputy Tindall:** Point of correction, sir.

**The Bailiff:** Deputy Tindall.

**Deputy Tindall:** I did not ask for it to be in the report, I just noted that it was not before us today in the debate.

**Deputy Lowe:** Deputy de Lisle asked about details of the work in the Prison and the Vice-President, which I thank him for. I tried to explain some of the areas that we actually have.

The work currently in the Prison covers hospitality, cookery, kitchen, woodworking, library, textiles, recycling, horticulture, cleaning and then outside of that we also have the Redband external horticulture in the grounds; that means those that can be trusted can actually do the horticulture in the grounds. There are voluntary placements to charity organisations that the prisoners go to, and then we have got links to numerous paid work opportunities to prepare the prisoners for release.

Gone are the days where you are in prison, locked up 23 hours a day and you are let out when your time is up and then you have to face reality of the world outside. It is very much a working prison and the prisoners do work Monday to Friday 8 a.m.-5 p.m. or 8 a.m.-6 p.m., and they are required to do that unless they are on remand. If they are on remand they can opt not to do it, but they do do it if they are on remand. So it is very much a work ethos in the Prison which there is no point actually locking up people to find when they come out that they are almost back to square one. It is getting people into the work ethic and having some responsibility as well.

So we are very pleased the way the Prison has been turned around and has turned around the life of many prisoners as well through the education unit and being able to get qualifications which they would not have got if they had been locked up in their cell, how it used to be in years gone by.



The question that I was also asked from Deputy Sarah Hansmann Rouxel was about the drones and why we had the drone system. It was sort of ahead of its time in one respect because drones now, as we know, are so cheap and cheerful and there are loads of drones here in Guernsey at this present moment in time. So it is a very good precaution and it works and we are very grateful for that, bearing in mind it is a big issue in the UK – drones getting into prisons in the UK. Thankfully we have not got that situation because we were proactive rather than reactive.

Deputy Tooley, well you have asked so many questions there is just no way I am going to be answering those questions. I just wish you had actually given them to me beforehand; I could have given you more informed ... You kept referring to a 2014 report which is five years out of date and of course a lot has changed since then down at the Prison. Now that is not dismissing your questions; I am more than happy to answer them but if you want to actually send them to me I am happy to do so.

But there are a couple of issues which I will answer at this moment in time.

I give way to Deputy Tooley.

**Deputy Tooley:** Thank you. I appreciate that.

I completely understand and do not expect at all that you could answer all those questions. I would have sent them to you beforehand but some of them were not written down until two o'clock this morning and I did not think you would have wanted them at that point.

**Deputy Lowe:** Okay. It has been out for quite some time. It has been in the public domain and that was before it was asked to be debated. So States' Members have had it for months, not weeks.

But a couple of areas that you have raised and you were concerned about the induction for women and I think that is something I just want to cover here, because I thank Deputy Soulsby for her very comprehensive reply yesterday which was a great benefit I am sure to Members here and indeed to the community to hear how much work it carries out with a very good working relationship with Health & Social Care and indeed the Prison, and they are credit to helping those very vulnerable people in the Prison.

But the health care team does conduct through assessments on reception and this was raised, 'What happens about women in reception?' and it includes potential referral for complex needs assessment. Most people coming into custody are well known to public services already, they are known to health, they are known to education, and their needs are documented. Care plans are comprehensive in this respect. So I have no fear about the way that women have the induction in the Prison.

But also, and I thank Deputy Prow as well because he raised it, this is a Prison Governor's Report and it goes back to what has been said before. It is right for States' Members to ask questions; there is not that fine line, we are responsible, but he is a statutory official and it is his report. But what is required in the Governor's Report is set out in the Prison Ordinance and it identifies exactly what has to be reported and that is what he has actually done here for that. So we cannot as political Members dictate what he has to put in that report because it is covered in the Ordinance. However, some of the things that he has heard today will be reported back to him and he can give consideration for future reports.

Deputy Gollop asked for population figures, or mentioned population figures, and I think that was mentioned as well by Deputy Inder and a couple of others have mentioned it. I have said it in here so many times before and I do not mind repeating it because I just think it is so beneficial, it is printed weekly. Go on the website now and I can tell you there are 73 convicted, 10 on remand. I can give you a breakdown of the male numbers in prison and whether they are on breach of parole, whether it is breach of bail; whether it is breach of community service; how many under 21 convicted; under 21 on remand; how many under 17 convicted; how many on remand. The list is there, including vulnerable prisoners. It is all listed, broken down whether male and female. You can look from 2019 back to 2016. Everything is done monthly so you can see the trends, the

monthly average is all there for everybody to see. The monthly average for 2018 was 114 prisoners, for three months – October November and December; and currently this year in 2019 the average for May was 89; June, 92; July, 89; and August, 84. But you can go back to the year 2013. It is all there for you to see – exactly the average of prisoners and the annual average, which was 101 in 2013 and 100 in 2018, and in between that it went: 91, 92, 91, 97.

It was then raised about the make-up of the Prison and about, I think, foreign – I am not sure of the expression used, I think it was by Deputy Sarah Hansmann Rouxel, but it has the country of origin in here. I can tell you currently we have 60 from Guernsey; we have 14 from the UK; we have two from Latvia; we have four from Portugal; we have two from Poland; and we have one from South Africa. It is there and it will then tell you whether they are of local abode or their country of origin. It will give you the breakdown of population age: how many 16-17-year-olds; how many 18-20-year-olds; 21-34-year-olds. The list goes on. It will give you the offence category; it will tell you how many have breached a supervision; how many are on drugs offences that are in the Prison, 28; how many for fraud, two; how many for property, four; how many for public order, two; how many for sexual offences, 23; how many for driving, six; how many for violence, 18.

It is here, it is updated weekly. Every Friday you can go on this and you can have a look and see exactly whether it is a category A, B or C prisoner that we have got in there. It will give you sentence lengths as well, which is all the data that somebody was actually mentioning before, whether it is three months or less; 3-6 months; 6-12 months; it is here. It will also finally tell you first time custodial sentences, a breakdown of whether it is public order, fraud, drugs.

So I can only encourage you, please, have a look on the website weekly. The data is all there, so although we are talking about the Annual Report, do not wait for 52 weeks, have a look weekly because I think you will find it interesting and beneficial to be able to be well informed of what is happening down in the Prison.

What this has told me, here with this Report and many of the questions that have been raised, is that it is time again to send an invite to all of you to have a visit down to the Prison. We sent this out to you two years ago probably. The turnout was so poor it was almost embarrassing. Because many said, 'Oh, we want to come. We want to question what is going on in the Prison,' but you did not actually come. But those that came I thank them for that.

I have stood up before and I have said, 'If you want to come and have a look at the Prison please let me know and we will arrange it,' and it is not taken up. So the questions that are asked could have been answered. You could see it for yourselves, you could see the facilities that are there, you could see the workshops, you can talk to the prisoners. It is very much a welcoming facility that we have, looking and treating people as humans and not actually locking people up and giving them a hard time for when they come out of prison.

So I urge you when we send out an invite again, which I will ensure that we will do in the next few weeks or perhaps beginning of the next year, please take it up, come and visit, come and have a look, take interest in the Prison, what is actually happening and you will be able to see and you can relay that to your parishioners, which I am sure will be beneficial to everybody.

So I thank the Prison Governor for his Report. I thank Deputy Merrett for asking us to debate it because clearly it shows yet again that the facilities are good, it shows that the States' Members are not actually reading the data that is available weekly, and I am more than happy to answer any questions, as indeed is the Prison Governor.

**Deputy Brehaut:** Point of clarification, sir.

**The Bailiff:** Deputy Brehaut.

**Deputy Brehaut:** Thank you, Deputy Lowe was on her feet.

The context for this debate for some people has been the society that gives rise to people going to prison rather than what takes place that can be rather good. So going to the Prison

635 necessarily does not deal with the social justice element which has been a theme through this debate.

**Deputy Lowe:** I disagree. It is very important you hear from the side of the prisoners and indeed the Prison staff to hear about the justice. But it is all part of the Justice Review and that is  
640 going to be very comprehensive. They are working very hard on that and of course the States will have that report released by the end of this year.

**The Bailiff:** There is a single Proposition Members: to take note of the Report. Those in favour; those against.

*Members voted Pour.*

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

## COMMITTEE FOR HOME AFFAIRS

### VI. Guernsey Prison – Independent Monitoring Panel – 2018 Annual Report – Proposition carried

#### *Article VI*

*Pursuant to Rule 20(5) of the Rules of Procedure of the States of Deliberation and their Committees, the States are asked to decide:*

*Whether, after consideration of 'Guernsey Prison - Independent Monitoring Panel - Annual Report 2018', they are of opinion:*

*1. To take note of the Report.*

**The Greffier:** Article VI, Committee for Home Affairs – Guernsey Prison, Independent Monitoring Panel, 2018 Annual Report.

650 **The Bailiff:** Deputy Lowe.

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

As I indicated when the motion to debate was considered at the July States' meeting, the Committee for Home Affairs welcomes the opportunity for this Assembly to discuss in however  
655 much detail it wishes the Independent Monitoring Panel (IMP) 2018 Annual Report.

The Assembly should note that the IMP performs a statutory role as detailed in the Prison (Guernsey) Ordinance 2013 and is independent of the Committee.

Under the Ordinance, one of the requirements of the IMP is to submit an annual report. Given the Panel's independent status, I do not propose to speak on their behalf but will, however, take  
660 the opportunity to provide additional clarity from the perspective of the service provider about some of the concerns raised within this Report.

One such concern which is raised relates to the provision of mental health care support within the Prison. The management of mental health is taken very seriously and the Prison is currently working with Health & Social Care to carry out a prison health care needs analysis to identify  
665 more clearly the level of mental health resources and services that are required. The aim is for this analysis to be completed by the end of the year.

In addition, new information sharing protocols are being developed and should be in place in the near future. Those protocols will ensure data protection rights are preserved but at the same

time seek to remove any unnecessary barriers to communication between health professionals and prison management to ensure the needs of staff and prisoners can best be fully taken into account. It is envisaged that it will also improve operational efficiency.

The overall general condition of accommodation within Guernsey Prison is of an excellent standard and it is recognised that the IMP concerns refer specifically to the condition of J Wing showers. These showers are subject to a pending capital request. The funding for the refurbishment of J Wing, which will include the showers, has been approved and, as with all renovations carried out on the Prison, it is not as straight forward as it might be in other establishments.

In the prison sector it is also an acknowledged fact that the reduction in accommodation standards invariably has a detrimental effect on prisoners' behaviour and compliance. However, I can report that there have been no specific incidents directly related to the standard of the showers. The J Wing showers have been identified as an ongoing issue for a significant period of time and it is hoped that the situation will be remedied by undertaking the required refurbishment. It is, however, worth noting that the showers in their current condition are compliant with health and safety standards and are in daily use by a large number of people, J Wing being the largest wing.

The Committee has also had constructive discussions with the IMP, both to thank the panel members for the investment of their time and energies and to assist them in understanding the boundaries of responsibility between their listening to prisoners and in some cases staff and the role of the Governor and the Committee.

The Committee is most grateful to the IMP members who are all volunteers drawn from the local community and by carrying out this role they make a really important contribution that can not only affect the prisoners but can also have a lasting impact for some when they leave prison and seek to rebuild their lives.

I therefore ask Members to support the Independent Monitoring Panel.

**The Bailiff:** Some people have already spoken on the Report but are there any who have not who wish to do so?

Deputy Merrett.

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

I tried very hard not to conflate the two so I would like to speak on this briefly and ask the President some questions which I am hopeful she can give me a full comprehensive reply to.

The important parts of the Report that I wish to bring to Members' attention are the various recommendations. Now one example of this, and I think Deputy Soulsby alluded to some of this yesterday afternoon, but there is a need for recruitment of mental health professionals, and as mentioned also in the Prison Report, the Independent Monitoring Report, the fact there are only paper trails regarding health care in general.

I would appreciate the President advising me if her Committee is in agreement with this recommendation and, if so, if they have instigated any meetings with the Committee *for* Health & Social Care to discuss how this can be achieved? So the recommendation is there, but I am asking the President if they are in agreement with that and if any meetings or any further work has been done to try to complete this recommendation.

Also it does, as the President quite rightly said, alludes to the impact the lack of refurbishment – and J Wing does seem to be the contentious one – has on the prisoners' behaviour and compliance because of course non-compliance is noted as being the biggest reason for having to use force. So non-compliance force was used 32 times out of a total of 61 in 2018.

I thank Deputy Leadbeater for his assurances this is now being addressed yesterday afternoon and also again Deputy Lowe this morning that the work is being progressed. But what I would like ask the Committee *for* Home Affairs is do they feel at the mercy of States' Property Services and is the capital request procedure ... if they consider that request has been enacted expediently or if

that capital request procedure has been a barrier to acting expediently in this manner? That is the question I would like to ask the President of Home Affairs.

Now what no Member, I don't think, has touched on yet is that this Independent Monitoring Report touches on the increase in prison population and it urges all those who are part of the criminal justice system to examine alternatives to custodial sentences. Now the panel states it would be supportive of a form of early conditional release for low risk prisoners who have accommodation and employment. I do not think any Member has mentioned this yet so far and I was deliberately trying not to conflate the two. What would be helpful for me, sir, is if the President could state her Committee's views regarding alternatives to custodial sentencing, meaning what alternatives do they consider are worth investigating further.

Now a confirmation I have just received – and again, sir, you will have to excuse me because I am trying to read from the screen, which I find incredibly difficult, especially when Deputy Lowe gave such a comprehensive opening statement but I am grateful that we have confirmation again today – that we can expect to see the justice policy later this year – quarter four, I believe Deputy Lowe said.

I am appreciative of this and it may be that Deputy Lowe feels that she cannot give her Committee's view regarding alternatives to custodial sentencing until the justice policy is before the States so we can all discuss that. However, in this Independent Monitoring Report it states quite clearly that they urge all of those who are part of the criminal justice system to examine alternatives to custodial sentences, and I would like to think at the very least the Committee *for* Home Affairs has had discussions regarding this. As Deputy Lowe quite rightly says, this Report has been out for months. I am sure the Committee *for* Home Affairs has met in that time and I would like to know if there is any commonality or anything that the Committee *for* Home Affairs can give to this Assembly and obviously a further response to the previous debate, which I will try not to refer to.

But the reason I ask these questions is so that the answers can be in the public domain, sir, so that all of our community can understand the questions that are being asked and that we can all understand the answers that are given or the reasons for why answers cannot be given. That saves me doing Rule 11s, Rule 14s and sending emails, which I am quite capable and competent of doing but obviously that does not put these questions and answers in the public domain, and that is why I have chosen to ask the questions and why I wished to debate this Report.

I think my questions are quite succinct and I am really hopeful of a full and comprehensive response from Deputy Lowe.

Thank you, sir.

**The Bailiff:** Deputy Gollop.

**Deputy Gollop:** Yes, thank you.

There is of course a slight conflation between the issues, but I do very much thank Deputy Merrett and the Committee for putting this before us and the Independent Monitoring Panel and I thank Mr Tony Talmage for the work that he has done and the Committee.

I also thank the President for reminding us of the updating on the website. I have seen printed copies of that information over the years but I have not always looked on the weekly front to see the updated figures.

Although I do agree with what Deputy Merrett has just said in so many ways because she is wanting us as a community and as an Assembly to begin to understand what alternatives to sentencing are out there. We know actually successive Home Affairs have worked on that. I remember when the late Deputy Quinn put a lot of effort into that in a past era.

But we also do not know altogether why the prison population is fluctuating by what amounts to 20%-25%. We know that at one point a few moons ago it reached 123 residents and that was a little bit of a crisis.

But returning to the main Report, I think there are lots of observations that we need to flag up. The concerns which I alluded to more generally in a previous debate are about mental health care and the Panel recommends:

... that efforts be made to further enhance relationships between prison healthcare and prison officers to encourage a deeper understanding of each other's daily work challenges. ... [and] a way be found [around GDPR] for relevant information about a prisoner's mental and physical conditions to be shared with [appropriate] ... officers. A need for change has been recognised by management ...

They also recommend, which we have already dealt with a bit:

... the recruitment of a [specific] mental health professional to the Healthcare team be made a priority.

Now I do not know if that has happened or is happening but if Deputy Lowe I am sure – Deputy Leadbeater. I give way to Deputy Leadbeater.

**Deputy Leadbeater:** Sir, I thank Deputy Gollop for giving way.

He just touched on: the IMP covered their concerns regarding health care and information sharing. That has now been addressed and information sharing protocols have been agreed with the relevant departments, so that is no longer an issue.

**Deputy Gollop:** Well that is certainly good to hear. We know at ESS that certain aspects of prisoner's release is also being dealt with.

But the Panel recommends:

... funding be provided to introduce the EMIS system at the Prison.

They also recommend:

... [replacement] of J Wing showers be made a priority.

So clearly there are specifics there. And also specifics not only on alternatives to custody for those with jobs and accommodation, but of course that opens up another question: what about prisoners who have not got that; how well integrated can the Prison be with, let us say, not just probation but the social work team probably at Health & Social Care and maybe with Social Security?

But on the general comments, too, the Panel are concerned about data protection legislation and the impact it might have on procedures and processes.

They are conscious, and I think this is an important point, that the:

... Guernsey Prison has unique challenges that apply ... to island communities ...

In that in the UK, as I mentioned earlier:

... prisons can 'specialise' in certain categories, [but] Guernsey has to accommodate ALL sections of the community ... – adult men ... young offenders, children and vulnerable prisoners ...

And that would include sex offenders, violent offenders and so on. The Panel says:

Separation of these disparate groups, avoiding disputes, intimate relationships, bullying and perceived unfair treatment, is not easy ... the Panel congratulates Prison Management on achieving relative harmony ...

But of course there is an implication there that occasionally feelings do rise to boiling point and obviously we need to minimise those.

The Panel very much recommend – and this is important to emphasise – further investment in the area as a priority about their concerns relating to the impact, as Deputy Hansmann Rouxel and

Deputy Tooley already said, that prison has on a person's mental health, including those who enter prison with drug dependencies and mental disorders.

805 Turning to the more specific issues, it is interesting that the fabric of the building is an issue: complaints about ventilation within the Prison facility, lack of adequate drainage, stagnant water, pungent smells, bad smell emanating from a kitchen sink, and the more structural problem of certain members of:

... the female population often feel that they do not get the same opportunities as the male population.

I do not know how that is catered for but I am sure the Committee and the team are very  
810 conscious of that, but probably the States need to be updated on that matter.

I think I have already mentioned healthcare, but the one final point I would make is the Prison was perhaps in the vanguard of banning smoking of traditional tobacco cigarettes on the campus on the site, but e-burns and e-cigarettes are mentioned, that prisoners complained since 2013 they were unable to buy nicotine-free or low nicotine liquid for their e-burns. Whether that is  
815 policy or it was a privilege I do not know.

I will give way to Deputy Leadbeater.

**Deputy Leadbeater:** Sir, I thank Deputy Gollop for giving way.

Previous to the smoking ban they could not buy nicotine-free cigarettes. You smoke e-burns  
820 because you are addicted to nicotine, these people are addicted to smoking and it is an alternative that gives them that nicotine replacement therapy and these e-burns that are used in Guernsey Prison are rolled out all the way across the prisons that house 88,000 prisoners across England and Wales.

825 **Deputy Gollop:** Thank you very much.

I will conclude by saying in addition prisoners have complained that when they receive an adjudication award and loss of canteen they are not allowed to purchase the products of e-burns. Now some of these are quite operational matters and I would welcome Deputy Lowe asking myself and others to go round the Prison between now and Christmas to acquaint ourselves with  
830 more information and the policy changes and constraints that maybe their budget does ...

**The Bailiff:** Deputy Soulsby.

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

835 I just respond to a couple of questions asked by Deputy Merrett and then repeated by Deputy Gollop just now. Deputy Leadbeater has covered off some of this but I think I can expand on some of the other areas.

In terms of data sharing, I think it was quite right, the comments given and how much HSC has been trying since before GDPR came in to get some advances in data sharing, but anyway.  
840 Members may recall that in our policy letter on the Partnership of Purpose we state:

.... good sharing of information, when sharing is appropriate, is as important as maintaining confidentiality. There is no contradiction between ensuring services rigorously protect the confidentiality of personal information whilst also proactively sharing information to optimise the care delivered.  
Sharing information is vital to provide a seamless, integrated service.

Health and care professionals should have the confidence and a duty to share information in the best interest of their patients in line with the policies of the regulators and professional bodies. Just as Deputy Leadbeater mentioned when he responded to, I think it was, Deputy Merrett that the issues referenced in the Report have been resolved to the satisfaction of both  
845 parties. But now lessons can be learnt from the microcosm of the Prison to inform the wider requirement to embed a system of confident appropriate sharing for the good of service users.

If you imagine the challenges in the Prison serving a population of around 100 multiplied up to a population of 65,000 including Alderney with a multitude of different agencies involved, it is not surprising that there is tension in the health and care system on this matter; and it is great that in the latest Committee plan Home Affairs specifically acknowledged the role of data sharing in transforming services but really we need to see and feel it.

In terms of the appointment of a mental health professional that is referenced, this has been tried but I understand it has been very difficult to make it work. It requires someone who is dual trained, which is rare. In addition, if it is a single person then the chance of them being there when needed is rare. A better model is in-reach from the mental health service but only for appropriate individuals. This is what our staff are trying to develop on top of the service already provided.

The Panel reference a need to bring in a primary health care system called EMIS. Whilst we agree that the sooner we can digitalise records the better, it would not be appropriate to determine what that should be in advance. Indeed it would be hoped that this could be linked through to the replacement of our current track care system rather than create a completely stand-alone one. I can confirm that this is something that is being actively investigated as part of the digital transformation and integration of health and care records and which may be brought to the Assembly in the next few months.

Just the one point in relation to e-burns and the comment that inmates would like to be able to have refills, e-burns are different from standard e-cigarettes with the focus of design primarily about security, which Deputy Leadbeater was saying, these are used in prisons throughout the UK. It is because a clear body enables staff to see nothing is hidden inside and the semi-rigid bodies make them less likely to be used as a weapon. It is not considered desirable or acceptable to make any changes to what is currently provided and which has worked well to date.

So, sir, I think this is an interesting report and food for thought and I thank the Panel for the work they do in raising issues that have been brought to their attention, though I do believe that the quantity and quality of service from health and care professionals is second to none and, whilst we can always do better, believe that we should be proud of the support that we give to those who find themselves in our Island Prison.

Thank you.

**The Bailiff:** Deputy de Lisle.

**Deputy de Lisle:** Sir, I would like Deputy Lowe to comment on some of the media reports this summer with respect to the Prison which I do not think are always integrated in the reports although perhaps mentioned tangentially.

Prison violence in Guernsey has more than doubled in the last year. That is a report that appeared in the media this summer. That is according to the Prison's latest Annual Report as well; it showed that staff used force to control situations with prisoners twice as much than in the previous year and that instances of prisoners breaking the rules had also doubled.

The Prison Governor is putting the increase in violence down to an increase in the number of prisoners and says there is a zero tolerance to this kind of behaviour within the Prison, which gives me some comfort.

**The Bailiff:** I think that was in the last report that we have debated. Is this relevant to this report, Deputy de Lisle?

**Deputy de Lisle:** Absolutely, sir, it is part and parcel of what is going on in the Prison right now and I would like some answers to it.

**The Bailiff:** It is what went on in 2018.  
Deputy Tindall.



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

900 I would like to start just by saying that I was slightly surprised that we did not combine these two reports formally, because there are cross overs here and some people obviously have done speeches which combine the two.

**The Bailiff:** If I had been asked to run the two together I would have put it to the Assembly  
905 but nobody asked as far as I recall.

**Deputy Tindall:** I agree, sir, in my error I assumed, but I have also tried to keep the two separate.

910 But one of the things that has become clear is that whilst it has been mentioned that the reports have been written by authors, I think the speakers are trying to influence – not influence sorry, their contents (*Interjection*) but it is a case of debate which I think is helpful to identify items which may be operational and there may be many statistics on this, but this is about the strategy which Deputy Prow pointed out, which is what I was trying to tease out from my speech in the previous debate.

915 So for example, page 9 in the Report explains what Home Affairs are doing in regard to ... sorry, it refers to mental health and Deputy Lowe has mentioned in her opening speech about what is being done and obviously repeated that this has been resolved, as Deputy Soulsby mentioned. But also it helps to raise issues which I think are very important, which have been raised by, in particular, Deputy Merrett and is referred to – sorry Deputy Gollop – and I would like  
920 to read the paragraph out that I particularly highlighted. I am going to read it in reverse order:

We are concerned that with the prison population edging upwards it could easily reach the Prison's Certified Normal Accommodation of 134 and this would place prisoners at increased risk of harm and would see prison budgets spike.

Then the precursor sentence said:

We would urge all those who are part of the criminal justice system to examine alternatives to custodial sentences including electronic tagging.

I think that really summarises to me, sir, why this debate on both the reports is very important.

I would like to take this opportunity obviously to thank the Panel. I do not think I mentioned thanking the Prison Service which I should have done in my previous speech and I will do so now  
925 as it is relevant. The Panel says in their compliments to the Prison, it:

... continues to be an institution that the island can be proud of. It treats its charges humanely and with respect while encouraging them to improve their lives and integrate back into the community in a meaningful way.

That actually leads me to the point I raised previously about recidivism because obviously that is something that the Report does clearly indicate that they feel education is a means to that end which is certainly very encouraging.

930 One of the things that I took an interest in a while back before I became a politician and is mentioned in this Report which I would like to raise, is in section Drugs, 'hooch' and Detoxing. As I say, a while ago I asked about the detox for prisoners and the programmes to kick the habit, and basically because of my concern about what happens if they have not been assisted through their time in prison in order to, again, not just to avoid reoffending but sometimes unfortunately to avoid death. We are told CDATs help those who illicitly obtain drugs before they go into prison  
935 but unfortunately the policy is not to help them if they illicitly obtain drugs whilst in prison. They hope that this anomaly will be addressed. I, too, would like that to be done.

I give way to Deputy Leadbeater.

**Deputy Leadbeater:** Sir, I thank Deputy Tindall for giving way.

940 Just on the detox point that I think was raised previously by Deputy Tooley too, the Prison used to have a policy of detoxing everybody as soon as they came in. That has been changed and

now it is done on a case-by-case basis, because there have been historic problems with people being detoxed and probably there would be a need for them to re-detox because they come straight out into the community, and especially ones on sub-12 months sentences when left with no support, they can go straight back into their bad habits. So this is why it is done on a case-by-case basis, to try and alleviate these issues.

**Deputy Tindall:** I thank Deputy Leadbeater for that interjection, but it does not specifically address what was raised in the Report which is the anomaly. But I can see a lot of work has been done, and I applaud that but I hope it can go further.

Just another minor point which is more about what the society can do to assist; it is a point raised in the Report and a point raised by Deputy Tooley in the last debate, and that is about the inability to obtain bank accounts. As a compliance officer, many will know, I have an interest in this because this is something that is specifically catered for in our legislation and it is specifically catered for in handbooks on how to enable people in the community to obtain bank accounts, and I really feel very strongly about this because if that guidance was followed some of these issues would not arise and bank accounts would be available. So I think it is not just the responsibility of those in here but also outside.

I give way to Deputy Le Clerc.

**The Bailiff:** Deputy Le Clerc.

**Deputy Le Clerc:** Sir, I just wanted to update the Assembly because this has come up a couple of times and that is the fact that the community savings are working very hard to launch bank accounts specifically for ex-offenders and I think we are almost at the point where they will be able to provide something in the community. So I just wanted to reassure the Assembly that there may be reasons why ex-offenders cannot have bank accounts but there is another solution that is coming and there will also be support for others in our community that are unable to open bank accounts.

Thank you, sir.

**Deputy Tindall:** I thank Deputy Le Clerc for that intervention and I am glad that she drew that to our attention. It is something that I was aware of, but I still feel that it is a shame that it is necessary, because if banks actually applied the policy and the guidance that is available to them the access to bank accounts would not be as severe as it is. But I could go on and on for ages about that and it is slightly separate from this debate.

So I would just like to finish with the point I raised before about recidivism and education and this important link and do a further quote, the Panel say:

We hope this will encourage more prisoners to engage in education across the board which we applaud, as experience has shown that purposeful activities increase motivation and engagement and can help reduce the likelihood of re-offending once back in the community.

I agree with that and I am thankful for the opportunity of debating this Report.

**The Bailiff:** Deputy Lowe will reply.

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

I was asked about the property maintenance and whether I found that, or whether Home Affairs found it challenging. Yes, we do. We do find it challenging to get the property maintenance funding but that is no different to any other committee; you can ask any of us here who are on committees. We have that problem all the time, it is not anything new, but we fight our corner and we continue to do so.

You asked as well about alternative sentences. Well of course that is part of the justice review which is taking place and it is something we have also mentioned here in numerous debates as well. Tagging has been mentioned which we were looking at, but of course the cost of tagging itself is not just a stand-alone, it means the JESCC would be involved, it might mean more staff, we do not know. That is all being formulated to find out and will fit in as well as part of the justice review.

Deputy Gollop was on about the prison population fluctuating. That will always be the case, Deputy Gollop. You are never going to have a static prison population and it will go in trends, whether it is summer or whether it is Christmas time, that is the just the way society operates. But you have got to remember here that a lot of this is through social issues. Home Affairs/the Prison are picking up the pieces of where the community and Government has probably failed and we are there to do that and we will do that. So if the courts decide it is only going to be a short-term sentence that is fine, that is our job to take them in the Prison. But all of that will be part of the justice review to actually be able to see if there can be even more alternatives, that they can have the tools in the box for the courts.

Deputy Soulsby has actually covered the data protection. That information sharing is already taking place, and quite rightly so. When it was drawn to our attention we straight away got in touch with the Data Protection Office who gave the all clear that of course that is not any different to a nurse in a hospital to be able to share that with the prison officers but still be able to protect certain confidentiality within the Prison.

It was also said about prisoners smoking and Deputy Soulsby covered part of that as well but prisoners can take nicotine replacement patches if they cannot access e-burns through Quitline. So there are alternatives there, they are not actually left without anything else.

HSC, we can be proud of the work they do with the Prison. I said it in the previous debate and I cannot thank HSC enough for the time and commitment they have got helping the people down in the Prison and we recognise that certainly as Home Affairs.

The other area which was mentioned about the use of force, that has dropped by 50% on a month-by-month basis over the last six months. This has been largely due to the type of prisoners we have in custody. I mean that is a fact of life. This is a prison and there are some pretty strong willed people in there who might feel aggressive, have different issues and that is what the prison staff are trained for, to assist and support and do what they can to get rid of the anger management, but that is monitored as well by the Prison Governor.

The bank accounts, I thank Deputy Le Clerc for raising that as well because that was remiss of me; it was in my original notes, I meant to bring it up so thank you. Yes, that is absolutely right there is this charity, but for me, and I know even during Deputy Le Clerc's time on Home Affairs last term, bank accounts have been an issue for a considerable number of years; and what is, I think, quite disgraceful and I just get quite upset about it, the clearing banks in Guernsey treat us different to the UK clearing banks. The same branch in the UK, if you are part of one of the big clearing banks in the UK you can have a bank account, they will open a bank account for a prisoner but they will not in Guernsey.

We have raised it numerous times, we have had different meetings with them as well and they will not do it because it is Guernsey, they are not allowed to do it. I just find that really unfortunate – *really unfortunate*. So once again we rely on charities to be able to try and formulate some way of trying to get around the system to ensure that some prisoners when they leave can have a bank account.

So I do not think there is anything else I need to cover, sir. I just ask Members to support the Independent Monitoring Panel and once again thank the Panel members for their time. They go in there unannounced whenever they like and they are there to support the prisoners, that is their role.

Thank you very much.

1040 **The Bailiff:** Once again there is a single Proposition: to take note of the Report. Those in favour; those against.

*Members voted Pour.*

**The Bailiff:** I declare it carried. That concludes the items deferred from the meeting on 4th September.

## Urgent Questions for Oral Answer

### **Aurigny's lifeline route between Alderney and Guernsey– Emergency level status – Urgent Questions from Alderney Representatives**

1045 **The Bailiff:** Before we start the items for this meeting, we will deal with the two urgent Questions. I mentioned yesterday I would allow two urgent Questions. Members may be a little surprised as to why that is. There was an email exchange between my office and the Alderney Representatives earlier this week and perhaps it might help if I explained that in an email yesterday I was given the reason for the urgency justification and I will read it out. This is submitted by the Alderney Representatives:

The reason for the submission of these two questions is because there are currently many people who are suffering significant disruption and are unable to complete journeys to and from Alderney and the airline has failed to provide the scheduled level of service for Alderney. Some people have now been delayed for days and have had to pay for their own costs of accommodation. There is a reputational risk for Alderney and the Bailiwick which could impact on tourism, business investment and quality of life. The Chief Executive of Aurigny wrote to all Deputies on 24th September claiming that the bulk of problems are due to weather, however the availability of only one plane suggests that this is a more complex issue and therefore the matter requires urgent political scrutiny.

1050 It was against that background that I was persuaded that these are Questions that should be posed at this meeting rather than delayed until the next meeting. So the first one is to be asked by Alderney Representative Roberts.

**Alderney Representative Roberts:** Thank you, sir, for this opportunity and allowing us this opportunity.

1055 Can the Chairman of the STSB explain if he feels as Alderney do, namely that the current lifeline status of the recognised lifeline route between Guernsey and Alderney be now acknowledged at an emergency level with health now at the highest risk of degree leading to the basic human right of travel and passage within the Bailiwick?

1060 **The Bailiff:** Deputy Ferbrache will reply.

**Deputy Ferbrache:** Sir, I am very grateful for that.

1065 The States' Trading Supervisory Board acknowledge the importance of air transport connectivity for the social and economic sustainability of Alderney and also that the current services provided by Aurigny provide an important and critical lifeline service to the population of Alderney.

The States of Guernsey, the States of Alderney and Aurigny signed a Memorandum of Understanding in 2015; this sets out the operational performance objectives for Aurigny on the Alderney/Guernsey route including frequencies, capacities and fares. Although this agreement

1070 does not constitute a service level obligation, the airline has undertaken to make best endeavours to meet these agreed standards. Of course, sir, I am aware that Alderney residents have voiced frequent concerns regarding their air links, including the current provisions by Aurigny.

The STSB, through the States' Trading Asset Shareholder Executive, is regularly updated on performance when measured against the Memorandum of Understanding.

1075 In light of the very recent concerns we asked Aurigny to provide an update on their recent performance. The latest quarterly performance statistics reported against the Memorandum of Understanding for the Alderney/Guernsey service include the following: the percentage of actual capacity delivered against the planned capacity and flight punctuality. The planned flights were broadly in line with the agreed levels in the MoU. The percentage operated for 2019 was 94% in  
1080 quarter one, and 96% in quarter two. The flights that were not operated were due to a combination of weather, technical and other reasons. The percentage of flights on time for 2019 were 87% in quarter one and 82% in quarter two. These results suggest that Aurigny are providing a service in line with the MoU and does not pose a risk to health. Aurigny will provide a Medevac service if requested regardless of the impact to its schedules.

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**The Bailiff:** Are there any supplementary questions? Any supplementary questions, you are allowed two supplementary questions.

**Alderney Representative Roberts:** I am allowed two, sir?

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**The Bailiff:** Yes.

**Alderney Representative Roberts:** To the President of STSB, has the States' Supervisory Trading Board taken steps to encourage or require Aurigny to adopt alternative approaches to deal with the current crisis?

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**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** I think, sir, it is covered in part by the Answer I have just read.

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Of course we are regularly – and by that I stress almost daily – in contact via our senior civil servants with Aurigny. Whenever concerns are raised we ask for urgent answers. So we are always seeking to address and get responses from Aurigny on any problems that arise, and it is a general thing: we talk about aircraft, we talk about number of rotations per day and per week, about times when the planes land, how regularly they do etc. All of those are under our constant care and we regularly speak to Aurigny.

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**The Bailiff:** Second supplementary.

**Alderney Representative Roberts:** Does the Chairman agree that the short-term lease of an additional Dornier from Ruag to cover this period would help?

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**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Yes, I do, and I believe they have been trying to do that, they have been trying to obtain a short-term plane. But I think, very helpfully raised by Alderney Representative Roberts, what has happened, pre my time as President of the States' Trading Supervisory Board, it was decided to purchase Dorniers. There were two old ones, one of which is completely clapped out, one of which is a classic, which means an old one, and there are two new ones. One of the new ones is currently being serviced, its annual, its periodic service, and the classic one has gone technical. I am informed by Aurigny via our civil servants that Aurigny are trying to lease on a

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short-term basis a plane to cover the point raised by Alderney Representative Roberts. I am also advised that that has not been possible at the moment.

**The Bailiff:** Alderney Representative Snowden.

**Alderney Representative Snowden:** Thank you, sir.

Could I ask could there be a breakdown between the issues with the problems between weather and tech, if that is okay; where the issues actually lie because I do not think it is just weather?

Thank you.

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** There are statistics in relation to that. Most – I cannot instantly quote them – of the delays are due to weather, but undoubtedly there are some due to technical problems. But I am not just going to pluck figures from the air and say 60:40 or whatever it may be.

**The Bailiff:** Another one, Alderney Representative Snowden.

**Alderney Representative Snowden:** Thank you, sir.

Just with that last comment I appreciate it but I think one plane is actually making quite a big issue at the moment.

Thank you. Would you agree?

**Deputy Ferbrache:** I didn't catch ... it was more a statement than a question but I did not catch it at all, so if he would kindly repeat it.

**Alderney Representative Snowden:** Okay. The question was I appreciate your saying it is weather but at the moment there is only one plane in operation, I believe, and I think this is greatly adding to the delays and issues of Alderney; would you agree?

Thank you.

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Yes, well I have already said that there is a technical problem and that is causing a lot of the delays.

**The Bailiff:** Deputy Soulsby.

**Deputy Soulsby:** Sir, yes. As part of his response, the President of STSB mentioned how Medevac was not affected. I would like to know whether the President was aware in advance that Aurigny's Chief Executive sent a notice of termination of the Medevac contract and thankfully thanks to the officers in STSB and HSC that notice was withdrawn, but I really would like to know whether the President was aware in advance that that notice was being sent.

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Very good question. I do not believe I was.

**The Bailiff:** Deputy Roffey.

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

The President helpfully gave the statistics for the first two quarters of the year which show that it was broadly in line with the Memorandum of Understanding, but the lobbying that we have been receiving suggests that in the third quarter the situation has deteriorated considerably.

So would he be able to provide Members in the next week or so – I mean the third quarter is coming round – with some real term statistics so that we can understand just how bad or otherwise the situation is at the moment? Because if the lobbying is to be believed, the situation is really dire.

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** I do not know if it is really dire. I am not prepared to speculate. Certainly Deputy Roffey's question is a good and sensible one. The civil servants listen to the radio, I am told when I speak, I am very glad of that because nobody else does, and hopefully therefore ... I will certainly ask them to provide that information.

**The Bailiff:** Deputy Gollop, sorry Deputy Merrett.

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

I am grateful for these emergency questions because there is the opportunity to ask the President some questions and I will just refer back to Alderney Representative Snowden's question: would the President give an undertaking please to give the information regarding how many flights have been delayed or cancelled via technical reasons and weather?

Thank you, sir.

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Yes, sir.

I think a suitable way of doing that, because I have been given supplementary information as well which I have not had time to read fully in the time that this matter has arisen, I can see no reason why that cannot be given at the same time as the statistics that Advocate Roffey – (*Laughter*) there is an advocate Roffey but it is not him! – that Deputy Roffey has asked for.

**The Bailiff:** Deputy Gollop.

**Deputy Gollop:** Deputy Ferbrache has already alluded to the situation with the planes, with the classic vintage ones and so on, but isn't the problem that the Memorandum of Understanding, let alone the proposed PSO that Economic Development are looking at at the moment, calls for too few a quantum of planes to ensure reliability and catch up when inevitably weather or technical problems intervene? So my question really is: isn't the Memorandum of Understanding concerning Aurigny's commitment to Alderney already flawed in terms of its ability to deliver a quality reliable service?

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Well, sir, every problem can be solved – and I do not mean to be dismissive – by money. One of the criticisms of Aurigny is that it does not meet its targets and the President of Policy & Resources referred a couple of States' meetings ago to the concerns he had, and rightly so, and he and I have had discussions and we have had discussions with Aurigny too, as he knows. So these problems could be solved by having planes on the ground, crew waiting to fly when there is a breakdown etc. That is just not feasible. (*Interjection*)

**The Bailiff:** Deputy Le Tocq.

1225 **Deputy Le Tocq:** Sir, I thank the President for yesterday in email contact exchanges with a  
delegation from the International Holocaust Memorial Alliance to ensure that Aurigny  
management were providing better information, because one of the biggest problems in this is a  
lack of communication and awareness of what alternatives are available. Will he give an  
undertaking to continue to put pressure upon management to inform those affected of what their  
1230 options are?

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Indeed, sir.  
1235 I am very grateful to Deputy Le Tocq for raising the issue with me yesterday. As he saw, I asked  
the Chief Executive of Aurigny to give daily updates and we will encourage them to continue to  
do that.

**The Bailiff:** Deputy Mooney.

1240 **Deputy Mooney:** Yes, sir.  
Just a point of fact if the majority of the disruption is actually down to weather there is very  
little point in actually leasing another plane they cannot operate if the majority is weather.

1245 **The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Well, I agree, sir, there is nothing that can be done about weather, but that  
is not the whole point. The service should run as efficiently as it possibly can. It is a lifeline service  
to the people of Alderney and it should be run as efficiently as it can.

1250 I take the point raised by Deputy Soulsby: again, Medevac facilities are of course absolutely  
essential for Alderney. They are essential for Guernsey too but they are essential for Alderney and  
they should be best maintained as soon as they can.

**The Bailiff:** Deputy Inder.

1255 **Deputy Inder:** Sir, would Deputy Ferbrache commit to, in any update to the States which he  
has committed, please give an outline explanation how the company has gone from £4 million  
losses to £7 million losses in a year?

1260 **The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** I am not sure that stems from the emergency thing but, yes, and I thought  
that had been explained not today but previously; but again Aurigny is a publicly owned company  
by the States of Guernsey, it should give as much information as it can about breakdowns. The  
1265 losses, I am not going to go into detailed explanation now because that is not the purpose of  
these particular Questions one has been asked and one to be asked by the Alderney  
Representatives, but I think I have made it clear – I know to Deputy St Pier, I know to others – that  
I was just as surprised as many other people that the losses suddenly raised from £4 million-odd  
to £7 million-odd.

1270 **The Bailiff:** Deputy Tindall.

**Deputy Tindall:** Thank you, sir.  
Following on from the communication point, would the President also agree that it is  
1275 important to keep Health & Social Care involved and informed of what is going on in order to  
ensure that services that are extremely important and the people are in the right places in the



right Island so that if they are not we can take alternative action; and that communication was not forthcoming on this occasion?

1280 **The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Well, I cannot really add anything to what I have previously said.

1285 **The Bailiff:** Your question then, Alderney Representative Snowden.

**Alderney Representative Snowden:** Thank you, sir.

In view of the current crisis affecting those people who are experiencing delays for many days in getting to and from Alderney, could the States' Trading Advisory Board state what mandate has been given to Aurigny by the shareholder to secure extra space or make alternative arrangements to ensure that it is possible to travel to and from Alderney?

Thank you.

**The Bailiff:** Deputy Ferbrache.

1295 **Deputy Ferbrache:** Thank you, sir.

The STSB encourages Aurigny to take what steps it can to deliver its agreed services. I am aware of course that Alderney's subsidised ferry service was also disrupted this week by weather. Since 2018, Aurigny has been engaged in the open tendering process that is expected to result in the award of a public service obligation (PSO) contract for the lifeline Aurigny/Alderney services. This process was expected to be concluded early this year but in March Deputy Parkinson, as President of the Committee for Economic Development, informed the Assembly that none of the submissions received for the initial invitation to tender had resulted in a successful bid and that process is currently being repeated.

Now just interjecting from the written answer, we understood that that was to be completed in September but it has not been and is now delayed further and may come through in November, but that is not within the control of the States' Trading Supervisory Board.

Clearly while that process is ongoing the ability of Aurigny to invest in any additional resources over and above what is necessary to deliver obligations under the Memorandum of Understanding are severely restricted.

1310 As Members may be aware, the STSB recently brought forward proposals for investment in the Airport Runway Rehabilitation Report in Alderney which in future will assist with withstanding the effects of the weather and improve operational performance.

**The Bailiff:** Supplementary question, Alderney Representative Snowden.

1315 **Alderney Representative Snowden:** Thank you, sir, and I thank the President for the update.

I would just like to go back on this point about weather, because okay, we have got bad weather, you have bad weather here; however, when the weather comes down and the service is trying to catch up it cannot catch up with one plane. So it is impossible to catch up and the service keeps going and it cannot do the demand. So I would like some reassurance about what we are going to do to try and sort this out?

Thank you.

**The Bailiff:** Deputy Ferbrache.

1325 **Deputy Ferbrache:** Well, sir, we have asked Aurigny and they have said that they will use their best endeavours to try and resolve the problem. There are additional weather problems at Alderney because of its geographical location, because of the winds and because of the length of

1330 its runway, so those are additional weather concerns that would not apply in Guernsey for those reasons, just like we have got weather problems with Guernsey Airport that they do not have in Jersey because of the different geographical location. But of course Aurigny can do all they can, but they are not providing an emergency service. I do not mean in relation to health matters, they are providing a regular service backwards and forwards and the service can only be improved to a level subject to the weather that will guarantee everything if we have planes sitting on the ground and pilots waiting to come in in emergencies and that is just not practical.

**The Bailiff:** Alderney Representative Roberts.

**Alderney Representative Roberts:** Thank you, sir.

1340 Does the Chairman feel it is long overdue for the STSB to take a hands-on approach with a company that has clearly gone feral?

**The Bailiff:** Deputy Ferbrache.

1345 **Deputy Ferbrache:** Well, I do not accept it has gone feral, and I think it is very easy to criticise. At the moment there is an efficiency review in relation to Aurigny which will report shortly. Now it is not for me to prejudge. I discussed with my colleague on STSB who has particular responsibility for that matter, the report, though I have not seen it in draft, he has. But I am not going to be judgemental; that will be public knowledge relatively soon.

1350 But the last thing the States should ever do in relation to any States' owned entity is take over the management of that. If it believes that the Board or the management is inefficient they should be replaced. (**Several Members:** Hear, hear.) We do not believe that we are at that stage. (*Laughter*) Deputy Inder can laugh. It is immature to do that in these circumstances, this is a serious issue and should be addressed seriously.

1355 **The Bailiff:** Deputy Gollop.

**Deputy Gollop:** In view of the answers to the last few questions, how far would Deputy Ferbrache acknowledge that the problems which undeniably exist are due to unrealistic expectations of Alderney passengers given the budgetary limitations of the Aurigny operation, or whether the problems at Aurigny are about budget and resources or whether it is more to do with inefficiency of management?

**The Bailiff:** Deputy Ferbrache.

1365 **Deputy Ferbrache:** That is actually a very good question.

Of course the people of Alderney naturally want the best service that they can have. I fully accept that. Forget me being President of STSB, I am an absolute supporter of Alderney, but sometimes they have got to realise that the cost to the taxpayer in Guernsey is massive. My good friend Deputy Trott makes that comment nearly every time he can in relation to Alderney and Aurigny. We have got to realise that.

1370 Can I say that any company could not improve its efficiency? Of course I could not. Every single company can improve its efficiency. Can I say in relation to that that – I think it is the third time I have said it ... St Peter said things three times, I have got his name, you will be able to forget ... *[Inaudible]* ... Can I say, in relation to that, that every problem can be solved to a large degree by a great outpouring of money? Guernsey already via Aurigny puts a lot of money into the Alderney service. The PSO will be addressed by Deputy Parkinson and his Committee very shortly, I believe. I said earlier in November if I am wrong that can be corrected.

1380 **The Bailiff:** Alderney Representative Roberts.

**Alderney Representative Roberts:** Is the Chairman aware that the winter timetable virtually shuts Alderney down for the weekends now, impacting on catch-up and the whole community?

**The Bailiff:** Deputy Ferbrache.

1385

**Deputy Ferbrache:** I am aware that there are grave concerns in Alderney about the winter timetable because they were expressed to me by both Alderney Representatives and other Members of the Alderney States. But again we have got to wait for the PSO. I know the PSO will not come into operation until deep into next year even when it is given to whoever it is given to, but in relation to that if there is a significant alteration to the winter schedule it will come at a cost. We will need to discuss that with P&R and we will need to also discuss that with the board of Aurigny.

1390

**The Bailiff:** Deputy Gollop.

1395

**Deputy Gollop:** As regards the complicated mandate of the STSB, does the President occasionally find conflicts of interest with his roles in overseeing Guernsey and Alderney Airport who might need additional operators and the need may be for those airports to encourage other potential passenger services from other airlines?

1400

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** I can answer that in one word, sir. No.

1405

**The Bailiff:** I think Alderney Representative Snowden had another supplementary.

**Alderney Representative Snowden:** Thank you, sir.

I am sorry to be a bit tedious on this matter but okay we will go back to the weather. We are meant to have four planes, we are down to three planes that are meant to be operational but only one is working. Surely that means that Aurigny cannot keep up with it, because you are not going to have three planes unless you are going to use them, you have only got one plane working, hence the problems in Alderney at the moment. I think you have got to agree that if all three were flying we would be in a better situation in Alderney than we are now?

1410

Thank you, sir.

1415

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Well clearly, sir, if all planes were flying Alderney would be in a better position.

1420

**The Bailiff:** Deputy Merrett.

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

I would like to ask the President if he is comfortable, and that the contingency planning for this plane to go into service was adequate and therefore he is comfortable, that the management of Aurigny contingency planning was insufficient and they recognised the possibility of this scenario?

1425

Thank you, sir.

**The Bailiff:** Deputy Ferbrache.

1430

**Deputy Ferbrache:** Well, sir, again and this is – perhaps my ethos is different from certain other States' Members, it is not for a States' Member or President of a Committee to interfere in

the management and the day-to-day running of e.g. in this case Aurigny. It is for the professionals who run airlines in difficult circumstances to make those decisions.

1435 In my view, knowing the facts as I now do and I have only known them recently because of the crisis that helpfully has been brought to my attention by the two Alderney Representatives, I believe that their actions were reasonable. A plane broke down in unexpected circumstances. The only way you are ever going to cover that and have sufficient cover is by extra money extra facilities and then Aurigny is up against the pressure that it is being criticised because it goes over  
1440 budget and it is not doing things that it should be doing or it is doing things it should not be doing.

The criticism that is often made in this Assembly by certain Members is that too much money and too much time is spent on the Alderney services. I do not agree with that, but that is a criticism that comes regularly from very high levels in this Assembly.

1445

**The Bailiff:** Deputy Tooley.

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

1450 Is the President of the States' Trading Supervisory Board of the opinion that Aurigny are making appropriate or sufficient effort to mitigate the effect of non-flying scheduled planes on the financial, physical and mental health of the population of Alderney?

**The Bailiff:** Deputy Ferbrache.

1455 **Deputy Ferbrache:** Again if I may say so, I think a very good question, and it is difficult to strike the balance. I think they are. Could we all be doing more? Probably we could. But I think it is very difficult, because if I were living in Alderney I would want a first rate service which was giving the representatives, the people who live in Alderney the chance to live their normal lives and develop their businesses. One of the key issues that may arise and we will hear from him in due  
1460 course, which perhaps goes beyond this question but I have been given the chance to talk about it so I will, is the Alderney/Southampton route. We will see how this Assembly adopts that and deals with that, no doubt, in early course.

**The Bailiff:** Deputy Fallaize.

1465

**Deputy Fallaize:** Deputy Ferbrache is right that it is not for States' Members to manage Aurigny operationally but the States are the shareholder (**A Member:** Hear, hear.) which effectively means that the States of Deliberation and STSB is playing that role on our behalf and it is for the States to set policies. Now the issue of airlinks to and from Alderney has been debated  
1470 and gone on for years through Question Time, through the media and in various other forums, but what has never happened is that this Assembly has never had the chance to establish the policies it wants to adopt in relation to airlinks to and from Alderney then it could make its policy decisions and its financial decisions at the same time. (**A Member:** Hear, hear.) Now does Deputy Ferbrache not think that is the way of resolving the issue and that a policy letter should be laid  
1475 before the States to draw a line under this, (**A Member:** Hear, hear.) so that we set very clear expectations about what we are prepared to pay for in relation to Alderney and we can do that only by setting policy?

**The Bailiff:** Deputy Ferbrache.

1480

**Deputy Ferbrache:** Absolutely, I agree with that. I am surprised it has not been done to date by whatever. It is, I am going to say, for my attention and we know that there are pressures upon civil servants, there are pressures upon States' time. It is my intention if at all possible to bring a policy letter, or if it could not be a policy letter a requête, something so that the States could

1485 debate and say, 'What do you want to do with Aurigny? What is your policy? How much money  
do want to put into it? What do you want it to do?' I think that should be debated by the States,  
because there are so many different views. I cannot guarantee on behalf of because I have not  
discussed it with Deputy Kuttelwascher, for example, at any length and Deputy Smithies is not  
here today because he is on States' business outside the Island. But it seems to me that is  
1490 something that should be done sooner rather than later.

**A Member:** Hear, hear.

**The Bailiff:** Deputy Kuttelwascher.

1495

**Deputy Kuttelwascher:** Sir, would the President agree with me one of the problems we have  
is there is a split responsibility between Economic Development who are responsible for airlinks  
policy and ourselves who are just responsible for Aurigny to deliver on airlinks policy, but we are  
not really there to develop airlinks policy, so that has to be resolved and that is one of the  
1500 problems?

Thank you, sir.

**The Bailiff:** Deputy Ferbrache.

1505

**Deputy Ferbrache:** I do agree with that, sir, and that is not a criticism of Economic  
Development or STSB, that is just the way that the functions have been divided by those that  
discerned that these matters should be so divided before this States started, but there should be  
joined up government generally and particularly in that regard.

1510

**The Bailiff:** Deputy Lester Queripel.

**Deputy Lester Queripel:** Sir, picking up on Deputy Ferbrache saying it is not the role of STSB  
to get involved in the operational issues of Aurigny, these problems between Aurigny and  
Alderney have been going on for years. A lot of the problem seems to me to be poor levels of  
1515 communication as referred to by Deputy Le Tocq earlier on. So can the President tell me please,  
have all the relevant parties sat around the same table at the same time in an attempt to resolve  
the whole issue and if not why not? I am talking about Aurigny Management, Members of the  
States of Alderney, Members of the Alderney Liaison Group, Members of STSB and whomever else  
needs to be involved in those discussions.

1520

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** Yes, sir.

There are two parts to that answer. It is again a good question by Deputy Queripel. The first  
1525 part is that there are, I have talked about the regular discussions between representatives of STSB  
i.e. the civil servants and Aurigny and they report back to us. So that is the first point.

The second point is a wider point raised by him there should be that general discussion but it  
should be in the light, I believe, and I am not putting it off because a policy letter will take some  
time to come forward, as Deputy Queripel as an experienced States' Member will know, but in the  
1530 light of the question asked by Deputy Fallaize – which is ... that would be more helpful and  
probably more productive once everybody knows what the States wants it, Aurigny, to do.

**Deputy Lester Queripel:** Just for clarification, was the answer to the question no?

1535

**The Bailiff:** Deputy Ferbrache.

**Deputy Ferbrache:** I thought I had answered the question in the best way that I can. I have only got so many words in my vocabulary and those are the words I have used for this question. *(Laughter)*

1540 **The Bailiff:** Deputy Tindall.

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

I just want to ask the President whether he agrees with the reference in the review of financial relationship between Guernsey and Alderney 2015 and that is given the *de facto* fiscal union that exists between the Islands. Alderney's problems are also Guernsey's problems and this is one of them.

**The Bailiff:** Deputy Ferbrache.

1550 **Deputy Ferbrache:** Of course I do and there are others in the States that may, when this issue becomes – I am talking about the Alderney/Guernsey issue which is much wider than the questions we are asked about. The question has been permitted to be asked so I will do my best to answer it. But in relation to that of course we should look at the overall view. My view is that there should be a very close liaison between Alderney and Guernsey and the truth is Guernsey will have to subsidise Alderney; there is no way you could do it, they have only got 2,000 people, they are on a small Island, they have not the economical savings that we can make. Of course I agree that but there are others here who have a different view.

1560 **The Bailiff:** These questions are now starting to stray way beyond supplementary questions arising from the Urgent Questions that I gave permission to be asked.

Does anybody else have a supplementary question that arises from the last substantive Answer given 14 minutes ago?

1565 **Deputy Gollop:** I think I do. *(Laughter)*

**The Bailiff:** Deputy Gollop.

1570 **Deputy Gollop:** I am going to ask the million pound question here and it is this: in overseeing Aurigny and having confidence in that entity, does STSB also consider the wider economic role a buoyant Alderney plays in Island life and the importance of the direct link to a leading UK airport such as Southampton that is part of the current scene for Alderney visitors, business people and residents and people seeking medical attention?

1575 **The Bailiff:** That is not a supplementary but I suspect Deputy Ferbrache can answer it fairly succinctly.

**Deputy Ferbrache:** Yes, sir, I am quite prepared to answer it.

1580 STSB is bound by its mandate but it exercises its common sense. That is why it has got, in Deputy Kuttelwascher and Deputy Smithies, two very able States' representatives and two very able non-States' members and it has got me, so it has got four out of five so it is not doing too bad. But in relation to all of that of course it has regard to it. But the overall economic benefit of Alderney/Southampton etc., which I think is alluded to in Deputy Gollop's question, is a wider issue for this States to decide in due course.

1585 **The Bailiff:** Does anybody else have a supplementary?  
Deputy Fallaize.

1590 **Deputy Fallaize:** I accept the point that Deputy Ferbrache has made about the responsibilities of his Board which do not extend to airlinks policy, but he obviously has a good idea of who should bring the policy letter to the States. So is he working with whichever committee it is – presumably it is the Committee *for* Economic Development since it is in its mandate – to encourage them to bring that policy letter to the States and if there is not any movement on that front given his responsibilities as the shareholder for Aurigny would he consider laying a requête?

1595 **The Bailiff:** Deputy Ferbrache.

1600 **Deputy Ferbrache:** Again, yes, I think I would like to – you cannot make policy on the hoof in this Assembly but I would like to – have discussions with Deputy Parkinson and his Committee and I am sure they would be receptive. They are doing their absolute best to make sure that airlinks are as open as they can be and as profitable in the sense of bringing benefit to the Bailiwick as they can be. So I am sure we will have that discussion. Ultimately, I would not like to say that that will fall on stony ground and it may be that we bring a joint policy letter, it may be that we bring a requête we will have to wait and see.

1605 **The Bailiff:** Deputy Le Pelley.

**Deputy Le Pelley:** Thank you, sir.

1610 In the light of the questions and answers that have been raised already on factors such as weather and aircraft going technical, is it not the right time now to perhaps consider whether the right correct fleet of aircraft are being used? Could it be that we actually ditch the Dornier and actually go back to a tried and tested aircraft like the Trislander? (*Interjections*)

**The Bailiff:** Deputy Ferbrache, I am not sure –

1615 **Deputy Ferbrache:** I think that is outside a supplementary –

**The Bailiff:** Yes. I will allow Deputy Parkinson a question and we will then have had half an hour on these Urgent Questions under Rule 12(6). I will postpone dealing with any further supplementaries until the conclusion of ordinary business. So this will be the last supplementary.

1620 If people have genuine supplementaries they can ask them at the conclusion of ordinary business.

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

1625 I am not sure this is actually a supplementary in that sense but I feel I need to say it in view of the issues that have been raised in this question session.

1630 I think it would be unwise for the Committee *for* Economic Development or its President to comment specifically on the performance of Aurigny on the Alderney routes in the context of the PSO process which we are undertaking at the moment in which Aurigny is one of the bidders. I think the States may want to know that we expect to conclude our deliberations on which bid to recommend by the end of October and hopefully in time to bring a policy letter to the States in November.

1635 My Committee, my entire Committee will be visiting Alderney on 21st October where we will be meeting the entire States of Alderney and we will have a clear opportunity to get the views of the Members of the States of Alderney on the bids which will be on the table in front of us. We are very cognisant of the need to provide Alderney with a service that the Island deserves and requires and we are very hopeful that this process will result in a satisfactory outcome for the States of Alderney and the people of the Island.

**The Bailiff:** Deputy Ferbrache, do you wish to respond to that? It was not a question. No.

1640 So we will move on with the ordinary business.  
Greffier, starting with legislation.

**LEGISLATION LAID BEFORE THE STATES**

**The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit)  
(Amendment No.3) Regulations, 2019;  
The Misuse of Drugs (Modification No. 2) Order, 2019;  
The Terrorism and Crime (Bailiwick of Guernsey) (Information) Regulations, 2019;  
The Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019;  
The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit)  
(Amendment No. 4) Regulations, 2019;  
Waste Disposal and Recovery Charges Regulations, 2019;  
The Income Tax (Substance Requirements) (Implementation)  
(Amendment) Regulations, 2019**

1645 **The Greffier:** Legislation Laid before the States – The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No.3) Regulations, 2019; The Misuse of Drugs (Modification No. 2) Order, 2019; The Terrorism and Crime (Bailiwick of Guernsey) (Information) Regulations, 2019; The Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019; The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 4) Regulations, 2019; Waste Disposal and Recovery Charges Regulations, 2019; The Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2019.

1650 **The Bailiff:** I have not received notice of any motion to debate any of those.

**STATES' ASSEMBLY & CONSTITUTION COMMITTEE**

**VII. The Reform (Guernsey) (Amendment) (No. 2) Law, 2019 – Approved**

*Article VII.*

*The States are asked to decide:*

*Whether they are of the opinion to approve the draft Projet de Loi entitled "The Reform (Guernsey) (Amendment) (No. 2) Law, 2019", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.*

**The Greffier:** Article VII, States' Assembly & Constitution Committee – The Reform (Guernsey) (Amendment) (No. 2) Law, 2019.

**The Bailiff:** Deputy Inder.

1655 **Deputy Inder:** Mr Bailiff, can I seek your leave to do the speech from a seated position, please?

**The Bailiff:** Yes.

1660 **Deputy Inder:** Thank you very much.



Members, the States has committed to introduce an Island-wide electoral system for the General Election on 17th June 2020. On 25th April this year the States agreed the Reform Law 1948 be further amended to introduce an Island-wide electoral system where 38 Deputies will be elected with voters having up to 38 votes in four-yearly elections.

It also agreed a number of proposals to streamline processes and to introduce new initiatives. The explanatory memorandum covering this draft Projet de Loi summarises the key changes.

The Committee is grateful for the constructive feedback provided by the Legislation Review Panel (LRP) which is taken into account for the final draft. One area that the LRP raised which is still under consideration by the Committee is the matter of offences in connection with political parties. Any further changes required can be made by amendment to the schedule which covers this topic.

Members will note that the Law also gives effect to Resolutions in respect of powers of the Scrutiny Management Committee. Deputy Green will be able to answer any questions about these provisions and this speech has already been shared with Deputy Green so we have not sort of dropped anything on him.

As Members are aware, the Reform Law has specific provisions relating to proposals which seek to amend that legislation. If two thirds of the Members present and voting approve the Proposition the Proposition will be carried and a relevant Resolution will be final.

Sir, Members, the Committee is presenting this draft Law to the States to ensure the legislative changes are in place to enable us to deliver the General Election.

The full implementation of Island-wide voting will also require the making of several pieces of secondary legislation. The Committee will be bringing such secondary legislation to the States promptly after this Law commences.

Given we are now less than nine months away from that General Election, it is imperative that this legislation is approved today to enable us to move forward in holding the General Election in the manner this Island directed through the Referendum.

I would ask Members to approve the draft legislation.

Thank you.

**The Bailiff:** Is there any debate?

Deputy Gollop.

**Deputy Gollop:** Yes, sir.

We certainly want to approve this legislation, hopefully unanimously, and I support the enhanced powers for Scrutiny.

I think the States' Assembly & Constitution Committee under its leaders, Deputy Inder and Deputy Merrett, have very much gone about this task with a can-do, let's move forward quickly kind of mentality, which is very commendable. (**Several Members:** Hear, hear.) But I would say that there is one big omission here and one area that frustrates me.

The first area of course – the really interesting question that is on everyone's lips, the talk of the Town when I go around – is what electoral expenditure will candidates individually or collectively working within groups, alliances, associations or other entities be able to spend legitimately, either that is given to them by the public purse or that is available to them from a private nature? So that is one question that is out there.

The frustration for me is I got perhaps a little bit of a political bloody nose yesterday when I did a late amendment and I certainly could not try that again, and I know H.M. Procureur would not easily forgive me either, especially with legislation. But I find it frustrating that although I think we do have to honour the wish of the electorate in the Referendum, we do not want to follow another place who clearly voted within the process that we outlined above the 40% turnout mark that may have been partly caused by the successful SACC campaign which reunited Len and Enid with the electorate, I do not know.

1715 But the point is we are honouring the result regardless of whether we have got misgivings about Option A but my frustration is this that part of the package of Option A is for the unwieldy number and the even number, it is an odd number too really, of 38 Deputies. I think we have found in this Chamber that our loss of seven colleagues has had some unfortunate consequences both in terms of voting patterns, relationships, ability of Members to step up to the plate and sit for committee roles, talent, people to fill in when occasionally us Members have bereavements or other illnesses or other life enhancing events, and the events of having babies and all kinds of things, but I think we have been the poorer by reducing our numbers without careful thought of the structure needed to support that. So My point here is let's hope for the future we do not just look at one aspect of the Reform Law but have a wider view too.

**The Bailiff:** Is there any debate on the Law?

1725 Deputy Roffey.

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

1730 Of course I support SACC in their work to bring about the legislative framework for next year's Election. I just have one very minor question on Schedule 4 which is dealing with parties. Hopefully it is a schedule that will never be needed because parties will never develop as a culture in Guernsey but who knows.

1735 Schedule 4 says any group wanting to register as a political party must have a leader. Now why should they have a leader? I know that in the UK for instance the Green Party, I think, has more than one leader; maybe that would satisfy that they have a leader because they have got more than one. But in the Guernsey context you may have a group of people wanting to put themselves forward as a party who do not want to designate a leader, and why would it be necessary for them to do so? What is the thinking behind the requirement for parties to have a leader?

**The Bailiff:** I see no-one else. Deputy Inder will reply.

1740 **Deputy Inder:** Thank you, sir.

1745 Thank you very much. I will go with Deputy Roffey first. That was discussed at the Committee and we did plump for the use of the word 'leader' as in leading the party in terms of administration process, but was less of a cap 'L' more of a lower-case l. But I completely understand his thinking on that but we have plumped for the word leader in terms of registration and that is what we are stuck with at the moment, but I accept his ... it does not necessarily mean he or she is going to be necessarily the leader of the party but that it just the way it went and we aped I believe UK provisions as well.

1750 Deputy Gollop, thank you for your support for the Committee work. I cannot really say much about him mourning the loss of the 47 candidates, but I would remind him that he actually supported, he was lead campaign on one of the referendum options, so to be perfectly frank, sir, with the greatest respect it is kind of irrelevant to this policy letter.

So in that regard I would ask Deputies to support the policy letter and I will be asking for a recorded vote.

1755 Thank you very much.

**The Bailiff:** Yes, we do need a recorded vote because we need to know whether it carries by two thirds majority. So we have a recorded vote on The Reform (Guernsey) (Amendment) (No. 2) Law, 2019, the Projet de Loi and titled as such.

*There was a recorded vote.*

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

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

**The Bailiff:** That is clearly a two thirds majority. What the written record will not show is that some people have said *Pour* with less enthusiasm than others. *(Laughter)*

Well the voting was 32 in favour with 1 against. I declare it carried by more than the requisite two thirds majority.

## **COMMITTEE FOR HOME AFFAIRS**

### **VIII. The Extradition (Bailiwick of Guernsey) Law, 2019 – Debate commenced**

*Article VIII.*

*The States are asked to decide:*

*Whether they are of the opinion to approve the draft Projet de Loi entitled "The Extradition (Bailiwick of Guernsey) Law, 2019", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.*

1765 **The Greffier:** Article VIII, Committee for Home Affairs – The Extradition (Bailiwick of Guernsey) Law, 2019.

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

1770 **Deputy Lowe:** Thank you, sir.

From the interest expressed by some Members it may be helpful if I provide some background.

On 21st September 2016 the States approved the policy letter to introduce an extradition legislation. The Assembly was in full support of the proposals. The Committee does, however, recognise that extradition is by its very nature legally complex. In all cases an extradition request can only be entertained if it is made on the basis of clear objective reasons why a person should be extradited or face trial or to serve their sentence, in the case of those who have escaped from custody.

The Committee did consider whether the final decision on extradition should have a political element or rest with H.M. Procureur. The conclusion, then and now, is that H.M. Procureur is far better placed than any politician or politicians to assess whether the requisite criteria for extradition have been met.

There are also cases where it is Guernsey that will be making an extradition request. Again the ability of H.M. Procureur to act in an apolitical capacity provides a valuable safeguard against accusations of political bias. This is particularly valuable in the context of a small community where the complexities and arguably sensitivities around extradition may be heightened.

It is also understood the Ministry of Justice and the Home Office would require considerable persuasion that it would be appropriate for such quasi-judicial and apolitical functions to be exercised by a politician, not least given that this would be in direct contrast to the position in Jersey whose regime has successfully withstood a comprehensive legal challenge.

1790 I therefore ask States' Members to approve the Law before them.

**The Bailiff:** Deputy Merrett.

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

1795 I think Deputy St Pier said earlier yesterday that something was self-explanatory; I find this very un-self-explanatory. So whereas I agree that it is firmly in our interests to have effective, fair and balanced extradition arrangements they must balance the liberty of our community with a need for justice to be served.

1800 There must be proportionate checks and balances and there must be accountability for decisions that are made. Criminals must not be allowed to evade justice by fleeing the country or territory nor should we be a safe haven for those who have committed crimes in other territories. Now, sir, I think we can all agree on this.

But if we briefly cast our minds back to 2016 Members may recall that they were asked to approve just one Proposition, that Proposition being, and I quote:

... to approve the drafting of legislation to introduce a domestic extradition regime.

1805 Now Members may recall that only Deputy Yerby, being her name at the time, spoke in detail on this. She said that her initial disappointment with the policy letter was that it serves simply as a vehicle to transmit legal advice to the States without the benefit of Home Affairs Committee's considered analysis and policy conclusion, and of course she was right. There was no political context or comment from Home Affairs but many Members would have been reassured that Deputy Yerby had been in correspondence with the Committee *for* Home Affairs.

1810 But even so two concerns remained.

One being that extradition is a question of how and when and why we deprive people of their liberty in the interests of justice and public safety. She continued this concern by verbalising that it is indeed a weighty matter which deserves careful consideration regarding the way in which we permit Bailiwick residents to be tried and punished under the justice system of another country.

1815 Now the second concern, sir, and I will quote again, is this:

It is a considerable leap from a six page policy letter we have before us today to the full draft Law.

I agree. She concluded, as did others who spoke, that we should scrutinise the draft legislation and that she looked forward to debating the draft Extradition Law. Now unfortunately Deputy Yerby upon her recent marriage is now known as Deputy McSwiggan and I have the honour of saying that for the first time in this Assembly so Deputy McSwiggan cannot be with us today (*Interjections*) – I will have to learn to pronounce it clearly, sir – cannot be with us today, but I have paid heed to her wise words and have researched this area and the draft law to the best of my ability.

It is worth noting that extradition cases are increasingly common in the post 9/11 world. The use of the internet vastly opens the possibility of extradition, the globalisation of criminal law arising from terrorism, money laundering and corruption means that extradition increases the impact on UK Domestic Law.

Now with the aim of modernising UK Extradition Law the UK government, some would say controversially, enacted the UK Extradition Act 2003 which Home Affairs is proposing for all intents and purpose to copy.

I will come on to why it was and has been controversial and why I have some concerns which I hope can be quelled by the President of Home Affairs. My concerns are primarily of three aspects.

One being the UK-US treaty and more broadly any treaties that the UK may sign whilst taking into account the provisions of Article 29 of the Vienna Convention. Secondly, it is accountability and, thirdly, it is the role of the Home Secretary especially with regard to having the final say on extradition requests and negotiating letters of assurance regarding the death penalty.

I will start with the treaties, sir, as I am particularly concerned with regard to the UK-US Extradition Treaty that was ratified by the US Senate in 2007. Now my understanding is that this Assembly has never debated that treaty under Article 29 of the Vienna Convention, as referred to in the Ministry of Justice background briefing paper regarding Crown Dependencies that on the Law of Treaties there is a provision that, and again I quote:

Unless a different intention appears from a treaty or is otherwise established, a treaty is binding upon each party irrespective of its entire territory.

Now the long standing practice of the UK when it ratifies a treaty or convention is to do so on our behalf. This should include consultation with Crown Dependencies as to whether they wish to have it extended to include them or not. It concludes:

... that treaties and conventions should not be negotiated so as to contain provisions referring directly to Crown Dependencies without timely consultation.

– and I assume, sir, and it is an assumption, our agreement.

So when was our Crown Dependency consulted on the UK-US treaty? I cannot find any evidence of us ever debating in this Assembly so when did we agree to it or was that done behind closed doors and if so I would like to know by whom.

Now during my research the UK-US treaty gave me cause for concern because the bars to extradition appear to be unfair or rather unbalanced. What I mean by this is that the bar to extradite someone from the United States are under a reasonable suspicion test whereas the UK to US are under a probable cause test. Extraditing someone from the US has a higher hurdle in practical terms.

Now in 2011 a review by Sir Baker a former Court of Appeal Judge looked specifically at the extradition agreement with the United States. Now key issues that were still outstanding in 2011 bearing in mind this was enacted in 2004 was the fairness of the Extradition Act if the country asking for someone to be extradited should provide evidence to be tested first in the British Courts and whether the UK should bar extradition where offences have largely been committed in the UK. Now Sir Baker concluded by saying that he had serious misgivings concerning the United States treaty.

Now maybe we should all accept the Minister of State Baroness Scotland of Asthal who stated that complete reciprocal agreements were never a feature of our extradition arrangements; of

course she is referring to UK. Maybe we should all accept that we will extradite our citizens more readily than we should expect other jurisdictions to extradite their citizens to us. Personally, sir, I do not accept this.

Now add to this the UK government has stated that the US treaty was only to be used against the so-called war against terror, but this was not explicitly written into the treaty or into the UK Law. Now this is important because any treaty signed by the UK appears to be binding on us. So maybe the President will sum up when she sums up and can confirm if that treaty is binding on us or not.

The US treaty was tested in the commonly named NatWest Three Case. Now I would assume, sir, not all Members are aware of NatWest Three and for their benefit I will try to summarise it succinctly. I will try. So very broadly a crime was allegedly committed by British citizens living in Britain against the British company based in London, meaning that any resulting crime would be expected to fall under the British legal and territorial jurisdiction, therefore one would expect would be tried in the British Court. However, the United States demanded they were extradited to the US for trial and eventually they were.

Now this led to an emergency debate in the House of Commons in July 2006 regarding the US Treaty. During the debate Nick Clegg stated that and I quote:

... the Extradition Treaty and its enactments through the Extradition Act 2003 is manifestly unfair to British citizens.

The UK Extradition Act has been amended in my counting almost 30 times as an enactment, which is perhaps evidence that it was not fit for purpose or maybe neglected some areas that needs to be explicitly in the Law. For example, a forum bar. Now it is arguable that maybe the judiciary cannot act in the manner expected by Westminster if they do not have adequate Law to interpret and implement to enable them to do so.

So five years later in 2011 there was a debate on that very aspect of the 2003 UK Act. The House of Lords and the House of Commons Joint Committee on Human Rights and entitled the Human Rights Implication of the UK Extradition Policy the report called upon the government to reform the UK extradition arrangements to strengthen the protection of British citizens. It was chaired by Hywel Francis who said that, and I quote again, sir:

Human Rights provisions in the Extradition Act are clearly inadequate.

There is more case law and more evidence of the practical effects of the Law and particularly the US-UK treaty. For example, in 2011 there have been 29 UK nationals or dual nationals extradited from the UK to the US but only five Americans have been extradited to the UK. Clearly there is far less population in the UK than to America. American citizens outweigh UK citizens by one in five so there are five times as many people living in the US than there are in the UK but, hey-ho only 29 were extradited to the US but only five US were extradited to the UK. It should be noted that only one, sir, one of the 63 extraditions between 2003 and 2009 to the US involved a suspected terrorist.

Now Mr Davis is the MP for Haltemprice and Howden concluded that the truth of the matter was that the UK has far more risks of Gary McKinnon's being extradited than I cannot say his name Osama bin Laden. Now for the benefit of any Members who may not know the McKinnon case very broadly again, sir, he was accused of hacking into US military systems; he claimed he was looking for evidence of USO. His extradition was eventually blocked by the Home Secretary on health grounds as he was diagnosed with Asperger's ... eventually blocked, as it went on for over 10 years. Now I will assume all Members know who Osama bin Laden was especially as I cannot pronounce the name.

Now as in previous debates it centred around the lack of safeguards, the lack of forum bars in the US treaty. It was noted that every other country has a safeguard, not only the Irish but Norway, Switzerland, Holland, France and Germany all have such provisions. Similarly, two Commonwealth countries, Australia and New Zealand, two of America's closest allies on the war

1910 on terror, have total discretion over who among their own nationals they will allow to be extradited. In fact German Law does not allow the extradition of any of their citizens outside their own country.

1915 The 2011 debate resolved to call upon the government to reform the UK Extradition arrangements to strengthen the protection of UK citizens by introducing a Bill to enact the safeguards recommended by the Joint Committee on Human Rights, the 15th Report HC767 and by pursuing such amendments to the UK-US Extradition Treaty.

1920 Now, sir, I cannot locate any such safeguards in our Projet. I would therefore appreciate the President of Home Affairs giving me an update as to the progress regards this Resolution. But why do I ask, sir? Well I cannot find anything in the previous policy paper or in this Projet that gives me any assurances, or reassurances rather, that the Committee *for* Home Affairs is concerned about the UK-US treaty. Maybe the President could confirm that if we agree the Projet today that would mean that we continue to be obliged by the UK-US treaty if any consideration was given to this. After all, sir, if we agree this Projet then where will responsibility and accountability sit? Because surely, sir, it will be with this Assembly. I believe accountability is key.

1925 For example, have we as a parliament or we as a foreign committee, whatever the titles are, lobbied for any change on the US-UK treaty.

1930 Now should we the politicians be accountable for not getting them all right in the first place? Should we as a Bailiwick be blaming Westminster if they do not get their treason laws enacted as they expected, or should we be drafting our laws to reflect our human rights obligations? **(A Member:** Hear, hear.) So should we draft our own safeguards for our own domestic legislation? That is the question. What influence can we have on treaties that the UK have signed or are signing on our behalf ones that we then have to abide by. According to Article 29 of the Vienna Convention, we should be able to do this? I will ask again: have we?

1935 I think that leads me to whether H.M. Procureur cannot say that either, I am so sorry Procureur, HMP or the States have the responsibility and whether they are neutral or not in foreign policy considerations. I do not understand how we as a States or as politicians can be neutral.

1940 I believe that treaties, especially any extradition treaty, should only apply if extended to us with our consent, meaning that we have the ability to debate, deliberate and decide if we were to sign or be included in that treaty. So this begs the question: should we be simply cutting and pasting the UK Law into our domestic legislation? Does that clearly signify the maturity in Guernsey's international relations and foreign affairs or give a good indication of our maturity?

Now Deputy Le Tocq said in 2016, and I will quote:

As a very small jurisdiction we do not possess, nor are we likely ever to acquire, the capacity to even monitor the process of extradition when enacted.

1945 Now this concerns me. If we want domestic legislation then we need to ensure we can influence the process that our citizens will be extradited under. We certainly need to influence and consent to any treaties.

1950 Now Jersey did a copy and paste in 2004, they replaced Secretary of State with Attorney General who is appointed purely by the Crown. In Jersey the Judge was substituted for the Magistrate's Court who decides if the requesting territory is human rights compliant and thence is a case for the Attorney General, for the Attorney General to make the final decision. The Projet de Loi before us today also replaces the Judge with the Magistrates Court, with having no Attorney General it is HMP who would replace Secretary of State. Now what is important to point out though is that under the UK Law, the Secretary of State and the Courts must agree, they must agree before any citizens can be extradited to a ... territory. There are several exceptions, including if a person could face the death penalty which is my next point of concern.

1955 But before I move on to that, I reiterate the UK Secretary of State who is a Cabinet Minister, who is democratically elected, appointed by the Crown on the recommendation of the Prime Minister, the Home Secretary who is currently Priti Patel has to agree. The Home Secretary is accountable for legislation, she is accountable at Westminster and of course she is accountable at

the ballot box. Jersey's Attorney General and of course our HMP are not. They are appointments of the Crown with only a potentially very expensive judicial review holding decisions to account.

I now seek clarity and have been assured that the same two-stage agreement is required under the Projet so the same safeguards are in place. The only difference is that the function of the Home Secretary under the UK Act will be discharged by HMP under this draft law.

Now in 2015 after the controversial McKinnon case when the High Courts decided the Home Secretary should consider human rights, even though relegated by the Magistrate's Court, the then Home Secretary at the time – in fact it was Theresa May – she blocked that extradition. Now the Scott Baker Report on the basis of the McKinnon case determined the Home Secretary had taken a role that was intended to be held solely by the courts.

In 2011 the UK inserted new provisions Section 70 of the UK Act in order to explicitly state that the Home Secretary must not – *must not* – consider whether the extradition was compatible with the Human Rights Act. Westminster changed the Law so that the courts will so determine if the extradition request is human right compliant. For all intents and purposes, sir, we have copied Section 70/11 into the Projet we are debating today. As I said, we have replaced the Home Secretary with HMP. So HMP does not have the power to take human rights into consideration.

Now personally I am uncomfortable with this, mainly because of the lack of accountability of decisions made, but also because HMP and our courts can be acting under domestic legislation that requires that replicates a UK Act and UK-US treaty which in my opinion and in the opinion of Westminster needs renegotiating.

Lastly, sir, I have serious concerns regarding the use of the death penalty on our citizens. Article 2 of the Human Rights (Bailiwick of Guernsey) 2000 is the right to life. Everyone's right to life should be protected by law and I quote, sir:

No one should be deprived of life intentionally ...

That is all good until you get on to the, and I quote:

... save in the execution of a sentence of a court following its conviction of a crime for which the penalty is provide in law.

Article 3, ban of torture – arise against inhumane or degrading treatment.

Now I have stated those two Articles as it is important Members understand their significance and the significance on our Human Rights Law. Now Members may be pleased to know there was a landmark judgment in *Soering v. the UK* 1989 that obtained a judgment that specifically resulted in the US committing not to seek the death penalty. The case was argued under the death row phenomena being that sentenced to death would have an oppressive and just effect on the mental and physical state of the accused and therefore was inhumane and degrading. Perhaps unsurprisingly the European Court of Human Rights declined to find the death penalty violated Article 2 which is the right to life but they were of the opinion that an extended period of time on death row which US prisoners often had to endure before their execution could amount to torture or inhumane treatment and it was in violation of Article 3.

Now this case is also significant, sir, because the original written assurances given to the Home Secretary that the death penalty would not be imposed was deemed by the accused to be worthless. The Virginia Authorities later communicated to the UK government they would not offer further assurances as they did intend to seek the death penalty. So arguably the written assurance was indeed worthless.

After the European Court of Human Rights ruling that although extradition itself would not constitute inhumane or degrading treatment but that such factors as execution method, the detainees personal circumstances, and the sentences were disproportional to the gravity of the crime that lead the European Court of Human Rights to conclude that the detention could violate Article 3, the death row phenomenon did breach it. With this ruling the UK government obtained further assurances from the United States. Now the European Court of Human Rights' decision makes it difficult for the US and other capital punishment countries to extradite suspects on



capital charges from signatory states without giving assurances that the death penalty will not be executed – excuse the pun – could not think of another word to put in there.

Now what this case does emphasise, sir, is that though there is a need to ensure letter of assurance under 36.2 under this draft law being to consider the assurance is adequate. So I ask does that mean that HMP would have to negotiate directly with the requesting territory. An example in this case would be the United States and imbalance of arms slightly springs to mind, but I have been assured that even if we give assent to sending the draft Law for assent the UK will remain responsible for our foreign affairs so any such negotiation would be a matter for the Foreign & Commonwealth Office.

So I look forward to the President summing up and I am hopeful that I may receive their reassurances I seek regarding when we were consulted, who deliberated and agreed for us, if we were indeed included specifically in a UK-US treaty.

Further, if in the future it will be a matter for this Assembly because if this Assembly does not have the opportunity to deliberate and debate before becoming a signatory, if we do not have any influence on the drafting or final treaty agreement, how, when and who will be consenting on our behalf? If we had delegated authority, I assume we have and by doing so who has then accepted that accountability?

I have gained some comfort from my own research regarding Section 36.1.2. which is the written assurance that HMP may receive or request regarding death sentence being imposed, but these assurances and comfort come from case law that predates the UK Extradition Act. So clarification that this Law remains the common law would be most appreciated.

Clearly my concerns regarding accountability are far broader than just that treaty.

I will finish with a quick question regarding asylum claims because I also question this, and I will be brief under this – I know Deputy Lowe may wish to speak to this, but under the UK Act, it is Secretary of State ... The appeal process asylum claims. The appeal in the Projet, section 65(2) onwards is the Lieutenant Governor. Now I believe that this is stating the existing provision, but is it already a provision in law or are we actually being asked to give our assent to it being a provision in law, because again, sir, I could not find that in my research that I tried to do.

I also think it is worth noting that the list of designated territories in the Projet are different from the UK and Jersey. I have been advised that this is because Jersey's list is out of date, which is obviously of concern, and the Projet are not. Further, the UK lists which are set out in secondary legislation and which can be difficult to follow through, differ from the UK because under the UK Act there are three regimes. The list is quite simply structured differently. However, I have had assurances that the lists in the Projet is consistent as appropriate with the UK's. This has been expressly confirmed by the Head of Extradition Policy and Home Office. But Members will note they do include the United States and Iraq. I suppose Libya. It is a quite interesting list, sir.

So, sir, in summary I still have a few questions to answer before I can agree to this Projet. I need assurance that: we will have fair and balanced extradition arrangements that balance liberty of our community with a need for justice to be served; that there will be proportionate checks and balances; and that there will be accountability for the decisions that are made.

Thank you, sir.

**The Bailiff:** Deputy Fallaize.

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

I just want to pick up on one small aspect of this where I had an email exchange with Deputy Lowe about it before the debate, and she referred to it in her opening speech, and it is the provision in the draft law which puts the decision in relation to some extradition cases into the hands of H.M. Procureur, where the equivalent decision in the UK would be made by the Home Secretary.

Now Deputy Lowe said she gave two reasons for this in her opening speech, she said that she thought, or the Committee thought, that H.M. Procureur was, I cannot remember the exact words

but essentially better placed or better equipped or something like that to make those decisions. She said that the authorities in the UK, which presumably means the Ministry of Justice, might not look very favourably upon these decisions being made in Guernsey by an elected Member of the States.

Well the second point makes no sense to me at all because the equivalent decision is made by the Home Secretary in the UK. Now it is right to say that when that decision is made, those decisions are made, the Home Secretary is acting in a quasi-judicial role, but the Home Secretary is still an elected politician. There are plenty of cases where elected Members of the States are making decisions in quasi-judicial capacities, the Development & Planning Authority is doing it most months. So Guernsey is quite familiar with instances where elected Members have to make decisions in a quasi-judicial capacity and that does not seem to me very solid ground for decisions in relation to extradition to be put into the hands of H.M. Procureur.

Now I think what it basically amounts to, and I am not trying to be disrespectful when I say this to anybody, but what it basically amounts to is, I think, a belief that the person who holds the office of H.M. Procureur is likely to be cleverer and more brilliant than people who hold elected office as politicians in a small community of 60,000 people. (**A Member:** Hear, hear.)

That is essentially I think what the proposal is, she is the learned Procureur.

**The Procureur:** Sorry to stand up, sir, but there has been an exchange with Deputy Fallaize about this and it has been made very clear to him that the exercise of the –

**Deputy Fallaize:** Shall I sit down, sir?

**The Procureur:** – function in the UK is a Crown function. The Home Secretary –

**The Bailiff:** Is this a point of correction?

**The Procureur:** It is, sir, yes, because that point has been made clear to Deputy Fallaize. The exercise that the Home Secretary undertakes is not that of an elected politician in relation to extradition; she is exercising a Crown function and that is very distinct and that point has been made already to Deputy Fallaize, sir. Otherwise Members are open to confusion on this issue.

**The Bailiff:** Deputy Fallaize.

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

I do not think that was a point of correction at all because I said I accepted that when the Home Secretary is making decisions in relation to extradition he or she is making them in a quasi-judicial capacity.

Now okay, it is fair to say that it is a Crown function and the functions of the Crown in that respect are now exercised by H.M. Government and the Home Secretary has that role on behalf of H.M. Government, but the fact remains that is arcane matters of constitutional law, the fact remains that the Home Secretary is an elected politician and that role in the UK is held by an elected politician.

Now this in a sense in relation to extradition may not matter enormously but the reason I think it is relevant for this matter to be highlighted in the States is because States' Members very frequently bemoan the fact there is sometimes perceived to be an imbalance of power – is a horrible word to use in this context but an imbalance of power – or authority in decision making, whether it is between elected States' Members and appointed civil servants or elected States' Members and the Law Officers or any other part of the system.

The reason this happens in Guernsey is because the States frequently choose to disenfranchise themselves and to take responsibilities which in other jurisdictions would be held by politicians and transfer them to Law Officers or statutory officials or appointed civil servants, and I do not

2110 think that this legislation should be allowed to be passed to the Privy Council for Royal Assent without the States of Deliberation recognising it.

It can do this if it wants, it can make laws and pass policies which pass functions, which would be political functions elsewhere, into non-political hands, it is perfectly entitled to do that, but if it is going to do it I think it should do it with its eyes wide open. (**Several Members:** Hear, hear.) If this legislation is passed today there is no doubt that whatever the arcane constitutional procedure arguments around it, the practical effect is that a function which in the UK is held by an elected politician will be held in Guernsey by H.M. Procureur.

Thank you, sir.

2120 **The Bailiff:** We will rise and resume after lunch.

*The Assembly adjourned at 12.33 p.m.  
and resumed its sitting at 2.30 p.m.*

**The Extradition (Bailiwick of Guernsey) Law, 2019 –  
Debate continued –  
Propositions carried**

**The Greffier:** Article VIII, the Extradition (Bailiwick of Guernsey) Law, 2019 – continuation of debate.

2125 **The Bailiff:** Deputy Prow.

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

Before I start I should declare an interest. I am not sure it is a declarable interest under the Rules, but as I think everybody is aware I formerly had a career in Law Enforcement and, within that career, the subject of and the need for robust and proper extradition legislation did come up. This is something I have an interest in and feel that I have perhaps things to offer to this debate.

I really only rise to respond to Deputy Merrett's challenge to this item, which is listed under Legislation for Approval. The approval of legislation is an important function of this States that usually attracts less debate than Propositions laid at the initial policy letter submission stage. In my view, this legislation is arguably one of the most important pieces of legislation to come before the States in this term.

The Policy & Resource Plan agreed by this Assembly, amongst other key priorities, lists Guernsey's aim to be a mature, safe and secure jurisdiction. It is absolutely essential that to achieve those ambitions, we must have a fit-for-purpose extradition legislation and processes to fight crime globally, with other trusted territories and legal jurisdiction.

I fully support Deputy Merrett in researching extradition and providing critical scrutiny before we finally sign off this legislation as an Assembly. But I wish to provide her with some reassurance, from my research and also from the very detailed scrutiny that the Home Affairs Committee gave it when I was sitting on that Committee.

I will deal with three points that Deputy Merrett has raised. The first was the UK-USA treaty, to which she referred at length. The second, she raised some points around human rights and the other point was around the role of H.M. Procureur.

If I deal with the UK-USA treaty. In doing this, I have taken advice from Law Officers of the Crown, as indeed did the Committee for Home Affairs at the relevant time and, as I said before, I do have some background from a Law Enforcement perspective on this. But I am sure if I say anything that might mislead the States, I would look to H.M. Procureur to correct me, through you, sir.

Quite simply, the point about the UK-USA treaty to which Deputy Merrett refers, my understanding is that it does not apply to us. Therefore any extradition would continue to be governed as it is now, under the repealed UK Extradition Act of 1989. The decision to extend that treaty, we would be in the same position as with any other treaty that the UK signs up with another jurisdiction, which would be through the P&R Committee's external relations process where this jurisdiction would have to agree to the extension of it. But as I understand it, it does not apply.

To really take on the point around the role of H.M. Procureur, I should refer to the States' meeting that has already been spoken about in this debate, back in September 2016, where the States agreed the Proposition to approve the drafting of this extradition legislation, which I am personally very pleased has come back to us before the end of this term. I think it is important that we remind ourselves of the debate that we had then.

Although Deputy Merrett did not speak at that time, eight Deputies did, including myself. Through you, could I remind the Assembly of the key purpose of extradition legislation? Crime, particularly serious crime, is becoming increasingly global in nature, and criminals can escape justice by fleeing across borders with increasing ease.

Internationally there is a recognition that improved judicial co-operation between nations is needed to tackle this development. This jurisdiction enjoys a positive reputation with regard to mutual legal assistance, deportation and sanctions, which has been fully acknowledged in the report submitted by the International Monetary Fund, in relation to combating money laundering.

The 2016 policy letter and the explanatory note to the *Projet de Loi* before us today makes it abundantly clear that the extradition regime currently in force in the Bailiwick is based upon the repealed 1989 Act, which was replaced in the UK by the 2003 Act. This regime requires updating. It is vital that we do this to demonstrate that we are a mature and responsible jurisdiction, who want to remain safe and secure and to protect our economy against EU blacklisting.

Sir, I would further remind the Assembly of an excellent speech made by Deputy McSwiggan, then Deputy Yerby, and if I may, through you, sir, offer congratulations on her recent marriage. Deputy McSwiggan spoke passionately about ensuring that the interests of justice and public protection are paramount. I completely share her views and we have often spoken about the importance of safeguarding the right to a fair trial being the cornerstone of democracy.

I must also add that I am equally committed to the rule of law and the principle of a fair trial, which will convict the guilty who commit international serious crime, which is a blight on society, undermines the world's economies and often affects the most vulnerable. In the context of extradition, global, organised criminals, can in today's digital environment, commit crime without respecting borders. This is why we need to approve this legislation today.

Again, referring to Deputy Merrett's challenge regarding the role of HM Procureur, I shall again point out that the then Deputy Yerby raised this in her speech. It is obviously something she researched in her commendable, intelligent way she does. She said this:

The policy letter also gave me pause for thought around the role of HM Procureur. It was unfortunate, perhaps, that the recommendations that the Procureur should be given powers equal to those of the Home Secretary in the UK, should have been made in the Procureur's own words. Again, it belied the careful consideration which the Committee have clearly given this matter. Since raising the matter with Home Affairs I (Deputy Yerby) have been advised that they sought advice on the appropriateness of assigning the role to various office-holders and that their conclusion in favour of the Procureur was founded on parallels with existing roles held by that office in respect of other international functions and on the fact that the Jersey system, which is similar, has already withstood confluence of legal challenge. I found the more detailed information I was given reasonable and persuasive and think it was helpful to make note of it here.

Sir, that is what she said in debate around the project letter. As this is a matter again under scrutiny, I wish to outline in detail the strategic considerations of the Committee *for* Home Affairs, of which I was a Member at the material time and before the appallingly bad P&R governance review process, which in contrast lacked any semblance of natural justice, or degree of evidence-

2195 collecting, caused the resignation of myself and my highly respected colleague, Deputy Graham, who contributed greatly, if I remember, to the discussion in Committee.

As said, the issue of HMP's role was considered in detail by the Committee at the policy stage and it concluded that it was appropriate that responsibility for incoming and outgoing extradition requests should rest with H.M. Procureur for the following reasons. In respect of outgoing  
2200 requests it was more appropriate for those to come from HMP in the exercise of his or her role as a prosecuting authority. In respect of incoming requests, there are close parallels between the core issues that arise in extradition as those that arise under HMP's existing role, as a central authority for incoming mutual legal assistance requests.

At a practical level, it makes sense for HMP to act as a contact point for both extradition and  
2205 mutual legal assistance as requests for extradition and mutual legal assistance are governed by many of the same international conventions and other obligations for which HMP is a well-established contact point; for example, the Palermo Convention, a United Nations multi-national treaty against transitional organised crime, and the Financial Action Task Force standards.

The point has been raised why human rights issues are expressly excluded from HMP's role  
2210 under Law when deciding whether or not to order extradition. It is because these issues will already have been considered by the Courts. This is in line with the position of the Secretary of State under the UK legislation. The reason is to avoid the same points being taken over and again, which was the experience under the UK Act until it was amended.

Again, sir, a point has been made about the role of the Secretary of State giving political  
2215 oversight, and this point has already been touched upon. The Committee have been advised that it is based on a fundamental misunderstanding of the constitutional position in the UK. The purpose of the Secretary of State's function under UK legislation is not to confer democratic oversight of individual case decisions on extradition. The function of the Secretary of State, under the Act, derives from the Royal Prerogative in the conduct of foreign affairs, which the executive  
2220 exercises on behalf of the Monarch.

To be clear, these functions do not therefore derive from that person's role as an elected  
Member of the legislature. While this may seem to be a technical difference because, in practice, the Secretary of State is usually an elected Member of Parliament, it is not just a technicality, as it is possible for that person to be a Member of the House of Lords and therefore unelected.

2225 There is a precedent for having Secretaries of State who are not in that situation, not elected persons, would have any involvement in the decision-making, which clearly demonstrates that political oversight is not the reason for giving a decision-making function to the Secretary of State. Furthermore the exercise of the functions of the Projet de Loi involves quasi-judicial decision-making as part of the Bailiwick's criminal justice system and this is axiomatic here and in  
2230 all comparable jurisdictions that criminal justice decisions on individual cases are made on an apolitical basis.

The other point to bear in mind is Guernsey was to move away from giving HMP this role in the legislation, but it would put it at odds with the position in the other Crown Dependencies. Jersey's extradition law gives the Attorney General the same functions as HMP under this Projet  
2235 de Loi and neither the Attorney General's Chambers, nor the Chief Minister's Office, has any knowledge of proposals to give politicians a role in the extradition process. This power was fully tested in a comprehensive legal challenge a few years ago and was upheld.

With regard to the Isle of Man, at the time of the policy letter in 2016, an extradition Bill was pending but because of international/domestic political issues, following an election, which issues  
2240 are unrelated to the issue at hand, the Bill was not taken forward. The legislative drafters at the Attorney General's Chambers in the Isle of Man have recently been asked to pick this up again and they have confirmed that the intention is for the Isle of Man Attorney General to discharge the same functions as those of the Jersey Attorney General.

2245 Whilst the position of the other Crown Dependencies is not a determinative factor, there is a risk that if Guernsey had just introduced its own domestic extradition regime in a way that departed from the approach taken in the other Crown Dependencies, especially given that Jersey

legislation has successfully withstood a legal challenge, it is possible that this would invite questions from the Ministry of Justice about the rationale for this, which would have a potential to delay implementation in an area where the legal framework applicable to Guernsey is already considerably out of date.

One other point that Deputy Merrett made was around questioning the fact whether this legislation was appropriate, if I understood what she was saying, for local legislation, where the current position is that we are relying on a UK Act of Parliament, which has been repealed. I would say, with regard to safeguards, we are much better off having our own legislation, which we can scrutinise and change in this Assembly, than having to rely on extended UK Acts of Parliament.

Thank you, sir.

**The Bailiff:** Deputy Graham.

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

I want to address this issue of who should have the ultimate sign off in cases of extradition, politician or designated statutory official. I think on these occasions it always helps to put ourselves as individuals in the place of somebody facing such a request for extradition. A request that, in individual cases, can lead to extradition to a country where the outcome could well result in many years of imprisonment or even worse.

I have to say to Members of the States that if I were in that position here in Guernsey and my fate depended on whoever was going to be signing that off, there is not a single political Member of this Assembly in whom I would have trust to treat my case totally free of personal or political agenda.

I am not going to try and have things both ways and say, look, I say that with the utmost respect, because it is actually with the utmost disrespect! (*Laughter*) I disrespect, I suppose, the integrity in a way, but it is not really integrity, it is the fitness of any politician to sit in such judgement. At this stage, Mr Bailiff, I sense another Code of Conduct complaint coming on but, anyway, I am in so far so I am going to stick with it!

I was interested in the exchange between Deputy Fallaize and H.M. Procureur and, in a way, they both have a point, in my view. H.M. Procureur certainly had a point that the Secretary of State, when adjudicating in such matters, is really doing so as a Privy Councillor, unless things have changed. Again, unless things have changed since I was in the business, the Secretary of State, when representing interests of the Crown Dependencies is doing so in his or her responsibilities to the Crown as a Privy Councillor. That is a clear point. Of course there are Members of the Privy Council who are not elected politicians.

But Deputy Fallaize also clearly had a point in that it is asking a lot of any political person to have that *alter persona* to switch off from a government minister to that of a Privy Councillor who should be immune from all other considerations. I think that is exemplified in the United Kingdom by a number of extradition cases that have arisen in recent memory.

To make the point, if I were Julian Assange, awaiting a potential request for extradition to the United States, I would have more than a passing interest in the coming general election in the United Kingdom. I reckon my chances of resisting extradition would be much greater with Jeremy Corbyn as Prime Minister than Boris Johnson. I do not think that is correct. That is really, in my view, the danger of handing things such as that over to a politician.

In our case, if not H.M. Procureur, who? If it were the politician, currently it would presumably be Deputy Mary Lowe or, even if by some freak of a device the Assembly were invited to convene to pass a judgement, again I just would not – no disrespect to Deputy Lowe – have the confidence as a potential person for extradition, in a political person having that final say on my fate.

If not a politician, why not H.M. Procureur? I do not think anybody was arguing that H.M. Procureur is necessarily more erudite or learned, although in my case she certainly is. I think the key thing is that she could be trusted to be a more fit and proper person to make such a life-changing decision about somebody's fate.

2300 When this proposed legislation was at its early stages and it came before Home Affairs, in its halcyon days when I was a Member of it, I do remember we gave great consideration to this, as indeed Deputy Prow has just indicated. I did point out at the time that there are examples here of how His Excellency the Lieutenant Governor acts in the place of the Secretary of State or, to put it more accurately, performs a role here which is performed in the United Kingdom by the Secretary of State in his role as a Privy Councillor.

2305 The obvious ones are in some matters of immigration. Also of deportation and, again, unless things have changed, I think in such things as the appointment of the Chairman of the Court in Alderney and so on. So His Excellency, in that sense, fits the bill as an independent person with no axe to grind, who of course makes such decisions based on advice and that is clearly the case.

2310 When this previously came in front of the States, I did not actually make that point, because His Excellency was present and I did not at the time know whether he had been asked for his opinion on this or not. I do know that, in Committee, we did ask for the Law Officers' advice on the appropriateness of the Lieutenant Governor acting in that role and the advice was that he should not. But I cannot remember what the reasons were, frankly, for rejecting that advice.

2315 To sum up, Members of the States, my view is that as long as this Legislature here, which is what we are, propose the Laws and passes the Laws, I think the greater distance that is kept from the administration of certain of those Laws, the better.

**The Bailiff:** Deputy Ferbrache.

2320 **Deputy Ferbrache:** Sir, this is the first time that we will have our own Extradition Law and I think it is very important indeed, because with the pressures of the world, it really is the opportunity for Guernsey to show it is even more independent than it already is. I am probably the only advocate that has appeared in Bow Street Magistrates' Court, 1981-82, as an expert on Guernsey Extradition Law, of which I knew nothing, in relation to a client who was being  
2325 extradited via the UK, it used to be done by Bow Street before they closed that down, so I have a little knowledge. My little knowledge is always a dangerous thing, really, is it not? So many here have got that same weakness!

In relation to this particular matter, for slightly different reasons than Deputy Graham, it must be clearly that this power should be vested in H.M. Procureur: (a) because no politician here is a  
2330 minister of the Crown, even if we changed our title to ministers, that would be irrelevant; but (b) also importantly, when the Secretary of State exercises a power, they have a coterie of lawyers that are experienced in relation to extradition. That is all that they do. Because they are dealing with extradition requests from all over the world every single day. So they have that band of expertise.

2335 Now, H.M. Procureur, her successor and deputies, she will have lawyers that would be able to assist her in properly guiding her to make the decision as to whether or not (a) or (b), the extradition process should take place. She will have that expertise. H.M. Procureur will eventually retire and go on and do other things, other people will replace her, but the fact is there will be the constant expertise, which will grow again over the years, in relation to that Department and the  
2340 holder of the office of H.M. Procureur.

So it would be just nonsense for a politician. We get people ... I was only President of the Economic Development Committee for about 18 months, Deputy Fallaize has only been President of the Education Department for three-and-a-half minutes; it does not happen. So the point is we could be moved very quickly, where there is a constancy of expertise and legal common sense in  
2345 relation to that.

The other point that I would mention is the death penalty. Now that is a concern, in the able speech by Deputy Merrett. Section 36 of the Law says this and I know it has been referred to:

HM Procureur shall not order a person's extradition if the person could be, will be or has been sentenced to death. Subsection (1) shall not apply if the Procureur receives a written assurance that a sentence of death will not be imposed or, if imposed, will not be carried out and HM Procureur considers that assurance adequate.

Well you can be assured that the Procureur will consider, if it is a death penalty case, they are going off to Texas or wherever the executive people every five minutes ... in relation to that, she will ensure that she gets that assurance. If the assurance is not adequate, the person will not be extradited. So there is a safeguard in the statute. I appreciate we could rejig it and re-do other things and alter it, but this is our first attempt. This is our first statute in relation to extradition, so it must be sensible, it must be balanced and also it must have a bit of a track record, in relation to what has happened and similar provisions in other country's statutes. Therefore I would hope that the States would pass this unanimously.

**The Bailiff:** Deputy Gollop.

**Deputy Gollop:** Yes, of course, as Members know, I have a little knowledge and speak too long and too often and come across as offbeat, so people do not always listen to what I say. I have been saying for a long time now, and I can only endorse some of what Deputy Fallaize has said today, that we have an existential crisis in this States – it must be sorted out, surely, once we have got over the ballyhoo of the Island-wide elections – about what the role of a Deputy is, in formulating policy and other aspects of the political role.

I am interested, as Deputy Ferbrache and others know, in a little bit of the old history and it is interesting there have, indeed, as Deputy Prow indicated, been occasionally in the dim and distant past, Home Secretaries who were Members of the House of Lords. I have come across the Duke of Portland, Baron Rendel, Earl Temple, Lord North, the Earl of Shelburne in the 18th Century, Viscount Sherwood, Marquess of Lansdowne, Viscount Melbourne – who appears in *Victoria*, the TV series – and the Duke of Wellington. They were all Home Secretaries.

But we have not really, for the last 150 years, apart from an Irish Peer, who does not count, seen a member of the House of Lords as Home Secretary. Some of these Home Secretaries had extremely brief periods of office. In one case I think it was only about three weeks. Sir Winston Churchill held the job for 18 months. They of course were making quasi-judicial decisions on other things, too, such as the implementation of the death penalty, until the 1960's.

I mention that, though, because the point has been well-made by H.M. Procureur, that the Home Secretary, or come to that the Minister of Justice in the United Kingdom, is a minister of the Crown, appointed by the government of the day, directly responsible to Her Majesty, and the Channel Islands have a very different constitution and history from that.

I think, too, we have to bear in mind that H.M. Procureur and H.M. Comptroller, who would have the same role, in the absence of HMP, have in this Assembly, even compared to our friends in Jersey, an essential difference, because they advise not just ourselves but I think I am correct in saying the Chief Pleas of Sark and the States of Alderney. They are also impartial from the government in London. They are not attached to the UK government.

Now somebody mentioned the magical word Attorney General earlier and I believe, well a historian close to me has remembered, that of course in World War Two, Sir Ambrose Sherwill was both H.M. Procureur and Attorney General. The roles are similar. I know advocate Nick van Leuven very much developed that when he was internationally around.

The significance there is of course, in the United Kingdom, they have and they do appoint an Attorney General and Solicitor General for their governments. But in almost every case those two individuals, although they do tend to be learned lawyers, are politicians; occasionally members of the House of Lords, more often than not members of the House of Commons. Yesterday we saw in the Mother Parliament, if you like, a situation where their current Attorney General was somewhat robust in the use of his language in a political debate, implying that parliament was dead and should have a general election as soon as possible.

I am sure H.M. Procureur and H.M. Comptroller sometimes wish that we had a change of membership here, but they would never say anything that impolite or unconstitutional, because their role is very different. They are not appointed by the Chief Minister or a Prime Minister.



2400 Although I agreed with the sentiment of a lot of what Deputy Fallaize had said and, had he gone to the Islanders' EGM, AGM in July, one of the 20-odd people who were there, he would have heard me speak about the gradual reduction of a Deputy's role and its extension into all kinds of wonderful commissioners and quangos and statutory officials and all the rest of it.

2405 On this occasion, it would undoubtedly be easier to make the case of giving Deputy Lowe that kind of role if Deputy Lowe was the minister for the Home Department or for Home Affairs. I would add to that not just a minister in name only, because what is in a name, Deputy Roffey had a point there, but a real minister. A real minister would not only have clear executive powers laid down but would not be dependent upon the opinions of four other able Members of her Committee.

2410 I have had these discussions with Deputy Tindall and probably it is just as well I am not on the DPA anymore, because I could not resolve them in my mind, let alone on the Committee, because even if I was a quasi-judicial, acting planning president or planning minister, which I am not or was not, then I cannot make a decision without consulting my four colleagues and forming a consensus.

2415 So if we did have a politician having this kind of power, logically it should not be Deputy Lowe or any other Member of the States, because that person would surely need advice from three or four other people; perhaps the non-States' members. In addition, Deputy Ferbrache is of course right on the money here, that in reality most, if not all politicians, would not have the specialist expertise to be comfortable in making that decision unless they did it in the manner of a sort of President Trump, who would make an opinion because that was the way he or she felt they wanted to go, they would of course wish to ask for credible legal advice.

2420 The first person they would turn would be H.M. Procureur and/or H.M. Comptroller. Then, having had the advice from the team at St James', they would then come to hopefully a decision, which took on board the legal advice, which would be delivered from a learned and impartial perspective. What all this amounts to is I thought at the time when we saw it on the legislation subcommittee in Scrutiny, and in the earlier debate, that given the way Jersey has gone and the subtlety of our relationships internationally, we are best to have H.M. Procureur fulfilling the role at this time. We may have a change of government in our approach, or a change of roles, and that would be the time to look at it again.

2425 Deputy Merrett, of course, went far wider, and like her I am not a particular fan of the death penalty or certain governments of the world or states and how they implement it. I must admit that when I read this legislation, I took a more pragmatic and less idealistic role, which perhaps is my failing. Because I think to myself Guernsey is quite a small place, really, and our focus is predominantly on the happiness of our community and the success of Guernsey's business and other interests.

2435 I have had these dialogues with Deputy Laurie Queripel, who I see opposite me. Deputy Laurie Queripel is a long-serving Member of Scrutiny and our acting chairman from time to time and he used to say, 'Why can't we say no?', when we would be given advice about introducing sanctions against Russian bad guys or alleged bad guys.

2440 But the reality is we are 60,000 people. We already spend too much money. We cannot afford an all-singing, all-dancing, legal, international finance foreign affairs team. On some of these issues we do not have the space to have a totally independent line and we do, pragmatically, have to keep in with the United Kingdom, up to a point, in Europe, and also the United States of America, particularly as regards terrorism and internal revenue issues.

2445 I think we would all wish to take a stance if an Islander, hopefully it will never be me, was caught up in a situation where I had hacked into American Defence and I was being extradited to a poison death camp or something. But I do listen sensibly and seriously to the point Deputy Merrett made and I think, in that case, H.M. Procureur or Comptroller would take on board the feelings of the community and Assembly Members, and also the feelings, perhaps, of the United Kingdom. We would have to work on that as a special case, if it ever made an impact in Guernsey.

2450 But I think, as legislation goes –

I will give way to Deputy Merrett.

**Deputy Merrett:** Thank you, Deputy Gollop. My understanding is that, under this legislation, HMP could only make the decision based on the matter of fact and law, not on the feelings of the community.

**Deputy Gollop:** That would be correct. But there would also be the need to take on board, maybe, the United Kingdom's position on the matter. We know Germany's position. Also, on the medical and psychological issues that might be relevant to the case, as to whether such an individual would be eligible to stand trial in the United States or any other country.

In fact it might be interesting to hear in the summing up what circumstances would be brought to bear for H.M. Procureur to make a judgement on that, whether there would be extenuating circumstances in that kind of case, because clearly, where a death penalty or unusual punishment, or we deem the country to be in some respects unfair as a community, they are excluded.

But with all those caveats on board, and I have always been a believer that we need to reform legislation and we heard from the President of Policy & Resources yesterday that it might be time, it is time, to go back to the work Deputy Perrot and others did in looking at our constitutional relationship – it certainly is time actually – bearing in mind the wider picture, I am more than happy today to approve this legislation, whilst listening carefully to the points Deputy Merrett has raised.

**The Bailiff:** Deputy Tindall.

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

Members will be pleased to note that I do not intend to go off on a tangent and talk about quasi-judicial decision-making, one of my favourite topics, particularly over fact and Law versus feelings of the community and taking them into account. Also I do not intend to have a trip down memory lane or, in this case, Bow Street, although I do have fond recollections of being in the stables at the police station next door, with my father. I say this only because it is my mother's birthday and I want to wish her a happy birthday!

Anyway, the reason I am standing is briefly to remind people of the function of the Legislation Review Panel because, of course, this piece of legislation has had scrutiny at that level. Very briefly, section 66, our responsibility is to make sure the purpose, ensuring the same is in accordance with and will effectually carry into effect any Resolution of the States.

Now the Resolution itself is that of 21st December 2016, which is the title of the Law, and that Resolution, which is not exactly helpful, is to approve the drafting of legislation to introduce a domestic extradition regime. Not the most helpful for our Legislation Review Panel to consider. However, despite this very vague Resolution, and this happens quite a lot, we do often discuss a lot more than just whether or not it is, in effect, a piece of legislation, which of course it is.

We discussed many of the aspects in the legislation and, actually, we have discussed, for example, the role of H.M. Procureur and also, in effect, the appeals process in relation to those decisions made by H.M. Procureur. I will not go into a list because obviously Deputy Merrett has done a very detailed analysis and also Deputy Prow did an excellent speech, aided by Deputy Graham.

Suffice to say, I think, that through the Legislation Review Panel's scrutiny, we were happy with the legislation as drafted. Personally I happen to believe very strongly that we need it from an international identity perspective. So I feel that we are satisfied. But, then, again, Members here did not have the benefit of those discussions that we had. We were able to sit and talk to the draftsman. We were able to sit and talk to the director of legislation.

We have non-States' members and I have to say that this ability to be able to have these discussions is one of the main reasons I remained on the panel, despite my various other roles

that I have taken on over the last couple of years, because it is so beneficial. One of the things I had recommended to the LRP is to have the benefit of a report on those discussions available to Members in this Chamber, which may have assisted on this occasion.

However I would add, also, that I do note the fact that this Resolution, as I say, is so limited, and I would draw that to the attention of everyone here who thinks about these Propositions because it does not help in the way in which we scrutinise our legislation. That really brings me to the last point I wanted to make, which is about this.

It is slightly off-piste but I think it has been brought out by this particular debate. It is something I have commented on very often and, in comparison to a majority of other democratic jurisdictions, we are poor on legislative scrutiny. I am grateful for those who have been involved in this and, despite the fact that I am very satisfied with it, I do feel that this could so easily have been dealt with in a more obvious, democratic, transparent way, than we do currently. Even so, I still feel that what I have luckily been part of means that I am very satisfied with the particular legislation in front of me.

Thank you, sir.

**The Bailiff:** Deputy Lowe will reply to the debate.

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

I will cover some of the points that Deputy Merrett raised earlier on. The US treaty Deputy Merrett refers to currently does not apply to us. An extradition under this Projet would therefore continue to be governed by the 1970's treaty as now, under the 1989 Act, that applies here now, unless and until that new treaty is extended to us, which will be a decision for External Relations to consider, like any other treaty.

A further point about the UK and the US treaty is that this was looked at in a detailed report under a High Court judge and the Law Officers got the authors over to speak to them when they were considering the policy. In response to that review, the UK Act was amended to insert a forum bar. In other words, you would not be extradited if the criminal activity mainly took place in the UK, and that is included in our draft Law.

The position re the death penalty is not changed under this Projet, and we would not be seeking to extradite anyone who could face the death penalty, unless H.M. Procureur receives sufficient assurance that such a penalty would not be carried out, as per UK powers. The assurance issue already applies to us under the 1989 Extradition Act.

Finally, the extradition regime, which the States agreed to in principle in 2016, is a regime which primarily provides for a court-based decision and I think that is so important. It is a court-based decision, which would be followed through by H.M. Procureur making process, in which the courts would consider human rights considerations and also whether extraditions should be barred on grounds of the forum bar, and any other statutory grounds. The forum bar was an amendment to the UK Act, whose provisions are also contained in our draft Projet.

Human rights and the ability for H.M. Procureur to consider human rights issues, this follows tried and tested UK review and case law and the independent review, which I think Deputy Merrett referred to, by Sir Scott Baker, recommends specifically that courts are better placed to make decisions on human rights grounds.

The other important point to bring out, as explained in the policy letter, the extradition regime that currently covers us, i.e. the 1989 Act, is seriously out of date. Parts date back to 1870 legislation. The effect of this is that in some situations, for purely technical reasons, it does not allow us to extradite for high profile offences such as money laundering or to some other countries that are co-signatories with us in international conventions. Therefore, if we were to receive a request relating to money laundering or corruption, etc., that in the 1989 Act does not allow us to give effect to, we would be in breach of the FATF standards and other international obligations, such as the UNCAC.

2555 So I think those points are all really important, which we need to give consideration to when we are supporting this Projet before you today. I thank Deputy Tindall for that because, if anybody is going to actually be scrutinising this with a fine tooth comb, it is definitely the Legislation Committee, because Deputy Tindall likes to do that and that is right, that is her job to do that, and I thank her for that. So when she stands up and says she is fine with it, I know that actually that has been well scrutinised. So thank you very much for that.

2560 It is complex. There are 191 pages here, so it is not a straight forward Projet before you but that just shows the complexity of it all. I know Home Affairs spend an awful lot of time, as Deputy Prow and Deputy Graham have confirmed as well, when we have considered this, and we are very solid on it that, in our opinion it is a court process and it is not really for the politicians to get involved.

2565 Now I accept that Deputy Fallaize says we have already got quasi-judicial for the planning, but they are not Crown appointees. They might operate within a quasi-judicial system, as a Deputy, but they are not Crown appointees and there is a huge difference between what is being proposed here to the DPA, they cannot be looked at in the same light.

2570 So, sir, I ask that Members please support this and we can make sure that this is in place and that we comply and we can update our Extradition Act. Could I have a recorded vote, please, sir?

**The Bailiff:** We have a recorded vote on whether to approve the draft Projet de Loi, entitled the Extradition (Bailiwick of Guernsey) Law, 2019.

*There was a recorded vote.*

*Carried – Pour 32, Contre 0, Ne vote pas 0, Absent 8*

**POUR**

Deputy Brouard  
Deputy de Lisle  
Deputy Langlois  
Deputy Soulsby  
Deputy de Sausmarez  
Deputy Roffey  
Deputy Prow  
Alderney Rep. Roberts  
Alderney Rep. Snowdon  
Deputy Ferbrache  
Deputy Kuttelwascher  
Deputy Tindall  
Deputy Brehaut  
Deputy Gollop  
Deputy Parkinson  
Deputy Lester Queripel  
Deputy Le Clerc  
Deputy Leadbeater  
Deputy Mooney  
Deputy Le Pelley  
Deputy Merrett  
Deputy St Pier  
Deputy Stephens  
Deputy Meerveld  
Deputy Fallaize  
Deputy Lowe  
Deputy Laurie Queripel  
Deputy Hansmann Rouxel  
Deputy Graham  
Deputy Paint  
Deputy Dorey  
Deputy Le Tocq

**CONTRE**

None

**NE VOTE PAS**

None

**ABSENT**

Deputy Dudley-Owen  
Deputy McSwiggan  
Deputy Oliver  
Deputy Tooley  
Deputy Trott  
Deputy Inder  
Deputy Smithies  
Deputy Green

2575 **The Bailiff:** The votes on the Projet were 32 in favour, with none against. I declare it carried.

### COMMITTEE FOR HOME AFFAIRS

#### IX. International Criminal Court (Bailiwick of Guernsey) Law, 2019 – Proposition carried

*Article IX.*

*The States are asked to decide:*

*Whether they are of the opinion to approve the draft Projet de Loi entitled "The International Criminal Court (Bailiwick of Guernsey) Law, 2019", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.*

**The Greffier:** Article IX, Committee for Home Affairs – the International Criminal Court (Bailiwick of Guernsey) Law, 2019.

2580

**The Bailiff:** Any debate or clarification required? We go to the vote. Those in favour; those against.

*Members voted Pour.*

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

### POLICY & RESOURCES COMMITTEE

#### X. The Income Tax (Guernsey) (Amendment) Ordinance, 2019 – Proposition carried

2585

*Article X.*

*The States are asked to decide:*

*Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Amendment) Ordinance, 2019", and to direct that the same shall have effect as an Ordinance of the States.*

**The Greffier:** Article X, Policy & Resources Committee – the Income Tax (Guernsey) (Amendment) Ordinance, 2019.

**The Bailiff:** Any debate or requests for clarification? We vote. Those in favour; those against.

*Members voted Pour.*

2590

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

**COMMITTEE FOR ECONOMIC DEVELOPMENT**

**XI. The Financial Services Ombudsman (Bailiwick of Guernsey)  
(Amendment) Ordinance, 2019 –  
Proposition carried**

*Article XI.*

*The States are asked to decide:*

*Whether they are of the opinion to approve the draft Ordinance entitled "The Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2019", and to direct that the same shall have effect as an Ordinance of the States.*

**The Greffier:** Article XI, Committee for Economic Development – the Financial Services Ombudsman (Bailiwick of Guernsey) (Amendment) Ordinance, 2019.

2595 **The Bailiff:** Any debate or clarification. No? We vote. Those in favour; those against.

*Members voted Pour.*

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

**COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE**

**XII. The Open Market Housing Register (Deletion of Inscriptions) Ordinance, 2019 –  
Proposition carried**

*Article XII.*

*The States are asked to decide:*

*Whether they are of the opinion to approve the draft Ordinance entitled "The Open Market Housing Register (Deletion of Inscriptions) Ordinance, 2019", and to direct that the same shall have effect as an Ordinance of the States.*

**The Greffier:** Article XII, Committee for the Environment & Infrastructure – the Open Market Housing Register (Deletion of Inscriptions) Ordinance, 2019.

2600 **The Bailiff:** Any debate? Deputy Gollop.

2605 **Deputy Gollop:** Yes, I did not understand it when I first saw it in the legislation. I still do not. Because I know Environment & Infrastructure now have the policy on housing, which used to be part of the Housing Department, but basically we have almost a bit of a sledgehammer to crack a nut here, because we have an Ordinance, at two pages, plus a mock form, the application for deletion of a dwelling from the Housing Register, which facilitates the name of the owner of an Open Market dwelling and his or her address, and the housing to be ... what does it say? Makes provision in relation to the procedure for applying to the Committee for E&I to have a dwelling deleted from the Open Market Housing Register.

2610 It provides that when that Committee is satisfied that the applicant is the owner of the dwelling in question, and the dwelling is inscribed in the said register, it shall delete the inscription and ...

Well, I thought that power existed for many years, that it had been done, it could be done. There were, I believe, not only developers who did it as a swap, but elderly people who, for social

2615 or other reasons wanted to downgrade to the Local Market, so I did not understand why we had to re-invent it in a new format with Environment & Infrastructure. You know, I am happy with it, but I am perplexed as to how it came to this particular place on its journey.

**The Bailiff:** Deputy Le Clerc.

2620

**Deputy Le Clerc:** Yes, sir. I am in exactly the same position as Deputy Gollop – I almost forgot his name, how could I do that to him?! The only conclusion that I can come to, and I would like this to be clarified, is that does this mean that these swaps that we have done in the past no longer have to come to this Assembly; that it will be just done at Committee level? That was my only sort of conclusion that it might be that. So I would like clarification, please.

2625

**The Bailiff:** Deputy Brehaut, do you wish to reply?

2630

**Deputy Brehaut:** Yes, Members are right. What used to happen was that the re-inscriptions, which is the deletion of a property, an existing Open Market property, would have to be deleted and then what people would do would be delete the Open Market property, so that is a dead inscription; the new inscription is on a property somewhere else and that frees off that property to the Local Market.

2635

That authority used to sit with the Housing Authority. It now sits with E&I and the detail of the form gives that consent, that approval for E&I to do that. These processes have been fairly discreet, because there has not been the volume of them in the past. I think if we had something such as comparable to a MURA development, which we have seen before, which is a number of properties involved in re-inscriptions, the MURA policy was there to facilitate that. This, I suppose, formalises a long-established process.

2640

**The Bailiff:** We vote, then, on the Ordinance. Those in favour; those against.

*Members voted Pour.*

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

## COMMITTEE FOR ECONOMIC DEVELOPMENT

### XIII. Financial Services Ombudsman – New Funding Structure – Propositions carried

*Article XIII.*

*The States are asked to decide:*

*Whether, after consideration of the Policy Letter, entitled "Financial Services Ombudsman: New Funding Structure", dated 16th August, 2019, of the Committee for Economic Development, they are of the opinion:-*

*1. To amend the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 and The Financial Services Ombudsman (Case Fee and Levies (Bailiwick of Guernsey) Order 2015, specifically to provide that the same annual levy can be applied to similar financial services providers in the Bailiwicks of Guernsey and Jersey.*

*2. To amend Schedule 2 of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 to allow for the amalgamation of the finances of the Offices of Financial Services Ombudsman in Jersey and Guernsey.*

**The Greffier:** Article XIII, Committee for Economic Development, Financial Services Ombudsman – New Funding Structure.

**The Bailiff:** Deputy Parkinson.

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

The Guernsey Financial Services Ombudsman's primary role is to resolve complaints about financial services provided in or from Guernsey, Alderney and Sark. Under the current funding structure, income and expenses of the two offices is shared equally between Jersey and Guernsey. It was agreed and understood at the inception that the Channel Islands Financial Services Ombudsman would need to effect a review of its funding within a few years of commencing operations, once its caseload was better understood.

The Channel Islands Financial Services Ombudsman has consulted on changing the way it is funded and the policy letter effects the findings of that consultation, these being: 1, ensuring that financial service providers of the same category in the Bailiwicks of both Guernsey and Jersey pay the same levy; 2, the continuation of the weighting of the total levy between the banking and non-banking sectors, whereby the banking sector pays a higher proportion on account of their greater usage; and 3, allowing for the amalgamation of the finances of the Guernsey and Jersey offices of the Financial Services Ombudsman, to remove the need to create complex provisions in respect of the sharing of costs and the management of financial reserves.

The proposed changes will ensure that the funding of the Financial Services Ombudsman is effected on an equitable basis between the two Islands. In short, this is the right thing to do for the Island's finance sector and our reputation, and I commend it to the Assembly.

**The Bailiff:** We go straight to the vote on the two Propositions. Those in favour; those against.

*Members voted Pour.*

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

## COMMITTEE FOR ECONOMIC DEVELOPMENT

### XIV. Amendments to Companies Law – Propositions carried

*Article XIV.*

*The States are asked to decide:*

*Whether, after consideration of the Policy Letter dated 4th July, 2019, of the Committee for Economic Development, they are of the opinion:-*

*1. To agree to that the amendments set out in the Policy Letter be made to the Companies (Guernsey) Law, 2008.*

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

**The Greffier:** Article XIV, Committee for Economic Development – amendments to the Companies Law.

**The Bailiff:** Deputy Parkinson.

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



As part of its ongoing monitoring and review of the Companies Law, a consultation was issued by the Committee in June 2018, reflecting feedback received from industry. This policy letter recommends a number of amendments to the Companies Law, as a result of consideration of the consultation feedback, including for example, incorporated cells no longer being required to have the same directors as its incorporated cell company. This will allow the most appropriate directors with relevant skill and expertise to be appointed for each incorporated cell.

Widening the provisions on who may be in control of an audit company or partnership, to enable it to be appointed as auditor of a Guernsey company, to better reflect the reality of how international audit entities are structured; and aligning the procedure for an off-market acquisition by a company of its own shares with an on-market purchase by enabling authorisation for both purchases by ordinary Resolution.

The proposed amendments will ensure that the Companies Law keeps step with the needs of the local business community and, as such, I urge you to support this letter.

Finally, sir, I would like to bring to Members' attention two minor typographical errors in the Propositions section of the policy letter: firstly in respect of the spelling of the word 'committee' in the heading, and second, as to a superfluous word, 'to', in the first Proposition.

Thank you.

**The Bailiff:** Any debate? Yes, Deputy Tindall.

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

Just a few points here, and there may be an apparent theme that I wish to speak about. First of all, just to say in respect of the qualification for appointment as an auditor this was something that was discussed whilst I was on the Committee, and I am very pleased that this is coming through, because it will help enable the auditors to be able to deal with their audits of certain companies. It was, in practical terms, a bit of a barrier. So I am pleased to see that.

Paragraph 4.7.2, however, I understand the principle, but the paragraph itself is a little light, shall we say. It says:

This provision has been the subject of some debate and the Committee consequently wished to consult on whether it is appropriate for this provision to remain in the Law, or to be repealed.

This is section 283, conversion of shares to stock.

The Committee has received detailed feedback and analysis from respondents and, following careful consideration of those responses, the Committee agrees that the ability to convert shares to stock in the Law is unnecessary and consequently, section 283 should be amended to reflect this.

Fascinating. But I would really like to know on what basis they feel that something was in there on 3rd September is now felt to be unnecessary. As I say, a bit fleshed out would be helpful.

Finally, sir, I draw attention to comments made in paragraph 4.14.1, and this is a general point about, which is what I raised in the previous debate in fact:

Whilst many of the proposed changes outlined above are expressed in precise terms and by reference to specific sections and sub-sections of the Law, the Committee does not intend that the suggested wording, or location of amendments, should to fetter the discretion of the draftsman in identifying the most appropriate way of implementing the desired amendment.

As I mentioned earlier, this is the Law. We do not normally have precise wording put in front of us at this stage, it usually comes before the Legislation Review Panel where we have to wrestle with this idea of what the draftsman is entitled to use their discretion and draft it in a certain way and decide whether or not it is acceptable, or indeed whether or not we want the President of the Committee that is sponsoring it, to actually explain any differences to the Assembly when it is presented.

2715 So I found that paragraph slightly intriguing as to why the norm is actually set out in the policy  
letter, but also really to draw attention to the fact that we have excellent draftspeople; there is no  
question about that, we are very lucky. Comparing it to the UK legislation, which I have worked  
with for many years, our legislation is much simpler, much easier to read and able to be dissected  
and understood to a greater degree. However, I still feel, as I mentioned before and I will say  
2720 again, we do not scrutinise legislation sufficiently to ensure it is the right thing for Guernsey.  
Thank you, sir.

**The Bailiff:** Anyone else? No. Deputy Parkinson.

2725 **Deputy Parkinson:** Yes, sir, paragraph 4.14.1 may be stating what Deputy Tindall regards as  
the obvious, but I see no harm in it being restated here. On her other comments, all I can say is  
that this is the product of consultation with industry and these are measures which it is felt will be  
of assistance to the business community in Guernsey and that is why we are bringing forward the  
changes now.

2730 **The Bailiff:** So we vote, then, on the two Propositions, bearing in mind that the second 'to' in  
the first Proposition has been deleted. Those in favour; those against.

*Members voted Pour.*

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

## POLICY & RESOURCES COMMITTEE

### XV. The Matrimonial Causes Law (Guernsey), 1939, Amendment – Propositions carried

*Article XV.*

*The States are asked to decide:*

*Whether, after consideration of The Matrimonial Causes Law (Guernsey), 1939, Amendment  
Policy Letter dated 16th August 2019 they are of the opinion:-*

*1. To approve the Projet de Loi entitled 'The Matrimonial Causes (Guernsey) (Amendment) Law,  
2019' and to authorise the Bailiff to present a most humble petition to Her Majesty praying for  
Her Royal Sanction thereto, noting that the two proposals relating to document duty and pension  
sharing are not included for the reasons set out in section 3 of the Policy Letter - The Matrimonial  
Causes Law (Guernsey), 1939 Amendment.*

*2. To direct the Policy & Resources Committee, in consultation with the relevant Committees of  
the States of Deliberation, to consider the matters relating to pensions noted in section 9.1 of this  
Policy Letter - The Matrimonial Causes Law (Guernsey), 1939 Amendment, and whether they  
should be considered for prioritisation during the next term as part of the Future Guernsey Plan.*

2735 **The Greffier:** Article XV, Policy & Resources Committee – the Matrimonial Causes Law  
(Guernsey), 1939, Amendment.

**The Bailiff:** Deputy St Pier.

2740 **Deputy St Pier:** Sir, I will be very brief in introducing this policy letter and the associated  
legislation. To be clear, the matrimonial causes or divorce and separation, the Law and this

amendment is not a wider reform of divorce law that has been referred to and has been the subject of consultation earlier this year. That matter is to follow.

2745 This is the result of a 2009 Resolution, which sought to extend the powers of the Divorce Court to enable it to ensure that justice is done between the parties in matrimonial proceedings and the subsequent draft amendment to the Law has resulted from that. The delay, which is obviously considerable – 10 years, in bringing this amendment forward – is due in main to the complexities in surrounding the pension proposals that were contained within the 2009 report by the then H.M. Procureur.

2750 Also not fulfilled is the proposal to charge a nominal duty of £1 in terms of document duty on any real property that is part of a divorce-related court order. But that is simply because that bit has already been dealt with as a result of the 2017 changes to the Document Duty Law, which was the anti-avoidance series of measures, which themselves were considerably delayed, but nonetheless that has now happened.

2755 These complexities and changes have resulted in not all aspects of the 2009 Resolution being fulfilled, which is why we have provided the supporting policy letter in line with H.M. Greffier's direction number one. But it is just to make clear that the main aspect not progressed relates to pensions and the provision relating to pensions in divorce proceedings, including pension sharing orders, and attachment orders concerning the pension scheme for one or other of the parties. That does obviously exist in other jurisdictions.

2760 The challenges that we have as a jurisdiction in introducing these divisions are that we do not have any primary pension legislation and so that would need to be prioritised and where pension providers are UK-based, as of course is often the case for Guernsey resident pensions, it would be necessary for any pension-sharing order to be made enforceable in the UK's courts, or for persons divorced in the Bailiwick to be able to make an application for financial relief in another jurisdiction where the pension is provided. That would not be possible without an amendment to legislation in that country, or at least for some reciprocal arrangements to be agreed.

2770 Representations by officers alongside Jersey and the Isle of Man, who are in a similar position, have been made but perhaps unsurprisingly at the current time is not seen as a priority for England, Scotland or indeed Northern Ireland. So it is frustrating but our view is that we have waited long enough, we ought to at least amend the bits we can.

2775 The work on this amendment, alongside other work that touches on pensions, such as secondary pensions and widow pension rights, which obviously was the subject of yesterday's debate, highlights that there is a need for a more comprehensive review of pensions policy. That is why there is a Proposition to that effect within the policy letter as a means to ensure that where matters require further consideration that they can at least be captured and considered through the appropriate policy planning processes and cycle. In this case, it really, I think, would be for the next term of Government to consider the priority of pensions policy in the future iteration of the Future Guernsey Plan, and the Committee will ensure that this matter is progressed for that consideration.

2780 I do not intend to go into the matter of the wider reforms that I touched on at the beginning of this speech, sir. That really is the subject of a separate policy letter, as I say, later in the year, and I think would be a distraction from this policy letter. But otherwise I will respond to any matters that arise in debate, sir.

2785 **The Bailiff:** Deputy Roffey.

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

2790 I support these proposals but I am hugely frustrated that this question of apportioning pensions has not been able to be sorted out, because it really makes a nonsense of the Divorce Court's ability to have an equitable split of assets. Because if the divorcing couple are of a certain age, as they would say in France, then very often a large part of their assets is actually embodied in the pension provision.

That might be one person or the other. It is very often the male; not necessarily but that is the typical situation, in the male's name. Yet they were only able to make that provision because of the way the family operated as a unit in the decades before that divorce.

I do not argue that it is very difficult to do, that we would need a domestic law on pensions – maybe we should anyway, actually, I think – and that where the pension provider is in another territory that is problematic unless you can have a reciprocal agreement. Although not all pension providers are domiciled outside the Channel Islands and I am sure we could get a reciprocal agreement with Jersey.

So I note that it is going to be looked at to see whether it should be prioritised in the next iteration of the plan and I hope that it is, because until it is I do not think that our Divorce Courts really have the power to make a fair and equitable division of assets between a married couple.

**The Bailiff:** Deputy Gollop.

**Deputy Gollop:** Yes, of course as Deputy Tindall knows, we looked at this in the Legislation Review and heard some of the more complicated arguments about some of it. I, of course, am always a little bit worried when we potentially open the door wider on Family Court rulings, because we have a situation here where we are empowering, perhaps, the Divorce Court to transfer real and personal properties to a wider range of people and that, of course, could lead to more expensive and more awkward family settlements and perhaps more time and litigation. Nevertheless, we hear that is what the judges want to see.

I, like Deputy Roffey, was concerned too about the pensions issue, because it is frustrating to see that it is the position in the United Kingdom that is holding back moving forward with policy proposals on this; because I would have thought too that another issue that will arise, if it has not already, will be that when the States actually approves, hopefully, secondary pensions, the secondary pension pot that an individual will acquire will be an asset for their benefit that you could get in, theoretically, a marriage, where one partner who was very financially successful had a much larger pot than the other partner. Whether that will ever be considered in a Family or Divorce Court as an asset is an intriguing hypothetical.

So I would argue that actually resolving the format of pensions, in terms of being seen as assets for divisions, and of course there are retirement annuity schemes that can be dissolved; some of these schemes can actually be sold earlier, but at a huge financial disadvantage to the person who has placed them. So we probably do need greater clarification as to what assets are relevant to the Divorce Court in terms of pension pots and so on. I think it goes slightly further than this policy letter suggests.

**The Bailiff:** Deputy Merrett.

**Deputy Merrett:** I will be very brief, sir.

I do accept Deputy St Pier's, I will try to be generous and say reasons why this has taken 10 years, although I would be more inclined, as is my nature, to say excuses. But I do concur with Deputy Roffey, with everything he says, which I will not repeat.

But what I do want to ask is, Proposition 2, it says, '... in consultation with the relevant committees of the States of Deliberation'. Now I am assuming that Deputy St Pier just means Employment & Social Security, but if he can tell me who else he thinks would be relevant, I would appreciate it.

Further, there is no time on Proposition 2 and this looks as if you would have to work with other jurisdictions, so if it has taken us 10 years to get this far I dread to think how long it could take to get any further if we have to have reciprocal arrangements. I appreciate it says that they should be considered a prioritisation for next term, which is all good and well; if it is not then I would ask Deputy St Pier, through you, sir, if he would actually rescind the Resolution and the States could agree to rescind it if that is the case.

2845        Lastly, sir, and this is just semantics, but as far as I am aware we do not have a Future Guernsey Plan, we have a Policy & Resource Plan. If it is the same thing and that is what Deputy St Pier means, then obviously that is fine but I am pretty sure we never agreed to call it a Future Guernsey Plan. I am pretty sure all those Propositions fell and it is still a Policy & Resource Plan. I would be pleased to be corrected, but I am pretty sure I am correct.

2850        I give way to Deputy Fallaize.

**Deputy Fallaize:** Point of correction, sir.

2855        I was looking at this the other day. All the Propositions which proposed Future Guernsey Plan, were amended to read Policy & Resource Plan, except one and in one piece of text somewhere – not in the Report itself but in the Propositions – there is still mention of the Future Guernsey Plan. So I do not quite know what that means the States decided or did not decide, but that was what the States decided.

2860        **Deputy Merrett:** Anyway, it is semantics but if Deputy St Pier could just, in summing up, reiterate that. I think he means the Policy & Resource Plan, although albeit it could be at some point called the Future Guernsey Plan.

Thank you, sir.

**The Bailiff:** Deputy Tindall.

2865

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

2870        I just wish to point out that I think it is very important we go ahead with this particular amendment to the Law, simply because it is going to be difficult to deal with the pensions. Having dealt with not so much the divorce side of it, but the distribution of assets side in the UK, it is extremely important to take pensions into account. But it is also very complicated and important we get this right. I do not think that should delay the rest of these really important proposals going through.

2875        That said, there is just one small point and that is in relation to the process, because occasionally I do like process: this is unusual in the sense that it is a policy letter with a piece of legislation attached, and I just want to confirm, because it is not stated in the policy letter but, as alluded to by my colleague Deputy Gollop, I can confirm it has gone through the process of going through the Legislation Review Panel first. It just happens that we have the draft policy letter to look at in respect of the Resolutions, so obviously as they are unamended, our deliberations on the draft can go ahead and confirm that we were satisfied with that.

2880        Thank you, sir.

**The Bailiff:** Deputy St Pier will reply.

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

2885        I think Deputy Roffey and others have identified the frustration in relation to pensions, which has obviously caused the delay but, as Deputy Tindall says, we risk causing further complication by failing to crack on and do what we can in relation to this piece of legislation, so I am glad that Deputy Tindall and others agree that we should now deal with this.

2890        I am also grateful to both her and Deputy Gollop for confirming the process through the Legislation Review Panel.

2895        It really will be for the next Policy & Resources Committee, I suspect, to put forward any recommendations to rescind any Resolutions, as Deputy Merrett has suggested. I think the process through the Policy & Resource Plan, the Future Guernsey Plan – it is semantics, but whatever, at least Deputy Merrett recognises both terms, which is a positive development – will at least provide a disciplined process by which Resolutions will be reviewed, perhaps more frequently than they were in the past, to determine whether they should be rescinded. So it is not

really for me to seek to bind any future decision in that regard, but I would simply identify that I think the processes are there to enable that decision to take place if indeed it is appropriate.

With that, sir, I encourage Members to support the Propositions.

2900 Thank you.

**The Bailiff:** Well, because the first Proposition deals with the approval of a Project de Loi, I will take that one separately from the second Proposition. So we will vote first on Proposition 1. Those in favour; those against.

*Members voted Pour.*

2905 **The Bailiff:** I declare it carried. Proposition 2, those in favour; those against.

*Members voted Pour.*

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

## COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

### XVI. Amendments to Statutory Minimum Wage arrangements to come into force on 1st January 2020 – Proposition carried

*Article XVI.*

*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 2020', dated 16th August 2019, they are of the opinion:*

*1. To approve the Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) (Amendment) Regulations, 2019 (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 2020:*

- a. adult minimum wage rate: £8.50 per hour (for workers aged 18 and over), and*
- b. young person's minimum wage rate: £8.05 per hour (for workers aged 16 and 17).*

2910 **The Greffier:** Article XVI, Committee for Employment & Social Security – amendments to the Statutory Minimum Wage arrangements to come into force on 1st January 2020.

**The Bailiff:** Deputy Le Clerc.

**Deputy Le Clerc:** Thank you, sir. I will keep this short.

2915 In 2018, this Assembly approved a policy whereby there is a link of Minimum Wage rates to median earnings, with the adult rate reaching 60% of median earnings by 2023. There is still an obligation for us to consult with various organisations, but as we had already agreed a plan in this Assembly, this was scaled back significantly this year.

2920 Once again feedback from the main industry groups was relatively positive and we therefore ask you to approve an adult minimum rate at £8.50 per hour. Another part of the plan is for the young persons' rate to rise to be equal to the adult rate. The gap between the two rates, which is currently 60p, will be closed as the young persons' rate will rise incrementally over the next few years to 2023 and we are recommending an increase to £8.05.

2925 The maximum offset for employers providing accommodation will be increased to £82 per week and to £114 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 were at the discretion of the Committee.

2930 We are confident that the Minimum Wage rates do stand up against other jurisdictions. However, we appreciate that in the current economic climate it is difficult to recruit and retain staff from overseas. We believe that with the current uncertainty around Brexit and the poor exchange rates, better economic factors in guest workers' own countries, and it is not the Minimum Wage alone affecting the attraction of Guernsey to guest workers but it is a combination of factors that is doing so – and I think this was something that was picked up in debate yesterday.

2935 I ask the Assembly to agree the changes to Minimum Wage and the offsets for 2020.  
Thank you.

**The Bailiff:** Any debate? Deputy de Lisle.

2940 **Deputy de Lisle:** Thank you, sir.

2945 While one wants to see an increase in the Minimum Wage, these seem comparatively lofty. It is above RPI, in other words; I think this is a 5% increase. When I look at comparisons with our nearest neighbour, why would we go beyond Jersey? From 1st October 2019, on page five, the Jersey Minimum Wage goes up to £8.02. That is from 1st October this year. All less than ours because ours is going up to £8.50. It really gives another competitive advantage to Jersey, with lower, more competitive wage rates, particularly for the service industries.

**Deputy Merrett:** A point of correction, sir.

2950 **The Bailiff:** Deputy Merrett.

**Deputy Merrett:** I believe Deputy de Lisle said £8.50. It is actually £8.10, sir.

2955 **Deputy de Lisle:** We are talking about the increases here, and not the current rate. The increase to £8.50 is from the beginning of next year.

Already staffing difficulties are closing the doors of service industries, including hospitality and retail businesses. These hikes have to be passed on to the consumer, with the effect of declining sales leading to closure in many cases.

2960 These, sir, are not office jobs in banking and finance. As one tries for parity, if you like, one kills the service industry if we are not careful. So the hiking of Minimum Wage is having a major effect also on the growing industry. The few vegetable and flower growers we have left are struggling at the current time. They are all going out, one after the other, and here we are wanting to encourage more home-grown local produce.

2965 It also could have an effect – I am talking the wage rates – on the dairy farming industry as we go forward; with the price of milk going up every year, the dairy farmers and their employees are going out one by one, as we know. Who is going to look after the land and keep it tidy as we have it?

2970 In reality, moving this function out of Economic Development into the Committee *for* Employment & Social Security may have presented a conflict of interest. The department provides top-up benefit payments to workers, with an interest in minimising payments. So my general point is that social policy is one thing, sir, but we have to be economically alert to what is going on outside on the ground. I am only making the point – and I am not making the point that the Minimum Wage should not go up, I am making the point we are going up way above inflation and it is causing problems out there in the service industry.

2975 Thank you, sir.

**The Bailiff:** Deputy Lester Queripel.

**Deputy Lester Queripel:** Sir, we are told in paragraph 2.2 in this report the following:

The Minimum Wage rates are not intended to reflect a 'living wage', particularly as different households have different family make-ups and different needs. There are several initiatives adopted by the Committee, such as a wide range of benefits, grants and social housing, which assist those with a low income.

2980 So, for anyone who is struggling to financially survive on a low income here in the Island, I  
urge them to contact the Social Security office and ask to speak to someone in the Income  
Support section and make an inquiry as to whether or not they qualify for Income Support. There  
is absolutely no need whatsoever to feel embarrassed about making that inquiry and they may be  
pleasantly surprised that they actually do qualify for Income Support.

2985 I have worked with dozens of Islanders who have asked me to help them with those inquiries  
and speak to staff at Social Security and Income Support over the years, and I can honestly say  
that at no time has any member of staff ever said or done anything to make those Islanders feel  
embarrassed in any way. They have always been 100% professional and, in fact, they go out of  
their way to be as helpful as possible.

2990 Having said there is no need for anyone to feel embarrassed about inquiring, it is easy for me  
to say that, because I have never been in that position. But having worked with staff and dozens  
of Islanders over the years, I can assure anyone struggling to survive on a low income that help is  
available and all it takes is a phone call. You will be treated in a civilised and dignified manner by  
staff at all times and your application will be treated as confidential at all times.

2995 Not only that, but if applicants do qualify for a benefit, in particular Income Support, there is  
also the possibility that the payment of the benefit will be backdated to such time as Income  
Support was introduced last year. The staff at Income Support have actually done that with several  
Islanders I have worked with over the last year or so.

3000 I make no apology whatsoever for costing ESS so much money these past few years. Having  
worked with staff at ESS so often these past few years, I have nothing but the utmost admiration  
and respect for them. I urge anyone on a low income, make that phone call to Social Security.

Thank you, sir.

**The Bailiff:** Deputy Gollop.

3005 **Deputy Gollop:** I meant to make the speech Deputy Lester Queripel has just made, yesterday,  
in relation to some of the issues raised by the Ferbrache Requête, because of course if anybody  
who has the perception they have lost out and they are financially struggling, they will get a  
sympathetic ear at ESS and the customer care and quality of service that Deputy Lester Queripel  
has reminded us of.

3010 Of course, you will see my signature at the bottom of this page, page 9, as one of the  
Members of the board who thoroughly support the policy letter. But that does not stop me  
having an independent view as well because of course I understand, I think, the place where  
Deputy de Lisle is coming from because he, amongst other many interests, actually walks the talk  
and has a retail or business or two in the Town and probably works well below the Minimum  
3015 Wage as well.

**The Bailiff:** Didn't declare an interest!

**Deputy Gollop:** I will not get into that one.

3020 There are challenges that the retail sector are facing, as well as the hospitality sector and one  
area that perhaps Economic Development and the wider States could look into is how it is that  
retailers who have a more traditional approach to the business of employing staff, younger staff  
that we are talking about today, older staff, renting premises, paying TRP, all the rest of it, have to



3025 compete with temporary traders who are here doing hawkers and shows and markets and cruise liners. That is a challenge that goes well beyond Minimum Wage, but I think it is an issue and it is part of the context.

But when Deputy de Lisle says Employment & Social Security have a conflict of interest, yes, I can understand the point he is making. I am sure –

Deputy Merrett wants to come in.

3030 **Deputy Merrett:** I thank Deputy Gollop for giving way.

Just on the matter of conflict of interest, I was a bit perplexed by Deputy de Lisle's comments, as I believe he may wish to consider declaring a conflict of interest himself, if he does indeed own retail stores in St Peter Port.

3035 **Deputy Gollop:** I do not know about that. I am not sure he employs anyone.

On conflict of interest, I am a member of the Chamber of the Commerce; but I am a lapsed member, I am not sure I paid my subs this year.

3040 The point I am making about Employment & Social Security is there is a technical conflict of interest in that when we narrowed down the number of States' committees and departments over several iterations, you do combine elements within that are subtly different.

3045 But I do not see a conflict of interest in a Committee that is trying to implement the States' corporate Resolution that Policy & Resources, Deputy St Pier particularly, have supported, which is alleviation of poverty, which is reduction of in-work poverty. The fact that many employees, hard-working families, to misquote former Prime Minister Gordon Brown, hard-working local families, are having to have top-ups because of the cost of living here, from Social Security, because their wages are so low, that is an issue we have to structurally deal with. (**A Member:** Hear, hear.) That is an issue.

3050 The other point is that Employment & Social Security will inevitably put a social perspective, or a welfare perspective on their role, up to a point. But the predecessor Committee, which Deputy de Lisle served on, Commerce & Employment, had it for many years and inevitably they diligently did their mandate as well, in a slightly different way I would argue, they were to some extent representing the business community and the employers and the strength of the economy and so were worried about widening, or narrowing the gap, more accurately, of pay.

3055 I think we have been pushed into this, not just through States' policy and the competitive labour market of today, but also because of the former Chancellor of the Exchequer's policy, the Rt Hon George Osborne, who talked about a £10 living wage, a £9 living wage is quoted here. The United Kingdom, surprisingly perhaps for a Conservative government, decided to raise the bar on this. They called it a living wage; we would say it is an inaccurate use of the term, but nevertheless, 3060 that was the point.

3065 We would all acknowledge, I think even the most conservative of us, that Guernsey and Jersey have higher living standards and, in many ways, the cost of living in Guernsey is even higher than that of Jersey because, for example, when I go to Jersey, I find coffees and fish and chips and things a little bit cheaper over there. Maybe I have got the wrong tastes. You cannot compare. We are trying a structured strategy.

The other point I would make is we have gone out to consultation; a consultation Deputy Fallaize particularly supported when he did sterling work on our Committee. We have a formula, we have extensive consultation, we listen to stakeholders from every element in the community and there has generally been consensus support for this.

3070 I would make one personal point. I did get an interesting opinion from an hotelier, who actually accepts the logic behind raising minimum wages and is obviously aware too of the wider exchange rate issues that Brexit has perhaps brought, that they would like to see a more integrated, holistic approach, between the Minimum Wage policies and the Treasury policies of Deputy St Pier's Policy & Resources Committee, whereby the – what is the word? – the tax 3075 allowance for lower earning workers, which in Guernsey is generally less generous than Jersey, or

the Isle of Man or the United Kingdom, should also be considered in conjunction with the Minimum Wage. That was their opinion. I thought it a valid one, without doing the sums, but I will support the policy letter today.

3080 **The Bailiff:** Deputy Fallaize.

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

Just briefly, I think Deputy de Lisle did not pay proper, or give proper weight to the issues of timing in his analysis. The reason that every time the proposed Minimum Wage rate comes to the States and it appears generous, in comparison to other comparable jurisdictions, is largely a factor of timing.

3085 It is because Guernsey changes its Minimum Wage, with effect from 1st January, and Jersey does not change its until 1st October. Over a period of about 18 months Jersey has increased its Minimum Wage by more than 50p per hour. If it applies the same sort of increase, with effect from 1st October 2020, which is the next time it would raise it, then it will go above ours, even above the rate that is now being proposed, and ours will trail theirs for a period of three or four months and then, because ours will go up again on 1st January, for the first two thirds of the following year, ours will probably be higher than theirs.

3090 So I do not think that there is a significant disparity, structurally, in the Minimum Wage between the two Islands, it is just that we are changing ours a few months ahead of when Jersey is changing theirs. So I do not think that Deputy de Lisle was making a valid comparison, but he is going to tell me I am wrong, I am think.

**Deputy de Lisle:** On a point of correction, if I may, and I hate to interrupt Members when they are making their speeches, but the fact is, on the 1st of next year, there will be quite a differential between the two. We will be on £8.50 and they will be on £8.02.

**Deputy Fallaize:** Yes, and then if Jersey raises theirs by 50p an hour, again, from 1st October 2020 until 31st December 2020, there will be a differential and Jersey will have a higher Minimum Wage rate than Guernsey will.

**Deputy de Lisle:** But you do not know that.

**Deputy Fallaize:** No, I do not know what Jersey is going to do, but if they do what they have done in previous years, that is a likely outcome. All I am saying is, in the UK it is £8.21 per hour, with effect from 1st April 2019, which means that at the present time the UK has a higher Minimum Wage rate, for those over the age of 25, than Guernsey does. It is just a factor of timing. So I think actually our Minimum Wage rate, even under these very sensible proposals, will still be very much in line with other comparable jurisdictions.

3115 Thank you, sir.

**The Bailiff:** Deputy Roffey.

**Deputy Roffey:** Sir, in the interests of trying to finish our business today, can I just remind Members that this Assembly approved a five-year medium-term programme to move to 60% or median earnings and various proposals just float on this and I can tell Deputy de Lisle, unless somebody brings back a proposal to rescind that, then next year's increase will also be a real terms increase, as will the one after that, because that is the decision of the States, and all ESS are doing is implementing it.

3125 As for the travails of the service industry, actually I think they have got far less to do with the Minimum Wage than the fact there is such a labour shortage, they need to pay probably considerably more than the Minimum Wage to attract staff. The difficulty is doing that whilst still

being able to be a viable going concern, because you have got to somehow make the income in order to make that a practical thing. I do not think we can be blamed here for actually causing that particular problem. The problem exists, but the root cause is very different.

**The Bailiff:** Deputy Merrett.

**Deputy Merrett:** Very brief, sir.

I am looking forward to when we can have the collation of data so that we actually know which industries are having to, if any, pay the Minimum Wage, so that we can see what else we can do to help with particular industries; because, again, we are rather lacking on that data, although I do appreciate that has been looked into.

Secondly, I am led to believe, through you, sir, I will ask the President, that actually members of our community can work at the age of 14 and 15, and clearly they are not included in this Minimum Wage that starts at 16 and 17. So I have a concern there and I hope that Deputy Le Clerc is able to give me some comfort. So that is my understanding but, obviously, I could be wrong, as I have been on occasion, apparently. Lastly, sir, I rise because I wish to request a recorded vote.

Thank you, sir.

**The Bailiff:** Deputy Le Clerc will reply.

**Deputy Le Clerc:** Thank you, sir.

I think Deputy Roffey has explained the situation to Deputy de Lisle and actually I would say that Guernsey would be at an advantage, because we can actually attract people to the Island. I think businesses are struggling to attract people to the Island, so paying a better Minimum Wage would actually bring more people to the Island.

I think it is, as Deputy Roffey has said and as was discussed yesterday, that there are multiple factors affecting the reasons why people are not coming to Guernsey at the moment and I think, probably, the majority of it is the exchange rate. That is what I am being told.

With regard to top up of benefits for workers, we do not look at the Minimum Wage, looking at what benefits will be paid. They are completely separate. Again Deputy Roffey has highlighted, we agreed in this Assembly two years ago that we would do 60% of median earnings. Actually it has worked out slightly higher. If you look at page seven, what we were predicting has worked out slightly higher because median earnings are slightly higher so the 60% has been slightly higher. But we agreed the plan and that is what we adhered to and we have consulted with a minimum amount of organisations and the feedback, as I said in my opening speech, has been fairly positive.

I thank Deputy Queripel for his kind words about ESS and what we do and how we treat people down there and we always do our best to ensure that people receive what they are entitled to. With regard to the living wage, again I have said in this Assembly, I think it is paragraph 7.3, it talks about the UK £9 per hour, but in the past we have said in Guernsey it would probably need to be at least £3 an hour higher than that and I do not think in the current financial climate, and the way the economy is at the moment, that we could come to this Assembly and put forward any sort of living wage. I think what we have tried to be is realistic.

Deputy Fallaize talked about Jersey and answered Deputy de Lisle's questions, but if one of the reasons why people are going to Jersey at the moment ... it may be because they have got better tax allowances than we have got, so actually they have got a better take-home pay than they would have here in Guernsey, because I think our tax allowance is slightly lower. Deputy Brehaut has just said, 'But then they have got GST.' So I do not think you can really compare one jurisdiction to another on many of these areas.

Deputy Merrett, we do not legislate for young people under the age of 16. I think this is predominantly about a working wage and we know that there are some people that leave school at 16. I do think there are some employers that now are reluctant to employ young people.

I have been approached sometimes by young people that have said they are not receiving the Minimum Wage and I know that I have asked our employment relations team to contact those employers to say that we felt that they should at least be paying the Minimum Wage. But it is not in legislation, but if we hear about those occasions, we do something about it, I will conclude there and I ask people to agree the proposals in this paper.

Thank you.

**The Bailiff:** We will go to the vote, on a recorded vote. There is a single Proposition.

*There was a recorded vote.*

*Carried – Pour 31, Contre 0, Ne vote pas 0, Absent 9*

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

**The Bailiff:** The voting was 31 in favour, with none against. I declare the Proposition carried.

**STATES' TRADING SUPERVISORY BOARD**

**XVII. Review of a Potential Guernsey Airport Runway Extension –  
Propositions carried**

*The States are asked to decide:*

*Whether, after consideration of the policy letter entitled 'Review of a Potential Guernsey Airport Runway Extension' of the States' Trading Supervisory Board dated 6th August 2019, they are of the opinion:*

- 1. To approve that no further work is carried out to assess the option to extend the airport useable runway within the current airport boundary by reducing the Runway End Safety Area, at the eastern end of the runway, in accordance with the Director of Civil Aviation's formal advice.*
- 2. To rescind Resolutions 1 and 2 of the States, following a Requête 2019/65 at Article XV, of 26th October 2018 in relation to investigating a potential solution to extend the operational length of the runway and providing the States with estimates for commissioning all the requirements*

**The Greffier:** Article XVII, the States' Trading Supervisory Board – review of a potential Guernsey Airport runway extension.

**The Bailiff:** Deputy Ferbrache.

3195

**Deputy Ferbrache:** Sir, I am going to be very brief. I am only going to take the Members – because I am sure they have read the Report – to paragraph 7.2, which reads:

The General Manager, Ports (as the Accountable Manager for Guernsey Airport) endorses the view of the DCA.

The DCA is the Director of Civil Aviation.

The DCA did not support the findings of the report –

That is the Jacobs Report.

– as he did not believe he should sanction any erosion in available safety margins for purely commercial reasons. He states in his letter dated 8th July 2019 that: "... as I am responsible for air safety, unless the ICAO –

3200 That is the international body.

– recommended requirements are met or unless there is very good reason, supported by a compelling safety argument, that they cannot be met; I don't think there is any case to allow this project ...

So therefore I ask the States to approve the two Resolutions.

**The Bailiff:** Any debate? Deputy Tindall.

3205

**Deputy Tindall:** My computer is taking its time to open. Ah, here we go.

Basically what I wish to clarify was a couple of points that I raised when the Requête was debated. The primary thing was whether or not this Requête was intended to be instead of what was recommended by PwC, which was to look at the extension of the runway within the Airport boundary.

3210

Because, from my perspective, we were privy to conversations which were helpful and I wanted to make sure that STSB were also privy to those conversations and I would like to know from the President whether or not those conversations were had and, more to the point, this is very specific, in that it is withdrawing that Resolution with regard to the RESAs. But in one particular sentence, it says:

In accordance with its mandate., the States' Trading Supervisory Board has been directed by the States to report back on the outcomes following an investigation into the potential to extend the runway within existing airport boundaries.

3215 I just want to clarify, because whilst we have had a direction from the States on the previous report that Economic Development brought to the States, I just want to be absolutely sure we are not tying our hands in respect of what I consider a potential option, which is very reasonably priced and could be sensible, because something which, again, as I say, I raised at the Requête debate and it seems to have kept being lost in translation, that there seemed to be an understanding there was either an extension of 1,700 m-1,800 m, 2,000 m, or the RESA, when  
3220 actually there was this other option that just seems to get lost.

I just really would like the President's view on what exactly we are saying is definitely off the table and perhaps whether or not, indeed, there were other conversations that I could not find in the Report, that actually talked about these other potentials and if there was anything he could  
3225 report back in that regard during his investigations, or rather his board's investigations.

I appreciate that the Assembly left it in the air, if you will excuse the pun, but it seems to me, having certainly been someone who was a naysayer at the beginning of this term, on extensions to the runway, having seen these possibilities, I just feel it would be useful to have the President's views.

3230 Thank you, sir.

**The Bailiff:** Deputy Langlois.

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

3235 Deputy Kuttelwascher, whose successful Requête led to this policy letter, is indisputably number one in this Assembly when it comes to airport runways. However, I am number two, and therefore, to paraphrase the 1960's Avis Car Rental advertisements, I try harder! (*Laughter*)

I was only one of only two States' Members who voted against the Requête's Propositions, simply because I knew the investigation would almost certainly be a waste of time and, as it  
3240 turned out, money. I would like to juxtapose the first two key conclusions of this policy letter, which was based on Jacobs' 34-page report, with extracts from my short speech during the debate, as recorded by *Hansard*. The policy letter says of option one, the simplest, not EMAS-enhanced option:

Option 1 proposed reducing the RESA to 90m ... This option was the least preferred option, due to the probability of an uncontained overrun being greater than that on the existing 198m RESA and therefore not acceptable in terms of safety guidelines.

I had said:

Deputy Kuttelwascher is now saying we can revert back to what we had before we spent £80 million – that is a 90m RESA – and it will be perfectly acceptable. Well it is not going to be. It is inevitable the RESA would have to be EMAS-enhanced,

3245 The policy letter says of option two, the only one that got a green risk assessment:

Option 2 proposed using an EMAS installation, creating a 120m length EMAS bed RESA ... This option is potentially the best solution ... However ... This provides a total useable runway length of only 1,541m rather than the desired 1,570m extension.

In other words, we would be about 30 m short. In my speech I had said:

An EMAS-enhanced RESA is a 60-metre runway strip and a 120-metre EMAS bed, which is 180m in total and, according to Deputy Kuttelwascher's own figures, we have only got 150 metres. That is we are 30 metres short.

Option three attempted to compensate for the missing 30 m by reducing the EMAS bid by that amount, but it got short shrift and it was dismissed as being only marginally better than option

one. There is obviously a strong element of 'I told you so' in what I have said so far! (*Laughter*)  
3250 Hopefully very strong.

But that is not my primary motivation. I am using this debate as a hook for an attempt to convince States' Members, including Deputy Tindall, and candidates in the forthcoming election to question and drop the popular 'extend the runway and all will be well' wishful thinking. Instead, we should be coming to terms with the reality that Guernsey is a turbo-prop-sized Island, which  
3255 can accommodate jets with similar landing and take-off characteristics, such as the late, lamented BAe 146 and currently the Embraer 195.

Only once we acknowledge that truth will we be able to put serious thought into how much air connectivity we can aspire to and how much we are willing to pay for it.

Thank you. I will be supporting the Propositions.

3260 **The Bailiff:** Deputy de Lisle.

**Deputy de Lisle:** Sir, I believe that we should be utilising technology wherever we can, particularly in an Island where our resources, particularly land and capital, are limited and EMAS  
3265 does give us that particular opportunity. It is that that is, of course, highlighted in this Report, because many would believe that EMAS would solve the problem and provide us with those advantages that would provide landing of larger jet aircraft.

EMAS actually has superior performance and is more consistent than a standard grass RESA. Not only do they stop the aircraft in any weather conditions, including torrential rain, snow and ice, but from the 15 arrests that have been successfully made already through EMAS, there have  
3270 been only some very minor injuries and no fatalities, plus the fact that all aircraft have sustained very little or no damage and all have gone back into service within a few days.

Now, sir, if you recall, the States extended the runway tarmac west by 120 m in 2009, when taking land also to the west of 240 m for the RESA in the west, during the Guernsey Airport pavements project. Now this enabled the 90 m RESA on the eastern end to be increased to a  
3275 198 m RESA. That has been deemed compliant by the CAA. Now it is all about using that initiative, which cost us £80 million or whatever, in the airport renewal. It is all about using that initiative to the Island's advantage and using the 107 m of the starter strip paved RESA for extending the declared landing distance to 1,570 m, leaving a 90 m RESA.

Jacobs conducted a RESA risk review to increase the declared landing distance to 1,570 m. Now Jacobs concluded that their option two, a 120 m EMAS RESA could be recommended and would be compliant with a stance taken by the UK CAA. Option three, a 90 m EMAS, would be a lower cost than the 120 m EMAS option and provide the 180 m increase in declared distance. However, according to them, not compliant with the view taken by the UK CAA.

3285 Now I have been in contact with the leading aircraft arresting systems company in the world, with over 5,000 military arresting systems in operation, through them, around the globe, plus over 115 EMAS beds installed by them, everywhere from New York's JFK Airport through to more remote airports.

Under the International Civil Aviation Organisation aerodrome reference code, Guernsey Airport's runway is classified as a 3C runway. The recommended length of a RESA for this category of runway is currently 240 m, with an additional runway strip of 60 m. The mandated minimum RESA is 90 m.

Now the company that I was talking about carried out a preliminary, what I call a desktop, modelling to definitively outline the full performance of a suitable EMAS bed. They are into this  
3295 business; they know it backwards. They have constructed 115 of these beds. That suitable EMAS bed was for the 09 overrun RESA at Guernsey Airport.

Now, based on the sketch 2.7, that is option three in the Jacobs Report, they maintain currently that Guernsey Airport should be able to get the 107 m runway extension and still have room for the 60 m strip, plus the 90 m for the EMAS bed. Now they also considered the DCA's letter, which  
3300 gave six reasons as to why he could not support the idea. The industry refutes all six.

First of all, he said, and I look up the statements that were made by the DCA, there is no safety gain, the proposals concentrate purely on commercial objectives. Well, installing an EMAS system would improve the performance from a 90 m RESA, to the equivalent of a 240 m RESA on the eastern end. That is a very important point and that is allowed through the CAA.

3305 Secondly, he says the regulator should not sanction erosion to safety margins. An EMAS would improve the set of safety margins, not erode it. There is no erosion of safety with the reduction of the RESA to 90 m, with an EMAS bed installed. What you have got then is 240 m RESA on the eastern end.

3310 His third point was the project does not align with the Department of Transport's policy in the UK and its standard practices. Well, use of an EMAS to improve and enhance a RESA is approved by the CAA in CAP168. This statement is implying that going with a reduced-length RESA, with an EMAS bed is not in line with ICAO or EASA standards.

3315 His fourth point was that the idea of using EMAS as an alternative safety system would still be a step down. In the UK it is only used when a 240 m RESA cannot be achieved. Again, EMAS would improve the safety margins from a 90 m RESA to the equivalent of a 240 m RESA. Then his fifth, I think, was the idea of using EMAS as an alternative safety system would still be a step down. Industry would say, far from being a step down in safety, it would be an improvement and would be in accordance with the CAP168 sections 3.76, 3.77 and 3.78. They would argue it is misreading, really, the CAA regulations.

3320 Then his final one was Guernsey does not really qualify for using EMAS, because of the location of the Airport. The industry would say that, to the best of their knowledge, there are no qualification criteria for using EMAS. There is no mention of qualification in CAP168, in the FAA order 5200 or in ICAO annex 40. It has been utilised in almost every imaginable location.

3325 Sir, I would agree with Deputy Tindall, I think that it would be folly for us to throw away further investigation, if you like, of this particular option. We could do other things. We could look at 1,700 m outside the perimeter of the Airport boundary but I think, if we do go in that direction, then we should also hold this as a potential in any investigation that way, as well, within the boundary, and not throw it out.

3330 Here we have my argument that the financial benefits of being able to accommodate the A320 and the Boeing 737 within the existing perimeter of the Airport makes continuing study well worthwhile, especially as the Jacobs Report and the industry consulted indicate that this is a possibility and should be taken further.

3335 We owe it to the work and the £80 million expenditure already on the runway, in the past terms, that was done, and the spending that was made, to take full advantage of that expenditure. At the moment we are not doing that. We put in the extended tarmac, the 120 m. We got ourselves a RESA extension on the east end to 197 m from 90 m, but in reality we have not used that in order to bring larger aircraft in.

3340 Now EMAS, because we have not got EMAS at the moment, but EMAS can do that and I would want the States to continue and keep this particular option open so that it can, actually, be reviewed further. That particular company that has been installing EMAS all over the world, with many projects, would be able to assist in terms of providing some more detail, with regard to the option and at not great cost because, as they say, a lot of the work has already been done.

Thank you, sir.

3345 **The Bailiff:** Deputy Kuttelwascher.

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

3350 I will make numerous references to the policy letter, if people want to put it up on their personal digital advisors, or whatever, but so far all I can say is a little knowledge is a very dangerous thing and I could challenge everything that has been said by everybody so far, including the President of STSB, and I will say why and I will explain why.

First of all, in the executive summary, section 1.3 it said basically that one:



... should not be sanctioning any erosion in available safety margins for purely commercial reasons ...

3355 I could not agree more and I never asked for that. The Requête never asked for it. The Requête was all about doing a risk assessment in various scenarios, especially if one could use an EMAS bed and I presume most people know what that is by now – engineered material and arrestor system. In section 2.2 they mention 108 m and 198 m. In my Requête I had 107 m and 197 m. All I can say is at the time I wrote the Requête I looked at the Airport data available on airport charts and they have knocked a metre off it.

3360 So I presume they bought a new ruler and measured the distances more accurately. Jacobs used Google to measure it, so we will not worry about that metre, we will stick with 108 m and 198 m, but that was not in the Requête, the metre that is, it is just one of those things. When you are measuring long distances it is not that easy to get it spot on.

3365 As I go through the Jacobs Report, I come to some rather significant things. If we look at page five, option two, and I will refer Members to the table later on. That option two is actually safer than what we have now. So if you are really interested in safety, think, 'Yes that is a good idea, why do we not do that just to enhance the safety of the Airport?' What is interesting about that is it would give you an extension of 78 m. It would not give you quite the 107 m or 108 m that I wanted, it would be 30 m short. Now, at the end of that paragraph:

As such, this marginal increase in runway length was unlikely to satisfy the rationale for the extension.

3370 Nobody checked it out. I did. But I will not tell you the answer. It has operational value, even the extra 78 m. If we look at section 5.2, it says:

Engineering Material Arresting Systems (EMAS) may be installed at UK licensed aerodromes as an alternative ...

– to a 240 m RESA. So it is allowed.

Section 5.3 supports option two, which was put forward by Jacobs. I will skip through this fairly rapidly, because I intend to support both the Propositions, because it allows for a way forward. Once again, at the top of page seven, it says:

... should not be sanctioning any erosion in available safety margins ...

3375 Option two would have bettered what we have now. So it would have increased the safety margin. I do not know, there is a contradiction. At this point, I want to say I did try and get some clarification. When I saw the initial draft report I wrote some notes and I sent them to everybody, political Members in our Committee and quite a few members of staff. I did not include the DCL at that point. Now I had no response or comment back, so I then did a screenshot, sent it to the  
3380 DCA, and he did not reply or comment to it. So I found I could not get any response to what were my questions.

3385 I then made some further questions to the Airport Director, four actually. None were replied to, except I got half an answer to one of them at a meeting, when I confronted them, and said, 'Can I have an answer?' I got half an answer. But that is by the way. I did try to get clarification. So I am basically basing everything on what is in this Report.

It says in section 7.1, 1,541 m, which is what would be allowed under option two:

... would not allow the economic benefits dependent on larger aircraft and payloads landing at Guernsey ... The economic benefits would be further weakened when taking into account the cost of installing and maintaining EMAS.

3390 Here we enter value for money, and this is why I am supporting what is in the Propositions, because I do not think it would be value for money to do what needs to be done to gain 78 m. Now I did try and get a definition of value for money from P&R a while back, if you remember. I never did quite get it, so I am going to give you one. Value for money is basically benefit over cost. It is that simple. Now, if you could measure the benefit over the lifespan of whatever they do, let us call it X, and the cost is Y, the value for money is X over Y.

Now if you could double the benefit for a 10% increase in costs, the value for money would be 2X over 1.1Y and that is far greater a benefit, as far as value for money goes, than the original. So spending 10% extra, if it doubles the benefit, the value for money from it is a great idea. So while I am saying the value for money of this proposal is poor, it does open the door to another proposal where the value for money would be much greater for a proportional increase in cost, which we at this present time do not know.

In 7.2, the General Manager of Ports made a statement and I did point it out, and I do not mind saying this, I know committee meetings are confidential but I do not consider what I said was confidential, I just disagreed with it. That is fine, but the General Manager can state his opinion in the policy letter. That is fine, but I did point out I disagreed with it and I will tell you why.

I notice my signature appears at the end. That is because I support the Propositions. But unfortunately I do not support all of the content of the policy letter and we vote on the Propositions. If we then look at the letter from the DCA, he referred to the development proposal. Well, it never really was a proposal, it was a suggestion, and to look at risk assessments of various possible options: what is it like with a 90 m RESA with no EMAS, what is it like with an EMAS, what other possibilities are there? If you remember there were a couple of Propositions that, if you needed EMAS and something then you would have to work out what the cost of all this would be.

Again in a second bullet point, he is saying he will not sanction erosion of safety. I never asked for that. It was never asked for. Then, in the last bullet point, this is extraordinary, he says:

The proposed mitigation of EMAS is not used in the spirit for which it was intended.

– which was interesting.

The Federal Aviation Administration have pioneered the guidance on EMAS, and it clearly states that the main purpose of EMAS is to mitigate against overruns only when it is not practicable to achieve the full standard RESA. It then gives the following reasons where it is not practicable, none of which are valid reasons for the use of EMAS here in Guernsey:

Well I completely disagree with two of them. He is saying basically there are no obstacles such as bodies of water, highways, railroads, or populated areas. At the end of the airport boundary, by the chain fence, is a road. So that is a reason why you could use EMAS because you have got a road there. Do you want to close the road or do you want to fill it in, do you want to go over it?

There is a precedent been set, because I do not know if Members know, those who were around 10 years ago, the EMAS to the west has got a length of 240 m, but not for the full width. It is chopped off on the south-west corner, because of – guess what? – a road. But the DCA just accepted it and there was no mitigation required; did not even want to say, ‘Oh, no, you have lost a bit there, you will have to put some EMAS in?’ No, it was just accepted, so a road is an obstruction which is considered as a valid reason to consider EMAS.

The other one is a severe drop-off in trade. I tell you, if an aeroplane came off the runway at the end of the RESA, it will end up in La Villiaze Road and I would hate to think what the consequences were, so we have two actual reasons why EMAS could be considered, if you wanted to extend any usage or commission, part of the runway, which we already have, so I just find that extraordinary.

Again, I could not get a response to try and clarify what the situation was and the only conclusion you can come to is that the DCA will not accept the use of EMAS to extend or recommission the runway length. That is obvious from what he has said.

It is interesting that we need to look at a couple of the Jacobs tables, because this is really the main issue of it. One of the things it said in section 2.6, there has previously been no statistical analysis of the risks associated with our runway, the over-run areas, the EMAS or anything. It has never happened. It did not even happen when we were extending the runway. It was quantitatively approved, but never qualitatively.

This is the first time we have had this done and I remember asking the representative of Jacobs, 'Do you think it was worthwhile asking the question?' They said, 'Oh, yes, and I was surprised they were not asked before.' Anyhow we have finally got some specific, scientifically based statistical information based on models which are accepted all over the world.

Option two refers to, it asks for certifications, specifications, CS, ADR, DSN, Issue 4, and it says if you put in 120 m EMAS within the current airport boundary, you get the extra 78 m and it would satisfy that specification. The DCA used exactly the same reference to say why it would not. So the whole thing is challengeable, I think, but I could not get a response. I wanted to challenge, but I could not get a response.

So option two is definitely an option. It would increase the runway length by 78 m. I do not think it would represent good value for money because it would mean, really, at the present time the DCA would not accept it. So if you wanted to bring in the extra runway, you might as well go for the whole 120 m, instead of mucking around with 90 m and 60 m. You would then have to go over La Villiaze Road for the RESA.

If you did that and you wanted to use the 14 ... the whole 1,583 m then would be available, you would need 120 m-plus for that. You need to go out a further 162 m from the current boundary over the road. Poor value for money. However, if you thought, if you are going to do that, why not just put in 1,700 m of runway up to the fence and you would have to go an extra 117 m. For a 1,700 m runway, you would need another 117 m of runway and safety. There is enough land and you can accommodate it and it can all be green, it can all be grass, and it can have a five-degree slope.

Now, the other interesting thing is if you were to utilise an EMAS test at the other side, instead of that, you could knock 120 m off that. Because actually I do not quite agree with Deputy de Lisle – a 240 m RESA can be substituted by 120 m EMAS bed, not a 90 m. So you could actually reduce the 279 m from the current airport boundary out over the road and into the valley to 159 m. So it is possible. It is certainly possible under the IDP, you could decide whether to go over the road with the tunnel, or you could fill it in or whatever. But it is certainly possible and that would represent really good value for money.

Going back a number of years, I had a quote for what it would cost to lay 1,700 m of tarmac, currently. It would not be a runway, it would be in the RESA bed but it would not be able to be commissioned. The price of that was less than £4 million. It was £3.6 million and £0.4 million contingency and I gather it would not be much different now. However, then we had the raw materials, we had the equipment, Lagan were there, we did not do it. There was an attempt to do it. It failed, it cost us a packet. All the surplus material was sold off rather cheaply, everything went and we lost the opportunity. Another one of the Government blunders. There was a series of those, which I am making note of for my memoirs!

So I support the current position. We do not want to continue with what we were tasked to do, in relation to my Requête, and that was, just to put Deputy Tindall at ease, to look at 1,570 m, period. It does not mean to say you cannot look at anything else. When we use words like, 'do not look at a runway extension,' my Requête only referred to a particular part. It was one part of the consultation document which has now gone, or a consultant document that we had before us. There were other things at 1,700 m, 1,850 m and doing nothing.

There is enough technical knowledge out there, on the Island, available for free, that can actually show that the 1,700 m runway for Guernsey is the sweet option and it is possible. Whether we want to bother looking at it or not is another question and I know ... I see Deputy Langlois is nodding his head. When he stood up and made his little speech, I thought, 'Gah, he reminded me of Boris Johnson last night!' The absolute defiance. Whereas he is saying he hopes people go into the next election saying they do not want to do anything, I would suggest we do the opposite.

I remember certainly what the electorate was saying at the time and that was of great interest. I get on well with the guy, but I think he is just wrong. In the immortal words of Deputy Ferbrache,

'He is a politician, he is entitled to be wrong.' So am I and I can admit, I can tell you a number of times I have been quite wrong.

3490 But that does not matter. I feel that there is enough evidence to progress this, but whether one does it or not, that is another step. But for now, we will bury the 1,570 m, we will bury the 120 m EMAS and get in the 78 m, because our DCA does not like EMAS. No point in arguing about that. If you wanted to commission that bit of runway now, you would have to go over the road to extend the Runway End Safety Area, but that is poor value for money, so let us go for the better  
3495 value for money and possibly look at going further. But for now we will bury this particular request of the Requête, support the Propositions, because I will be supporting them, but please, that is not the end of the story. (**Several Members:** Ahh!) Definitely not the end of the story.

Thank you, sir.

3500 **The Bailiff:** Deputy Ferbrache will reply.

**Deputy Ferbrache:** Sir, I am grateful for all the speakers, particularly Deputies de Lisle and Kuttelwascher, obviously. But I am not going to go into whether they were right or they were wrong, because the Propositions are very clear. Deputy Langlois is entitled to his own view and if  
3505 he realistically thinks that runway extensions, greater or lesser, are not going to be an election issue next time, well then I think he is not being realistic.

I fully accept that, if the make-up of the States is broadly along the lines of this particular States, after the election in June, everybody will be wasting their time. It will be wasting their time bringing it forward, because unless the States is more commercial going forward, nothing will  
3510 happen and Guernsey will go backwards. But that is not the purpose of this policy letter.

Deputy Tindall asked the question, 'Did you look at other options?' The answer is really no. Because it is explained by Deputy Kuttelwascher and in paragraphs 1.1 and 1.2. The reasons are various. Look at the chronology. Firstly, you had the Kuttelwascher Requête of October of last year, which said look into this specific option. Then you had a debate about whether there was  
3515 money for a business case for a wider extension, a 1,700 m, 1,800 m extension. That failed by a long way.

Then we had the Report, you have seen the Report from Jacobs, you have seen the Director of Civil Aviation's letter and you come to the conclusion, and I have come to the conclusion, reluctantly, that there is nothing more that can be done during the lifetime of this particular  
3520 States. So therefore sometimes you have got to accept, through gritted teeth, and realise you have got democratic, intelligent, elected people, who could be wrong, as they are here, and then you have just got to move forward and do what you can do today.

Hopefully, with a more commercial States, post 1st July 2020, we might be able to do something for the benefit of Guernsey. On the basis of this, though, I ask you to adopt the  
3525 following Propositions.

**The Bailiff:** I put both Propositions to you together. Those in favour; those against.

*Some Members voted Pour; others voted Contre.*

**Deputy Lester Queripel:** I was going to ask for a recorded vote, sir.

3530 **The Bailiff:** Okay. I think the vote had already been called. I have not got the Rule in front of me, it is only if it is close that you can call.

**Deputy de Lisle:** Sir, I think you have been asked for a recorded vote.

3535 **The Bailiff:** But after the vote had been called.

**Deputy Ferbrache:** Upon reflection it is probably quicker to have one.

**The Bailiff:** We will have a recorded vote, then.

3540

**Deputy Ferbrache:** I agree with Deputy Langlois, I do not think we are going to be surprised by the result.

**The Bailiff:** Perhaps some will change their minds. Who knows? (*Laughter*)

3545

*There was a recorded vote.*

*Carried – Pour 28, Contre 2, Ne vote pas 0, Absent 10*

**POUR**

Deputy Brouard  
Deputy Langlois  
Deputy Soulsby  
Deputy de Sausmarez  
Deputy Roffey  
Deputy Prow  
Alderney Rep. Roberts  
Alderney Rep. Snowdon  
Deputy Ferbrache  
Deputy Kuttelwascher  
Deputy Tindall  
Deputy Brehaut  
Deputy Parkinson  
Deputy Lester Queripel  
Deputy Le Clerc  
Deputy Leadbeater  
Deputy Mooney  
Deputy Le Pelley  
Deputy Merrett  
Deputy St Pier  
Deputy Stephens  
Deputy Fallaize  
Deputy Lowe  
Deputy Hansmann Rouxel  
Deputy Graham  
Deputy Paint  
Deputy Dorey  
Deputy Le Tocq

**CONTRE**

Deputy de Lisle  
Deputy Gollop

**NE VOTE PAS**

None

**ABSENT**

Deputy Dudley-Owen  
Deputy McSwiggan  
Deputy Oliver  
Deputy Tooley  
Deputy Trott  
Deputy Meerveld  
Deputy Inder  
Deputy Laurie Queripel  
Deputy Smithies  
Deputy Green

**The Bailiff:** The voting was 28 in favour, with two against. I declare the Propositions carried.

**STATES' ASSEMBLY AND CONSTITUTION COMMITTEE**

**XVIII. Dates of States' Meetings –  
1st September 2020 to 31st August 2021 –  
Propositions carried**

*Article XVIII.*

*The States are asked to decide whether, after consideration of the policy letter entitled "Dates of States' Meetings - 1st September 2020 to 31st August 2021" dated 12th August 2019, they are of the opinion:*

*1. To agree:*

*(a) that the dates on which States' Meetings shall be convened in the period from the 1st September, 2020 to the 31st August, 2021 shall be as follows, and to update Schedule 1 of the Rules of Procedure of the States of Deliberation and their Committees accordingly:*

**2020**

2<sup>nd</sup> September

30<sup>th</sup> September

21<sup>st</sup> October

3<sup>rd</sup> November                      Budget Meeting & Policy Letter of the Committee for  
Employment & Social Security on uprating of noncontributory  
benefits

25<sup>th</sup> November

15<sup>th</sup> December                      P&R Plan Meeting

16<sup>th</sup> December

**2021**

27<sup>th</sup> January

24<sup>th</sup> February

24<sup>th</sup> March

28<sup>th</sup> April

26<sup>th</sup> May

15<sup>th</sup> June                              P&R Plan (Phase 2) & Accounts

7<sup>th</sup> July

*(b) in respect of the period beginning on the 1st July 2020 until 31st August 2021, that statements under the provisions of Rules 10(4) and (5) shall be made by the Presidents and, in the case of the States of Alderney, the nominated Alderney Representative according to the following rota, and to update Schedule 1a of the Rules of Procedure of the States of Deliberation and their Committees accordingly:*

**States' Meeting 2020      Committee/s/States of Alderney to make Statement**

22<sup>nd</sup> July                              • Policy & Resources Committee

2 <sup>nd</sup> September	• Committee <i>for</i> Economic Development
30 <sup>th</sup> September	• Development & Planning Authority Committee <i>for</i> • Education, Sport & Culture
21 <sup>st</sup> October	• Committee <i>for</i> Home Affairs • Overseas Aid & Development Commission
3 <sup>rd</sup> November	N/A Special Meeting
25 <sup>th</sup> November	• Committee <i>for the</i> Environment & Infrastructure • Committee <i>for</i> Health & Social Care
15 <sup>th</sup> December	N/A Special Meeting
16 <sup>th</sup> December	• Committee <i>for</i> Employment & Social Security The • States of Alderney

### **States' Meeting 2021**

27 <sup>th</sup> January	• Scrutiny Management Committee • States' Assembly & Constitution Committee
24 <sup>th</sup> February	• Policy & Resources Committee
24 <sup>th</sup> March	• Committee <i>for</i> Economic Development Committee • <i>for</i> Education, Sport & Culture
28 <sup>th</sup> April	• Committee <i>for the</i> Environment & Infrastructure States' • Trading Supervisory Board
26 <sup>th</sup> May	• Committee <i>for</i> Employment & Social Security • Transport Licensing Authority
15 <sup>th</sup> June	N/A Special Meeting
7 <sup>th</sup> July	• Committee <i>for</i> Health & Social Care • Committee <i>for</i> Home Affairs

2. To agree that the Committee for Education, Sport & Culture will determine and publish the calendar for the period from September 2021 to July 2024 for all States Schools (including voluntary schools) by the end of January 2020.

3. To agree that Rule 1.(1) of the Rules of Procedure of the States of Deliberation and their Committees should be amended with immediate effect to read as follows:

1. (1) The States' Assembly & Constitution Committee shall submit, in the six months prior to a General Election, a policy letter setting out the dates on which it proposes that States' Meetings should be convened during the States' term immediately following that General Election, having first taken into account the dates of school terms and any other information which it considers relevant. The policy letter referred to above shall also include proposals setting out the Committee or Committees whose President or Presidents will be obliged to make statements, and for the States of Alderney statement to be made by one of the Alderney Representatives, under the provisions of Rules 10(4) and (5) at each ordinary Meeting during the said period.

**The Greffier:** Article XVIII, States' Assembly and Constitution Committee – the dates of States' meetings, 1st September 2020 to 31st August 2021.

**The Bailiff:** In the absence of Deputy Inder, I assume that debate will be opened by the Vice-President Deputy Merrett.

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

In a bid to lighten the atmosphere and mood in here, I just wish to quote from a note that I have been passed by Deputy Ferbrache, because I want this on public record, because he says:

I pass this to you as our beloved and much-respected Vice-President ...

Now where flattery will not get him anywhere, I will frame it, sir. What Deputy Ferbrache has passed to me in the absence of Deputy Inder, President Inder in this regard, I have never had a speech written for me in my life, but I do feel duty bound to read it out because I have so and I would like to do so.

Basically, sir, this is brief, thank goodness, basically the Rules of Procedure of the States of Deliberation and their committees require SACC to bring a policy letter to the States, each September, setting out the States' meeting dates, from the period 1st September in the following year, to 31st August of the year after that and the rota for the general update statements at these meetings.

The meeting dates proposed by the Committee and the rota of statements are set out in section three of this policy letter. The Committee is suggesting a change of approach to setting meeting dates in the future. It is proposing changing Rule 1, to enable the Committee to propose dates for the following political term, prior to general election.

The benefits of this proposal are set out in section four of this Report. The Committee is grateful to the Committee for Education, Sport & Culture for agreeing to provide the school dates up to 2024 to facilitate this. If the States approves the proposal, a further policy letter will follow in early 2020, setting out the remainder of the proposed States' meeting dates for the 2020-24 States' term. We ask Members to support the Propositions as drafted.

Thank you, sir.

**The Bailiff:** Deputy Tindall.

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

I thank Deputy Merrett for confirming one point, which was the agreement of the Committee for Education, Sport & Culture. I personally did not feel that that was quite clear from the Report, but I am grateful for that. I do find it a little bit awkward, though, approving dates four years in advance. I do not see any reason why we need to change year-by-year; I thought that was quite appropriate, we had an opportunity for the new Members to settle in and work out the best way in which to deal with this. For me, I think that is too far ahead. I much prefer to do things like that further ahead, one-three years for the Budget, not for dates.

Thank you, sir.

**The Bailiff:** Deputy de Lisle.

**Deputy de Lisle:** Thank you, sir.

Having proposed the amendment in 2018-19, to return to meetings to be scheduled at the end of the month, as was customary, I am very supportive of the conclusions of the SACC that suggest before us a schedule of meetings based largely on an end of the month schedule. This is preferred by the Douzaines, who of course have their meetings on the Monday before the end of the month, before the Wednesday of these States' meetings, and discussion there can involve the



Douzaines, which is very useful and allows debate before the States' meeting. I also concur with the advantages held to providing in future the dates of States' meetings for the whole term.

Thank you, sir.

3600

**The Bailiff:** Deputy Merrett will reply.

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

I am glad it is a brief debate, because I think we all would like to try to conclude business, if we can, today. The benefits of why the Committee has made that Proposition that Deputy Tindall referred to, on page nine, 4.5, I will briefly read them out because I am assuming that all Members have read the benefits.

The benefits, for example, are that teachers and parents would have the benefit of being able to plan ahead in regard of school holidays, with more confidence; respective candidates plus Deputies will know the dates of States' meetings in advance for the political term, States' committees will be able to schedule meetings for the whole term, if they wish to, rather than annually, elected Members will be able to plan ahead with more confidence, especially regarding conference attendances – if they are able to have a holiday that would be fantastic; and the Douzaines would have advance notification, as alluded to by Deputy de Lisle.

Further, sir, it will reduce the number of policy letters that will be needed to be debated in each term. So there are benefits, but obviously it is up to the elected Members in this Assembly today to decide if they agree with them. I have not heard anything convincing to negate that, quite frankly, so I will certainly be supporting them, but I would suggest and I hope we can go to the vote *au voix*, but obviously that depends on Members if they wish to have a recorded vote, sir.

3620

**The Bailiff:** Does anyone want a separate vote on Proposition 3? Yes. So we will take 1 and 2 together and then we will take 3. I put to you Propositions 1 and 2. Those in favour; those against.

*Members voted Pour.*

**The Bailiff:** I declare those carried. Proposition 3, those in favour; those against.

*Some Members voted Pour; others voted Contre.*

**The Bailiff:** We will have a recorded vote, just to be certain. A recorded vote on Proposition 3. I think it is carried, but we will just be certain.

3625

*There was a recorded vote.*

*Carried – Pour 26, Contre 5, Ne vote pas 0, Absent 9*

**POUR**

Deputy de Lisle  
Deputy Langlois  
Deputy Soulsby  
Deputy Prow  
Alderney Rep. Roberts  
Alderney Rep. Snowdon  
Deputy Ferbrache  
Deputy Kuttelwascher  
Deputy Brehaut  
Deputy Gollop  
Deputy Parkinson  
Deputy Lester Queripel  
Deputy Le Clerc  
Deputy Leadbeater

**CONTRE**

Deputy Brouard  
Deputy de Sausmarez  
Deputy Roffey  
Deputy Tindall  
Deputy Fallaize

**NE VOTE PAS**

None

**ABSENT**

Deputy Dudley-Owen  
Deputy McSwiggan  
Deputy Oliver  
Deputy Tooley  
Deputy Trott  
Deputy Meerveld  
Deputy Inder  
Deputy Smithies  
Deputy Green

Deputy Mooney  
Deputy Le Pelley  
Deputy Merrett  
Deputy St Pier  
Deputy Stephens  
Deputy Lowe  
Deputy Laurie Queripel  
Deputy Hansmann Rouxel  
Deputy Graham  
Deputy Paint  
Deputy Dorey  
Deputy Le Tocq

**The Bailiff:** The voting on Proposition 3 was 26 in favour, with 5 against, so I declare it carried.

### **POLICY & RESOURCES COMMITTEE**

#### **XIX. The Guernsey Financial Services Commission: 2018 Annual Report and Accounts – Proposition carried**

*Article XIX.*

*The States are asked to decide:*

*Whether, after consideration of the Policy Letter dated 2nd July, 2019, of the Policy & Resources Committee, they are of the opinion:-*

*1. To note the annual report and accounts of the Guernsey Financial Services Commission for the year ended 31st December, 2018.*

**The Greffier:** Article XIX, Policy & Resources Committee – the Guernsey Financial Services Commission, 2018 Annual Report and Accounts.

3630

**The Bailiff:** Deputy St Pier.

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

3635 It is of course the responsibility of the Policy & Resources Committee to present the accounts for the Guernsey Financial Services Commission to the States each year. In the absence of Vice-President Deputy Lyndon Trott on States' business, it falls to me to do so, to open this debate. As part of that process, the accounts are typically presented by the Commission to both the Policy & Resources Committee, and also to Deputies, and I understand that the latter session was held on 29th May, and obviously the Commission's willingness to engage in that way is to be welcomed.

3640 I am just going to make four very brief points that are drawn out of the accounts. As I say, the accounts belong to the Financial Services Commission, not to the States, not to the Policy & Resources Committee, and of course the Proposition is merely to note. So in the event of debate, I may have a limited capacity to be able to respond to points made. But I will attempt to do so. Briefly, the four points I wish to draw out are: firstly, the strong flow of business that is noted in  
3645 the accounts, into the Island during 2018 and I understand that is continuing into 2019. Obviously to be welcomed.

3650 Secondly, the completion of some major projects by the Commission in 2018, such as the changes to the private investment fund rules, the so-called PIF rules, which have been successful and provided the jurisdiction with a competitive advantage that has driven some of that new business, as well as the development, of course, of the world's first regulated green fund, the Guernsey Green Fund Rules; and the Financial Services Commission I think are to be commended taking that initiative in doing so. And the completion, of course, of the new anti-money

laundering handbook, a painful process for many involved in it, in line with the revised international Financial Action Task Force (FATF) standards.

3655 Thirdly, the publication of a three-year business plan as part of the Annual Report, and I understand that is increasingly regarded as being an international requirement of regulators and this will see the Commission, between 2019 and 2021, seeking to focus on authorisations on innovation support, firm self-assurance educational events, supervision and enforcement. It also explains the Commission's ongoing commitment to various international, supervisory, regulatory  
3660 fora, which write the international standards, to which Guernsey is of course *de facto* subject. It is important that the Commission does participate in those to seek to ensure those standards are relevant and as appropriate and proportionate as they can be to us as a jurisdiction.

My fourth and final point is confirmation that the Commission is financing its investment programme from reserves and prudent financial management and has given the commitment to  
3665 the Policy & Resources Committee last year not to put up fees to industry, either in January 2019 or indeed next year. Obviously that too is to be welcomed, sir. With that, I do commend them to the Assembly and ask them to duly note them.

**The Bailiff:** Deputy Lester Queripel.

3670

**Deputy Lester Queripel:** Sir, the Proposition asks us to note the Annual Report and Accounts. I start by saying I am willing to note them. Having done that, I just want to make a comment or two on what we are told in the Report. I was somewhat perplexed and bemused by our being told in the first three sentences of the Chairman's statement, back in 1973, he correctly predicted the  
3675 result of a Europa Cup football match between Arsenal and Ajax. I am sure it was not that difficult to predict the results of the Arsenal games in 1973, sir, but he goes on to say that from the proceeds of the sweepstake, he bought a copy of the report of the Club of Rome. Ever since then he has been fascinated by the efforts made by scientists, central bankers and others in trying to predict the future.

3680 Now the irony is, sir, that when my brother Deputy Laurie Queripel and I predicted the 2008 financial crash, in 2005, not a single financial expert or banker took any notice whatsoever. (*Laughter*) We had been telling them – I hear Deputy Merrett is asking a colleague how we predicted the financial crash and to explain that –

3685 **Deputy Merrett:** Point of correction, that is not what I was asking a colleague.

**Deputy Lester Queripel:** I apologise, sir.

We had been telling bankers and financial experts for years that the way banks were operating at that time was completely unsustainable, because they were lending money they did not  
3690 actually have, to people who could not afford to pay it back. It is as simple as that.

But the experts took no notice, because we were simply lay people with no financial expertise whatsoever. Now, in relation to the GFSC, if we fast forward a couple of years to 2011-12, we see that a similar situation existed here in Guernsey because the way the GFSC were operating then was also completely unsustainable. Their cost base was rocketing and they were spiralling out of  
3695 control.

Somebody had to bring them to heel and rein them in and it was the previous Assembly who brought them to heel and brought them in. So much so that, once again, we are told in this Report in front of us today, that the GFSC will not be increasing fees or charges in 2019, or 2020. That is certainly good news for finance companies and I think the GFSC should be commended for  
3700 that.

And, I take great comfort from the fact that it was one of those laymen who led the charge in a previous Assembly, in bringing the GFSC to heel and reining them in. One of the very same laymen, in fact, who had predicted the financial crash of 2008 – in 2005.

Thankfully the GFSC responded to that much-needed wake-up call from the States, spearheaded by a layman. It is because they were given that much-needed wake-call by the States and it is because they responded positively to it that they are in a much better position today. So surely that proves beyond a shadow of a doubt that experts and professionals need to seriously consider the views of lay people when those views are conveyed.

In closing, sir, I do have a question for Deputy St Pier, when he responds, which is this. Bearing in mind we are asked to note the Report and Accounts before us, what will happen if the majority of the Assembly decide they do not want to note the Report and Accounts before us?

Thank you, sir.

**The Bailiff:** It will not be noted. Deputy de Lisle.

**Deputy de Lisle:** Thank you, sir.

I welcome the comfort given, actually, by the Director General and the Chairman. The Chairman's Report is certainly an upbeat statement. He makes a number of points. One that uncertainty brings improved chances to the finance industry. He says:

Financial services thrives on uncertainty as it provides products and solutions that help to address and/or minimise the financial consequences of uncertainty or mishap for its clients.

I think that is a very telling statement and one that certainly gives one comfort. The other point there is that the Commission is to continue to play its role in facilitating new opportunities, through the use of innovative and proportionate regulatory approaches. First of all, being innovative, bringing new products and services, or supporting new products and services to the market, like we found the Green Policy just recently, but many before; and the use of proportionate regulatory approaches, I think that is very important too – we do not want to go overboard with regulation – and allow the Bailiwick to prosper as a result. It will enhance the Bailiwick's reputation as a preferred place to do business. So innovation and proportionate regulation.

Also, another point from the Director General's statement, that also gives comfort, I find. The Director General, in his statement, sees Guernsey as never being part of the EU's single market for finance services and, thus the UK's exit from the EU has little direct impact on Guernsey's terms of trade in financial services, with European Union member states. Some have fears that way.

The point that I think Deputy St Pier made, as well, whilst the majority of the business coming to the Island was repeat business, there was a good flow of new business too, including some businesses relocating from other jurisdictions. That again is promising and provides comfort in very uncertain times.

Thank you, sir.

**The Bailiff:** Deputy Gollop.

**Deputy Gollop:** Some very quick points. The first point is the policy letter is impressively short, as it always is, 30 or so words, and I think it answers a question; because we argued pointlessly in the DPA last year over whether you could bring a policy letter to the States to note a report if it had already been published. The answer, of course, is yes, because Policy & Resources set the precedent with this and other reports. Deputy Lester Queripel will remember that debate well.

The second point I wish to make is that, it was raised earlier in a different debate, but I think it is something the GFSC need to consider, regardless of their ability to maintain and manage an excellent offshore sector and that is the issue whereby some less fortunate people in the community, particularly those persons who have perhaps been in and out of prison, or in other forms of debt problems, seem to have greater difficulty in finding a clearing bank account in Guernsey than they would in other jurisdictions, and I suspect part of the reason for that is the regulatory policies of the GFSC.

3755 My third point is, although as Deputy de Lisle says, it has been a positive year, there are still  
some clouds on the horizon, because one notes that there are still 108 permanent staff employed  
by the GFSC, which is comparatively high. And that is not part-time staff, that is permanent staff,  
and that the income/expenditure for the year has gone up in both areas, but the income has gone  
up slightly less quickly than the expenditure and the expenditure now is well over £13 million and  
there seems to have been a significant increase, I am afraid, in legal fees. So there are clearly areas  
3760 for Policy & Resources to maintain an oversight, I think, into the GFSC to ensure they are  
providing value for money.

**The Bailiff:** Deputy Prow.

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

3765 I shall be brief. I am reminded, when reading the Report, of the opportunity that five Deputies  
have just recently had on a visit to the Isle of Man, where we had a presentation from their  
External Relations. He referred to the threats to the Isle of Man, which are identical in actual fact  
to the threats to this jurisdiction.

3770 He referred to them as the three Bs. The first B I cannot remember, but it was humorous. I  
could come up with a B but it would not be parliamentary language, sir! (*Laughter*) The second  
was Brexit and the third was blacklisting. Of the three, blacklisting was the major concern and I  
think it is worthy of note and it is perhaps not often in this Assembly given recognition that the  
finance industry is the biggest industry on this Island and the fiscal tax take that we receive allows  
us to do a lot of things.

3775 Therefore I was very interested to read the Report and I thank the Chairman, the Commission  
and the Director General for all the work they do and all the work that their staff do. It is essential  
that we remain off blacklists and the work that they do is essential to that. Also, points other  
Deputies have made, it is not all about regulation in a negative sense. It is also providing  
opportunities and if I can just read from the Chairman's statement, which is to do with green  
3780 funding, it says:

The Commission will continue to play a role in facilitating new opportunities through the use of innovative and  
proportionate regulatory approaches that allow the Bailiwick to prosper such as the introduction in the past year of the  
Guernsey Green Fund initiative.

I understand the President of P&R has spoken at the Labour Conference promoting the Green  
Fund.

Thank you, sir.

3785 **The Bailiff:** Deputy Tindall.

**Deputy Tindall:** Sir, I also will be brief. The Guernsey Financial Services Commission is an  
important body, which must uphold standards, in order to ensure that our finance industry and  
business support services, which are regulated by them, continue to be regarded in high esteem  
3790 worldwide. It certainly does the job and most would say it does it well. But, as with all regulators,  
there is a need to be responsive to industry and accountable for the role it plays and the way it  
plays it. Debating this Report is a way to do so.

I appreciate that many aspects of this Report are just advising of activities, ways in which we  
maintain our position as an offshore finance centre and, bearing in mind the wish, I sense, to  
3795 complete this meeting today, I wish to raise just two points. Firstly, a short section of the Report,  
pages 17 and 18:

The final draft version of the AML/CFT Handbook was published on 12th November 2018 accompanying the draft  
Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, which was subsequently approved  
by the States of Guernsey on 12th December 2018. Education and outreach on the revised framework, which becomes

effective on 31st March 2019, continues into this year with regulatory self-assurance workshops on the Handbook being organised by the Commission for all sectors.

As work on the Handbook drew to a close, our input into the government-led National Risk Assessment (NRA) increased in the second half of the year, including two focussed surveys for the banking and fiduciary sectors respectively. The NRA is due to be finalised by the middle of 2019 and is likely to provide good opportunities for us to again engage with industry, this time to discuss the interplay the NRA will have with firms' money laundering and terrorist financing business risk assessments.

I did inform Deputy St Pier of my intention at some point during this meeting to ask for an update on this NRA as it is so inextricably linked with the handbook and the industry's compliance with that and, of course, as mentioned, the work of the GFSC in supervising that compliance.

3800       Comment has again been made about submitting a Report with a Proposition just to note. We were advised that this was appropriate because we could not amend the Report. However, what could happen is for amendable Propositions on actions coming from the Report. Whilst I have not laid an amendment, which I suppose I could have done and which is of greatest importance to me, is whether we can have a review of the GFSC's role and its remit and whether it remains appropriate.

3805       In my view, and of many I speak to in the industry, this is a reasonable request: regulators must be arm's length but not immune from scrutiny. We should ensure its purpose fulfils that which the industry in Guernsey needs in order to fill its responsibilities. So I ask Deputy St Pier to advise on the timeline for the NRA and also, if there is any intention in the near future, for this reasonable remit of a review.

3810       Thank you, sir.

**The Bailiff:** Deputy St Pier will reply.

3815       **Deputy St Pier:** Thank you, sir; thank you to those that have contributed to the debate.

Responding briefly to Deputy Lester Queripel's question, if the Assembly chooses not to note the Report, then the Report will be not noted. I cannot advise any more clearly than that, I am afraid.

3820       Deputy Gollop raised the question of those that struggled to get banking, for a whole variety of reasons. I think that is probably more to do with anti-money laundering regulations rather than Guernsey Financial Services Commission regulations, as such, and of course the AML provisions are largely driven by off-Island standards, albeit as referred to in Deputy Tindall's speech, they do need to be turned into a local handbook. But I think it is the international framework that presents a problem for so many of the people that Deputy Gollop referred to.

3825       However, there has been some work by, I think, Peter Neville, in particular, in seeking to establish a Guernsey Community Savings Bank that would be able to provide banking to some of those people who are currently unbanked and I think that is absolutely to be encouraged and welcomed. I am also conscious that there are, I was contacted by a parishioner recently, whose daughter had been unable to obtain a credit card from the UK and I think this is becoming a problem as well, because some financial products, now, are under the FCA rules in the UK, we are deemed to be outside the UK for those purposes and so the marketing of those products outside the UK becomes a problem for those institutions.

3830       So I think these are issues which we are conscious of and working with industry to seek to understand the nature of the problem and to work with the industry to see whether there are practical ways around it, but I think the reality is that some of these things that do crop up are driven outside the Island rather than by our own regulator, who I think does seem to be pragmatic.

3835       With regard to the National Risk Assessment point, I am grateful for Deputy Tindall in raising, giving advance notice of that. My understanding is that the Commission and officers of the States have been working on a briefing note to be circulated to the industry by the end of this month, which is obviously imminent and that note will also seek to indicate the relationship between

publication data for the National Risk Assessment at the end of the year and the financial services institutions' own business risk assessments.

3845 I know Deputy Tindall has been advised of that, but that puts it on record, which I know she was keen to do.

With regard to a wider review, it is something which has cropped up, certainly in the time that I have been in Government, through the Policy Council, working with the previous Commerce & Employment Department and, subsequently, I think it is kept under review as to the nature of the relationship and that is something that I think working with the Committee for Economic  
3850 Development, is not on the agenda immediately but it is never far from it, that is perhaps the better way of putting it.

That may not be entirely satisfactory to Deputy Tindall but I think that probably best describes the current position. With that, sir, I ask Deputy Lester Queripel and indeed other Members of the States to note the accounts.

3855

**The Bailiff:** We go to the vote to note the accounts. Those in favour; those against.

*Members voted Pour*

**The Bailiff:** I declare them carried. It has now turned 5.30 p.m., so I could adjourn to 9.30 a.m. tomorrow, but I sense the mood of the meeting is to continue, so we will continue, Greffier.

## COMMITTEE FOR ECONOMIC DEVELOPMENT

### XX. The Guernsey Competition and Regulatory Authority: Accounts and Auditors' Report for the year ending 31st December 2018 – Proposition carried

*Article XX.*

*The States are asked to decide:*

*Whether, after consideration of the Policy Letter entitled "The Guernsey Competition and Regulatory Authority: Accounts and Auditors' Report for the year ending 31st December 2018" dated 25th June 2019, they are of the opinion:-*

*1. To note the accounts of the Guernsey Competition and Regulatory Authority and auditors' report for the year ended 31st December 2018.*

3860 **The Greffier:** Article XX, Committee for Economic Development – the Guernsey Competition and Regulatory Authority: Accounts and Auditors' Report for the year ending 31st December 2018.

**The Bailiff:** Deputy Parkinson.

3865 **Deputy Parkinson:** Sir, I have nothing to add to the accounts that are before Members, so I ask Members to note them.

**The Bailiff:** Deputy Laurie Queripel.

3870 **Deputy Laurie Queripel:** Thank you, sir.

In my opinion there are some errors or mistakes in this Report. I am not referring to the accounts aspect, the financials, but to the text of the Report. I just want to turn to a couple of pages, rather helpfully – not, there are two page numbers at the bottom of each page, so for the

avoidance of doubt, I am going to be referring to the number at the very bottom of each page.  
3875 First of all, I wanted to turn to page 10, this is the number at the very bottom of the pages and, at the top right hand side, there is a heading '5G' and it says:

CICRA facilitated two 5G summits designed to bring together key stakeholders in support of the policy objectives of the States of Jersey and the States of Guernsey.

And on page 17, sir, it says, near the top, in bold:

Developing a regulatory framework for the delivery of 5G is important because the States of Jersey and the States of Guernsey have both stated their intent to support the implementation of 5G.

Now sir, perhaps in debates in recent times in regard to digital strategies and things there has been a sort of implicit support of 5G, but there has not been any explicit support of 5G and I think  
3880 that is where this Report is in error, to some extent. I know that for a fact, because I have been in touch with the office of Economic Development and I am told, and Deputy Parkinson I am sure will either confirm this or deny it, that there is a policy letter pending in regard to the specific subject of 5G and I think that is going to come perhaps in November or December.

In lieu of that, sir, I am preparing some questions in regard to the issue of 5G and those  
3885 answers should come back well before that policy letter is debated. Bearing in mind the concerns that have been raised about 5G, environmental health concerns etc., I think we need the fullest information possible before the Assembly makes an explicit decision on the specific issue of 5G. That is what is happening. As I have said, I am going to compile some questions.

What I think Deputy Parkinson, because I think Members need the fullest information possible  
3890 so that they can consider all the aspects relating to 5G ... for example, Members may or may not know that a 5G network, or the rollout of a 5G network, to facilitate that network, may include the cutting down of trees around the Island in order for that network to work properly. Yes, it may. That is the information that I have received.

It is certainly, in other parts of the world where 5G is being rolled out, trees are being to cut  
3895 down in order for the effectiveness of the network to work, basically. That is the sort of information, it is only a small issue, there are lots of issues and factors that will need to be considered, but that is just one small issue that Members may or may not be aware of in regard to a 5G network. That may involve the cutting down of perfectly healthy trees to facilitate that network.

But there are lots of other things, too, sir. So I think at the very least Deputy Parkinson and  
3900 Economic Development should go back to the regulator saying that, in this particular area, they have jumped the gun. The States have not made an explicit decision in regard to the specific issue of 5G, so I just wanted to point out that there has been a bit of a jumping of the gun there and I just hope that Deputy Parkinson can go back and relay that point to the regulator.

3905 Thank you, sir.

**The Bailiff:** Deputy Parkinson will reply.

**Deputy Parkinson:** Sir, I think those passages in the Report refer to the States' Telecom  
3910 Strategy, which was approved by the Assembly I think in June 2018. I do not have that in front of me, so I stand to be corrected. But in the States' Telecom Strategy, we said we wanted fibre to every business on the Island and 100MB broadband to every household. As I understand it, and I am no technical expert in these fields, that means 5G across the Island.

Now Deputy Laurie Queripel is correct that we do plan to come back to the States to set out  
3915 how we will make progress against the agreed States' objectives and I think, without jumping the gun too much, what we will be saying is that actually we can move to what might colloquially be called 4.5G within the current structure, that the telcos can do this on their existing masts and it is basically just upgrading the antennae etc. that they already have.



3920 True 5G, which I think is technically release 16, 4.5G is release 15 of the technology approvals released; 16, which would be needed to have self-driving cars or some of those other use applications will not realistically come to Guernsey for several years. I do not expect to see self-driving cars in Guernsey before 2025, so we have some way to go before true 5G would be needed or the use cases for it would be needed.

3925 But all that will be set out in a report that we will bring to the States in due course. I do not think that what is written in this Report is incorrect, because I think this is a reference to the States' agreed Telecom Strategy and it should be understood in that light.

With that, I ask Members again to note the Report.

**The Bailiff:** A single Proposition to note the Report. Those in favour; those against.

*Members voted Pour.*

3930 **The Bailiff:** I declare it carried.

## **POLICY & RESOURCES COMMITTEE**

### **XXI. Schedule for future States' Business – Proposition as amended carried**

*Article XXI.*

*The States are asked to decide:*

*Whether, after consideration of the attached Schedule for future States' business, which sets out items for consideration at the Meeting of the 16th October 2019 and subsequent States' Meetings, they are of the opinion to approve the Schedule.*

## **STATES OF DELIBERATION**

*SCHEDULE for FUTURE STATES' BUSINESS (For consideration at the ordinary Meeting of the States commencing on the 25th September, 2019)*

*Items for Ordinary Meeting of the States commencing on the 16th October, 2019*

*(a) communications by the Presiding Officer including in memoriam tributes;*

*(b) statements;*

*(c) questions;*

*(d) elections and appointments; P.2019/95 – Committee for Employment & Social Security – Employment and Discrimination Tribunal: Appointment of Convenor (e) motions to debate an appendix report (1st stage);*

*(f) articles adjourned or deferred from previous Meetings of the States;*

*(g) all other types of business not otherwise named; No. 87 of 2019 - The Water Charges (Amendment) Regulations, 2019*

*No. 88 of 2019 - The Wastewater Charges (Guernsey) Regulations, 2019 No. 89 of 2019 – Waste Disposal and Recovery Charges (No. 2) Regulations, 2019*

*No. 91 of 2019 – The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 5) Regulations, 2019*

*P.2019/89 - The Population Management (Guernsey) (Amendment) Law, 2019\**

*P.2019/90 – The Customs and Excise (Discretionary Financial Penalties) (Bailiwick of Guernsey) Ordinance, 2019\**

*P.2019/91 – The Public Holidays Ordinance, 2019\**

*P.2019/92 – The Probation (Bailiwick of Guernsey) Law, 2018 (Commencement) Ordinance, 2019\**

*P.2019/94 – Committee for Employment & Social Security – Contributory Benefit and Contribution Rates for 2020\**

*P.2019/88 – Policy & Resources Committee – Committee Operational Responsibilities and the Organisation of States' Affairs (Transfer of Functions and Consequential Matters) Ordinance, 2019\**

*P.2019/93 – States' Trading Supervisory Board – General Pilotage – Retirement Age of General Pilots\**

*P.2019/96 – States' Assembly & Constitution Committee – Proxy Voting for Parental Absence\**

*P.2019/87 – Requête – Prohibition on Importation, Sale and Use of Glyphosate\* (h) motions to debate an appendix report (2nd stage);*

*(i) Schedule for future States' business.*

*Amendments to the proposed Meeting dates and order are permitted only for those items marked with an \*.*

*States of Election on the 16th October, 2019*

*Item for Special Meeting of the States commencing on the 5th November, 2019*

*P. 2019/xx States' Budget*

**The Greffier:** Article XXI, Schedule for future States' business.

3935 **The Bailiff:** I have not received notice of any amendments. Deputy St Pier. Oh sorry, there is one, is there? In my hurry to leave I had not noticed it. So there we are. Deputy St Pier, you wish to lay an amendment?

*Amendment:*

*To insert the following wording at the end of the Proposition:*

*"subject to deleting item P.2019/88 (Policy & Resources Committee – Committee Operational Responsibilities and the Organisation of States Affairs (Transfer of Functions and Consequential Matters) Ordinance, 2019) from paragraph (g) of "Items for Ordinary Meeting of the States commencing on the 16th October, 2019."*

**Deputy St Pier:** Yes, please, sir.

3940 It is with regard to the item at the top of the second page, the Policy & Resources proposals in relation to Committee operational responsibilities. What we would like to do is to remove it from this Schedule and bring it so that it is laid at the same time as the Ordinance, which will be at the 6th November meeting.

3945 Subject to that, sir, I think the rest of the Schedule is self-explanatory and hopefully, with the agreement of the amendment, I will encourage Members to support it.

**The Bailiff:** Deputy Brouard, in the absence of Deputy Trott, you are seconding the amendment?

3950 **Deputy Brouard:** I would like to second the amendment, sir.

**The Bailiff:** I put the amendment to the vote. There is only very limited opportunity to debate. I think somebody is rising.

3955 **Deputy Tindall:** I have been scrabbling through the Red Book to ascertain, sir.

**The Bailiff:** My recollection is it is only those committees that are affected. Under Rule 3.8 the Policy & Resources Committee shall ... no; anyway. There is no opportunity for general debate, so I just put the amendment to the Assembly. Those in favour; those against.

*Members voted Pour.*

3960 **The Bailiff:** I declare it carried and I put the schedule as amended to the Assembly. Those in favour; those against.

*Members voted Pour.*

**The Bailiff:** I declare it carried. And that concludes this meeting. Thank you, Members.

*The Assembly adjourned at 5.42 p.m.*