

## **2.10 The Deputy of St. Ouen of the Chief Minister regarding the authority of the Assistant Minister with responsibility for External Affairs to comment on significant constitutional matters:**

Would the Chief Minister advise the Assembly what authority, if any, his Assistant Minister with responsibility for External Affairs has to comment on significant constitutional matters and, in particular, those reported on 27th June 2012 in the *Guardian* newspaper?

### **Senator I.J. Gorst (The Chief Minister):**

The comments were made when reporters visited the Island in order to conduct a series of interviews with a number of different people. The *Guardian* sought to present selective comments made over 6 weeks ago as part of a longer interview as if they were a direct response to recent stories relating to U.K. tax avoidance schemes. This was not the case. The comments, when restored to their proper context, are consistent with the position of the Council of Ministers, which is that it is not Government policy to seek independence from the United Kingdom, but rather that the Island should be prepared as part of any normal contingency planning process.

### **2.10.1 The Deputy of St. Ouen:**

I am struggling to hear but I did ask: “Would the Minister advise us what authority his Assistant Minister had” but also I would like the Chief Minister to confirm that under the States of Jersey Law, one of the functions of the Chief Minister and not a selected Assistant Minister includes conducting external relations in accordance with the common policy agreed by the Council of Ministers. Could he confirm that that is indeed the case?

### **Senator I.J. Gorst:**

The Deputy is absolutely right. Of course, in fulfilling those functions, I have appointed an Assistant Minister with responsibility for External Relations and I take advice from other Ministers as well, which we call the External Relations Group and Ministers are co-opted on to that, dependant on the area that we need to consider and how it affects their portfolio.

### **2.10.2 Deputy G.P. Southern:**

Is the Chief Minister aware of any further research or investigations into this contingency that have been performed since the report in 2008 was issued and, if so, will he agree to release them to Members?

### **Senator I.J. Gorst:**

Well, of course, a number of pieces of work have been considered, resulting not least in the setting up of a Channel Islands Brussels Office and co-operation between Jersey and Guernsey. The setting up of, in effect, a department under the Chief Minister’s Department of External Relations, all things which were part of the recommendations of the second constitutional review group, so Members have seen some of those recommendations being put into action.

### **2.10.3 Deputy J.A.N. Le Fondré:**

Does the Minister accept that this story, irrespective of whether it has been misquoted or not, has spread around the world? For example, just to get my French in for the day, the headline for *Le Figaro* is “*L’île de Jersey menace de prendre son indépendance*”, which in my interpretation is: “The Island of Jersey is threatening to take or declare its independence.” So, does he accept, irrespective of whether it has been misquoted or not, it has spread around the world?

### **Senator I.J. Gorst:**

Unfortunately, I do accept that, yes. There has been a lot of interest in the international media and certainly officers have, when being contacted, tried to discuss the context with those international journalists, as instructed to do so.

#### **2.10.4 Deputy R.G. Le Hérissier:**

Would the Chief Minister not acknowledge that, aside of whether it was right or wrong to talk about this story to the press, alarm and despondency has been spread among the local population? Of course, it came out as a very incomplete analysis, based solely on constitutional issues. For example, there was no economic analysis and it seemed to be based upon the premise that the U.K. is acting in a hostile fashion. So therefore we must be prepared. It was the limitations and the bias of the analysis that worried people.

#### **Senator I.J. Gorst:**

I think politicians always have concerns in that regard when they read matters relating to their portfolios across the international media. I am absolutely committed, as is, I believe, the Council of Ministers and my Assistant Ministers, to building positive relationships with the United Kingdom Government. To that end, I have already spoken and this Assembly will have the ability to vote upon whether they wish to provide funding for the creation of a London Jersey office to further enhance that relationship and to also encourage inward investment. So that is the direction in which we need to go. It is the right direction. We must ensure that that relationship remains strong, but equally, any Government, I believe, would be criticised if it was not appropriately considering contingencies and this is one area where we should consider those contingencies.

#### **2.10.5 Deputy J.H. Young**

In view of the risks of further increasing speculation on this subject and the risk of turning possibilities into self-fulfilling events, would the Minister propose that the contingency planning in future will be done in public, through the pages of the media or be done in private?

[11:00]

#### **Senator I.J. Gorst:**

It seems to me that most of the questions arising today and the negative publicity that unfortunately has arisen is because we have been trying to talk about contingency planning in public. It is very difficult for governments who want to encourage debate and make sure that the population is satisfied that we are considering all the issues and concerns about eventualities and yet at the same time when we do that we get criticised for doing that, so it is a difficult but fine balance. Of course the second constitutional review group back in 2008 did its work, as far as I am aware, in private and then published that work and that is probably the appropriate way to go.

#### **2.10.6 Senator S.C. Ferguson:**

The Chief Minister has talked about the London office or the possibility of a London office, what other damage control measures will he be taking or has he planned?

#### **Senator I.J. Gorst:**

This is not a damage control measure, I should be absolutely clear about that. As I have said many times before, our relationship with the United Kingdom is our most important political and economic one and we must work at that. I believe that one of the ways that we can do that to ensure that London is aware of our concerns, but equally aware of our privileges, and how we operate is that we set up an office right there in London so that we can ensure that contact is maintained on a day-to-day basis.

#### **2.10.7 Deputy M.R. Higgins:**

We all know that the question of independence is not being left to one man or to a small group of men in the Council of Ministers. Any decision about whether such a course of action was appropriate should be for this House. I hope the Chief Minister will share any contingency

planning they have with Members of this House and I hope he and other members of the Council of Ministers will refrain from speaking on this subject at all until this House has been consulted.

**Senator I.J. Gorst:**

Well, it seems quite appealing because it would probably make my life a lot easier if I took that as a guiding rule not to comment when asked on things. Of course I do also from time to time receive comments from my media colleagues that I am not forthcoming enough with making comments, but that is my problem. It is my responsibility to comment on these issues and therefore it is my Assistant Minister with responsibility for External Relations also to comment. However it is right that I take proper advice and, as my Assistant Minister said, this area was touched upon briefly at the previous Council of Ministers and I am proposing that the Council of Ministers has a far fuller debate about what a common foreign policy would look like. Once that has taken place then it would be right that this Assembly is made aware of that. As I have said previously, I am also of the opinion that the office of Assistant Minister for External Relations should be made into a ministerial office, however, that has not yet been considered by the Council of Ministers and that is the appropriate next step for that issue to be considered.

**Deputy M.R. Higgins:**

My question was before any statements are made should you not consult with this Assembly because it is this Assembly that should be making these decisions, not individual people speaking off the cuff?

**The Deputy Bailiff:**

Deputy, I think you have had your answer from the Chief Minister on that and we are going to move on.

**2.10.8 Senator L.J. Farnham:**

In areas of foreign policy Members will be aware that most relationships are challenging at the best of times but is the Chief Minister satisfied that our relationship with the U.K. is as it should be, namely robust, productive and generally working well?

**Senator I.J. Gorst:**

I would like to see it improve. I believe that it is robust, that it is productive but one of the targets and aims that I have set myself during this term of office is that it improves so that the United Kingdom is aware of decisions that they make and the affect that they might have upon us but equally in reverse.

**2.10.9 Deputy T.M. Pitman:**

Given that, as we have seen with recent events with the Comptroller and Auditor General, it is now almost impossible to hold the Council of Ministers to account, does the Chief Minister not agree with me that the prospects of Jersey gaining independence are truly terrifying for a breakdown of law and order and good government?

**Senator I.J. Gorst:**

I do not agree with the Deputy on many counts with regard to his question there, certainly with regard to the ability to hold Ministers to account and with regard to what I have said is appropriate contingency planning. But equally I have said, and I support this position, that it is not Government policy to seek independence.

**2.10.10 Deputy M. Tadier:**

The Chief Minister need not worry about being forthcoming with the media either in Jersey or elsewhere because he has 2 quite capable alternatives on the Council of Ministers who do it for him, it seems. **[Laughter]**. The question is does the Chief Minister still have a Communications

Unit for the Chief Minister's Department, and does the Assistant Minister with responsibility for External Affairs have access to that Communications Unit?

**Senator I.J. Gorst:**

Yes and yes, on both counts. Some individuals might be critical of the Communications Unit. It is small in number but they offer a very vital support and they do an excellent job and the way they have helped Ministers handle recent publicity has proved that to be the case.

**2.10.11 The Deputy of St. Ouen:**

Would the Chief Minister confirm that this Assembly currently does not elect any Assistant Ministers to particular positions and that therefore responsibilities as described in the States of Jersey Law fall to the Chief Minister to conduct external relations and not others?

**The Deputy Bailiff:**

I am afraid the question is based on a false premise. The States of Jersey Law does enable an Assistant Minister to perform the functions of the Chief Minister, save for some exceptions.

**The Deputy of St. Ouen:**

How do you explain Article 18.3(b) then?

**The Deputy Bailiff:**

18.2(b)?

**The Deputy of St. Ouen:**

18.3(b) of the States of Jersey Law.

**The Deputy Bailiff:**

"The functions of the Council of Ministers shall be discussing and agreeing policy ..." 2(b) or 3(b), did you say?

**The Deputy of St. Ouen:**

3(b), which states ...

**The Deputy Bailiff:**

"The functions of the Chief Minister shall include conducting external relations in accordance with the common policy agreed by the Council of Ministers", is that the question?

**The Deputy of St. Ouen:**

Yes, exactly. That is specific to the Chief Minister and not other individuals.

**The Deputy Bailiff:**

Under Article 28: "A Minister may delegate wholly or partly functions conferred or invested in the Minister by or under this Law or any other enactment."

**The Deputy of St. Ouen:**

As a further clarification? It is important. Either we can rely upon this States of Jersey Law or we cannot. This seems to suggest that it is the Chief Minister who is clearly responsible for undertaking these 2 functions; co-ordinating through the Council of Ministers the discharge of the common functions described in 2, and conducting external relations. If you are then suggesting that we cannot rely on that because he can confer any responsibility he wants to a third party, how do we justify and reconcile the 2 matters?

**The Deputy Bailiff:**

Perhaps I was too quick to say it is out of order; I will ask the Solicitor General as a question of law to advise. **[Laughter]**

**Mr. H. Sharp, H.M. Solicitor General:**

One has to read on; you do not stop at Article 18 and one has to read it in conjunction with Article 28, which makes it perfectly plain that a Minister may delegate their functions, save for particular exceptions set out at 28.2 which do not apply here. One has to read together, not in isolation.

**Deputy M.R. Higgins:**

Can I ask a question of the Solicitor General?

**The Deputy Bailiff:**

Yes, please do.

**Deputy M.R. Higgins:**

In terms of delegation, am I right in saying that no powers can be delegated unless there is legal authority for it to be done. For example, there are certain Assistant Ministers who have been delegated powers legally and others are not. Surely, unless there is a legal delegation of those powers then the Chief Minister is still responsible?

**The Solicitor General:**

I am sorry, I am not quite sure what is meant by “a legal delegation”. A Minister may delegate; once the Minister has delegated the Assistant Minister may act.

**The Deputy Bailiff:**

Very well, but this is not question time of the Solicitor General. It is my fault; I should not have encouraged you. But the question, Deputy, was not in order because it was based on a false premise. Do you have a final supplementary for the Minister?

**The Deputy of St. Ouen:**

Yes, although it might be on a false premise, I am not better informed, thank you. **[Laughter]**