

# STATES OF JERSEY

## OFFICIAL REPORT

TUESDAY, 24th MARCH 2009

QUESTIONS.....	9
1. Written Questions .....	9
1.1 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE CONTRIBUTION LEVEL REQUIRED TO OBVIATE THE NEED FOR SUPPLEMENTATION: .....	9
1.2 SENATOR B.E. SHENTON OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE SHORT-LISTING OF ARCHITECTS FOR THE ST. HELIER MASTERPLAN: .....	10
1.3 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE ANNUAL ELECTRICITY COSTS AT JERSEY AIRPORT AND JERSEY HARBOURS:.....	11
1.4 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING TEMPORARY BOLLARDS AT LES CHARRIERES DE BONNE UNIT: .....	11
1.5 SENATOR B.E. SHENTON OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE DEVELOPMENT OF THE ESPLANADE QUARTER:.....	12
1.6 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING PROPOSALS TO RAISE THE 20 PER CENT INCOME TAX RATE:.....	12
1.7 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE REMOVAL OF THE CEILING ON SOCIAL SECURITY CONTRIBUTIONS: .....	13
1.8 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE SHARING OF TAX INFORMATION WITH THE UNITED KINGDOM AND FRANCE:.....	14
1.9 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE USE OF MINISTERIAL DISCRETION IN RELATION TO INCOME SUPPORT CLAIMS:.....	16
1.10 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING PROPOSALS FOR THE FUNDING OF RESIDENTIAL CARE FOR THE ELDERLY UNDER THE INCOME SUPPORT SCHEME:.....	17
1.11 DEPUTY T. M. PITMAN OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE LACK OF VESTING CERTIFICATES SECURED IN RELATION TO THE ENERGY FROM WASTE PLANT CONTRACT:.....	18
1.12 DEPUTY T. M. PITMAN OF ST. HELIER OF THE ATTORNEY GENERAL REGARDING PROSECUTIONS OF CANDIDATES FOR BREACHES TO THE ELECTORAL LAW:.....	18

1.13	DEPUTY T. M. PITMAN OF ST. HELIER OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE DEVELOPMENT OF THE WATER'S EDGE HOTEL: .....	19
1.14	THE DEPUTY OF ST. JOHN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE STATES SHAREHOLDING IN THE JERSEY ELECTRICITY COMPANY AND ITS SUBSIDIARY COMPANIES:.....	20
1.15	DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING LEGISLATION FOR A DEPOSITOR PROTECTION SCHEME: .....	20
1.16	DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE REMIT OF THE FISCAL POLICY PANEL:.....	21
1.17	DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE WORKING PATTERN OF HOSPITAL CONSULTANTS:.....	21
1.18	DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE NUMBER OF CLIENTS ON LONG TERM INVALIDITY ALLOWANCE RETURNING TO WORK: .....	22
1.19	DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE COST OF CONSULTANTS: ....	23
1.20	THE DEPUTY OF ST. MARY OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING LA COLLETTE PHASE 2 RECLAMATION SITE:	24
1.21	THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE CONTRACT FOR THE NEW ENERGY FROM WASTE PLANT:.....	29
1.22	THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BREGARDING ADVANCE PAYMENT BONDS FOR THE NEW ENERGY FROM WASTE PLANT: .....	29
1.23	THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING COMPANIES INVITED TO SUBMIT AN EXPORESSION OF INTEREST IN THE DEVELOPMENT OF THE NEW ENERGY FROM WASTE PLANT: .....	30
1.24	THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING COMMUNICATIONS WITH BABCOCK AND ART TO PROVIDE A WASTE SOLUTION FOR JERSEY:.....	30

**Communications with Babcock Volund.....30**

**Communications with Advanced Recycling Technology Limited (ART).....31**

1.25	DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE ANNUAL FEE PAID TO THE PROVIDERS OF CORPORATE TRAVEL SERVICES TO THE STATES:.....	32
1.26	DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING ASSURANCES IN RESPECT OF THE MAIN CONTRACTOR OR SUB-CONTRACTORS OF THE ENERGY FROM WASTE PLANT SHOULD THEY GO INTO LIQUIDATION:.....	32
1.27	DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BREGARDING DISCHARGE OF “BRACKISH WATER” ARISING FROM THE NEW ENERGY FROM WASTE PLANT EXCAVATION:.....	33
1.28	DEPUTY A. K.F. GREEN OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE POSSIBILITY OF ADDITIONAL COSTS IN THE CONTRACT FOR THE ENERGY FROM WASTE PLANT:.....	34

<b>2. Oral Questions.....</b>	<b>35</b>
2.1 Deputy S. Pitman of St. Helier of the Minister for Treasury and Resources regarding the cost to the States of implementing and administering the Goods and Services Tax:.....	35
Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):.....	35
2.1.1 Deputy R.G. Le Hérisssier of St. Saviour: .....	35
2.1.2 Deputy G.P. Southern of St. Helier: .....	35
2.1.3 Deputy G.P. Southern:.....	36
2.1.4 Deputy R.G. Le Hérisssier: .....	36
2.1.5 Deputy G.P. Southern: .....	36
2.1.6 Deputy G.P. Southern:.....	36
2.1.7 Deputy S. Pitman:.....	36
2.2 Deputy R.G. Le Hérisssier of the Minister for Housing regarding the assessment of demand for over-55s housing:.....	37
Senator T.J. Le Main (The Minister for Housing): .....	37
2.2.1 Deputy R.G. Le Hérisssier: .....	37
2.2.2 Deputy J.A. Martin of St. Helier: .....	37
2.2.3 Deputy P.J. Rondel of St. John: .....	37
2.2.4 The Deputy of St. John: .....	38
2.2.5 Deputy G.P. Southern:.....	39
2.2.6 Deputy G.P. Southern:.....	39
2.2.7 Connétable K.P. Vibert of St. Ouen: .....	39
2.2.8 Connétable G.F. Butcher of St. John:.....	39
2.2.9 Deputy P.V.F. Le Claire of St. Helier: .....	39
2.2.10 Deputy J.A. Martin: .....	40
2.2.11 Deputy R.G. Le Hérisssier:.....	40
2.3 Deputy K.C. Lewis of St. Saviour of the Minister for Home Affairs regarding the proposed implementation of e-Border controls.....	40
Senator B.I. Le Marquand (The Minister for Home Affairs): .....	40
2.3.1 Deputy K.C. Lewis:.....	41
2.3.2 Deputy J.M. Maçon of St. Saviour:.....	41
2.3.3 The Deputy of St. John:.....	41
2.3.4 Deputy K.C. Lewis:.....	41
2.4 The Deputy of St. John of the Minister for Planning and Environment regarding a Percentage for Art contribution arising from the planning consent for the Energy from Waste plant.....	42
Senator F.E. Cohen (The Minister for Planning and Environment):.....	42
2.4.1 Deputy R.G. Le Hérisssier: .....	42
2.4.2 Deputy R.G. Le Hérisssier: .....	42
2.4.3 Connétable A.S. Crowcroft of St. Helier:.....	43
2.4.4 Senator B.E. Shenton:.....	43
2.4.5 Deputy A.T. Dupre of St. Clement:.....	43
2.4.6 The Deputy of St. John: .....	43
2.5 Deputy G.P. Southern of H.M. Attorney General regarding Article 39A of the Public Elections (Jersey) Law 2002. ....	44
Mr. T.J. Le Cocq Q.C., H.M. Solicitor General (Rapporteur):.....	44
2.5.1 Deputy G.P. Southern:.....	44
2.5.2 Senator S. Syvret:.....	45
2.5.3 Senator S. Syvret:.....	45
2.5.4 Deputy G.P. Southern:.....	45
2.6 Senator B.E. Shenton of the Minister for Treasury and Resources regarding the commercial valuation of beachfront land in St. Brelade's Bay: .....	45

Deputy J.A.N. Le Fondré of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):.....	46
2.6.1 Senator B.E. Shenton:.....	46
2.6.2 The Deputy of St. John:.....	46
2.6.3 Deputy M. Tadier of St. Brelade:.....	46
2.7 Deputy D.J.A. Wimberley of St. Mary of the Minister for Education, Sport and Culture regarding the New Scientist articles circulated to all Members recently about a sustainable, ecological economy:.....	47
Deputy J.G. Reed of St. Ouen (The Minister for Education, Sport and Culture):.....	47
2.7.1 Senator S.C. Ferguson:.....	47
2.7.2 Deputy G.P. Southern:.....	47
2.7.3 The Connétable of St. Helier:.....	47
2.7.4 Senator S. Syvret:.....	48
2.7.5 Deputy M. Tadier:.....	48
2.7.6 The Deputy of St. Mary:.....	48
2.8 Deputy R.G. Le Hérisssier of the Minister for Education, Sport and Culture regarding grants to the Cultural sector:.....	48
The Deputy of St. Ouen (The Minister for Education, Sport and Culture):.....	48
2.8.1 Deputy R.G. Le Hérisssier:.....	49
2.8.2 Deputy G.P. Southern:.....	49
2.8.3 Deputy G.P. Southern:.....	49
2.8.4 Deputy P.V.F. Le Claire:.....	49
2.8.5 The Connétable of St. Helier:.....	50
2.8.6 The Deputy of St. John:.....	50
2.8.7 Deputy G.P. Southern:.....	50
2.8.8 Deputy J.A. Martin:.....	50
2.8.9 Deputy R.G. Le Hérisssier:.....	51
2.9 Deputy F.J. Hill of St. Martin of the President of the Chairmen's Committee regarding allowing members of the public to film at scrutiny hearings:.....	51
Senator B.E. Shenton (President, Chairmen's Committee):.....	51
2.9.1 The Deputy of St. Martin:.....	51
2.9.2 Senator S. Syvret:.....	52
2.9.3 Senator S. Syvret:.....	52
2.9.4 Deputy M. Tadier:.....	52
2.9.5 Deputy G.P. Southern:.....	52
2.9.6 Deputy C.F. Labey of Grouville:.....	53
2.10 Deputy S. Power of St. Brelade of the Minister for Transport and Technical Services regarding road works on La Route de la Haule:.....	53
Connétable M.K. Jackson of St. Brelade (The Minister for Transport and Technical Services):.....	53
2.10.1 Deputy S. Power:.....	53
2.10.2 Deputy C.H. Egré of St. Peter:.....	54
2.10.3 The Deputy of St. John:.....	54
2.10.4 Deputy S. Power:.....	54
2.11 Deputy T.A. Vallois of St. Saviour of the Minister for Economic Development regarding staffing levels within the Economic Development Department:.....	55
Senator A.J.H. Maclean (The Minister for Economic Development):.....	55
2.11.1 Deputy T.A. Vallois:.....	55
2.11.2 Deputy J.M. Maçon:.....	55
2.11.3 Deputy G.P. Southern:.....	55
2.11.4 The Deputy of St. John:.....	55
2.11.5 Deputy S. Power:.....	56

2.11.6	Deputy S. Power:	56
2.12	Deputy P.V.F. Le Claire of the Minister for Education, Sport and Culture regarding special discounts on entry to Heritage sites for Active Card holders:	56
	The Deputy of St. Ouen (The Minister for Education, Sport and Culture):	56
2.12.1	Deputy P.V.F. Le Claire:	56
2.13	Deputy T.M. Pitman of St. Helier of the Minister for Housing regarding the viability of constructing sheltered housing for the elderly on the site of Ann Court:	57
	Senator T.J. Le Main (The Minister for Housing):	57
2.13.1	Deputy T.M. Pitman:	57
2.13.2	Deputy P.V.F. Le Claire:	57
2.13.3	Deputy P.V.F. Le Claire:	57
2.13.4	Deputy G.P. Southern:	58
2.13.5	Deputy J.A. Martin:	58
2.14	The Deputy of St. John of the Minister for Economic Development regarding boats damaged by vandals at Elizabeth Marina on 6th and 7th March 2009:	59
	Senator A.J.H. Maclean (The Minister for Economic Development):	59
2.14.1	The Deputy of St. John:	59
	The Deputy of St. Martin:	60
<b>3.</b>	<b>Questions to Ministers without Notice - The Minister for Social Security</b>	<b>62</b>
3.1	Deputy J.A. Martin:	62
	Deputy I.J. Gorst of St. Clement (The Minister for Social Security):	62
3.1.1	Deputy J.A. Martin:	62
3.2	Deputy G.P. Southern:	62
3.2.1	Deputy G.P. Southern:	63
3.3	Deputy S. Pitman:	63
3.3.1	Deputy S. Pitman:	63
3.4	Deputy D.J. De Sousa of St. Helier:	64
3.4.1	Deputy D.J. De Sousa:	64
3.5	Senator P.F. Routier:	64
3.5.1	Senator P.F. Routier:	65
3.6	Connétable D.W. Mezbourian of St. Lawrence:	65
3.6.1	The Connétable of St. Lawrence:	65
<b>4.</b>	<b>Questions to Ministers without Notice - The Chief Minister</b>	<b>66</b>
4.1	Deputy R.G. Le Hérisier:	66
	Senator T.A. Le Sueur (The Chief Minister):	66
4.1.1	Deputy R.G. Le Hérisier:	66
4.2	The Deputy of St. John:	66
4.2.1	The Deputy of St. John:	67
4.3	Deputy A.K.F. Green of St. Helier:	67
4.3.1	Deputy A.K.F. Green:	67
4.4	Deputy J.A. Martin:	67
4.5	Deputy R.C. Duhamel of St. Saviour:	68
4.6	Deputy M. Tadier:	68
4.6.1	Deputy M. Tadier:	68
4.7	Deputy S. Pitman:	69
4.7.1	Deputy S. Pitman:	69
4.8	Deputy M.R. Higgins of St. Helier:	69
4.9	The Deputy of Grouville:	69
4.10	Deputy G.P. Southern:	70
4.10.1	Deputy G.P. Southern:	70

<b>PERSONAL STATEMENTS</b> .....	<b>70</b>
<b>5. Senator J.L. Perchard will make a personal statement regarding comments made in the States Assembly on 10th March 2009</b> .....	<b>70</b>
5.1 Senator J.L. Perchard (The Minister for Health and Social Services):.....	70
<b>6. Deputy M.R. Higgins will make a personal statement regarding comments made in the States Assembly on 3rd February 2009</b> .....	<b>71</b>
6.1 Deputy M.R. Higgins:.....	71
<b>PUBLIC BUSINESS</b> .....	<b>72</b>
<b>7. Ratification of the Agreements for the Exchange of Information Relating to Tax Matters between the States of Jersey and the Nordic countries (Denmark, the Faroes, Finland, Greenland, Iceland, Norway and Sweden (P.20/2009))</b> .....	<b>72</b>
7.1 Senator T.A. Le Sueur (The Chief Minister): .....	72
7.1.1 Deputy M. Tadier: .....	72
7.1.2 Deputy J.M. Maçon: .....	73
7.1.3 Deputy G.P. Southern:.....	73
7.1.4 Senator A. Breckon: .....	73
7.1.5 Deputy M.R. Higgins:.....	73
7.1.6 Deputy R.C. Duhamel: .....	73
7.1.7 The Deputy of St. John: .....	74
7.1.8 Senator T.A. Le Sueur:.....	74
<b>8. Draft Taxation (Exchange of Information with Third Countries) (Amendment No. 2) (Jersey) Regulations 200- (P.21/2009)</b> .....	<b>77</b>
8.1 Senator T.A. Le Sueur (The Chief Minister): .....	77
Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel): .....	79
<b>9. Waterfront Enterprise Board: appointment of States Directors (P.32/2009)</b> .....	<b>82</b>
9.1 Senator T.A. Le Sueur (The Chief Minister): .....	82
<b>10. Waterfront Enterprise Board: appointment of States Directors (P.32/2009) - amendment (P.32/2009 amd.)</b> .....	<b>83</b>
10.1 Deputy G.P. Southern:.....	83
10.1.1 Deputy M. Tadier:.....	84
10.1.2 Senator T.A. Le Sueur:.....	84
10.1.3 Deputy R.G. Le Hérissier: .....	85
10.1.4 The Deputy of St. John:.....	86
10.1.5 Deputy P.V.F. Le Claire:.....	86
<b>11. Waterfront Enterprise Board: appointment of States Directors (P.32/2009) as amended</b> .....	<b>88</b>
11.1 The Deputy of St. John: .....	88
<b>LUNCHEON ADJOURNMENT PROPOSED</b> .....	<b>88</b>
The Deputy Bailiff:.....	88
<b>LUNCHEON ADJOURNMENT</b> .....	<b>88</b>
<b>PUBLIC BUSINESS - resumption</b> .....	<b>88</b>
11.2 The Deputy of St. Mary: .....	88
11.3 Deputy D.J. De Sousa:.....	89

11.4	Connétable D.J. Murphy of Grouville: .....	89
11.5	Deputy T.M. Pitman: .....	90
11.6	Deputy J.A. Martin: .....	91
11.7	The Connétable of St. Helier:.....	91
11.8	Senator P.F. Routier: .....	92
11.9	Connétable J.M. Refault of St. Peter:.....	94
11.10	Deputy M.R. Higgins:.....	94
11.11	Deputy I.J. Gorst: .....	94
11.12	Deputy G.P. Southern:.....	95
11.13	Deputy P.V.F. Le Claire: .....	95
11.14	Senator S.C. Ferguson: .....	96
11.15	Deputy M. Tadier: .....	97
11.16	Senator T.A. Le Sueur:.....	97
<b>12.</b>	<b>Health and Safety Appeal Tribunal: appointment of member (P.33/2009) .....</b>	<b>99</b>
12.1	Deputy I.J. Gorst: .....	99
12.1.1	Deputy P.V.F. Le Claire:.....	99
12.1.2	Deputy I.J. Gorst:.....	99
<b>13.</b>	<b>Payment of Statutory Notice payments: establishment of precedent (P.34/2009) .....</b>	<b>100</b>
	Deputy I.J. Gorst: .....	100
	Deputy G.P. Southern: .....	100
13.1	Deputy G.P. Southern:.....	102
<b>14.</b>	<b>Payment of Statutory Notice payments: establishment of precedent (P.34/2009) - amendment (P.34/2008 Amd.).....</b>	<b>104</b>
14.1	Deputy I.J. Gorst: .....	105
14.1.1	Deputy G.P. Southern: .....	106
14.1.2	Deputy M. Tadier:.....	106
14.1.3	Deputy I.J. Gorst:.....	107
<b>15.</b>	<b>Payment of Statutory Notice payments: establishment of precedent (P.34/2009) as amended.....</b>	<b>110</b>
15.1	Deputy A.K.F. Green:.....	110
15.2	Connétable S.A. Yates of St. Martin: .....	110
15.3	Senator T.J. Le Main: .....	111
15.4	The Connétable of St. Peter: .....	112
15.5	Deputy P.V.F. Le Claire: .....	113
15.6	Deputy J.A. Martin: .....	114
	The Connétable of St. Martin:.....	115
	Mr. T.J. Le Cocq Q.C., H.M. Solicitor General: .....	115
15.7	Deputy M. Tadier: .....	118
15.8	Deputy T.M. Pitman: .....	119
15.9	Senator P.F. Routier: .....	119
15.10	Senator B.I. Le Marquand:.....	120
15.11	Deputy M.R. Higgins:.....	121
15.12	Deputy S. Power:.....	121
15.13	Senator B.E. Shenton:.....	122
15.14	Deputy I.J. Gorst: .....	122
	The Solicitor General:.....	125
15.15	Senator S.C. Ferguson: .....	126
15.16	Senator S. Syvret: .....	126
	The Connétable of St. John:.....	127

The Solicitor General:..... 127  
15.17 Deputy A.E. Jeune:..... 128

**ADJOURNMENT PROPOSED..... 128**

The Deputy Bailiff:..... 128

**ADJOURNMENT..... 128**



**The Roll was called and the Dean led the Assembly in Prayer.**

## **QUESTIONS**

### **1. Written Questions**

#### **1.1 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE CONTRIBUTION LEVEL REQUIRED TO OBVIATE THE NEED FOR SUPPLEMENTATION:**

##### **Question**

In P.82/2005, figures produced by the Social Security Department suggested that removal of the ceiling on employer and employee Social Security contributions would raise additional funding of £22 million. Would the Minister advise members what the current figure would be today and what percentage increase in the combined employee and employer rate would enable the elimination of supplementation?

##### **Answer**

Employees currently pay 5.2% of earnings and employers pay 5.3% up to a ceiling of £3,394 per month in Social Security contributions. Self employed individuals pay 10.5%.

Based on figures from the 2007 income tax data for employed earners, an additional £30 - 35 million would be raised by completely removing the contribution ceiling, on the assumption that the current ceiling for supplementation remains in place. This estimate includes a substantial sum that would be payable by the States as the largest employer on the Island, increasing the cost to the States. An estimate of the earnings from self-employment is not available and has not been included in this calculation.

Through the present funding of supplementation by the States, tax payers subsidise approximately 70% of all workers, as their contributions do not fully cover the costs of their benefits and pensions.

Were the Social Security Law to be amended to alter the way in which supplementation is funded, removing the ceiling will transfer some of this cost from all taxpayers (who pay tax on both earned and unearned income) to higher income workers and their employers. The advantage is that it reduces the burden on taxpayers; the disadvantage is that it increases the burden on business and concentrates the cost of Social Security provision upon earnings rather than earnings and other income.

Removing the ceiling will reduce the need for supplementation funding by £30 -35 million. To completely eliminate supplementation funding by the States, a further £33-38 million in additional contributions would need to be raised from employers and employees.

This could be achieved by increasing the total percentage rate for contributions by between 2% – 3%. Raising the rate of contributions would increase the cost borne by all workers, including those on relatively low incomes who are currently below the ceiling. Many of these workers will not be liable for income tax.

It should be noted in considering these estimates that increases to contribution rates will be needed to cover the cost of ensuring sufficient funding is available for pensions in the future and may also be needed to pay for a long-term care scheme. The sums required and rate increases needed in **each** of these areas will be similar in magnitude to that needed to meet the shortfall in the contributions of those earning less than the current earnings ceiling, that is currently funded through supplementation.

## **1.2 SENATOR B.E. SHENTON OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE SHORT-LISTING OF ARCHITECTS FOR THE ST. HELIER MASTERPLAN:**

### **Question**

Would the Minister confirm that the following UK architects were short-listed to develop the inner St. Helier Masterplan on behalf of the States of Jersey at taxpayers' expense, namely Sir Richard McCormack, Sir Michael Hopkins and Robert Adam Architects and, if so, would the Minister describe in detail the selection process used in filtering down to this shortlist, the tendering process used, and details of how the contract was advertised?

### **Answer**

The Minister recently decided that in view of the large number of potential development sites emerging in the northern area of the town an holistic masterplan of the area should be prepared. The masterplan would set a regeneration vision for the area.

Due to imperative to begin the regeneration work very soon the Minister set a three months deadline for delivery of the masterplan.

The Minister is particularly grateful to Deputy Judy Martin and Deputy Paul Le Claire for deferring their propositions relating to this area to enable the completion of the masterplan.

In order to complete the masterplan within the three month period, it was obvious that, rather than seek widespread expressions of interest which would have taken weeks, it was better to invite selected tenderers who were able to demonstrate the successful completion of similar masterplans. Furthermore the tenderers had to demonstrate the capacity to complete the work in the required period and be familiar with St Helier. Using a practice with experience of St Helier is highly beneficial as it prevents the necessity for expenditure on 'acclimatisation', and the time this takes.

In accordance with the requirements of the relevant Code of Financial Directions, three internationally renowned practices with recent local experience were invited to tender. The three practices, MJP Architects, Hopkins Architects and Robert Adam Architects were, importantly, required to form an association with a local architectural practice as part of their tender.

Then, as a result of an enquiry from the principal of a local practice and a subsequent conversation with the President of the Association of Jersey Architects, three local practices were also invited to tender.

The local practices were BDK Architects, Naish Waddington Architects and Axis Mason Architects.

In the event two of the local practices joined forces with UK tenderers, and the third with a multidisciplinary UK practice with masterplanning experience.

Four tenders were received, in order of receipt: BDK Architects with Savills; Hopkins Architects with Naish Waddington Architects; MJP Architects with Axis Mason; and Robert Adam Architects with MS Planning. All were interviewed by the Department last week. Officers have made a recommendation to the Minister.

The Minister has consulted with his newly formed political group before confirming the appointment. The political group formed by the Minister to assist with the masterplanning process

comprises the Constable of St Helier, Deputy Martin, Deputy Duhamel, Deputy Lewis and Deputy Le Claire.

The Minister has made a decision, the tenderers are in the process of being advised of the outcome and notification of the outcome is imminent.

### **1.3 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE ANNUAL ELECTRICITY COSTS AT JERSEY AIRPORT AND JERSEY HARBOURS:**

#### **Question**

Would the Minister inform the Assembly of the total annual cost of electricity at the Airport, including any running costs, stating whether consumption is billed through an electric meter or through a contract (and, if so, would he give details of the contract) and would the Minister also give similar information for Jersey Harbours specifying the breakdown between different areas of the harbours.

#### **Answer**

The total cost of electricity to Jersey Airport in 2008 was £682,378.28, with £275,440.07 recovered from their customers.

The total cost of electricity to Jersey Harbours was £573,086, with £409,066 recovered from their customers.

As a high voltage consumer, the Airport has a negotiated contract with the JEC. Consumption is billed by meter at the Harbour. Tenants or users who consume electricity are then metered and billed quarterly at both the Airport and Harbours.

The figures for Jersey Harbours can be broken down as follows:

Port of Jersey:	Expenditure - £317,538	Recharged - £250,822
Jersey Marinas:	Expenditure - £230,015	Recharged - £158,244
Corporate (including Coastguard):	Expenditure - £ 25,533	

### **1.4 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING TEMPORARY BOLLARDS AT LES CHARRIERES DE BONNE UNIT:**

#### **Question**

Would the Minister inform the Assembly when the work on the bank below the temporary bollards that were placed on the bend of Les Charrières de Bonne Nuit some 4 years ago will be undertaken to allow the bollards to be removed, as local residents are frustrated by the lack of progress?

#### **Answer**

The embankment below the temporary barriers is in private ownership and was the subject of a landslip in 2000. Following strong intervention by the department the landowner eventually

affected repairs to the embankment which included the removal of the roadside bank. This provided a visual and physical barrier to vehicles travelling down the hill. The removal of this bank was carried out without consultation with the department and resulted in an unsafe position for the travelling public. The department informed the land owner that he had created a dangerous situation but the land owner refused to carry out any further remedial action. The department was therefore left with no option other than to install temporary barriers to make the situation safe.

The department has been working with the Law Officers since 2000 with a view to ensuring that the landowner makes the area safe for the travelling public. These discussions have been protracted and drawn out and are still ongoing. The landowner is refusing to cooperate in resolving this dispute and the department has put the matter in the hands of the Law Officers. The Law Officers are continuing to investigate whether there is a legally acceptable way that may bring this situation to a satisfactory resolution such that the temporary barriers can be removed and the road be fully opened to two way traffic.

**1.5 SENATOR B.E. SHENTON OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE DEVELOPMENT OF THE ESPLANADE QUARTER:**

**Question**

Can the Minister advise the Assembly whether the development of the Esplanade Quarter by one developer has been referred to the Jersey Competition Regulatory Authority and if not, why not?

Given the development consists of 16 separate building blocks comprising offices, retail and restaurants, 388 residential apartments and 65 self-catering units, does he consider that the appointment of one developer could place them in a position of dominance and have detrimental competition ramifications as the site is developed?

**Answer**

The JCRA has been consulted and they consider that there is no dominant position. Dominance is defined based on a relevant market, and there appears to be no basis to limit the relevant market to the provision of office space at the Waterfront, as opposed to the provision of office space in St Helier generally. The whole notion of dominance is based on a firm's ability to increase prices by restricting the supply of a good or service within a relevant market. Here, there appears to be the opposite effect, an increase in the supply of office space available in St Helier.

**1.6 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING PROPOSALS TO RAISE THE 20 PER CENT INCOME TAX RATE:**

**Question**

Would the Minister agree to consider bringing forward for approval proposals to raise the 20% income tax rate to 25% for all personal income over £60,000 and 30% for all personal income over £90,000 and set out the additional income to be raised by such measures together with an indication of any additional costs involved in changing from the current rate to the rates mentioned here?

**Answer**

This question appears to be based on a belief that Jersey's system of income tax is similar to the UK's with standard tax allowances available to all, regardless of income, and tax then paid on residual income, after allowances, at the relevant rate.

It is not. Jersey's income tax system is, in fact, completely different to the UK system with generous tax exemptions provided to low to middle earners, and few tax allowances for higher earners, who pay 20% tax on nearly all their income.

If Jersey was to switch to the UK system, and abandon the carefully constructed system of margin relief in order to implement the Deputy's proposals, both low and middle earners would be likely to pay more tax.

The economic costs of such a fundamental change to our tax system would also be significant as the foundation of Jersey's prosperity - near full employment, sound government finances, low taxes, top quality public services and one of the highest national incomes per person in the world - stem from Jersey being a low tax jurisdiction. The 20% tax rate being central to this.

I believe it would be extremely unwise - and perhaps foolish - to increase the 20% top rate at a time when the world is in economic turmoil, our economy is probably on the brink of recession, and the States has only recently agreed the most radical changes to our tax system in 60 years.

In these uncertain times, and following the major changes we have only just made, Jersey needs a period of stability in its tax system. Accordingly the I intend proposing no further fundamental changes to our personal tax system for at least the next two years (outside those which have been agreed or necessary for environmental spend).

My focus is on dealing with the economic downturn, protecting the jobs of Jersey people and improving the efficiency of States departments.

I suggest it would be useful for the Deputy to meet with the Comptroller of Income Tax to gain an understanding of how our tax system works.

## **1.7 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE REMOVAL OF THJE CEILING ON SOCIAL SECURITY CONTRIBUTIONS:**

### **Question**

Would the Minister agree to consider bringing forward for approval proposals to 'uncap' social security contributions and apply the current 6% rate to all wages earned and not merely the first £42,480 and would also he give an estimate of the additional income to be raised by this proposal?

### **Answer**

I am committed to a full review of the current Social Security system starting in 2010. This will include an examination of the level of contributions and the impact of changing or removing the contribution ceiling.

The total social security contribution rate is 10.5%, made up of 5.2% from employees and 5.3% from employers. An additional 2% is levied in respect of health insurance, to subsidise the costs of GP consultations and prescribed drugs in Jersey.

Based on figures from the 2007 income tax data for employed earners, an additional £30 -35 million would be raised by requiring contributions of a total of 10.5% in respect of all earnings, on the assumption that the current ceiling for supplementation remains in place.

Through the present funding of supplementation by the States, tax payers subsidise approximately 70% of all workers, as their contributions do not fully cover the costs of their benefits and pensions.

Removing the ceiling could be used to transfer some of this cost from all taxpayers (taxed on the basis of earned and unearned income) to higher earning workers and the self-employed. The advantage is that it reduces the burden on taxpayers; the disadvantage is that it increases the burden on wage earners and business in general.

## **1.8 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE SHARING OF TAX INFORMATION WITH THE UNITED KINGDOM AND FRANCE:**

### **Question**

Will the Chief Minister inform members of the extent of the tax information that can be exchanged with the respective authorities in the UK and France under the Tax Information Exchange Agreements (TIEAs) and, in particular, whether such information extends to Jersey-based -

- a) Funds;
- b) Trusts;
- c) Income both earned and unearned; and
- d) Savings and bank deposits

held by UK and French taxpayers?

Will he further outline the conditions that HM Revenue and Customs and its French equivalent have to satisfy, through Court actions or otherwise, in order to justify such exchanges and will he also state whether these 2 agreements differ in any significant ways from previous agreements such as that with the United States authorities?

### **Answer**

All the TIEAs signed by Jersey, including those with the United Kingdom and France, are based on an OECD Model Tax Information Exchange Agreement. They provide for requests for any information that is foreseeably relevant to the administration or enforcement of the domestic laws of the parties concerning taxes covered by the Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons.

Under the terms of each Agreement each party shall ensure that it has the authority, in accordance with the requirements of the Agreement, to obtain and provide, through its competent authority and upon request:

- a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

- b) information regarding the ownership of companies, partnerships, collective investment schemes, trusts, foundations and other persons, including information on all persons in an ownership chain; and
  - (i) in the case of collective investment schemes, information on shares, units and other interests;
  - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
  - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
  - (iv) in the case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in sub-paragraph (i) to (iii).

The wording of each Agreement may differ slightly but the overall coverage is the same except that earlier agreements such as that with the United States, did not refer to foundations as there was no such vehicle in place in Jersey at the time. However, all of the elements referred to by the Deputy are covered in the Agreements entered into.

In the case of Jersey the authority to provide the information requested is provided by the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008.

All of the TIEAs, including those with the United Kingdom and France, also include the following requirements to be met when a request for information is made, which requirements are based on the OECD Model Agreement –

“Any request for information shall be formulated with the greatest possible detail possible and shall specify in writing:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature of the information requested and the form in which the requested party would prefer to receive it;
- (d) the tax purpose for which the information is sought;
- (e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting party, with respect to a person identified in sub-paragraph (a) of this paragraph;
- (f) grounds for believing that the information requested is present in the requested party or is in the possession of or obtainable by a person within the jurisdiction of the requested party;
- (g) to the extent known, the name and address of any person believed to be in possession of, or able to obtain the requested information;
- (h) the statement that the request is in conformity with the law and administrative practices of the requesting party, that if the requested information was within the jurisdiction of the requesting party then the competent authority of the requesting party would be able to obtain the information under the laws of the requesting party or in the normal course of administrative practice and that it is in conformity with this Agreement;

- (i) a statement that the requesting party has pursued all means available in its own territory to obtain the information, except those that will give rise to disproportionate difficulty”.

Some media comment has suggested that the requirements to be met for a request for information to be responded to are such that few requests are made. It is worth repeating that the requirements referred to are those set out in the OECD’s Model Agreement which was adopted by the OECD Member States. Reference has been made to the fact that only five requests have been received from the United States since the Agreement was signed in 2002. However, the Agreement provided that in respect of civil tax matters the Agreement did not come into force until 1 January 2006 – as had been agreed at the time of signing and was also in the OECD Model Agreement. The five requests received have therefore been for the period since the 1 January 2006. All requests received from the United States authorities have been responded to positively and promptly. The United States authorities have always indicated that they do not expect to make many requests. One reason for this is that the fact that the information they require from a tax payer can be obtained under the terms of the TIEA will normally mean that the tax payer will make the information available voluntarily, the tax payer recognising that such cooperation would be viewed favourably by the US Tax Authorities. The US Tax Authorities have expressed their satisfaction and gratitude for the assistance given by the Jersey authorities in respect of those cases where requests have been made.

## **1.9 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE USE OF MINISTERIAL DISCRETION IN RELATION TO INCOME SUPPORT CLAIMS:**

### **Question**

Will the Minister inform members how many times, if any, Ministerial discretion has been requested and has been exercised by him and his predecessor over Income Support determinations and decisions?

Will he further detail what issues were involved and what decisions were finally arrived at through the exercise of discretion?

Will he also inform members how many cases have come to the Social Security Appeals Tribunal in the period since it was reformed following the introduction of Income Support, what issues were raised and what rulings were made?

### **Answer**

The vast majority of Income Support claimants receive their benefit as a regular weekly amount. Individual payments are also made to claimants through the Special Payment Regulations which provide for most situations in which a specific expense needs to be met.

The Income Support Law does give the Minister the power to make other payments in exceptional circumstances. This is a necessary part of the Income Support framework as it provides the flexibility to address the needs of individuals in unusual and exceptional circumstances. The Income Support Policy Guidelines lay down a number of these circumstances in which the Minister’s discretion has been delegated to determining officers.

Only in the most unusual circumstances would a case be referred directly to the Minister.

Since the inception of the Income Support, a total of 10 ministerial decisions have been made in respect of discretionary payments.



These matters are handled with the highest degree of confidentiality and it would not be appropriate to provide details of the exceptional circumstances which gave rise to the need for a discretionary payment. However I can confirm that the payments that were made covered the following types of expense:

The payment of childcare fees to very young mothers (2 cases);

the payment of a rental component to an owner occupier;

the payment of a rental component to an individual moving out of residential care;

the payment of a medical driving assessment fee;

the payment of a living component to a young adult, previously in foster care;

the payment of a personal-care component to a child;

the payment of expenses to attend a funeral (2 cases);

One application was refused in respect of a request for travel costs to attend a memorial service.

Since February 2008 there has been one appeal to the Social Security Tribunal in respect of the assessment of capital in an Income Support application. The appeal was dismissed by the Tribunal.

There has also been one appeal in respect of the backdating of a claim to Long Term Incapacity Allowance. The appeal was dismissed by the Tribunal Chairman as it was out of time.

#### **1.10 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING PROPOSALS FOR THE FUNDING OF RESIDENTIAL CARE FOR THE ELDERLY UNDER THE INCOME SUPPORT SCHEME:**

##### **Question**

Will the Minister inform members when he will be bringing his proposals for the funding of residential care for the elderly under Income Support to the Assembly and will he assure members that these proposals, already postponed from the 2008 Income Support scheme, will not be further delayed awaiting the investigation and assessment of a wider insurance-based residential care scheme?

##### **Answer**

The funding of residential care costs for income support claimants is currently covered by the Income Support Transitional Provisions Order.

Since February 2008 all new applications for assistance with residential care costs have been processed by the Social Security Department. During 2008 a standardised placement process for residential care was introduced and fee rates were agreed with local providers. These measures have already led to a much greater consistency in the funding of residential care costs.

I will shortly be issuing Income Support Policy Guidelines which will include a section covering the administration of requests for residential care funding.

It is true that if the Department were not working on a proposal for long term care funding that the residential care regulations could be brought to the States at an earlier date. However, the Department has acknowledged the recommendations of the HSSH Scrutiny Panel Report on Long Term Care which emphasised the importance and urgency of introducing a system of long term care funding. For this reason, the green paper on Long Term Care has been scheduled in advance of the residential care regulations within the 2009 Business Plan.

The 2009 Business Plan for my Department includes the following commitments:

“Introduce Residential Care regulations within Income Support Scheme” with a target date of December 2009.

“In conjunction with New Directions, undertake public consultation on long term care scheme and gain political approval for outline scheme” with a target date of June 2009 to publish a green paper.

As with all Business Plan commitments, the intention is to maintain the proposed timetable.

My Department has taken on a considerable amount of extra work in the first three months of 2009, as an inevitable consequence of the difficulties in the global economy. This may have an impact on a number of commitments made within the Business Plan and it is not possible, at this stage, to identify the full extent of any specific slippage.

**1.11 DEPUTY T. M. PITMAN OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE LACK OF VESTING CERTIFICATES SECURED IN RELATION TO THE ENERGY FROM WASTE PLANT CONTRACT:**

**Question**

Would the Minister explain why the standard practice of securing Vesting Certificates as guarantees for all equipment/materials ordered and paid for, was not adhered to in relation to the Energy from Waste Plant, and advise whether any alternative approach used by the Transport and Technical Services Department offered Jersey taxpayer’s equivalent protection?

**Answer**

The Contract does allow for Vesting certificates to be provided by the Contractor but only when identifiable equipment has been constructed within the Contractor’s (or sub-contractor’s) premises until final delivery on site to ensure that the value of the equipment is available to the Department in the event of damage or loss during transfer of liquidation of the contractor/sub-contractor.

Clause 25 of the Institute of Chemical Engineers Red Book contract, clearly sets out the process by which equipment, once constructed, passes title to the client, the States.

**1.12 DEPUTY T. M. PITMAN OF ST. HELIER OF THE ATTORNEY GENERAL REGARDING PROSECUTIONS OF CANDIDATES FOR BREACHES TO THE ELECTORAL LAW:**

**Question**

Does the Attorney General consider that he has the power to decide that one candidate should be prosecuted while another candidate should not when each have breached the same electoral law – possibly even within the same electoral district?

**Answer**

If this were a question of general principle, the short answer would be yes. However, it seems too close to the circumstances surrounding the pending prosecution of two States members, including the Deputy's wife, both of which prosecutions are sub judice, to be other than coincidental, and accordingly I do not regard this as a proper parliamentary question to put, notwithstanding that it may fall within Standing Orders. The answer given below is of general application and does not refer to the factual circumstances posed in this question.

On the point of general principle, I would say this. In 1951, Lord Shawcross, the then Attorney General for England, made a classic statement on public interest which has been supported by Attorneys General in England and Wales ever since:

*“It has never been the rule in this country – I hope it never will – that suspected criminal offences must automatically be the subject of prosecution.”*

House of Commons debates, Volume 483, column 681, 29th January, 1951.

This principle has long been applied both in Jersey and in the United Kingdom. It is, for example, the basis upon which many prosecutions of young people, which would take place if the evidential test were the only criterion, are in fact not brought, and those persons dealt with at Parish Hall enquiries and kept out of the court system.

The public interest is considered in each case where there is enough evidence to provide a realistic prospect of conviction. In cases of any seriousness, a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Prosecution lawyers must balance factors for and against prosecution carefully and fairly. There are lists of some common public interest factors, both for and against prosecution, on the Law Officers' website, to be found at paragraph 5 of the Code on the Decision to Prosecute, issued in January 2000.

**1.13 DEPUTY T. M. PITMAN OF ST. HELIER OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE DEVELOPMENT OF THE WATER'S EDGE HOTEL:**

**Question**

Would the Minister advise whether the recent purchaser of the Water's Edge Hotel has been given consent, or any indication that this will be granted, to demolish the hotel in order to develop luxury apartments?

**Answer**

It is understood that the 'purchase' referred to in the Jersey Evening Post recently is for a lease of the premises, and not a freehold sale.

There has been no application, and thus no permission, for the redevelopment of the Water's Edge Hotel at Bouley Bay.

The owners came to see the Minister some months ago to explain that they were considering redevelopment of the hotel for residential use. There have subsequently been two preliminary meetings between the Department, the architects and the Minister, at which preliminary designs have been discussed to redevelop the premises with residential apartments. They have been advised that there will need to be an Environmental Impact Statement submitted with any application made. The site is particularly sensitive, as it is the largest single property in Bouley Bay.

There have been no indications that permission will be granted, although the powers of the Minister may not include requiring the building to remain in its current tourism use.

**1.14 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE STATES SHAREHOLDING IN THE JERSEY ELECTRICITY COMPANY AND ITS SUBSIDIARY COMPANIES:**

**Question**

Could the Minister advise the Assembly of the exact holding, in percentage terms, which the Island holds within the Jersey Electricity Company Limited (JEC), including any subsidiary companies held within the JEC portfolio or which trade under the JEC name, state who the Directors of the said companies are and what, if any, share holdings within these companies are held by the people of Jersey?

**Answer**

The States' holds 62% of the ordinary share capital in the Jersey Electricity Company Limited (JEC) and 54% of the company's total share capital. JEC has investments in the following:

Subsidiary undertaking: Jersey Deep Freeze Limited

Associate: Newtel Holdings Limited

Joint venture: Foreshore Holdings Limited

Other investments: Channel Islands Electricity Grid Limited

The States does not have any direct shareholding in any of these companies. As the States has no direct holdings in these companies it does not maintain records of their directors. Each company is required to make an annual return to the Registrar at the Financial Services Commission, including information on their directors.

**1.15 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING LEGISLATION FOR A DEPOSITOR PROTECTION SCHEME:**

**Question**

Will the Minister advise the Assembly when the legislation for a Depositor Protection Scheme will be brought to the States?

**Answer**

The States debated a proposition on 3rd December concerning Deposit Protection. It was agreed that the Minister for Economic Development would bring proposals for a Deposit Protection Scheme to the States by July 2009.

The Department has commissioned a report from Oxera and is also working closely with industry partners. Given the importance of this matter we are working hard to bring forward proposals as soon as possible and which I currently anticipate to be well in advance of our commitment.

**1.16 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE REMIT OF THE FISCAL POLICY PANEL:**

**Question**

Has the remit of the Fiscal Policy Panel been broadened and, if so, how, and how does its revised remit overlap with the remits of the States Economic Adviser and relevant Treasury staff?

**Answer**

The Fiscal Policy Panel's remit has not been broadened and remains that agreed by the States as part of P133/2006 and the new Fiscal Framework. That is, they are an independent panel of leading economists who publish an annual report each year covering their views on economic conditions and the States' finances, with particular reference to the States economic objectives. Their advice covers the need for running surpluses/deficits and whether funds could be withdrawn from/paid into the Stabilisation Fund. The Treasury and Resources Minister is entitled to ask for an update to their report at any point in the year should economic conditions change.

In keeping with that remit the Fiscal Policy Panel will publish their annual report this year in early May to fit in with the States Strategic Planning process and the Minister has asked them to update their last report from November before he brings forward a fiscal stimulus package to the States in April.

**1.17 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE WORKING PATTERN OF HOSPITAL CONSULTANTS:**

**Question**

Will the Minister inform members whether every consultant employed by Health and Social Services is required to work a full working week before engaging in private practice and, if so, what is the Health and Social Services' definition of a 'full working week'?

**Answer**

The Health and Social Services Department employs a range of consultants, some of whom work full time and some of whom work part time. Full time consultants are required to fulfil a minimum schedule of activities in accordance with their Job Plans. These Job Plans are managed by either the surgical directorate or the medical directorate of the General Hospital, as appropriate. These activities are measured in units of four hours duration and are termed 'programmed activities' (PAs). These PAs are contractually underpinned by the consultants' contract which was negotiated with the British Medical Association some years ago now. The standard working week for a full

time consultant is 40 hours – and therefore it can be seen that 10 programmed activities comprise this weekly working period.

A consultant is required to participate in the hospital's on-call arrangements by which in an emergency he / she might be required (during his / her period of on-call) to attend the hospital to minister to a very sick or injured patient. This period of on-call covers evenings, night time, weekends and Bank Holidays. Unlike any other pay group in the States of Jersey, a consultant is not additionally remunerated for participating in such on-call arrangements. A consultant is entitled to time off in lieu (this time off being determined by the frequency and intensity of the on-call rotas).

In this context, consultants can undertake private practice within the working week as it is accepted that they often work beyond their 10 programmed activities. They can also work in the time they have legitimately accrued by participating in the above mentioned on-call rotas.

The arrangements for the management of public and private medicine in the hospital are governed by the Code of Practice which clearly specifies how and under what circumstances private practice activities can be pursued. This Code of Practice was negotiated with the British Medical Association and is based on the arrangements which exist in the National Health Service in England.

#### **1.18 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE NUMBER OF CLIENTS ON LONG TERM INVALIDITY ALLOWANCE RETURNING TO WORK:**

##### **Question**

Given that Income Support and associated benefits were, in part, promoted as a support for those in work or seeking to return to work, would the Minister specify the number of clients on Long Term Incapacity Allowance who have returned to work (distinguishing between full and part-time) since the inception of Income Support and state what percentage this forms of clients on LTIA?

##### **Answer**

There is no direct connection between Long Term Incapacity Allowance (LTIA) and Income Support. LTIA replaced Invalidity Benefit and Disablement Benefit in October 2004. These are contributory benefits, paid from the Social Security Fund whereas Income Support is a tax-funded benefit, only paid to households with income below a certain level. Whereas Invalidity Benefit could only be claimed by individuals who were not in work, individuals receiving LTIA are at liberty to take up paid employment and retain their benefit. The individual does not need to inform the Department if they take up or resume paid employment. Many people receiving LTIA will not be eligible for Income Support based on the level of their household income.

For those individuals who do receive LTIA and Income Support, depending on the severity of their illness or disability, they may be partially or fully exempt from any work requirement under Income Support.

RC42/2007 (Review of the changes to the Incapacity Benefit System) included an analysis of LTIA claimants in paid work which noted that:

“4.29 A separate analysis of Long-Term Incapacity Allowance claims reveals that at some point over the period May 2005 to April 2006, 30 per cent (or 210 claimants) had undertaken some form

of employment and paid social insurance contributions. Under the previous benefit system none of the claimants with long-term illnesses would have been entitled to work.”

At the end of February 2009, there were 3,016 LTIA claims in payment.

### **1.19 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE COST OF CONSULTANTS:**

#### **Question**

In the light of public concern over fees paid to consultants, would the Minister inform the Assembly of the cost of -

- a) the Atkins Report into the post-Buncefield situation regarding the fuel farm and the associated risks?
- b) the work by Hopkins Architects Ltd. reviewing and revising the design of the outside of the Energy from Waste plant?

giving sufficient details of the work undertaken to provide a clear indication that this was money well spent?

#### **Answer**

a) The cost of employing Atkins Limited to conduct a quantitative risk assessment of the Jersey Fuel and Gas storage facilities at La Collette, including the risk of a Vapour Cloud Explosion, such as that witnessed at Buncefield, and a specific assessment related to the proposed Energy from Waste plant, was £56,000. The reports produced enabled the La Collette Hazard Review Group, who commissioned the work, to establish the tolerable levels of risk for occupation of the area in land use planning terms, and therefore was critical both to confirming the acceptability of current land uses and that of proposed developments. The information has been used to inform supplementary planning guidance for the Minister of Planning and Environment and is being used to inform revised emergency and evacuation procedures on site. Atkins are leading consultants in this field and contributed to the production of UK guidance on hazards and land-use planning. The investment required to produce this report was good value given the benefits in understanding of the risks from the fuel and gas storage facility that it has provided.

b) The cost incurred thus far in employing Hopkins Architects Limited in reviewing and revising the design of the Energy from Waste Plant has been £283,119. The work has entailed reviewing the Department's outline planning application building envelope design, revising this design to obtain outline planning consent, developing the design into a functional architectural specification for issue with the Energy from Waste facility tender, reviewing the bidders designs against this specification, revising and improving the design in cooperation with the preferred bidder, and submitting a finalised design for the submission of Reserved Matters. Under a condition of the Reserved Matters Hopkins Architects Limited are to be retained to advise the Department on the acceptability of the delivered design against the Reserved Matters architectural criteria as set out within the Contract. The cost of this final stage of commission is estimated to be between £50,000 and £100,000. The investment in appointing Hopkins Architects Limited, who are an architect of international repute, to produce a high quality building envelope design and to ensure it is implemented, is considered good value for money, given that the building will be in a sensitive location and will be operational for 25 years.

## **1.20 THE DEPUTY OF ST. MARY OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING LA COLLETTE PHASE 2 RECLAMATION SITE:**

### **Question**

As the La Collette Phase 2 Reclamation Site is porous to the sea and adjoins a site of exceptional ecological importance, and is therefore extremely environmentally sensitive, can the Minister provide the Assembly with a complete list of the permissions, laws, regulations, protocols and other documents which define and regulate all the different activities on the site, including the construction and operation of the new incinerator, giving, an indication of the purpose, scope and content of each document and, if possible, a website reference for each?

### **Answer**

The activities at La Collette, as far as they concern the Laws which are within the remit of the Minister, are described below. The principal control mechanisms in Laws are described in relation to these activities along with the purpose and scope of the controls. Links to the Jersey Law website are provided

#### **Planning and Building (Jersey) Law 2002**

The Planning law is in place to provide for the orderly, comprehensive and sustainable development of land that best serves the community of Jersey as a whole. The process can also impose necessary controls on development and the use of land on the Island but should not replicate or duplicate other controls that might be available. Development – which is defined amongst other things as building or engineering operations or the change of use of land – requires planning permission. Any application for permission is considered against all material considerations including the Island Plan and any other strategies or programmes that have been approved by the States.

The following Planning Permissions authorize the activities at La Collette in a land use context

Planning Permit 17742 (18 October 1991) granted planning permission for the formation of a breakwater that created the La Collette II reclamation project. The aim of the project was to form a new area for development but also to provide a solution to the disposal of non-organic waste for the Island. Planning Permit 17742/B (12 September 1995) gave permission for infilling of the area created by the breakwater and in particular allowed for superfilling over and above the height of the breakwater where the site was to be used for the disposal of ash from the incinerator at Bellozanne. This was located on the north-eastern area of the site and allowed for superfilling up to 8m above the level of the top of the breakwater.

This Permit has authorized the tipping activities at La Collette since that time.

Planning Permit 17742/C (18 October 1996) granted permission for landscape tipping along the north eastern edge of the La Collette site – again over the ash pit areas - up to a maximum height of some 10m above the level of the top of the new sea wall.

Planning Permission P/2002/2597 allowed for the establishment of a timber and green waste reception and recycling (composting) on the La Collette site until December 2007. Application RC/2007/2971 sought to extend that temporary permission until such time as a new composting facility is established.

In April 2008 an application was submitted to re-locate the reception for commercial green waste within the La Collette site (P/2008/0958). The application was approved on 12 November 2008



In September 2008 an application was received to enlarge the bus depot at La Collette to facilitate the Energy from Waste Plant construction.(P/2008/0098) The application was approved on 12 November 2008.

An application for outline planning permission for the erection of an Energy from Waste Plant was received in January 2007. (PP/2007/0050). This permission was granted after due consideration in October 2007. As the application was in outline various matters relating to the final arrangement of the Energy from Waste Plant were reserved for future consideration.

In September 2008 a submission was made that sought to discharge the reserved matters of the outline permission (RM/2008/2086). After due consideration these reserved matters were approved at the end of October 2008.

Both the outline application and the reserved matters submission were accompanied by an Environmental Impact Statement (EIS) as the result of an Environmental Impact Assessment (EIA0 in connection with the proposal.

All of the above applications were publicized in accordance with the relevant procedures at the time.

#### Waste Management Activities at La Collette

Listed below are a number of waste management activities which are currently being carried out or proposed for the La Collette site.

1. Land reclamation. The deposit of construction and demolition wastes to reclaim land from the sea.
2. Bioremediation. The bioremediation of oil contaminated soils prior to deposit in the land reclamation site.
3. Ash disposal. The deposit of ash from incineration of wastes in containment cells above mean high water.
4. Aggregates recycling. The processing of construction and demolition wastes to produce recycled aggregates.
5. Green waste composting. The reception and treatment of green waste to create compost.
6. Asbestos reception facility. The reception and secure storage of asbestos wastes.
7. In addition to the above activities the construction of new Energy from Waste facility is being undertaken at La Collette.

#### Enactments controlling activities

These activities are carried out under a number of Laws, either directly through a specific authorisation issued for a particular activity or landuse, or more generally with provision in Law to prohibit undesirable consequences of an activity e.g. the pollution of controlled waters.

The relevant Laws are described in more detail below.

- Planning and Building (Jersey) Law 2002
- Water Pollution (Jersey) Law 2000
- Waste Management (Jersey) Law 2005

This is not however an all inclusive list as there will be other Laws which have a bearing on how activities carried out at La Collette are carried out which are outside the remit of the Minister for Planning and Environment e.g Health & Safety and Statutory Nuisance.

### Water Pollution (Jersey) Law 2000

The Water Pollution (Jersey) Law 2000 provides for the protection of the aquatic environment from all forms of pollution.

There are two basic concepts underlying this new Law. Firstly 'controlled waters' are what the Law is designed to protect and 'pollution' is what the Law is protecting them from.

'Controlled waters' include the territorial seas of the Island up to the 12 mile limit, coastal waters, as far as the highest tide, including bays and inlets, surface water including streams, brooks, reservoirs etc. and groundwater i.e. water under the surface of the earth.

In this law, the definition of pollution is in line with modern European thinking and with the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic. Thus, pollution includes the introduction of substances or energy into controlled waters that cause or may cause a hazard to human health or water supplies, harm to any living resource or aquatic eco-system, damage to any amenity value or interference with any legitimate use of controlled waters. It also covers the introduction into controlled waters of a substance or energy that contributes to pollution, but which may not be the sole cause.

For example, if a contractor when constructing the incinerator caused a leak of oil to the sea that resulted in loss of marine life, then they may be guilty of an offence and subject to a fine and/or imprisonment. This is an offence of strict liability, which means that an intention to pollute is not a necessary ingredient of the offence.

If any person wishes to make an introduction into controlled waters that would otherwise be in contravention of the Law (Article 17 (1)), then the person can apply for a discharge permit. The process for approving any discharge permit is detailed within the Water Pollution (Jersey) Law 2000. It requires the consent of the regulator (the Environment Division) who will set limits on water quality in order to ensure that the marine environment is protected.

An application for a discharge permit for the controlled discharge of treated brackish water (rainwater and tidal ingress) arising from the construction work to the incinerator has been received by the Minister for Planning and Environment and is currently being considered. The permit has been advertised in the Jersey Gazette and is currently undergoing public consultation.

The permit will only be approved when the regulator is absolutely satisfied that the treatment process and regular monitoring of discharged water is sufficient to ensure that no harm to the ecology of the marine environment and Ramsar site occurs.

It is expected that a further discharge permit for the cooling water for the EFW will be applied for prior to its commissioning. The same strict appraisal and public consultation will take place to ensure that any discharge will not harm the marine environment.

Deemed discharge permits in the La Collette area currently exists for the cooling waters of the JEC Power Station and the interceptors from the fuel farm. There are also two Transport and Technical Services pumping stations located within the La Collette area which are regulated under the Pumping Stations composite discharge permit.

### Waste Management (Jersey) Law 2005

The Waste Management (Jersey) Law 2005 came into force in two stages in November 2006 and February 2007.

Waste management activities are defined in the Law as the deposit, keeping, treatment, disposal or recovery of controlled waste on any land, or by means of any mobile plant. “Controlled wastes” are those hazardous, healthcare, municipal or household wastes which are subject to the provisions of the Law.

The waste management activities at La Collette must be carried out in accordance with a waste management licence that is issued under the Law by the Minister. In addition, the Law prohibits unlicensed activities or activities carried out in a manner that is likely to cause pollution.

“Pollution” is defined within Article 1 of the Law and includes the introduction into the environment of any substance or energy, if its introduction results or is likely to result in a hazard to human health or food or water supplies; harm to any living resource or ecosystem; damage to any amenity; or interference with any legitimate use of land, water or air.

The Planning & Environment Department are currently pursuing and considering applications for waste management licences. Under the transitional provisions in the Law, operators of existing waste activities who have submitted applications can continue lawfully until their applications are determined and a waste management licence is in force.

The status of the existing waste management operations are indicated in Table 1 below.

Table 1 – Waste Management Licence Application Status.

	Waste Management Activity	Operator	Application status
1	Land reclamation.	T&TS Department	Application submitted
2	Bioremediation.		
3	Ash disposal.		
4	Aggregates recycling.	Contractor to T&TS Department	Application submitted
5	Green waste composting	T&TS Department	Application submitted
6	Storage of asbestos.	Contractor to T&TS Department	Working Plan submitted, application form in amendment for submission
7	New Energy from Waste plant.	Application not yet submitted. Proposed future activity	

The construction of the new Energy from Waste facility is underway. A waste management licence will need to be issued before the reception and disposal of waste activity can commence.

When issued, licences will authorise the operator to carry out specific activities at La Collette and contain a number of conditions to control how the operation can be carried out. The licence conditions are required to control the licenced activities taking place at the site in order to prevent

pollution of the environment. The licence will require each licensed facility to be constructed, operated, maintained and monitored to provide a high standard of environmental protection.

Licence conditions will be used to set the standards to which the site must operate. The operator must manage the site operation and provide a working plan which describes how those standards will be met.

Licence conditions are legally binding. The site will have to operate in accordance with the standards and methods detailed within its licence conditions and working plan. Breach of a licence condition is an offence under the Law.

The Law allows that any conditions imposed may cover any of the following matters -

- (a) the design or construction of any plant that is to be used for the purposes of the activity to which the licence relates;
- (b) the manner in which the activity is to be carried on;
- (c) the times at which the activity may be carried on;
- (d) the types and quantities of waste that may be received and dealt with in any specified period;
- (e) emission and discharge limits;
- (f) the keeping of records, the period or periods for which they shall be kept, the making of returns and the giving of other information in respect of the activity; and
- (g) time limits for complying with any conditions.

Website references

Website references for the Laws are provided below from the Jersey Law website,

- Planning and Building (Jersey) Law 2002  
[http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fconsolidated%2f22%2f22.550\\_PlanningandBuildingLaw2002\\_RevisedEdition\\_1January2008.htm#Toc175470268](http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fconsolidated%2f22%2f22.550_PlanningandBuildingLaw2002_RevisedEdition_1January2008.htm#Toc175470268)
- Water Pollution (Jersey) Law 2000  
[http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f27%2f27.800\\_WaterPollutionLaw2000\\_RevisedEdition\\_1January2008.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f27%2f27.800_WaterPollutionLaw2000_RevisedEdition_1January2008.htm)
- Waste Management (Jersey) Law 2005  
[http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f22%2f22.950\\_WasteManagementLaw2005\\_RevisedEdition\\_1February2007.htm](http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f22%2f22.950_WasteManagementLaw2005_RevisedEdition_1February2007.htm)

**1.21 THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE CONTRACT FOR THE NEW ENERGY FROM WASTE PLANT:**

**Question**

Can the Minister inform the Assembly whether his Department, before signing the contract for the new incinerator, researched which plants, if any, CNIM have built in the UK, comparable to the one contracted for in Jersey, whether pollution limits had been exceeded by those plants and, if so, the reasons that occurred?

**Answer**

The Department visited Energy from Waste plants built by CNIM at Sheffield and Stoke during 2007 as part of the procurement process. Both plants have features that are comparable to the Jersey plant. In addition, the Department visited several CNIM reference facilities in France and were provided with details of all CNIM reference plants of similar type to that proposed by the company for Jersey.

The Sheffield plant, which started operations in 2006, was the main reference site reviewed by TTSD when considering the CNIM bid. A thorough review of the plant, and its performance took place, together with a comprehensive visit.

Since the end of 2006, the Sheffield plant has had no reported breaches of air emissions. Emission limits for this type of plant are extremely tightly regulated under the European Waste Incineration Directive. To have no reported emission limit breaches in over two years attests to the quality of the plant and the way the plant is operated. Emissions are continuously monitored which enables the operator to take appropriate actions if required during any potential disturbances.

The Jersey plant will be very similar in design to the Sheffield one, incorporating similar gas cleaning and monitoring equipment, and will be operated to the same standards.

**1.22 THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING ADVANCE PAYMENT BONDS FOR THE NEW ENERGY FROM WASTE PLANT:**

**Question**

Further to statements made on 25th February 2009 on the rescindment of the incinerator project by Deputy E.J. Noel, Assistant Minister for Treasury and Resources, that the “advance payment bonds” in relation to the incinerator were somehow better than vesting certificates and that “so far, we have paid £34 million in advance payment into the advanced payment bond. Under the terms of the contract these would not be recoverable if cancelled”, would the Minister explain exactly how these bonds work, the exact wording concerning these bonds, and the reference in the contract?

**Answer**

The Contract does allow for Vesting certificates to be provided by the Contractor but only when identifiable equipment has been constructed within the Contractor’s (or sub-contractor’s) premises until final delivery on site to ensure that the value of the equipment is available to the Department in the event of damage or loss during transfer of liquidation of the contractor/sub-contractor.

The Advance Payment Bond provides financial security to the Department for any difference between the outgoing payments and the value of the works on the ground for the period of the

contract where this is apparent. The Advance Payment Bond and the Performance Bond would be available in the event of a Contractor breach (so would not apply in the event of termination for convenience).

**1.23 THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING COMPANIES INVITED TO SUBMIT AN EXPRESSION OF INTEREST IN THE DEVELOPMENT OF THE NEW ENERGY FROM WASTE PLANT:**

**Question**

Can the Minister confirm whether the placing of a Notice in the OJEC (Official Journal of the European Community) by the Department in 2003 inviting companies to submit an “expression of interest” for dealing with Jersey’s waste placed a legal obstacle to engaging with and progressing expressions of interest which did not, in the first instance, come via the OJEC Notice procedure?

**Answer**

The OJEC notice was employed by the previous Committee to make established and reputable waste management companies aware of the Energy from Waste procurement. As Jersey is not a formal member of the European Union, there was no legal obstacle to engaging with and progressing expressions of interest from companies who did not formally respond to the OJEC notice. Indeed, the Department maintained a watching brief on all expressions of interest that arose up to the point of recommending the preferred solution for a replacement for the Bellozanne incinerator in May 2008. However, once formal tenders had been issued to four companies in November 2007, any subsequent company expressing interest would have had to offer a solution of considerable merit to have justified halting the procurement process. No such company emerged, although the Department reviewed 78 technology solution companies as part of the Waste Technology Options review.

**1.24 THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING COMMUNICATIONS WITH BABCOCK AND ART TO PROVIDE A WASTE SOLUTION FOR JERSEY:**

**Question**

Can the Minister for TTS provide to members a complete timeline of communications both written and oral with Babcock and ART about their proposals to provide a waste solution for Jersey and a summary of the work done by the department and their consultants in connection with this company and with their proposals?

**Answer**

Communications with Babcock Volund

Babcock and Willcox Volund (BWV), of Denmark are a respected supplier of Energy from Waste boiler and grate technology, but did not respond to the Department’s OJEC Notice issued in August 2003.

The Department’s Technical Adviser Fichtner Consulting Engineers, through their work on other contracts, were aware that BWV were not bidding for full EPC turn-key projects in the UK - the

OJEC notice issued by the Department required those expressing interest in the procurement to offer a complete solution for Jersey's residual waste disposal.

Two companies, including Advanced Recycling Technology (ART) Limited, indicated that BWV were a potential plant supplier within their expressions of interest in response to the OJEC Notice, but provided no evidence of the commitment of BWV, and BWV did not contact Fichtner or the Department to confirm their commitment, which might have added weight to these submissions.

BWV were included within the Technology Review Report that Fichtner produced for the Department in October 2006 which was circulated to all States Members. At this time, Fichtner confirmed that the BWV plant could have been considered as a suitable technology for Jersey, but reported that at the time the Company were not actively offering even its grate and boiler together with a main contractor to UK projects which they were aware of.

BWV were included within the updated Technology Review Report that Fichtner produced for the Department at the start of May 2008 and which was provided to States Members as P72/2008 Addendum, where Fichtner reported that no change in the BWV position with regards to full EPC turn-key projects had occurred.

Fichtner contacted BWV in September 2008 for the first time in respect of the procurement, following a challenge from ART that led to the submission of P139/2008 "Committee of Inquiry: Energy from Waste Plant Procurement Process" by Deputy Baudains. The details of the contact are contained in the Department's response to that proposition (P139/2008 Comments) which was withdrawn before it came to debate.

#### Communications with Advanced Recycling Technology Limited (ART)

ART Limited submitted an expression of interest in response to the Department's procurement on 13 October 2004 regarding an ART Limited Resource Recovery Plant. This was well over one year after the original advertisement had been placed in the OJEC (August 2003) and after a short-list had been drawn up and discussed. Despite this, the Department still reviewed the proposal to check that no "better" solution had been missed.

This proposal was considered in consultation with ART Limited as part of the Department's Solid Waste Strategy Technology Review which was completed in October 2006.

The proposal from ART Limited was not considered suitable because the ART company references were for only part of the waste process (namely to produce fuels for further use) and therefore the key requirement for a total waste solution for the island to be provided had not been met. This fact was formalised within the Fichtner Technology Review Report of October 2005 which was circulated to all States Members.

This was communicated to ART Limited by the Department on 27 October 2006, indicating that a short-list of companies had been drawn up for the procurement and approved by the Waste Strategy Steering Group (a States Member and Officer steering group for the implementation of the Solid Waste Strategy).

ART Limited were not satisfied with the response given by the Department and approached the Planning and Environment Minister in September 2007 with regard to their proposal. The Planning and Environment Minister forwarded their request to the Department and the Company were informed again that the short-list had been determined and that ART Limited were not included.

ART Limited approached the Environment Scrutiny Panel in the Spring of 2008 and had correspondence with the Department's Technical Adviser, Fichtner, about their claim that there was

a “Babcock Wilcox Volund Consortium” which ART claimed to be co-ordinating - BWV subsequently confirmed that ART were not acting for them - and regarding the ART’s experience in delivering Energy from Waste projects - of which they have none as a company that the Department is aware of.

ART Limited were included within the updated Technology Review Report that Fichtner produced for the Department at the start of May 2008 and which was provided to States Members as P72/2008 Addendum, where Fichtner reported that there was no change in their view of the unsuitability of the ART Limited solution.

The Department is aware that ART Limited communicated extensively with many States Members in the run up to the debate on P72/2008 “Energy from Waste Facility: Establishment and Acceptance of Tender”, P139/2008 “Committee of Inquiry: Energy from Waste Plant Procurement Process” and subsequently in the run-up to the debate on P8/2009 “Energy from Waste Facility: Rescindment”.

**1.25 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE ANNUAL FEE PAID TO THE PROVIDERS OF CORPORATE TRAVEL SERVICES TO THE STATES:**

**Question**

What is the annual fee, if any, paid to the provider of corporate travel services to the States, are individual booking charges also levied and, if so, how much is charged per transaction and what have been total transaction fees charged for the current contract to date?

**Answer**

The States of Jersey service provider does not charge an annual management fee for providing a corporate travel service. However we do pay a transaction fee for each travel booking (i.e. hotel, flight, rail etc). In 2008 approximately £17k was paid to the travel agent in transaction fees. We are unable to release the financial terms relating to the transaction fees as they are commercially sensitive and could negatively impact any future tendering process.

**1.26 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING ASSURANCES IN RESPECT OF THE MAIN CONTRACTOR OR SUB-CONTRACTORS OF THE ENERGY FROM WASTE PLANT SHOULD THEY GO INTO LIQUIDATION:**

**Question**

Given the world recession and the failure of many commercial enterprises what assurances can the Minister give that, in the event of the main contractor or sub-contractors of the Energy for Waste plant going into liquidation, they will be able to fully recover the money they have paid out on this contract or see the plant completed at no additional cost to the States quoting precisely the contractual terms in this regards.

**Answer**

The Contract includes Parent Company Guarantees with both joint venture partners within CSBC (Jersey) Limited. One guarantee is with the CNIM main parent company (for the entire Engineering Procurement and Construction Contract value) and the other is with Spie Batignolles Camerons (for



the civil element in the event that CNIM also went out of business) which would be recoverable in the event that the Contractor, CSBC (Jersey) Limited, went into liquidation. The financial position of all tenderers and their parent companies were considered and factored into the final evaluation of the tenders received.

The Contractor - CSBC (Jersey) Limited would be liable under the contract for any of the sub-contractor's liquidation implications.

An on-demand Performance Bond and an on-demand Advance Payment Bond (which reduce at key stages in the project) have also been provided from Credit Lyonnais SA. The on demand Advance payment bond ensures that the States maintains a cost neutral position throughout the construction period.

**1.27 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BREGARDING DISCHARGE OF "BRACKISH WATER" ARISING FROM THE NEW ENERGY FROM WASTE PLANT EXCAVATION:**

**Question**

Will the Minister advise Members of the contractual terms in the Energy for Waste Contract covering unforeseen circumstances (such as extra hard granite) causing additional costs to be met by the purchaser, including the maximum additional potential cost to which the purchaser is exposed?

**Answer**

The Contract requires the Contractor to establish, through its own investigations, what circumstances apply on site. The risk of encountering, for example, unforeseen ground conditions remains with the Contractor. The only exception within the Contract relates to unforeseen contamination, but this is limited to where this is over and above the amount and type of asbestos defined within the asbestos remediation plan appended to the Contract.

In terms of unforeseen circumstances, it is for the contractor to prove that he has encountered these circumstances, whatever form they might be and under the contract, they are dealt with as a claim. Under Clause 17 - Contractors Variation and Clause 18 - Contractors Claim, of the Institution of Chemical Engineers Red Book Contract, the methodology for dealing with claims is clearly dealt with, a copy of which has already been supplied to the Deputy.

In the case of extra hard rock, the "preferred bidder" was provided access to the site to undertake their own ground investigation to ascertain the exact nature of the ground conditions to validate the information contained in the tender documents prior to contract signature. If there were any discrepancies between the two sets of information, the preferred bidder had the opportunity to vary their tender price prior to the contract being signed in November 2008. The Contractor advised that, due to the need for a slight adjustment to the footprint of the plant there would be a £75,000 adjustment to the cost of excavation which was included in the final contract price. There were no other variations resulting from the process. The risk therefore is with the contractor to remove the material found on site.

**1.28 DEPUTY A. K.F. GREEN OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE POSSIBILITY OF ADDITIONAL COSTS IN THE CONTRACT FOR THE ENERGY FROM WASTE PLANT:**

**Question**

An application DP(B)2009/03/01 was published in the Jersey Gazette on 14th March 2009 for a permit to discharge “treated brackish water” arising from the Energy from Waste Plant excavation. Can the Minister give full details of this application, in particular –

- (a) the chemical composition of the water before and after this “treatment,” and how this chemical composition changes over time?
- (b) the nature of the treatment?
- (c) how this brackish water arose, the quantity involved, how the situation was discovered, and the likely duration of the discharge?
- (d) whether the Ramsar Secretariat will be informed of this potential discharge and their view sought?

**Answer**

Application DP(B)2009/03/01 has been made by the Civil Engineering contractor for the Energy from Waste project Spie Batignolles Camerons (SBC) who are part of the main contractor consortium CNIM Spie Batignolles Camerons (CSBC Jersey Ltd). The application is to discharge water that will arise on the site during the construction of the plant. The water will come from the sea via ground infiltration, and from rainfall. In principal the water entering the site will be clean water from the sea or from rainfall. The application is to pump the sea water and rainwater out to sea if it gets on site. There is a risk that pollutants, for example hydrocarbons or silts, could be introduced to this water whilst on site and thus the contractor has made an application to the regulator for a discharge permit. This application gives details of the proposed treatment of the water prior to discharge.

- (a) the chemical composition of the water before and after this “treatment,” and how this chemical composition changes over time?

The water entering the site will be sea water and rain water. Any water leaving the site must comply with the limits set by the regulator. These limits will be set on the quality of water that can be discharged so as to protect the receiving water.

- (b) the nature of the treatment?

The proposed treatment process in the application is for a series of silt settlement tanks, pH adjustment (if necessary) and a hydrocarbon trap to be installed prior to discharge.

- (c) how this brackish water arose, the quantity involved, how the situation was discovered, and the likely duration of the discharge?

The brackish water will be predominantly sea water with some rainwater. In order to construct the waste bunker it is necessary to dig below the high water sea level. When the tide is high the water infiltrates through the porous ground and can enter the excavation pit until the permanent sealed concrete structure is in place. In order to construct the waste

bunker the excavated pit must be dry so that the concrete can be safely and successfully cast.

In order to minimise the amount of sea water on site the contractors are constructing a sheet pile barrier around the pit excavation. Whilst this should dramatically reduce the amount of water entering the excavation it is unrealistic to expect the sheet piles to prevent all water ingress.

It is intended that the excess water is pumped through a treatment plant into the existing sea water culvert to sea. In order to do this the application to discharge has been made. When the construction is complete there will no longer be a need to discharge water from the construction site so it is anticipated that the consent will be required until June 2010.

- (d) whether the Ramsar Secretariat will be informed of this potential discharge and their view sought?

The Regulator will not be consulting with the Ramsar secretariat as nothing will be consented that has the capacity to harm the ecology of the site.

## **2. Oral Questions**

### **2.1 Deputy S. Pitman of St. Helier of the Minister for Treasury and Resources regarding the cost to the States of implementing and administering the Goods and Services Tax:**

Would the Minister inform Members what the cost of implementing G.S.T. (Goods and Services Tax) was to the States and outline the ongoing costs of administering this tax?

#### **Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):**

The cost of implementing G.S.T. will be in the region of £2.5 million which was agreed in the budget covering all costs incurred from 2005 to date. The ongoing costs for administration by Income Tax and Customs in 2008 was around £750,000. This includes direct staffing costs and all other related expenditure. In the full year these costs are expected to be in the region of £1 million.

#### **2.1.1 Deputy R.G. Le Hérisier of St. Saviour:**

Given the Assistant Minister's commitment to public sector reform and cutbacks, would he outline to the House what steps he has taken thus far to reduce those costs?

#### **The Deputy Bailiff:**

The costs of what, sorry?

#### **Deputy R.G. Le Hérisier:**

Administering G.S.T. Thank you.

#### **Deputy E.J. Noel:**

The simple answer to that is that there is no anticipated reduction in those costs. The costs of £1 million per year to raise £15 million in tax is 2 per cent of the tax raised, which is one of the most efficient rates in the world to date. The only thing that is more efficient is impôts duty.

#### **2.1.2 Deputy G.P. Southern of St. Helier:**

Is it not the case that in order to make this particular tax even more efficient, all he simply has to do is raise the rate and is that not his intention, or his Minister's intention, to do sooner or later?

#### **Deputy E.J. Noel:**

It is not my intention, nor the Minister's intention, to raise the rate of G.S.T, certainly at this time. The House has already been given an undertaking that G.S.T. will not change in the rate until 2011.

**2.1.3 Deputy G.P. Southern:**

I believe that assurance, which was given to the House, was given under the condition that circumstances do not change and substantial changes are not made to the G.S.T. law. Is that not the case?

**Deputy E.J. Noel:**

I believe that certainly is the case. If changes are made to our current simple G.S.T. legislation then obviously the tax lost will have to be recovered. If the proposed proposition that we are debating next week is approved, then we will lose some £6 million in tax revenue for an additional cost of 20 to 30 per cent on our annual cost of collecting G.S.T.

**2.1.4 Deputy R.G. Le Hérisier:**

The Minister says that it is a very efficient tax but the amount collected, is that an indicator of efficiency? What about the internal efficiency within the department, would he describe how that is measured?

**Deputy E.J. Noel:**

I am afraid that that is a question I cannot answer at the moment because I do not have the relevant facts to answer that. I am assured that the Income Tax Department is run, in particular with G.S.T., extremely efficiently with only some 5 members of staff.

**2.1.5 Deputy G.P. Southern:**

Will the Assistant Minister come to the House with a statement about the internal efficiency of the Income Tax Department? While he is on his feet, will he also state that while this tax is an efficient tax - there is no doubt about it - it is also a grossly and manifestly unfair tax in that it impacts most [Approbation] on the lowest paid?

**Deputy E.J. Noel:**

Firstly, I am happy to give an undertaking that I will approach my Minister to get that information and bring it back it to the House. I refute the Deputy's second point because it is not only an efficient tax it is, the way it is structured, a progressive tax with the Social Security rebate and with the reforms that Deputy Le Fondré brought forward has changed what was a regressive tax into a progressive tax.

**2.1.6 Deputy G.P. Southern:**

Will the Minister come to the House with the argument that suggests that the tax, as structured, is in any way progressive? Because I believe he is misleading the House.

**Deputy E.J. Noel:**

I am quite happy to come to the House with evidence to show that G.S.T. as it stands, and with the systems in place to protect the less well-off in our society, is indeed a progressive tax.

**2.1.7 Deputy S. Pitman:**

Does the Assistant Minister have evidence to back up what he has just said in that next week, if we go ahead with this proposition, we will lose £6 million, and does he have any research for any other options that could fill that hole? Like 1(1)(k)s who should be paying their proportionality of tax.

**Deputy E.J. Noel:**

There are many other ways of raising taxes but my Minister - and I endorse it - has given an undertaking that in this term we will not seek to raise additional taxes other than those already

agreed by this House in connection with the environment. So, although there are always ways of raising taxes, at this moment in time with our economic climate, the preferred route is to leave G.S.T. as it is.

## **2.2 Deputy R.G. Le Hérissier of the Minister for Housing regarding the assessment of demand for over-55s housing:**

What methods, if any, are in place to assess accurately the demand for over-55s housing?

### **Senator T.J. Le Main (The Minister for Housing):**

Members will know that the Housing Department keeps an accurate waiting list of those requiring such accommodation now and the Housing Needs Survey offers some robust statistical information about future need. However, we know that under existing arrangements those needing housing of any type can register with any number of providers such as the Housing Department, any of the trusts and a number of Parishes. It is not clear whether the same people are registered on more than one or all lists, therefore, it is difficult to quantify the overall long-term housing requirement of the population, not least our ageing population. It also creates a risk that individuals fall between 2 schools and their housing needs are not properly met because we do not know that they are in need. This is wholly unacceptable and it is something that I am trying to address through the setting up of a single means gateway to affordable housing which Members will recall was introduced as a concept in a debate on Jersey Homebuy. This concept would require anyone wishing to access any form of affordable housing to register and assess through the gateway where a master list would be maintained and provide accurate figures in respect of demand. This no doubt would be a recommendation of Professor Whitehead in her review of social housing.

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

Given the enormous gaps that there appear to be matched by a considerable number of overlapping lists, would the Minister acknowledge that basically we have no real idea and he is just putting his finger in the wind?

### **Senator T.J. Le Main:**

No, that is not correct. We have a very good idea and we are very well aware that we have a very, very strong - a robust - waiting list of over 300 at the moment where people are being assessed and in need. So we have a very good idea with all the information that has come to us of the ageing population accommodation needs.

### **2.2.2 Deputy J.A. Martin of St. Helier:**

Again, I think the Minister for Housing is missing the point. He has stated there is a criteria for social rented housing and that criteria is on income which is quite low. So if the Housing Minister has over 300 people waiting for over-55s housing, why is he not talking individually or collectively to all the Constables who may have other people with a very good income, or large capital, there could be another 300 or 400 out there but they will not be on the Minister's list. They are not allowed to go on it because of his low criteria.

### **Senator T.J. Le Main:**

I have just answered the question that it is unsatisfactory at the moment; that there could be people on various lists, but we do meet with the Constables. Only last week my Assistant Minister and officers met with the Constables and we have a very good working relationship with the Constables and I am rather hopeful that once the recommendations of Professor Whitehead and the review of social housing comes to this Assembly, then there will be a full discussion and the information will come forward through those discussions and you, Sir.

### **2.2.3 Deputy P.J. Rondel of St. John:**

In my previous time in this House we were being told that we needed homes by the Minister, or at that time the President of Housing. I am appalled to hear that this research had not been done across the Island within all these different areas: the private, the Parishes and obviously his own sector. Would he please give us a guarantee that within the next 3 months he will bring a report to this House explaining that all this research has been done and give us the actual numbers of people who are on all these waiting lists?

**Senator T.J. Le Main:**

The Deputy of St. John obviously does not listen to what is going on but **[Laughter]** how many times do I have to remind him that Professor Christine Whitehead is producing a full-scale investigation discussion document of the review of social housing? All the information that the Deputy would require will be included in that review for this Assembly to take part in. I am rather hoping that that review is in draft form now and within the next 7 or 8 weeks will be ready. The only reason why it has been delayed slightly again is because of the current economic climate and things have changed a little bit in various areas and we have had to take that into account.

**2.2.4 The Deputy of St. John:**

A supplementary. This report was promised in December, again in January, and we still are being told it will be another 7 or 8 weeks. Can he get his house in order and let us have this report by return, not in 7 or 8 weeks when we will have more questions to put to the Minister because he will have not done his work.

**Senator T.J. Le Main:**

No, I am not prepared to be bullied into that. **[Members: Oh!]** Quite honestly, I have just had to remind the Deputy that things have changed and there is now a severe financial - well, credit crunch, if you like - and ...

**The Deputy Bailiff:**

Senator, you have made the point that you are not willing to bring it forward.

**Senator T.J. Le Main:**

No, I am not willing at the moment. It will come forward to ...

**The Deputy Bailiff:**

Can you keep the answers concise as appropriate?

**Senator T.J. Le Main:**

It will come to the Assembly when the time is right and it will be very soon.

**The Deputy of St. John:**

On a point of clarification, I am not a bully. If the bullying comes from anywhere it is from across the Chamber.

**The Deputy Bailiff:**

Yes, it is inappropriate, I have to say, for Members to accuse each other of bullying. So, Minister, if you ...

**Senator T.J. Le Main:**

I quite happily withdraw that for the nice Deputy of St. John. **[Laughter]**

**Deputy G.P. Southern:**

Only to transfer it elsewhere. **[Laughter]**

**Senator T.J. Le Main:**

I would be very happy to do that as well. **[Laughter]**

**2.2.5 Deputy G.P. Southern:**

My shoulders are broad; my skin is thick. In his meeting with the Constables, did he arrive at an agreement for shared criteria for the allocation of over-55s housing and did he discuss with the Constables the potential for overlap and solving any overlaps between their list and his list?

**Senator T.J. Le Main:**

There were discussions taking place on the last rezoning of land with the Constables and the possibility of allocations and lists. Yes, that was discussed with the Constables but I do not feel that we can move much further at the moment with the Constables, or anybody else, until this review comes forward where all of you - all Members - will have a full input in producing the policy that will make way for future needs of essential housing.

**2.2.6 Deputy G.P. Southern:**

If I may, a supplementary. Specifically, did he and the Constables agree shared criteria for the allocation of housing and did he agree to cull the list to make sure - to ensure - that there was no overlap?

**Senator T.J. Le Main:**

We have not agreed anything finally. We are still in ongoing discussions.

**2.2.7 Connétable K.P. Vibert of St. Ouen:**

I will ask a question that I know the Senator does not know the answer to. Is the Senator aware that only yesterday the Comité des Connétables agreed on a proposed way forward to bringing all these lists together?

**Senator T.J. Le Main:**

No, I did not know **[Laughter]** and I welcome as normal the full input of the Connétables who are great allies of the housing needs. **[Members: Oh!]**

**2.2.8 Connétable G.F. Butcher of St. John:**

You are not getting attacked by St. John's totally. Recently the Minister pushed forward or encouraged fields to be rezoned for housing, one of which was in St. John. The rezoning went through last year in the middle of the year. I wonder if the Minister would know why the only spade that has been put in the ground there has been to put potatoes in this field.

**The Deputy Bailiff:**

I am not sure, Constable, that we can say that arises out of the current questioning.

**2.2.9 Deputy P.V.F. Le Claire of St. Helier:**

I was trying to progress the issue of Professor Whitehead's report and ask the Minister if it is going to go to consultation to the general public and if he could be a little bit more informative and elaborate on why this has been delayed due to cost reasons and the economic climate? I find that quite strange. If he could maybe indicate if it is going to consultation to the general public before it comes here and why has he given the reason for delay as a financial one?

**Senator T.J. Le Main:**

It will go out for consultation. It will go out as a Green Paper and I would expect and hope that everybody interested in this subject, including the public, would get involved in this consultation and bring forward ideas and views. I think the same point I made before with the Deputy of St. Helier is that there has been some radical issues on social housing and issues related to that over the

financial difficulties in the marketplace at the moment, and we have had to make sure that we have all the boxes ticked so that all the questions can be answered.

**2.2.10 Deputy J.A. Martin:**

Will the Minister not admit that Professor Whitehead is bound to fail because he has just said he needs all the boxes ticked? The question is, do we know how many houses we need for the over-55s, and this review is on social housing? It will not give us a total answer. Will the Minister just admit that?

**Senator T.J. Le Main:**

Absolutely wrong. We know very well that we, the Housing Department, through the information we have and the waiting lists and the needs and the redevelopments and everything else we are doing, are going to have to realign our stock. The Housing Department themselves will be requiring over the next 5 years something like 400 units of accommodation to meet the needs of elderly people who are seeking to be housed in proper accommodation that will suit their medical and physical needs and there will probably be more than that over a period of time as the ageing population becomes ... but it is getting a very serious problem at the moment, housing elderly people.

**Deputy J.A. Martin:**

Then the Minister for Housing must support and call for over-55s housing. Thank you.  
[Laughter]

**2.2.11 Deputy R.G. Le Hérissier:**

Would the Minister confirm that Professor Whitehead has in fact criticised the methods by which these numbers are counted and that she will be recommending that there be a single channel into over-55s housing overseen by the Housing Department?

**Senator T.J. Le Main:**

I cannot tell you. I have not seen the draft document. I presume that the Deputy is quoting from having scrutinised Professor Whitehead and interviewed her. We have done many interviews with Professor Whitehead but certainly I am not aware of what the Deputy is saying.

**Deputy R.G. Le Hérissier:**

Can the Minister confirm what he told her in those areas of policy?

**Senator T.J. Le Main:**

I cannot remember. [Laughter]

**2.3 Deputy K.C. Lewis of St. Saviour of the Minister for Home Affairs regarding the proposed implementation of e-Border controls.**

Will the Minister be resisting the proposed implementation of e-Border controls between Jersey, the United Kingdom and France?

**Senator B.I. Le Marquand (The Minister for Home Affairs):**

There are 2 separate matters which I have been considering recently, e-Borders is one of those, which is a U.K. (United Kingdom) initiative to identify suspect persons applying to travel to the U.K. prior to their arrival. Its purpose is to provide protection from terrorists and other criminal elements and it should be welcomed. Jersey was asked in February 2008 whether it intended to enter fully into the e-Border scheme so that the same protections and exchange of information could apply to us and that was agreed in principle in March 2008. It is necessary for Jersey to agree to be part of the e-Border system so that we can remain part of the common travel area. Further



details as to what precisely is proposed are only just becoming apparent and indeed more details became apparent last Friday.

### **2.3.1 Deputy K.C. Lewis:**

The common travel area has existed since the 1920s enabling people to move freely between Jersey and the United Kingdom without being subject to immigration controls. Clause 46, now 48, of the Borders Immigration and Citizenship Bill abolishes the common travel area in its present form. As we are British subjects in a Crown dependency this is an infringement of our civil liberties and a breach of our human rights. Does the Minister not agree?

### **Senator B.I. Le Marquand:**

Article 46, now 48, of the law referred to is not e-Borders. That is in fact the second matter that I have been considering recently. I am not happy that we have been, in that law, placed in the same position as Southern Ireland but have received assurances at a meeting which I attended Monday of last week as to exactly what is intended by the U.K. There are now going to be further discussions in terms of firming up so that we get assurances that the inconvenience to local people will be minimised. There is no intention to put in place a passport control or anything of that nature for people coming from Jersey entering the U.K. The intention is that if this information of people who come into the common travel area who the U.K. do not want there, that they would be able to individually deal with them.

### **2.3.2 Deputy J.M. Maçon of St. Saviour:**

Does the Minister have those assurances in written form?

### **Senator B.I. Le Marquand:**

There are letters setting that out but it is intended to make the confirmation of that more formal than that.

### **2.3.3 The Deputy of St. John:**

With the meeting with the United Kingdom Government last week [**Interruption**] was the Minister fully au fait and up to speed with everything that was going on which I am sure he was ... but given the Chair's interjections now for the third time, I will try and get this out. Given the meeting that I had in the U.K. on Thursday, along with 12 other colleagues...

### **The Deputy Bailiff:**

Deputy, I am interrupting because as an experienced former Member you must know that you speak in the third person. [**Approbation**]

### **The Deputy of St. John:**

Yes, I am well aware but I was thrown after the first one because the Chair interjected and therefore it has thrown me ever since. That being the case I have forgotten what the question was going to be. [**Laughter**] Is the Minister fully up to speed and was he given all the information by the U.K. Government prior to his meeting last week because it would appear from what we were told within our meeting that Jersey have been left out of the loop in certain areas to do with the border.

### **Senator B.I. Le Marquand:**

I am sorry, this is getting even more confused because I have tried to explain there are 2 quite separate things: there is e-Borders, which is an information exchange arrangement, and there is separately from that Article 46, now 48, of the law mentioned by Deputy Lewis. They are quite separate things. I am fully up to speed on both of those.

### **2.3.4 Deputy K.C. Lewis:**

I just find it quite bizarre that Northern Ireland and Southern Ireland, which are technically 2 separate countries, will not need any e-Border controls but people from Northern Ireland will. According to the U.K. Government website, we need not worry because this restriction only applies to people travelling by sea or by air. Have I missed something? My question also is will there be any restrictions between the Channel Islands?

**Senator B.I. Le Marquand:**

Well, I do not know precisely what the arrangements are for Northern Ireland. I had not understood that e-Borders would operate as between Northern Ireland and the U.K. but I could be wrong. No, neither of these 2 arrangements, neither the e-Borders nor the statutory change, will affect arrangements between the Islands.

#### **2.4 The Deputy of St. John of the Minister for Planning and Environment regarding a Percentage for Art contribution arising from the planning consent for the Energy from Waste plant.**

I hope I can get this one right. Would the Minister advise whether, within the Energy from Waste plant consent, there is a proposal for a Percentage for Arts contribution and if so, how much?

**Senator F.E. Cohen (The Minister for Planning and Environment):**

As I advised the last Assistant Minister for Transport and Technical Services, I will not be expecting a separate Percentage for Arts scheme on the Energy from Waste project. The building is designed by an internationally-acclaimed architect and a similarly regarded landscape architect. The S.P.G. (Supplementary Planning Guidance) allows the Minister to take such factors into account when assessing the appropriateness of a Percentage for Art condition on a public project. It must be remembered that Percentage for Art is a voluntary arrangement that at its core is designed to derive a public benefit from private development. In the case of public projects, while Percentage for Art is to be encouraged generally, it can also be argued that in some cases that the delivery of the project at a certain standard is in itself a public benefit. Thus I have regarded that the architecture construction materials and landscaping effectively constitute a Percentage for Art project in themselves.

**The Deputy of St. John:**

I would like to thank the Minister for a good answer.

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

Can I ask the Minister by what process are the decisions made for Percentage for Art? Is it one that he takes in isolation or does he consult relevant people?

**Senator F.E. Cohen:**

The Percentage for Art Supplementary Planning Guidance makes it very clear that the programme is a voluntary programme. There is no way of forcing an applicant to endorse or to apply or comply with the Supplementary Planning Guidance and therefore it is a matter between the applicant and the department to negotiate wherever possible but it is impossible to enforce it. Thank you.

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

Can I just clarify that? Could the Minister confirm that there is, despite the worthiness of this project, absolutely no pressure put upon people undergoing development to put forward such a project?

**Senator F.E. Cohen:**

“Pressure” is not the correct word. We use the mechanisms of encouragement. This is a policy that is designed to deliver over a period of time an exceptional portfolio of modern British art derived out of private development that I believe will be unrivalled in any other comparative jurisdiction. We certainly do everything we can to encourage developers to comply with the Supplementary Planning Guidance but there is no mechanism to force developers to do so.

#### **2.4.3 Connétable A.S. Crowcroft of St. Helier:**

I must say as a supporter of Percentage for Art, I am at a loss to understand the Minister’s reasoning. Several major private sector projects are going ahead where the benefit of the iconic architect is there, as is the landscape element, and yet Percentage for Art is being encouraged and indeed produced. Here we have a major public sector piece of work which surely calls for enhancement by art if anything else does, and yet he is saying that he does not think that Percentage for Art is applicable in this case. I do not understand his reasoning.

#### **The Deputy Bailiff:**

So what is the question?

#### **The Connétable of St. Helier:**

Would the Minister explain his reasoning? [Laughter]

#### **Senator F.E. Cohen:**

I had hoped that I had already done so in my initial answer, and it is that one can argue that in a public project, in certain instances, the project in itself derives the public benefit. The concept of Percentage for Art is to derive an additional public benefit out of private development, so there is a fundamental difference. But having said that, I would always encourage public sector applicants to comply with the Supplementary Planning Guidance and, wherever possible, to deliver Percentage for Art projects. But, again, as I have repeatedly said, this is a voluntary scheme so it is impossible to force the delivery of Percentage for Art schemes anyway.

#### **2.4.4 Senator B.E. Shenton:**

The Minister had previously indicated in this Chamber that a Percentage for Art, albeit quite a small one, would be payable on this project. Has he revised the guidelines or done a U-turn on this decision?

#### **Senator F.E. Cohen:**

It is not a question of doing a U-turn, it is a question of affordability of the public sector to deliver this project. While I would encourage the applicant to deliver a Percentage for Art project in relation to this, I certainly cannot force it and would not intend to do so. Thank you.

#### **2.4.5 Deputy A.T. Dupre of St. Clement:**

Would the Minister say why we seem to be using English people to do these projects and not using local people? Thank you.

#### **Senator F.E. Cohen:**

I did not say “English”, I used the term “British”. The term includes Island artists and indeed there are a number of Percentage for Art schemes where local artists, I am pleased to say, have been commissioned. However, it is certainly not the intention of the department, or me as Minister, to constrain applicants in relation to what they consider to be appropriate artists to deliver their Percentage for Art pieces and that is left entirely to them. Thank you.

#### **2.4.6 The Deputy of St. John:**

Would the Minister agree with me in that at the time of a credit crunch it would be difficult to be spending taxpayers' money in this particular area, as other areas within the infrastructure would need to be taken into account?

**Senator F.E. Cohen:**

Yes, the Deputy of St. John is well known as a practical chap and I thoroughly agree with his comment.

## **2.5 Deputy G.P. Southern of H.M. Attorney General regarding Article 39A of the Public Elections (Jersey) Law 2002.**

Are any of the following offences outlined in the U.K. Electoral Commission's guidelines on postal voting called into question by Article 39A of the Public Elections (Jersey) Law 2002 - bribery, treating, undue influence, secrecy, personation, multiple voting and proxy voting; and is his department satisfied that the "traditional standards" of the polling station were observed in line with those guidelines (that political propriety should be carried through to the postal voting context)?

**Mr. T.J. Le Cocq Q.C., H.M. Solicitor General (Rapporteur):**

The question so far as I understand it appears to be in 2 parts: the first part refers to Article 39A of the Public Elections Law. This Article deals with specific activities such as completion and delivery of forms and documentation in connection with pre-poll or postal voting. The Article does not appear to me to be identical in terms with the offences mentioned in the Deputy's question. That is all, however, I feel able to say about Article 39A. Since the Deputy was charged with offences under that Article there have been questions about it put to the Attorney General which we have, as a matter of routine, discussed. While the Attorney General has sought to answer those answers constructively, increasingly they have run the risk of relating directly or indirectly to those charges. In accordance with the principles of Standing Order 10(10), accordingly we will decline to answer any further conditions on Article 39A or elaborate on answers already given until the criminal proceedings against the Deputy have been concluded. As to the second part of the question, as the Attorney General's Department has no responsibility to ensure the observance of standards in polling stations in accordance with U.K. guidelines or otherwise, the satisfaction of the department is irrelevant and that part of the question seems to be incapable of a meaningful answer. If an allegation of any form of electoral irregularity in connection with postal voting or otherwise was investigated by the police and a police file submitted to the Attorney General, it would be for the Attorney General, of course, to decide whether or not a prosecution should be brought.

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

In the hope that I may squeeze a little further information out of the Solicitor General, may I ask the Solicitor General on what grounds (the decision to prosecute or not to prosecute given sufficient evidence) would that decision be made?

**The Solicitor General:**

It is certainly not for me to discuss in this Assembly the basis on which any decision to prosecute could be made, nor, with respect, could I see this as being a supplementary question relating to the ambit of Article 39A. As the Deputy will know, and indeed as can be seen from the public documentation on the Law Officers' website, there is a code of practice relating to decisions to prosecute. The first test that has to be passed is the evidentiary test and thereafter every decision to prosecute where the evidentiary test is passed is subject to a public interest consideration. In most cases, the public interest will be in favour of a prosecution; in some cases they may not.

**Deputy G.P. Southern:**

I thank the Solicitor General for his answers.

### **2.5.2 Senator S. Syvret:**

The Solicitor General said, or implied, that the application of U.K. laws or otherwise - the "otherwise" I take it to mean U.K. legislation - satisfactorily when it comes to polling stations was of no concern to the Attorney General's Department. Could he explain that point further? Because I find it very strange given that a variety of laws come into play in polling stations and presumably if the department is dissatisfied with them, they will consider prosecuting. So surely the conduct is relevant. Does he also not accept there is a grave danger that the integrity of the enforcement of the law in general terms will fall into disrepute when it is seen to be applied selectively to different candidates [**Approbation**] and not completely across the board?

#### **The Solicitor General:**

I do not intend to answer any point relating to the supposed selective application of the law. I am not aware of any selective application of the law.

### **Senator S. Syvret:**

I am. I can tell you...

#### **The Solicitor General:**

However, in connection with polling stations, all I said was that it is not the responsibility of the Attorney General's Department, and it is that department to which the question was addressed, to satisfy itself that any particular standards have been reached. It seems to me that the standards of the polling station are firstly within the direct oversight of the returning officer for any particular polling station and he will report at the end of the poll to the Royal Court. It seems to me that ultimately polling stations are under those supervisions. Naturally should there be any allegation of polling irregularity at the polling stations, those matters must be investigated by the police and I repeat my answer to the question previously relating to the presentation of the file to the Attorney General for decision on prosecution.

### **2.5.3 Senator S. Syvret:**

A supplementary. So it is correct then to say that in fact ultimately the conduct of what takes place in the polling stations is of relevance to the Attorney General's Department?

#### **The Solicitor General:**

The conduct of what takes place in polling stations is of relevance to the Attorney General's Department if it forms the basis of an investigation by the police and a file by the police is forwarded to the Attorney General's Department for consideration. Only at that time, in my opinion, does the Attorney General's Department have a direct involvement in response to this.

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

Can I ask a point of clarification? Could I ask the Solicitor General to put some meat on the bones of the phrase: "Not identical in terms of the offences in the code of conduct", what does that mean in legal or English terms "not identical with"?

#### **The Solicitor General:**

I do not think I can elaborate on the answer in any way, I am afraid. I indicated at the beginning we were not going to elaborate and we are not going to discuss the ambit of Article 39A and therefore I do not go any further on it.

## **2.6 Senator B.E. Shenton of the Minister for Treasury and Resources regarding the commercial valuation of beachfront land in St. Brelade's Bay:**

Would the Minister explain how a commercial valuation of £10,000 was reached for a prime piece of beachfront land in St. Brelade's Bay, with views over the beach, given that the buyer was going to use it for commercial purposes?

**Deputy J.A.N. Le Fondré of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):**

The site in question was to be utilised as a bin store and the use would have been restricted solely to that purpose with a restrictive covenant being put in place. Therefore, with no direct commercial use, the amount that a business would wish to pay for the land was significantly reduced. I think it is quite important to clarify a couple of other matters. Firstly, that decision was never finalised on the basis that when the documentation was placed in front of me to consider and due to earlier representations received, I decided to investigate matters further. Also, contrary to certain publicised comments, this was communicated to certain interested parties at the time. I was away on annual leave very shortly thereafter and it had been my intention to discuss the matter with all parties on my return. Indeed, there were certain exchanges of emails with me while I was away. Those discussions have now taken place and I believe that a compromise has been reached and is being investigated to ensure it is feasible.

#### **2.6.1 Senator B.E. Shenton:**

Where did the valuation of £10,000 come from?

**Deputy J.A.N. Le Fondré:**

Two comments: firstly, the figure arrived at was in negotiation with an officer of my department. To give an indication, it would equate to approximately £18.50 per square foot. Now, by comparison, the highest commercial tender received recently for a public site with planning and by law consent for a 36-unit residential development was approximately £37 per square foot. Bear in mind that is a commercial residential as opposed to a bin store with restrictive use for a bin store. So, clearly, the purchaser of a residential site would expect to yield a lot more profit per square foot than a purchaser of a bin store. Also as a guide, which is on existing use, the entire St. Brelade's Bay part, I am told, was valued at £17,000 in 2007 based upon existing use.

#### **2.6.2 The Deputy of St. John:**

Can I ask the Assistant Minister was the valuation of the apartment block he was referring to on the seafront, as this particular site is?

**Deputy J.A.N. Le Fondré:**

I do not have the information to hand but all I can say it is a comparison on something with residential use as opposed to a bin store with restrictive use which means that the use could never be changed away from a bin store for the future. It does help to add we have - I will call it a principle rather than a policy if you see what I mean - a statement of principles evaluation that has been in place within the department since 2006 and is placed on the website for everyone to see.

#### **2.6.3 Deputy M. Tadier of St. Brelade:**

Does the Deputy acknowledge that no consultation was carried out with either of the Deputies of District No. 2? Indeed, it was only due to the good work of my fellow Deputy that I think this was stopped. Does he also acknowledge that this is an example of the worst of the Jersey way where deals are almost done on a nod and a wink without any proper consultation of elected Members and constituents?

**Deputy J.A.N. Le Fondré:**

I need to go slightly back to the details but my understanding was that representations came from other political representatives of the parish in the other direction, in other words, in support of the scheme, which is why it has become quite interesting. I would rather not go into the full details of

that one, I do not think, because I need to delve into the facts, but that is my understanding. In terms of consultation as to whether an approach was made to my department or whether an approach was made to Planning, I am not entirely clear on the process; I picked it up when a representation was made to me by the relevant parties. Thank you.

**2.7 Deputy D.J.A. Wimberley of St. Mary of the Minister for Education, Sport and Culture regarding the New Scientist articles circulated to all Members recently about a sustainable, ecological economy:**

Will the Minister confirm whether he has read the *New Scientist* articles circulated to all Members recently about a sustainable, ecological economy and, if so, will he inform the Assembly what steps, if any, are being taken to ensure that students leaving school have a good understanding of the linked issues of peak oil, climate change and sustainability in general, and are prepared to cope with this changing world?

**Deputy J.G. Reed of St. Ouen (The Minister for Education, Sport and Culture):**

I can confirm that I have read some of the articles in the 18th October edition of the *New Scientist* published in 2008. I also wish to advise the Assembly that regardless of my personal knowledge in this area, all pupils in our schools study science up to the age of 16 and the G.C.S.E. (General Certificate of Secondary Education) science syllabus includes topics surrounding ecological and environmental issues. Students are not only expected to understand the serious issues facing the planet, they are also assessed on their ability to evaluate a range of economic and environmental considerations and solutions. As part of this process, students are asked to explore the issues of sustainable development which involves balancing economic development, maintenance of standard of living and respect for the environment. In addition, over the last couple of years, the Departments of Environment and Education, Sport and Culture in partnership with other organisations and interest groups have specifically focussed on these issues by involving pupils of all primary and secondary schools in Jersey Environment Week. Our young people will be the future guardians of this Island and as such my department aims to do what it can to promote the importance of environmental education within the school curriculum.

**2.7.1 Senator S.C. Ferguson:**

Will the Minister ensure that all views on all sides of the argument relating to the controversial matters are given to the students so that they can have a balanced view of the problems that are faced?

**The Deputy of St. Ouen:**

I am led to believe that the current curriculum allows that to happen.

**2.7.2 Deputy G.P. Southern:**

In the light of the previous question, does the Minister believe that creationism should be taught in science lessons?

**The Deputy of St. Ouen:**

He will have to explain to me what creationism is, I think.

**2.7.3 The Connétable of St. Helier:**

I also wanted to follow up the previous question to ask the Minister whether he believes that there should be specific awareness taught to our students of the folly of climate change denial.

**The Deputy of St. Ouen:**

I think that we deny our students the ability to think for themselves if we suggest that they are in denial.

#### **2.7.4 Senator S. Syvret:**

To follow on from the previous supplementary question, will the Minister assure the Assembly that the science curriculum in his schools where it does teach these subjects does use the consensus of scientific opinion, which I know that the Senator does not like, so let us call it by its correct term: the meta-analysis of variance scientific studies. Will he also say what actual direct preparation is being given to students in schools in connection with the impending end of the hydrocarbon economy and lifestyle?

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

The second part is rather a detailed question which I am unable to answer. However, I am quite prepared to enter into dialogue with the Senator to ensure that I can provide that information.

#### **2.7.5 Deputy M. Tadier:**

Can the Minister confirm that the classes will be taught the link between rampant economic growth and the damage it causes to our environment both locally and globally? Can he also give an undertaking that they will be taught the real meaning of the word “sustainability”? Perhaps they can come back once they have learnt it to tell us about it.

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

Again, I believe that we are already addressing all the issues that the Deputy raises.

#### **2.7.6 The Deputy of St. Mary:**

Yes. I welcome the Minister’s apparent commitment to this topic but I am a little bit concerned about the depth of the preparation of, particularly, the teachers in this area. These are, as we have just seen from the various supplementaries, quite complicated areas and I would like to ask the Minister whether any progress is being made with the appointment of specific advisers for global education, both on the development side, as in sustainable development of less developed countries, and also on the environmental side. I would remind him that there was a full job description drawn up 3 years or so ago for an environmental adviser for States education and nothing happened, and so I would welcome his comments on this and ask whether he is committed to those 2 advisers being in place soon?

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

I am sure I can speak for my department when I say that we are mindful of development, both now and in the past, regarding environmental matters. It is something I am sure that our teachers who are obviously educating our youngsters take into account when encouraging our students to consider environmental matters. I am rather disappointed that the Deputy has chosen to question myself, a relative third party, rather than contact the department and find out for himself how our curriculum is constructed.

#### **The Deputy of St. Mary:**

Well, I think that merits some kind of rejoinder. I knew from previous experience at the One World Group about this environmental adviser post and it vanished from the radar. I was just asking the Minister whether he thought that we should get on and have advice in this area for teachers.

### **2.8 Deputy R.G. Le Hérisier of the Minister for Education, Sport and Culture regarding grants to the Cultural sector:**

Given the emergency grant to the Jersey Heritage Trust, will the Minister be responding similarly to requests from the cultural sector?

#### **The Deputy of St. Ouen (The Minister for Education, Sport and Culture):**



I am pleased that the Deputy has acknowledged that a number of our cultural organisations are facing serious funding pressures. I raised this with his panel during our first Scrutiny public meeting and also referred to this matter in response to a question which the Deputy asked in January. As the Minister responsible for the cultural sector, I will do all in my power to continue to provide financial support to all organisations tasked with delivering services in this area and work with those organisations to ensure that the best possible value is achieved for that support. In the case of Jersey Heritage Trust, the problem was an immediate one which would have resulted in the closure of at least one and possibly 2 of our heritage sites. In my view, this would have been unacceptable, hence my response. This does not, however, diminish the extent of the challenges elsewhere. There are more fundamental issues to address which is whether funding for the cultural sector is sufficient to ensure a sustainable approach to managing and protecting our heritage, while at the same time developing the wealth of creativity which exists in our Island. I shall work with all those involved in the coming months to consider this issue and will value the opportunity to involve the Deputy and indeed his panel in that process.

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

Would the Minister confirm that, notwithstanding the excellent work, I should add, of the Heritage Trust, one of the issues which had led to the current crisis, namely the amphibious vehicle issue, he was convinced that all the lessons that needed to be learnt had been learnt and there would be no further quackery about the DUKWs (amphibious trucks)? **[Laughter]** Secondly, why did he choose ...

#### **The Deputy Bailiff:**

Sorry, one question at a time, Deputy.

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

I believe for the most part the issues to do with Jersey Heritage do not directly relate to the issue of the DUKWs. It is indeed more of an issue of reduced income derived from lack of visitors attending on the sites.

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

The Minister just stated that he would do his utmost to support culture in the Island. Will he be approaching the Treasury and Resources Minister to access some of the stabilisation fund in these recessionary times so that he can physically support culture in the Island? If he has not approached the Minister for Treasury and Resources, will he do so in the immediate future?

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

I am pleased that the Deputy raised this issue. I have indeed raised this matter with the Minister for Treasury and Resources, especially with regard to the short-term issues and dialogue continues.

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

Does the Minister have any optimism that he will achieve the results with the Minister for Treasury and Resources who, so far, has not let out what he is going to do with this £140 million?

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

I am classed as the eternal optimistic.

### **2.8.4 Deputy P.V.F. Le Claire:**

We know, from past information, that the cable cars were a dramatic effect on the downturn of footfall in relation to Fort Regent. We also know that when the Jersey Heritage Trust took over Elizabeth Castle, for example, they were having something like 300,000 or 400,000 a year visiting the castle and now it is down to 100,000. Would the Minister look into these important issues of accessibility and also affordability? In other areas and in other jurisdictions in the world, local

residents visit sites because they are given reductions due to their residency to visit local attractions and local sites of important cultural heritage. Will the Minister look at these important issues to drive up numbers of people visiting these locations?

**The Deputy of St. Ouen:**

I am working with and encouraging Jersey Heritage Trust to look at all options and ways in which to improve their income and secure future for not only Elizabeth Castle but other heritage sites.

**2.8.5 The Connétable of St. Helier:**

Would the Minister agree with me that, quite apart from the cultural benefits to the community from investing in our heritage and our culture, there is a clear economic payback from these investments, especially in relation to our tourism industry, as was recently illustrated by the representative from Isle of Man Heritage?

**The Deputy of St. Ouen:**

Absolutely. I believe we have a lot to learn from the experiences in the Isle of Man and I, for one, will be pursuing that particular line.

**2.8.6 The Deputy of St. John:**

Would the Minister explain why he needs to go to the Treasury for additional funding, given that several weeks ago, I raised questions about Victoria College being lit from dusk until dawn? This morning I noticed it was still lit and if he was to be turning off the lights at a reasonable hour at night, I am sure funding could be found from within his budget. Will he please answer that question?

**The Deputy of St. Ouen:**

The Education Department provides independent and separate budgets to each school that the schools are responsible to manage. Therefore, I am unable to directly influence that particular area. I have already passed on the concerns regarding the lighting of Victoria College to the headmaster and the school and I believe that they are looking at it.

**2.8.7 Deputy G.P. Southern:**

What consideration has the Minister given to restoring provision for access from the town side to Fort Regent in order to revive what is his responsibility; a Sports and Cultural Centre in Fort Regent?

**The Deputy of St. Ouen:**

I am aware that various studies have been undertaken, the latest by a group called EDAW which, for the life of me, I cannot remember what it stands for, so will you please forgive me if I do not use the actual wording. However, one of the issues is the access to Fort Regent from the Snow Hill area. This is very much, I believe, key to the future development of the site and it is an area that I wish to see promoted.

**2.8.8 Deputy J.A. Martin:**

Would the Minister inform the House whether there has, since he became Minister, been any investigation as to whether Culture is under the right Ministry? I said this when I stood for the Minister for Education, Sport and Culture after speaking to the Minister for Economic Development: "Culture will die at Education unless it is moved to Economic Development." Has the Minister investigated this or is he just willing to let it die while he is empire building?

**The Deputy of St. Ouen:**

I refute the suggestion that I am empire building. I do believe that there are opportunities that exist to further develop culture and look at the synergies between culture and tourism. However, let us

not forget that culture is not just about money or economic development or tourism. It is about recognising our local heritage and developing it. Thank you.

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

Would the Minister not accept that these grants need to be fully tied down to specific purposes and that he also needs - if he is truly serious - to find money to deal with fundamental issues like the loan at the Opera House which remains a constant drag on that organisation and the fundamental issue of the fact that the Heritage Trust is simply going to go bankrupt if tourist revenue does not increase?

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

I do believe that the Opera House needs to be addressed and that is one of the many matters that are on my agenda. Equally, regarding the grants and the funding, partnership agreements were put in place last year with all funded cultural organisations. I am in the process of re-visiting these partnership arrangements to understand how they are managed. Thank you.

### **2.9. Deputy F.J. Hill of St. Martin of the President of the Chairmen's Committee regarding allowing members of the public to film at scrutiny hearings:**

Will the president advise whether the Chairmen's Committee has decided to prevent members of the public from filming at Scrutiny meetings and, if so, will the chairman explain why the decision was made, what consultation, if any, took place and does the chairman consider his Committee's decision conducive to the principles of openness and accountability?

### **Senator B.E. Shenton (President, Chairmen's Committee):**

The matter came to light when a member of the public that runs one of these blog sites asked to video a Scrutiny meeting. We discussed it at the Chairmen's Committee and looked at what other parliaments do around the world and the general rules from other parliaments were they did not allow videoing. However, we felt that we should try and be as open as possible and the protocol was decided that, if we are given 3 days' notice and we get the agreement of the Chairmen and the people taking part in the Scrutiny hearing, then they could video the hearing. One has to bear in mind that when I was on Scrutiny, during some of the matters that were being discussed, I remember on 2 occasions members breaking down when recounting very personal experiences and I think the last thing anyone would want would be a member of the public sticking a video in their face. We have referred the matter to the Privileges and Procedures Committee for further consideration because of course you have to look at the whole aspect of videoing and blogs and so on and so forth. We are moving into a new media age and I am standing here today and there is no one in the public gallery videoing or recoding me. In fact, there are no television cameras allowed and I think the whole matter needs reviewing. It is not just isolated down to Scrutiny. It is a much bigger area. The information age is changing and we need to have a look at it.

### **2.9.1 The Deputy of St. Martin:**

I welcome the answer because this is going towards the right way but I would like to ask the president does he have any idea of the timetable as to when this will be discussed and, in the meantime, will those people who would like to film be able to carry on doing so until they are told not to?

### **Senator B.E. Shenton:**

As I have previously mentioned, if they wish to video a Scrutiny meeting, providing they give us 3 days' notice so that we can contact the witnesses and, providing the witnesses have no objection, then they can video the hearing. The matter, hopefully, will be discussed by Privileges and Procedures fairly quickly. It is one of these issues where it looks very simple at the start but when

you start digging deeper, it is a much bigger issue. As I said before, we are moving into a new information age. We cannot ignore the bloggers and the internet and we have to make sure that the rules fit for the future and not get stuck in the past.

### **2.9.2 Senator S. Syvret:**

I was disturbed to hear the chairman say that there had been some upsetting incidents before his panels. I would have personally thought that, were there any matters of personal sensitivity of the kind that might upset individual witnesses and members of the public, they would automatically be heard in camera, I would assume. I certainly would not wish members of the public who are vulnerable to be exposed in that way. That is the first question.

### **Senator B.E. Shenton:**

Obviously, when we are holding Scrutiny hearings or any hearing, you try and deal with the facts but if you are dealing with experiences of income support and so on and so forth, sometimes you can get down to fairly distressing aspects, so I agree with the Senator wholeheartedly that the thoughts and the views of the witnesses have to be taken into account and, obviously, if we had thought that there was going to be a breakdown, it would have been held in camera anyway. As it was, there were no members of the public present at this particular hearing even though it was a public hearing.

### **2.9.3 Senator S. Syvret:**

The second question I was going to ask is the chairman has said the matter is under review. Will he give the Assembly an assurance now that, whatever the final decision that is arrived at, it will be applied on a level playing field basis so that independent journalists will not be discriminated against and the rules and restrictions will not apply to commercial media?

### **Senator B.E. Shenton:**

It is very difficult to draw a distinction between accredited journalists these days and the bloggers. As I said before, last night, for example, in the media was the fact that the local newspaper industry is dying in the U.K. because people are moving towards the internet and blogs. Some of us might not particularly like blogs but they are certainly here to stay. They are the media of the future and this House has to have a look at the whole way it communicates with people going forward and this is a very important piece of work that the Privileges and Procedures Committee have to undertake and I would hope that most Members will give input into how they feel the media access should be given or access to the people should be given going forward.

### **2.9.4 Deputy M. Tadier:**

I will not comment too much on the rights and wrongs of this particular case as I am on P.P.C., save to say that there are those who think that this kind of action is an attack on freedom of expression and the freedom of the media. The question I want to ask is very simple. Was a vote carried in the Chairmen's Committee and, if so, could the Senator give us the breakdown of the vote and if there was no vote, why not?

### **Senator B.E. Shenton:**

We went around the Chamber and it is pretty obvious that the Committee was fairly split. We did not hold a vote. The minutes are available now on the website and they were placed on the website, I think, yesterday. Rather than sort of make it black and white or yes or no, we were trying to work towards a compromise and the compromise was very much to allow videoing with the agreement of the witnesses and with the agreement of the chairman. One should bear in mind that we did run this past some of our colleagues in the U.K. that we have come to this decision and they were horrified that we were being so open, so we are making a step in the right direction.

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

Will the Minister accept my support in maintaining the principles of Scrutiny that it should be a process which takes place in public and, therefore, videoing with notice and with permission is absolutely acceptable and the way forward?

**Senator B.E. Shenton:**

I wholeheartedly agree and, as the Deputy may well know, I have my concerns about the access of Le Capelain and Blampied rooms for members of the public when we are holding Scrutiny hearings. As I mentioned to Senator Syvret, we did have a hearing where someone broke down and no members of the public were present. Unfortunately, that is quite often the case that we do not have members of the public present. The Public Accounts Committee are looking to hold a hearing to do with the incinerator hedging issue. We are looking to hold it in the Town Hall and it will be interesting to see if we have more members of the public attending if it is in a more accessible place.

**2.9.6 Deputy C.F. Labey of Grouville:**

A previous questioner made the case for freedom of media. Does he not agree that there is a case to be made for freedom of individuals not to have cameras stuck in their faces?

**Senator B.E. Shenton:**

I wholeheartedly agree, which is why the protocol as it stands is that the witnesses still have to agree to allow the videoing of themselves. Obviously, if they have no objections, then the videoing can go ahead.

**2.10 Deputy S. Power of St. Brelade of the Minister for Transport and Technical Services regarding road works on La Route de la Haule:**

In view of assurances given by his predecessor that the new surface would not be disturbed for at least 3 years, except for emergencies, can the Minister outline the reasons why trenches have been dug on the recently resurfaced route to La Haule between Beaumont and Bel Royal Garages 4 times in as many recent months?

**Connétable M.K. Jackson of St. Brelade (The Minister for Transport and Technical Services):**

Although the department is committed to enforcing an embargo on works that involve the digging up of La Route de le Haule until 2010, the law clearly states that consent should not be unreasonably withheld and, despite the department's careful planning, there are situations which occur when the department cannot reasonably refuse consent. An example of this is where individual property connections that could not have been anticipated or completed before the original embargo commenced are required and where no technical or financially reasonable alternative means of connection is available. The 4 occasions to which the Deputy refers all fall into this category. In order to ensure the department's investment in resurfacing is protected, it applies a principle that any excavations in the newly resurfaced road are reinstated like for like so that maintenance issues are kept to a minimum and the visual amenity of the newly resurfaced road is maintained. To this end, the department has developed an enhanced reinstatement specification which must be followed when reinstating a road which remains under embargo. All of the instances to which the Deputy refers have been reinstated by the respective utility company with the enhanced specification. The department continues to progress the development of a new law which will update embargo rules and opening a minimum post resurfacing embargo of 3 years which it hopes to bring before the States during 2009 or 2010.

**2.10.1 Deputy S. Power:**

I thank the Minister for that reply. Does the Minister know that at least one trench was dug on a St. Lawrence property on the north side of La Route de la Haule and this property has had alternations and renovations commenced and being carried out before the instigation of road works in 2008, and can the Minister give an indication to the department as to how much liaison goes on between T.T.S. and the Planning Department?

**The Connétable of St. Brelade:**

My understanding is that all planning applications are passed by the Transport and Technical Services Department for comment, particularly when it comes to new connections and the department responds appropriately depending on the needs or the requirements of the utility company. I would add that it is a pet concern of mine that roads are not dug up indiscriminately and, from Parish experience, I can suggest that many of my fellow Connétables are jealously protective of their road surfaces because they are fully aware of the costs of digging them up and the costs of resurfacing and the degradation of the surfaces which inevitably results in increased costs to the parishioners and/or taxpayers. I take onboard what the Deputy says. I am aware that there were gas connections to be redone on one of the connections and the department does not allow excavations indiscriminately.

**2.10.2 Deputy C.H. Egré of St. Peter:**

While the Minister is investigating this particular area, would he please investigate the concerns that the Parish have over repair work that is now going on on Rue de Beaumont which borders on to La Rue de la Haule which runs from the Canon to the filter in turn? The road was resurfaced much to the pleasure of the people who live on that road because it reduced the vibrations in their own household because of previous repairs. They are now faced with further repairs going on as we speak. There have been no utilities put in that road. This is an actual breakdown of the surface. As this was only carried out, I think, within the last 4 years, would he please investigate as to why we are having to carry out resurfacing or repairs yet again in such a short time?

**The Connétable of St. Brelade:**

The Deputy mentioned this instance to me this morning and I am happy to carry out that investigation.

**2.10.3 The Deputy of St. John:**

Would the Minister inform the House of the 4 sets of road works that have been carried out? Were they carried out by a number of different utilities or the same utility? If it is the same utility, will he be talking to the management to try, in the future, to get them to work with his department instead of against his department?

**The Connétable of St. Brelade:**

I understand these were 4 separate occasions and the utilities communicate through my department and my department co-ordinates activity, so while the situation on La Rue de la Haule is regrettable, my department has a grip of what is going on and will continue to do so.

**2.10.4 Deputy S. Power:**

The resurfacing of La Rue de la Haule and, indeed, the resurfacing of a lot of the Island's primary routes was much lauded in 2008 by the previous Minister. Indeed, it is a very expensive exercise and I am just wondering how the Minister can tighten up within the department procedures so that the forward planning of these resurfacing exercises and resurfacing projects protect the fabric of the resurfaced road for at least 2 to 3 years.

**The Connétable of St. Brelade:**

The new Street Works Law, to which I alluded earlier on, is long overdue and I am very keen to have it on the statute books and this, as I suggested, will take place either during the course of this

year or early 2010. It will imply a 3-year embargo on new road surfaces and I think this will be of benefit to the public in general.

**2.11 Deputy T.A. Vallois of St. Saviour of the Minister for Economic Development regarding staffing levels within the Economic Development Department:**

Following recent reports regarding possible redundancies in the public sector, could the Minister advise whether the staffing levels within the Economic Development Department are assessed on a regular basis and, if not, will such assessments now be undertaken?

**Senator A.J.H. Maclean (The Minister for Economic Development):**

I can confirm that not only the staffing but also the structure of Economic Development has been completely reviewed and will continue to be the subject of ongoing reviews. Levels of management have been removed, reporting lines streamlined and staff resources applied to those areas of the department that add the greatest value. The department is operating with less staff than approved in either the 2007 or 2008 Business Plans. Furthermore, during the last 2 years, there have been reductions in full-time employees. I think it is fair to say that, as far as departmental productivity is concerned, Economic Development does not just talk the talk; we demonstrably walk the walk and will continue to do so.

**2.11.1 Deputy T.A. Vallois:**

The Minister mentions that there has been a reduction. Has this caused any effects on the actual running of the department going forward?

**Senator A.J.H. Maclean:**

Sorry, can I ask the Deputy to repeat that because I did not catch the end of it?

**The Deputy Bailiff:**

Whether it has any effect on the running of the department going forward.

**Senator A.J.H. Maclean:**

No, not at all. The staff numbers have reduced but we are operating in a far more productive manner than we were before. I can give an example for the Deputy. If she would like to have that detail, I would be happy to supply it.

**2.11.2 Deputy J.M. Maçon:**

In the case of all these efficiencies being saved, can the Minister indicate how much money has gone back to the Treasury, given the stripping of management?

**Senator A.J.H. Maclean:**

It is about re-prioritising our budget to ensure that it delivers more productivity and that is really what we are aiming to do, so although the headcount is reduced, it does not necessarily mean that we are going to return more money to the Treasury. Those funds will just be better applied to the areas that we are responsible for looking after.

**2.11.3 Deputy G.P. Southern:**

In the face of all this stripping out of manpower, does the Minister still have his own press relations officer or spin team as was previously the case?

**Senator A.J.H. Maclean:**

I have absolutely no idea what the Deputy is talking about. Perhaps he would like to expand on that particular question. I do not have any private spin team, as he is suggesting.

**2.11.4 The Deputy of St. John:**

On a previous set of questions to the Minister or his Assistant Minister, I put questions on maintenance within his departments. Given all the stripping out that we have heard about, could this be one of the reasons why we have such poor maintenance through lack of staffing on the marinas?

**Senator A.J.H. Maclean:**

No, is the short answer to that question. If the Deputy is clearly referring to Jersey Harbours and the concerns that he has about maintenance levels down there, there is a Service Level Agreement in place with Transport and Technical Services to supply those services. It is nothing to do with the individual staffing levels of the department in question.

**2.11.5 Deputy S. Power:**

Given the Minister's 3 years as an Assistant Minister at Economic Development, would he say he is entirely happy with the staffing levels at the Harbours Department?

**Senator A.J.H. Maclean:**

I am never entirely happy with anything and I think it is important that we continually review all areas of not only Economic Development and the responsibilities that it has but all departments within the States, particularly at the current time and in the current economic climate.

**2.11.6 Deputy S. Power:**

Could I ask the Minister a supplementary on that? Would the Minister agree with me that there is a view that the Harbours Department is overstaffed?

**Senator A.J.H. Maclean:**

The Deputy may be expressing a personal view and that is of course entirely up to him.

**2.12 Deputy P.V.F. Le Claire of the Minister for Education, Sport and Culture regarding special discounts on entry to Heritage sites for Active Card holders:**

Would the Minister consider granting special discounts on entry to heritage sites to Active cardholders ensuring that the heritage of Jersey retains its important place in our everyday lives while increasing revenue for heritage sites?

**The Deputy of St. Ouen (The Minister for Education, Sport and Culture):**

Although the Active Card is a membership scheme offered by the Department of Education, Sport and Culture, responsibility for the publicly administered heritage sites lies with the Jersey Heritage Trust who already offer a range of discounts to individuals and groups. I will, however, happily pass on the Deputy's suggestion together with any relevant information on the discounts available through the Active Card Scheme in order that the Trust may consider it in the wider context of its admissions policy.

**2.12.1 Deputy P.V.F. Le Claire:**

Could I thank the Minister for suggesting that he will take this proposal forward to the Jersey Heritage Trust. I appreciate the complexity of the arrangements between the Jersey Heritage Trust and other organisations but the funding issues remain in place for the department to have to bolster, at times, these organisations. Could I support the Minister in what he is going to do but could I also highlight that in Portsmouth, for example, if you produce your local area driving licence with your area of residence proven on your entry to certain sites, you are given a local's reduction. That increases footfall and it could be carried on in Jersey so that locals attend cultural sites with a reduction. Perhaps some form of local residency could be proven and a reduction and increase in footfall could occur that way too.



**The Deputy Bailiff:**

What is the question, Deputy?

**Deputy P.V.F. Le Claire:**

Would he agree to take that suggestion with him?

**The Deputy of St. Ouen:**

I think I have already said I am pleased to discuss any matter and any ideas with the Deputy.

**2.13 Deputy T.M. Pitman of St. Helier of the Minister for Housing regarding the viability of constructing sheltered housing for the elderly on the site of Ann Court:**

In the light of recent statements, would the Minister advise the Assembly whether the Housing Department in conjunction with Planning Officers have investigated the viability of constructing sheltered housing for the elderly on the site of Ann Court given its central location and, if so, how many units could potentially be constructed?

**Senator T.J. Le Main (The Minister for Housing):**

Officers have been involved in the existing proposals for the creation of 20 new units of lifelong homes along with the proposed new car parking.

**2.13.1 Deputy T.M. Pitman:**

With due respect, that seems rather a flippant answer. It is a very large site and I would think, if 20 is the limit, perhaps the Senator should go and do his homework again. Could he enlarge please?

**Senator T.J. Le Main:**

The Deputy asked have the officers been involved in discussions with Planning and I have given him the answer. The only discussions my officers have had with Planning Officers is the creation of 20 new units on the site. Is that not the answer to his question?

**2.13.2 Deputy P.V.F. Le Claire:**

Given this morning's advance notice by the Minister that there is a need of 400 to 500 and increasingly more numbers of sheltered housing needed on the Island, how are we possibly going to achieve that without building in the green zone? If we take such a large site in town within walking distance of all the facilities, ideal for people of this category, if we are only going to achieve 20 on the site, will he undertake to look at this issue to help formulate a more practical solution to what is going to be ...

**Senator T.J. Le Main:**

No, I am not prepared to look at the moment. I am the Minister for Housing and my role in this Assembly is a Member of this Assembly and I have a duty to the whole of this Assembly and this States Assembly have agreed there should be a car park on the Talman site and the gas works. There was a petition, which was taken to this House, for this Assembly to agree to a new town park. That is the policy of this Assembly and, currently, 16,000 people signed that. I was a member of that district as a Deputy for 15 years and I supported that project. Currently, my duty is that this Assembly will debate the future of Ann Court and the car park and the Millennium Park and the decision will arise out of that and if the Assembly decide at that time that it will not be a car park, then I will gladly move forward with plans for redevelopment of that site for sheltered housing but, until such time, I remain a corporate player in this Assembly and I remain in the hands of this House. This House will direct me and I would not be so foolish as to move forward in the meanwhile overriding the wishes that may come out of a decision of this House.

**2.13.3 Deputy P.V.F. Le Claire:**

A remarkable answer to nothing that I asked. First of all, if I may, just in premising this question, point out that the support for the petition was for a car park on Gas Place and not Ann Court. It has never been agreed in the Assembly and if the Minister is truly a corporate player, how does he propose to drag the corporation behind him in re-zoning other areas in Jersey for 400 or 500 homes if he can only get 20 out of this potential site? If he is not going to look at it, how can he get our support?

**Senator T.J. Le Main:**

How many times do I have to try to argue with the proponents that do not want to lose Ann Court for housing? The issue is that I am very happy that if this Assembly decides they want Ann Court to remain for social housing, I will put plans forward and we will develop it but up until such time as this Assembly have made a decision, I am not prepared to waste money on that sort of issue.

**2.13.4 Deputy G.P. Southern:**

It is a point of clarification but I think the Minister is accidentally in danger of misleading the House when he suggests that this House has supported the petition for car parking on the Ann Street site. That is not the case. The case was the town park and underground parking at the time and that was what was supported. Will the Minister withdraw that statement?

**Senator T.J. Le Main:**

No, I will not withdraw it at all. The issue is quite clear. We all understand about the gas works car park and the original proposals of an underground car park. That is not now feasible due to costs. There is a master plan being prepared at the moment by the Minister for Planning and Environment who will look at all the issues in the north-east part of St. Helier. The issue is quite clear that there is no decision being made on what is going to happen to Ann Court; whether it should be a car park to complement the achievement of a new town park on the gas work site or whether it should remain as housing. I await the States decision to be made and I will not go forward with my department wasting taxpayers' money on preparing plans and discussions with officers until I have had a firm decision from this House. It is quite clear. I am a corporate player and the issue is quite clearly that I cannot override the decision of this House and I am not prepared to do so.

**2.13.5 Deputy J.A. Martin:**

The Minister is not listening to the question. It has not been a decision of this House; it was a decision of the Council of Ministers. He is a corporate player. Is the Minister a corporate player or is he the Minister for Housing who told us not less than an hour ago we are going to have a shortage of housing of 400 to 500 and is he going to come back with the Minister for Planning and Environment and ask us to re-sow more green land because none are being built at the moment? Is he a corporate player or does he really seriously want us to take him as the Minister for Housing?

**Senator T.J. Le Main:**

How many times do I have to say this to the Member and to one or 2 other Members of the Assembly that seem to think that the issue of the town park will go away. There has been a States decision. The Council of Ministers have promised they will deliver the town park as required by this Assembly and by the demand and request of 16,000 people who signed the petition although, as Deputy Southern says, with an underground car park. At this present time, I concur with the wishes of our Assembly because I was one of those that voted in favour of a town park. In the meanwhile, at the moment, there are proposals that will be debated. Deputy Martin has a proposal on the table to come forward when the master plan has been completed and the Assembly will decide then when the master plan has been completed in its findings. It may very well be that the master plan will identify other areas for car parking - I am not sure - and if it does, then the Minister for Housing will be pleased to develop the site for sheltered housing, no question, but I

can only do it on the basis that this Assembly are the masters of any decision that I am prepared to take.

**2.14 The Deputy of St. John of the Minister for Economic Development regarding boats damaged by vandals at Elizabeth Marina on 6th and 7th March 2009:**

Would the Minister advise the Assembly how many boats were damaged by vandals at the Elizabeth Marina on the night of 6th and 7th March 2009, the estimated cost of that damage and what action, if any, has been taken to ensure this cannot happen again?

**Senator A.J.H. Maclean (The Minister for Economic Development):**

Could I ask my Assistant Minister who has responsibility for the harbour to answer the question?

**The Deputy of St. John**

On a point of order, I put the question to the Minister.

**The Deputy Bailiff:**

It has been customary, I think, for the Minister for Economic Development to allow the Minister who has responsibility for the harbour to answer.

**The Deputy of St. John:**

When he is in the Chamber?

**The Deputy Bailiff:**

Yes, it has been practice.

**The Deputy of St. John:**

On a point of order, I believe that there was a consensus that if the questioner wished the Minister to answer the question, we had agreed - or at least, there was a ruling, I believe - that the questioner could put it to the Minister if he wished to.

**The Deputy Bailiff:**

Do you wish to insist that it be answered by the Minister, Deputy?

**The Deputy of St. John:**

Yes, Sir, given that I have been pulled up several times for not getting standing orders right, I felt it is time that I tried to get it right.

**The Deputy Bailiff:**

Yes, Minister, if you would answer the question then.

**Senator A.J.H. Maclean:**

I was waiting for the Deputy to take his seat again. Right, I am told that 54 boats were damaged during the incident that the Deputy is referring to. I might add that I am delighted to note that his own boat was not damaged in the incident, which is good news. We have not been advised of the total cost of the damage caused during the event. We are waiting for the results of the police investigation. Jersey Harbours will continue to manage, as best, the problems of youths congregating at the harbour. However, this is a wider social issue and cannot be managed by the port alone.

**2.14.1 The Deputy of St. John:**

Firstly, for clarification, my own vessel is not in that marina and the Minister knows very well that it is not because he has attended St. Helier Marina with me. That said, could we be told as to

whether or not all the security cameras on the night of this particular occurrence were in operation, how many security officers were on duty and what training the security officers have?

**Senator A.J.H. Maclean:**

There are a numbers of questions there. On the night in question, I understand that there were 2 cameras which had limited functionality. The remaining cameras were operational. There was one camera that was not operating, sorry, 2 with limited functionality and the rest were operational. As far as the number of security staff on duty that particular evening, I do not have the exact numbers to hand but I am more than prepared to supply those to the Deputy in due course. I would say that they are professional security staff that do carry out security on the waterfront as a whole and we do have a great deal of confidence in the services that they fulfil.

**The Deputy of St. John:**

A supplementary, Sir.

**The Deputy Bailiff:**

I am afraid the time has run out.

**The Deputy of St. John:**

Sir, you allowed the Minister for Housing to continually talk himself out of the question and yet, when we are trying to put supplementaries to get information out of the Ministers who do not want to answer, you cut me short at the knees, Sir.

**The Deputy Bailiff:**

I recall you suggesting your knees were in danger on a previous occasion. The position is that I entirely sympathise with what you say about the length of answers and it is incumbent upon Ministers to be as brief as possible and, if it gets too long, I will stop them but it has to be a judgment call eventually as to being given sufficient time to answer but not too much. As to the time, I am afraid the time has expired.

**Deputy T.M. Pitman:**

Sir, I was about to propose, could we consider extending the session to get the questions answered?

**The Deputy Bailiff:**

What are you proposing?

**Deputy T.M. Pitman:**

I propose suspending Standing Orders.

**The Deputy of St. Martin:**

Could we propose suspending Standing Orders to enable the last 4 questions to be asked this morning?

**The Deputy Bailiff:**

Very well. The Deputy of St. Martin is proposing that Standing Orders be suspended so that the last 4 questions can be answered. Is that seconded? **[Seconded]**

**Deputy M. Tadier:**

Can I speak on this?

**The Deputy Bailiff:**

No, I think it is a very simple matter really, Deputy, that people either want to extend the time or not. We cannot have a debate about a matter like that, so the appel has been called for and I invite

Members to return to their seats. The matter is for or against the proposition of the Deputy of St. Martin to extend the period by suspending Standing Orders.

<b>POUR: 22</b>		<b>CONTRE: 23</b>		<b>ABSTAIN: 0</b>
Senator B.E. Shenton		Senator T.A. Le Sueur		
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator T.J. Le Main		
Connétable of St. Lawrence		Senator F.E. Cohen		
Deputy R.C. Duhamel (S)		Senator J.L. Perchard		
Deputy of St. Martin		Senator A.J.D. Maclean		
Deputy J.A. Martin (H)		Senator B.I. Le Marquand		
Deputy G.P. Southern (H)		Connétable of St. Ouen		
Deputy of St. Ouen		Connétable of Trinity		
Deputy of Grouville		Connétable of Grouville		
Deputy P.V.F. Le Claire (H)		Connétable of St. Brelade		
Deputy S. Pitman (H)		Connétable of St. Martin		
Deputy K.C. Lewis (S)		Connétable of St. Saviour		
Deputy of St. John		Connétable of St. Clement		
Deputy M. Tadier (B)		Connétable of St. Peter		
Deputy of St. Mary		Deputy R.G. Le Hérissier (S)		
Deputy T.M. Pitman (H)		Deputy J.B. Fox (H)		
Deputy T.A. Vallois (S)		Deputy of St. Peter		
Deputy M.R. Higgins (H)		Deputy S.S.P.A. Power (B)		
Deputy A.K.F. Green (H)		Deputy I.J. Gorst (C)		
Deputy D. De Sousa (H)		Deputy A.E. Jeune (B)		
Deputy J.M. Maçon (S)		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		

**Deputy G.P. Southern:**

May I remind Ministers that were due to answer that the convention is that they do circulate answers widely to all Members of the House.

**The Deputy of St. John:**

On that particular point, if I may raise an issue, they do circulate the Members of the House but the media should also be circulated with those answers, Sir.

**The Deputy Bailiff:**

It is a matter for consideration by Ministers. There is nothing in Standing Orders obviously about that at the moment, so I do not think it is a matter for the Chair.

**Deputy M. Tadier:**

Sir, the reason I wanted to speak earlier is just to clarify that when the answers are circulated - and I hope this can be confirmed by the Chair - the answers that we receive are not covered by

parliamentary privilege and that is what I wanted to mention before. It may have affected the way people vote so when the answers are circulated, they will not be covered by parliamentary privilege as they are in the Chamber. Can you confirm that is the case, Sir?

**The Deputy Bailiff:**

I would have thought that is probably the case, yes, although if you want a firm ruling, I would have to look into it but I would imagine that is the case.

**The Deputy of St. Martin:**

Sir, can I, on behalf of those who would like to see the extension on the question of time this morning, thank the Connétable of St. Lawrence for giving us support. We did note the Connétable did and the rest did not.

**3. Questions to Ministers without Notice - The Minister for Social Security**

**3.1 Deputy J.A. Martin:**

Will the Minister inform Members if he still intends to end the transition in October and, if so, what sum of money will he be withdrawing from the benefits of households currently in receipt of £22.5 million of protected payments and, if he is going to do this, will he inform those in receipt of these benefits?

**Deputy I.J. Gorst of St. Clement (The Minister for Social Security):**

The Deputy is quite right. The transitional payments are due to be started with a staged withdrawal in October of this year. If that stage withdrawal is to take place, then my department would need to issue letters, I think, in April and May of this year. As I have recently said at the Scrutiny hearing, however, a number of proposals have been gathered together as part of the economic stimulus package. Those proposals are duly being considered by the Fiscal Policy Panel and I would like to inform the Deputy that one of those proposals is that the transition payments are extended for a year.

**3.1.1 Deputy J.A. Martin:**

A supplementary. Is the Minister not concerned? I fully understand protecting the people who are on transition but, since January 2007, hundreds and hundreds of people have now entered on the benefit payments now, so they are either wrong and they are losing out or the transitions are right and they are not. Which one is right?

**Deputy I.J. Gorst:**

I am not sure exactly what the Deputy is trying to ask me. If transition is to be extended, then, yes, there will be a piece of work that needs to be undertaken to understand those people who are currently on transition if their circumstances have changed and what effect that will have upon them and whether they should be moved from transition directly just on to income support. That is a piece of work that would need to be undertaken and it will be a decision for this House, as I understand it. The Fiscal Policy Panel will make their recommendations, that will turn into a proposition and the House will decide, so it will be ultimately for Members of this House to decide whether that is the right course of action, I should say, in an economic slowdown and that is critical for Members to remember.

**3.2 Deputy G.P. Southern:**

In his answer to written question 4150 tabled today, the Minister suggests that the Supplementation Bill paid by the taxpayer to top up Social Security contributions may be as high as £73 million. Can he explain what research has been done to state why this is so high?

**Deputy I.J. Gorst:**

As Members know, analysing and understanding at the start of the year the figure that supplementation is going to be at the end of the year is an inexact science, shall we say, because it is quarterly in arrears. It is driven obviously by the level of wages in the economy and it is difficult for the department to know in advance exactly what that amount is going to be. I will shortly, during the course of this year, be considering some proposals to try and see if we can budget more accurately for supplementation. While the amount will vary, we could perhaps put in the States accounts a budgeted amount and then make an adjustment for either a higher or lower number in the following year, so it is not a satisfactory answer for the Deputy, I appreciate, but that is because of the nature of what supplementation is.

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

Supplementary on supplementation, if I may. Yes, it is not a very satisfactory answer. Research was commenced some time ago on the reasons why the Supplementation Bill seemed to be going up. Will he specifically inform Members today to what extent the one-third one-third one-third principle has been breached? How much, in terms of proportion, is the taxpayer now paying towards the Social Security Contributions Bill? Is it still one-third or has it risen above that?

### **Deputy I.J. Gorst:**

I do not have that information with me today, so I am not able to give a full answer to that. I understand that it might be slightly lower. Supplementation is a difficult issue. What we say is that those who currently are on lower incomes, we, as taxpayers, are prepared to top up their contribution into the Social Security fund to provide ...

### **The Deputy Bailiff:**

I think, Minister, that you were asked about one-third, one-third, one-third and I think you said that you do not know the answer to that.

### **Deputy I.J. Gorst:**

This is important to provide benefit in the future for those employees.

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

He has not agreed to dig out those figures and say what the figure is yet. Will he do so?

### **Deputy I.J. Gorst:**

I have no problem with providing that figure.

### **3.3 Deputy S. Pitman:**

Could the Minister inform Members whether or not he feels it acceptable that the Medical Board have deemed a person who has degenerative disc disease and arthritis 45 per cent unfit to work after 2 years of him being assessed by the Board and the illness quickly progressing? Indeed, this person has sought employment but has been refused it because employers have said he would be a financial liability. How is the Minister going to address this reality?

### **Deputy I.J. Gorst:**

I thank the Deputy for that question. S.T.I.A. (short term incapacity allowance) and L.T.I.A. (long term incapacity allowance) are quite difficult benefits. The previous Minister for Social Security had a professor to review that whole area of benefit. I am going to struggle with his name. I cannot remember his name. I think it is Stratford but it begins with an "S" anyway. I propose that the review will be rolled up into the total review of the Social Security Law and the Social Security Fund. I must say it must be driven by medics but, currently, it uses a faculty analysis - and this is where we are going to get a little bit technical - but perhaps what we should be using is a function analysis as we do for medical components of income support.

### **3.3.1 Deputy S. Pitman:**

The Minister was made aware of this by one of his constituents who he met with myself 11 weeks ago and nothing has been done about it. In the meantime, while this review is being done, what is the Minister going to do about this person who is receiving income support on 45 per cent of long term incapacity allowance. That is surely a very low percentage of the full amount, considering that this person's disease is progressing very fast.

**Deputy I.J. Gorst:**

As the Deputy knows, these cases are not always straightforward and nor is this one. It becomes very difficult. In order for me to defend myself in this case, I would have to talk about personal individual details and I am not prepared to do that, nor do I think it is acceptable to do so, suffice to say that I have asked for this to be reviewed.

**3.4 Deputy D.J. De Sousa of St. Helier:**

Is the Minister satisfied that the department can respond promptly to urgent requests for special payments such as dental work and rental deposits and that the clients are informed of what can be claimed?

**Deputy I.J. Gorst:**

I am satisfied that the department can respond speedily to these requests. It can be, in a case of extreme need, that the department could turn a claim around within one day. However, the department generally works to turning a claim around within one week but we have a tolerance time of 2 weeks. I should say in the majority of cases, as I see the Deputy in front shaking his head. With regard to whether all potential recipients are aware of the benefits that are available to them, then the department has a piece of work to undertake there because I am not, at this stage, satisfied that everyone that could be entitled to a benefit is aware of all the benefits that they could be entitled to and that is a piece of work that we are undertaking and will continue to undertake to make sure that people are aware.

**3.4.1 Deputy D.J. De Sousa:**

Can the Minister inform the House that he will push for this urgently, as a lot of people are missing out on benefits they are entitled to because of lack of information?

**Deputy I.J. Gorst:**

Perhaps this is an opportune moment for me to pay tribute to my predecessor. Before I took up this role, I was under the impression that Social Security was, shall we say, a relatively quiet department. I have become all too aware that that is not the case. The Deputy is quite right. It is a priority that the department, alongside a myriad of other departments that I continually daily talk to my officers about and they juggle trying to meet the needs of the more vulnerable members of society but I can assure her it is a priority but these things do take time.

**3.5 Senator P.F. Routier:**

Thank you for that compliment. Will the Minister please inform Members what progress has been made in providing improved work and training opportunities for people with learning disabilities and on the autistic spectrum since his department has been allocated new funds to provide additional opportunities?

**Deputy I.J. Gorst:**

Perhaps I could turn that question around and ask the Senator where he left it but, seriously, that ranks, as the Deputy has just said, as a priority for my department. That piece of work currently sits with the Education Department because one of the priorities within that strategy was understanding and providing funding for the transition, as we call it, between services. The remaining areas of concern that I have, and those in those particular areas have, is transitioning between education. Education can be congratulated on the service that they provide at Mont à



l'Abbé School to these individuals. It then becomes very difficult to find meaningful occupation or meaningful training or meaningful work opportunities when those individuals reach school leaving age, so that is where this piece of work currently sits. It is with Education and we are waiting back for a report to understand and a strategy to deal with that but it does remain a top priority. I should tell Members that I was involved in a transition meeting with a member of my Parish and I was absolutely shocked to experience what that process was like and it remains an absolute priority for me and it ought to remain a priority for the other departments and for this Assembly.

### **3.5.1 Senator P.F. Routier:**

A supplementary. Can the Minister give an assurance that the allocated funds will be used solely for people with learning disabilities and people on the autistic spectrum because that is what the money was intended for and for no other purpose?

### **Deputy I.J. Gorst:**

As I was one of the authors of that strategy, I am well aware that that is what it was intended for and that is what I intend to ensure that it is allocated to. I should add one slight caution to that and that is that some of the monies will be apportioned to Jersey Employment Trust, of which I am a Trustee, and I should make that clear. Their remit is across the disablement spectrum and, therefore they might struggle to apportion it directly to those with learning difficulties on the autistic spectrum, for example. If they are introducing new training courses, it might be that some with physical disablements are joined alongside those courses as well, so it might be quite difficult in that instance to hypothecate it but I am absolutely committed to ensuring that the vast majority of the money, apart from those difficult areas, do remain hypothecated for those 2 groups of individuals.

### **3.6 Connétable D.W. Mezbourian of St. Lawrence:**

The Health and Social Services Department is shortly to launch a new Carer's Strategy and I understand that the Employment Forum at the moment is looking at flexible and family-friendly working arrangements. As part of the strategy, we hope to deliver some form of flexible working for carers and I ask the Minister whether he can tell us at what stage the Employment Forum is regarding this flexible working and what consideration is being given to flexible working for carers?

### **Deputy I.J. Gorst:**

I thank the Connétable for that question. As far as I am aware, the Employment Forum carried out their consultation of what had become known as family-friendly proposals or policies last year and perhaps the year before. I understand that my officers will shortly be presenting to me their recommendations. I am unable to say whether they have included proposals for carers. I cannot say one way or the other because I have not seen their proposals. If the Connétable and the Health and Social Services Department is saying that this is an issue which they did not address at the time with the Employment Forum, then perhaps the way forward is for them to write to me and/or the Employment Forum and perhaps we can include it as an addendum to their recommendations.

### **3.6.1 The Connétable of St. Lawrence:**

I thank the Minister for his response and I think, as the report is being prepared by the Employment Forum, it would be better if the Minister advises the Health and Social Services Department whether the carers have been taken into account in these flexible arrangements.

### **Deputy I.J. Gorst:**

I am not sure that that is how the process works. As I understand it, the Minister instructs or requests the Employment Forum to look at a certain area of employment legislation which, as I say, the previous Minister did. They then consult interested parties and a more wider consultation and my question was - and I know I am supposed to be giving answers and not raising questions - I am

not sure whether Social Services were part of that consultation process or not. It sounds at this stage as though they ought to have been and that is why I am suggesting that Social Services might wish to contact the Employment Forum and/or myself.

**The Deputy Bailiff:**

Very well. I am afraid that brings questions of the Minister to an end.

**Deputy G.P. Southern:**

May I just bring a point of, I think, order? May I remind, before we start on questions for the Chief Minister, to congratulate the Minister for Social Services on fitting so many words into so few breaths in the length of his answers. Can we have succinct answers in the next please, Sir, and will you ensure that that happens?

**4. Questions to Ministers without Notice - The Chief Minister**

**4.1 Deputy R.G. Le Hérissier:**

Would the Chief Minister confirm whether or not he approves the salary paid to the Managing Director of W.E.B. (Waterfront Enterprise Board) and would he not also confirm that much of that salary is the recycling of public money, e.g. the enormous rental paid for Liberation Bus Station.

**Senator T.A. Le Sueur (The Chief Minister):**

The remuneration paid to the Managing Director of W.E.B. was a matter gone into by the remuneration committee, the directors of that company, who take advice on comparable salaries in the private sector. On that basis the salary is considered to be comparable, and I believe the Managing Director of W.E.B. is doing an excellent job and clearly he is being paid out of the assets of W.E.B. and those assets of W.E.B. are rising due to the sound work that the Managing Director does.

**4.1.1 Deputy R.G. Le Hérissier:**

A supplementary, would the Chief Minister define whether the productivity of W.E.B. is reflected in the manager's salary and if so, how is the measurement undertaken?

**Senator T.A. Le Sueur:**

W.E.B. is not a company manufacturing widgets and productivity is not a matter which determines any great element of the Managing Director's salary.

**4.2 The Deputy of St. John:**

As the Chief Minister a year ago, with responsibility for the Treasury, and as the agreement for the Energy from Waste Plant was purchased in euros, will the Chief Minister please advise Members, while he was at the Treasury, did he not have a hand on the tiller of the Treasury, given that the purchasing of the euros for the Energy from Waste Plant was completed in his time? The contract was signed in July, and yet when he left the Treasury on 8th December, or 10th December, to become Chief Minister, no forward purchasing of euros had taken place. Will he give us a reason why this did not happen?

**Senator T.A. Le Sueur:**

I thank the Deputy for his question. The policy for this matter and policy in general is set by the States and set by the Minister. The implementation of that policy is done by the department. The policy was correct but there may have been shortcomings in the implementation of that policy, as a result of which the current Treasury Minister called for a review by the Comptroller and Auditor General, the results of which have now been published and are in Members' hands. As a result of that further investigation by a disciplinary panel is ongoing.

#### **4.2.1 The Deputy of St. John:**

Given that the Chief Minister was responsible at that time, can it be right that his officers are now being interviewed, or being accused of malpractice, or failing to do their particular work in that area by protecting that large sum of money when he himself was the head of that department and therefore, should he not be carrying the blame himself and therefore, finding some way of recompensing the Island.

#### **Senator T.A. Le Sueur:**

This matter is being reviewed, as I said by a disciplinary panel. Part of the remit of that panel is that matters are confidential at that stage and no detail should be gone into. While understanding the Deputy's question I think it would be unwise to go into the details prior to the review of that work, but I would point out to the House, at the risk of going on longer than I ought to do, that as well as the disciplinary panel the Public Accounts Committee also had a look at this and I am sure between the 2 different areas the matter will be thoroughly aired.

#### **4.3 Deputy A.K.F. Green of St. Helier:**

An application was published in *The Gazette* to discharge water from Energy from Waste excavations. This water was described as brackish water. In answer to my written question today, 4373, it was indeed described as a mixture of rain and salt water. We now know, thanks to the States analysts, that the water which might be pumped into the sea from the excavation site is laced with lead, arsenic, and a cocktail of other metals. Will the Chief Minister use his influence to ensure that the environmental regulator, that is Planning and Environment; stand up to T.T.S. (Transport and Technical Services) for the sake of the environment and our fish industry.

#### **Senator T.A. Le Sueur:**

I have no doubt that the regulator will comply with all requirements of the law and ensure that if any misdemeanours have been, or are in danger of being, carried out the department will be brought to book and we have seen in the past that departments have been prosecuted for failures if standards are ... I hope there will not be a failure in this particular case but if there is I have no doubt that the law will apply its full force.

#### **4.3.1 Deputy A.K.F. Green:**

Supplementary, Sir. Will the Chief Minister please assure the House that the Food and Environment Protection Act 1985 will be in force vigorously?

#### **Senator T.A. Le Sueur:**

Without knowing much about that law at the current time I will ... I am sure that any law to be enforced will be properly applied and if I can do anything to make sure that it does occur then I shall certainly encourage that.

#### **4.4. Deputy J.A. Martin:**

Does the Chief Minister believe that the 20 per cent maximum rate of income tax is sacrosanct? If not, will he consider the introduction of graduated thresholds of taxation so that those most able to pay proportionately more will pay more?

#### **Senator T.A. Le Sueur:**

No, I do not regard the rate as sacrosanct, but I do think it would be a retrograde step for the Island to increase that rate at a time when countries around the world are reducing their income tax rates and reducing their reliance on that form of taxation in preference for taxation by other means. So, that subject was discussed at some considerable length in the fiscal strategy some years ago. It may well be that it is now due for review, but at the present time while I do not think it is sacrosanct, I think it would be a very dangerous precedent to try and tinker with it.

#### **4.5 Deputy R.C. Duhamel of St. Saviour:**

The Electricity (Jersey) 1937 Law, as revised under clause 22, provides for the States to set electricity tariffs when it is deemed to be in the public interest to do so. It also provides, under clause 29, an opportunity every 10 years for the States to consider exercising its right to purchase the J.E.C. (Jersey Electricity Company) and its assets at a favourable rate. In the current economic climate, and after the implemented increase in electricity costs of some 24 per cent, will the Chief Minister or his Minister for Treasury and Resources bring forward propositions to this Assembly to revise the States position in these 2 areas?

#### **Senator T.A. Le Sueur:**

I think since the law of 1937 times have changed somewhat. Apart from me getting older we also have a Jersey Competition Regulatory Authority in place who can examine the tariffs charged by the electricity company and if they have any concerns about those tariffs then they can comment accordingly. As to the possibility of the States buying the balance of the shares in that company at a favourable rate I would point out that the general trend is that governments should not be involved in purchasing assets of that nature. Ideally we should be divesting ourselves of those shares rather than buying more. That, so far as I am concerned, remains the position but I am happy to discuss that with the Minister for Treasury and Resources and, if appropriate, bring a proposition to this House.

#### **4.6 Deputy M. Tadier:**

Will the Chief Minister put aside any political differences and join me in congratulating Senator Syvret on the sterling work he has done in getting the police to re-open investigations into a possible mass-murder. **[Interruption]** Can I ask for any interventions to come through the Chair. I would be happy to answer any.

#### **The Deputy Bailiff:**

This is question time, Deputy.

#### **Deputy M. Tadier:**

That is what I thought. I will have to start again unfortunately, seeing as I was interrupted. So, will the Chief Minister join me in congratulating Senator Stuart Syvret on the sterling work he has done in getting the police to reopen investigations into a possible mass murder at the General Hospital?

#### **Senator T.A. Le Sueur:**

No, I will not.

#### **4.6.1 Deputy M. Tadier:**

On supplementary, can the Chief Minister perhaps give a more full answer as to why he will not? I think this is something which is in the public interest and which the public have a great deal of direct interest in at the moment.

#### **Senator T.A. Le Sueur:**

I am not privy to deciding as and when police should continue investigations. Any case which remains unsolved, or remains uncertain, remains open in the police files and if they seek and obtain more information that enables them to make a further decision, so be it. I welcome the police activities in continuing to investigate all matters and it would be up to them to decide if and when any new evidence comes to light.

#### **Deputy M. Tadier:**

The question has not been answered, if I may venture to say that. Simply I am saying that as far as I can see it is Senator Syvret's intervention that has re-opened this case; it seems black and white. Does the Chief Minister not welcome that?

**The Deputy Bailiff:**

The Chief Minister has given his answer, Deputy. You may not like it, but he has given it.

**4.7 Deputy S. Pitman:**

Will the Chief Minister inform Members what discussion he took part in, in trying to prevent the U.K. Health Agreement from being stopped, and what has he tried to do about it since the decision was made by the U.K. to pull it?

**Senator T.A. Le Sueur:**

The reciprocal health agreement with the U.K. contains a clause which enables either party to terminate that agreement at 3 months' notice. Last year I was aware that the U.K. had given notice under that agreement to terminate arrangements and immediately the Island took steps to see if that could be implemented in a more manageable way. Those discussions did continue under the previous Chief Minister and continued under my leadership, but the fact remains that the notice has been given and as the Deputy and Members are aware the agreement does come to an end on 31st March in accordance with agreed procedures.

**4.7.1 Deputy S. Pitman:**

Supplementary, the Chief Minister did not answer the second part of the question. What attempts has he made to try and bring this agreement back?

**Senator T.A. Le Sueur:**

This is a matter primarily for the Minister for Health and Social Services but I think we have to face reality that Jersey is not unique in the situation. This agreement is common with other countries with which the U.K. has arrangements and is no different from arrangements that Jersey has with other territories in Europe and elsewhere.

**4.8 Deputy M.R. Higgins of St. Helier:**

Part of my question has been asked already by the Deputy for St. John. My question is, does the Chief Minister believe in the concept of ministerial accountability, and if he does, will he accept the political responsibility for the actions of the Treasury Department when he was the Minister at the time when they failed to hedge the euro cost of the Energy from Waste Plant at great cost to the Island, and will he therefore consider resigning as Chief Minister?

**Senator T.A. Le Sueur:**

Ministers are accountable for policy. Officers are accountable for implementing that policy. We will decide as a matter of review to what extent responsibility lies with each particular individual and to the extent that I may come under scrutiny for that matter I am prepared to do that as much as anybody else.

**4.9 The Deputy of Grouville:**

Last year Education Sport and Culture were charged with organising an anthem for the Chief Minister's Department. The rights of that music were finally decided upon, or agreed to, at the end of last year. Could the Chief Minister explain to this Assembly what has happened to the anthem since then?

**Senator T.A. Le Sueur:**

I am afraid I would need notice of that question. I do not think it was an anthem written for the Chief Minister's Department, I think it was probably an anthem written for the Island, but commissioned by the Chief Minister's Department and it had been very successful, I think, and is a good image, if you like, a focal point for the Island. I will certainly look into it and see what is happening because I believe it should be promoted in all possible occasions.

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

Further to his response to my question 4150 earlier today where he reveals that 5 requests have been received from the U.S. (United States) over T.I.E.A.s (Tax Information Exchange Agreements) in the past 3 years, does he know, and will he inform the House how many of those requests resulted in prosecutions or tax returned to the U.S. authorities?

#### **Senator T.A. Le Sueur:**

The purpose of the Tax Information Exchange Agreements with the U.S. enables the U.S. authorities to take action in that country to recover any tax that was not properly declared. I do not know the extent to which that tax recovery ... what the amount has been, but I do know that the U.S. authority has been very grateful and appreciative of the work and the co-operation that the Island did enabling them to pursue their case in their territory.

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

Surely the judge of whether T.I.E.A.s are an effective mechanism to discourage and prevent tax avoidance and evasion is the success rate of getting tax back. Notwithstanding that, will he inform Members what the total numbers of requests for information under T.I.E.A.s with all authorities has been since we started signing them, and also the numbers accepted where information was revealed?

#### **Senator T.A. Le Sueur:**

I can certainly make available to you in due course the total number of requests that we have received. I would add that all of the requests that we have received we have willingly co-operated with and assisted other jurisdictions and, as I say, they have appreciated that support, but I do, at the risk of going on a bit too long, point out that it is not necessarily just in a case of the number of requests that we have received, the very fact that the agreement is in force means that the authorities have the weapon to attack taxpayers who they consider to be at risk and threaten them that if they do not disclose voluntarily to the tax authorities in that jurisdiction they can get the information legally through a Tax Information Exchange Agreement. So, I am sure that the effect of these agreements goes far wider than the number of requests we have received.

#### **The Deputy Bailiff:**

That concludes Questions Without Notice to the Chief Minister. We come now to personal statements and first of all Senator Perchard will make a personal statement regarding comments made in the States Assembly on 10th March 2009.

### **PERSONAL STATEMENTS**

#### **5. Senator J.L. Perchard will make a personal statement regarding comments made in the States Assembly on 10th March 2009**

##### **5.1 Senator J.L. Perchard (The Minister for Health and Social Services):**

I wish to make a full and unreserved apology to States Members for using unstatesmanlike language in a private conversation with a Member in the House during the States sitting on 10th March. My comment to a fellow elected representative was undignified and fell short of the standard that the Island rightly expects from its elected representatives. I regret that I did not keep a tighter reign on my personal feelings. In this apology I wish to make 2 further statements; firstly, I wish to make it clear to Members that I did not lie to the House during that sitting and I absolutely reject the allegations made about the precise words that I used at the time. Secondly, comments I directed at a States Member concerning self harm were made last year and outside the Assembly and before I became Minister. These 2 statements are not meant in mitigation, nor as an excuse, but simply to make the record perfectly clear and correct. I expect that many Members may well

appreciate the level of provocation that I have, and continue to have to endure, both personally and on behalf of others. I am certain that this is well-understood because many from both within and without this House have been subject to the same levels of provocation and abuse; provocation and abuse that continues unabated and apparently without opportunity for redress. The question that requires a clear and forthright answer is, how are those who are abused and provoked to be protected and permitted to lead their lives subject to the law and protected by the law? To conclude, Members might rightly consider whether I have learned a lesson as to my conduct, or whether such an incident might recur in the future. Members have my assurance that I have indeed learned a great deal from this incident and I trust that they will allow me the opportunity to demonstrate higher standards of demeanour in the future. I wish to reiterate my full and unreserved apology to the House and to the people of Jersey for my part in this unpleasant exchange. I ask, and hope, that my mistake may be forgiven in the fullness of time.

### **The Deputy Bailiff:**

Deputy Higgins will also be making a personal statement regarding comments that he made in the States Assembly on 3rd February 2009.

## **6. Deputy M.R. Higgins will make a personal statement regarding comments made in the States Assembly on 3rd February 2009**

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

During the elections late last year I stated on a number of occasions that to restore the trust of the electorate in politicians in the States politicians who make mistakes should be prepared to own up and admit them. I also believe that that is the honest and honourable thing to do. During the States debate on 3rd February 2009 I made a mistake which I would like to admit to and correct. At the beginning of the debate the Chairman of the Privileges and Procedures Committee raised a matter of privilege for the Bailiff, who was presiding over the Assembly at the time, relating to an item on Senator Stuart Syvret's blog which followed and in camera debate regarding suspension of the Chief of Police. The Chairman stated to the Bailiff that she had written to the Bailiff the previous week to give notice as required, under Standing Order 8, that she wished to raise a matter that her committee considered affected the privileges of the States and said that she would like to propose that the issue was formally referred to P.P.C. (Privileges and Procedures Committee) to allow her committee to investigate it. This statement was then questioned firstly by Senator Syvret who asked why this matter had to be formally referred to P.P.C. when they plainly had the power quite autonomously to investigate any matter they considered to fall within this kind of right, and secondly, by Deputy Le Claire of St. Helier who said: "I find it bizarre that in a grandstanding way this has been requested to be referred to the P.P.C. when it is completely within their power to investigate which matters they choose to and if they need to seek clarification on whether the matters of privilege affected the States they could write to you, they could meet with you, as I have done in the past, to discuss those issues and there is no need to prejudice any outcome by grandstanding this issue or other issues in the future by requesting formal referrals." The Bailiff responded to Deputy Le Claire's statement by saying: "I think that the Privileges and Procedures Committee is proceeding entirely in accordance with Standing Orders. Standing Orders require the committee, or any Member who thinks that a matter of privilege is in question to refer the matter to the Bailiff, the Chairman has done that, and then to raise it on the floor of the Assembly, the Chairman has done that, and the Chairman could proceed this morning to raise a substantive proposition, but she has told Members that she wishes to give Senator Syvret the opportunity to say anything to the committee which he might, on reflection, wish to do. That seems an entirely proper way to proceed." Now, at this point in the process I intervened with a point of information and said: "This matter was referred to P.P.C. at its previous meeting by the Bailiff himself who brought up the question of privilege and so that this, in the interests of transparency, should be revealed." Unfortunately, in the heat of the moment my mouth was engaged before my brain and I did not say

what I meant to say. I have been dismayed by what I had heard at the point of time because no mention had been made of the fact that the matter had been raised at the previous P.P.C. meeting and discussed with the Bailiff. As I felt that this was less than transparent I got to my feet and spoke out. What I should have said was that a meeting of the P.P.C. took place, that a matter was discussed, and that it was discussed with the Bailiff who had been invited to the meeting by the Greffier to give advice to the committee on that matter. I therefore wish to set the record straight and to apologise to the Bailiff for stating the matter was referred to P.P.C. by the Bailiff himself, which it was not. Thank you.

## **PUBLIC BUSINESS**

### **7. Ratification of the Agreements for the Exchange of Information Relating to Tax Matters between the States of Jersey and the Nordic countries (Denmark, the Faroes, Finland, Greenland, Iceland, Norway and Sweden (P.20/2009))**

#### **The Deputy Bailiff:**

There are no matters under K, so we come to Public Business and the first item of business is the Ratification of the Agreements for the Exchange of Information Relating to Tax Matters between the States of Jersey and the Nordic countries, Denmark, the Faroes, Finland, Greenland, Iceland, Norway and Sweden, Projet 20 lodged by the Chief Minister, and I will ask the Deputy Greffier to read the proposition.

#### **The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to ratify the agreements for the exchange of information relating to tax matters between the States of Jersey and the Nordic countries of Denmark, the Faroes, Finland, Greenland, Iceland, Norway and Sweden, as set out in the appendix to the report of the Chief Minister, dated 1st December 2008.

#### **7.1 Senator T.A. Le Sueur (The Chief Minister):**

Members may recall that a couple of months ago I brought a very similar proposition to the States in respect of the agreement with Germany. Since that time the progress on Tax Information Exchange Agreements has hotted up, if that is the right expression, particularly in the light of the changing situation in the world economy and the ongoing review of this matter by, in particular, the G-20 group. What we have before us today is a similar situation in respect of 7 territories this time, so rather than do 7 countries individually I am bringing a proposition in respect of the whole Nordic Group, which is to say Denmark, the Faroes and the other countries so named. The principles which apply in the German case apply even more strongly now and I reiterate that the purpose of these exchange agreements is to build up good political and economic relationships, to obtain support from the Islands within the international forum and to press for action to be taken by the O.E.C.D. (Organisation for Economic Co-operation and Development) against non co-operative jurisdictions. It is even more important in the current climate that we proceed with these Tax Information Exchange Agreements and it is my policy and the policy of the Council of Ministers to maintain that in order to preserve the future of the Island and, on that basis, the agreements which the Chief Minister signed in Helsinki in October and which he reported to the House in December 2008 I now bring forward for ratification. I maintain that proposition.

#### **The Deputy Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?

#### **7.1.1 Deputy M. Tadier:**

Rather than speak it is really to seek some kind of clarification. First of all, just for my own personal peace of mind, can I ask, as a general rule, are we approached by these countries to enter



into T.I.E.A.s, or is it a mutual thing, or do they approach us? I would also like to know whether there have been any negotiations entered into with any third world or developing countries for such T.I.E.A. agreements.

#### **7.1.2 Deputy J.M. Maçon:**

I do endorse this, but I just have a point of information I would like clarified. How often has Jersey approached other places? Because obviously these agreements are reciprocal and I am just interested to know how many times Jersey has asked for information.

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

In the past the Chief Minister has made the point that we did not wish to proceed with actions in terms of tax information agreements on the grounds that there is not a level playing field. To what extent does he feel that the moves by Lichtenstein, by Switzerland, and indeed by others, have indeed produced only a moderate slope, rather than a level playing field? Would he further inform the House whether he expects the convention of T.I.E.A.s to stay in place for the indefinite future, or whether he expects to come under pressure from the O.E.C.D., the United States, and others to enter into some wider-based and more general tax exchange agreements in the near future, because certainly one of the problems here is, I think, we are chasing a moving target. While we might sign T.I.E.A.s until we have 3 figures of T.I.E.A.s the fact is they are very specific and the burden of evidence is very substantial. They can only chase single avoiders or evaders and they do not approach to deal with the general principle of tax avoidance which is becoming increasingly problematic, particularly in the third world and developing countries, but even more markedly and notably in the U.S. and in the western world that governments are becoming extremely concerned about the haemorrhaging of taxation revenues that they believe they should be using at home on which to base their societies and their provisions for their public. The fact is that as we progress these T.I.E.A.s the end result will be, I am sure, that we will end up having to agree to a much wider and broader based agreement in the future.

#### **7.1.4 Senator A. Breckon:**

I wonder if the Chief Minister would like to comment on the inclusion of Iceland. The reason I say that is I think there is some tension with their banking problems and the way they have treated the U.K. nationals and also in Guernsey. I wonder if the Chief Minister would like to comment if there is any intention, or if there was any consideration of excluding them from this agreement because it says in the narrative on the agreement, on page 127, that: "Iceland and Jersey look forward to working together to expand their bilateral commercial links and to developing a long term political relationship based on transparency and co-operation." I would use this as an opportunity to ask the Chief Minister perhaps if we could test them on some of that and some of the banking issues, deposit protection and other things, if they could get their act together perhaps before we sign these agreements and just not fall into place because there may have been an opportunity to demonstrate something by removing Iceland from this list.

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

I would just like to follow up on Senator Breckon's comments and just go slightly further. There are a few hundred people in Jersey who have money deposited with Landsbanki Guernsey and who have only had 30 pence in the pound back and are probably unlikely to get much more back. The Icelandic Government had given guarantees to the Guernsey authorities with regard to the bank and these guarantees, to the best of my knowledge, have not been honoured. So, would he, before he signs the agreement with Iceland, please bring that up and try to get recompense for the Jersey sufferers from that banking collapse.

#### **7.1.6 Deputy R.C. Duhamel:**

Just for a point of clarification mainly. In the appendices it states that these agreements have been signed on 28th October 2008 and yet we have a ratification agreement here suggesting that nothing

will be signed until the domestic procedures have been undertaken within the respective parliaments. For good order, have these agreements been signed on 28 October, and we are just using this House as a rubber stamp, or indeed are we in a position to be meaningfully giving our agreement for the Chief Minister, or whoever is going to sign on behalf of Jersey, to go ahead and sign them, presumably on a different date to 28 October, because that is in the past? I would like to know which way.

#### **7.1.7 The Deputy of St. John:**

Following on from Senator Breckon on the Landsbanki scenario with Guernsey and Isle of Man, et cetera, will the Members be permitted to vote on each of the agreements separately so that we can record our concerns by voting for or against whenever we get to Iceland, given that there is this outstanding issue? Could the Minister tell us whether we can vote on each item?

#### **The Deputy Bailiff:**

Does any other Member wish to speak? On that last point, Chief Minister, it is a matter for you that the proposition puts them all together but it is up to you.

#### **Senator T.A. Le Sueur:**

The proposition is quite clear; it puts them all together but for reasons I will explain I think that is quite a reasonable stance to take and I propose to put it as one proposition, but if Members have finished their questions ...

#### **The Deputy Bailiff:**

Yes. I call upon you to reply, Chief Minister.

#### **7.1.8 Senator T.A. Le Sueur:**

I will take them in the order given to me. In terms of who approaches whom, it is done by mutual arrangement, but generally it will be the countries with whom we have the opportunity to obtain some particular benefit, either commercial benefit or reputational benefit that we target. So, hence we have been focusing on places like Germany and France and the U.K. rather than some of the other O.E.C.D. countries with whom we have little in common and little commercial activity. In terms of the third world, at the present stage the Tax Information Exchange Agreement arrangements are driven primarily by the O.E.C.D. and it is with the O.E.C.D. countries that our focus is currently there, but I will say that as the general world stage is shifting the need to extend these sort of arrangements to the third world countries are becoming more obvious and I am sure we will be at the next stage in proceedings. Deputy Southern questions whether we are getting any closer to a level playing field and I think the answer is, yes, we are getting closer to a level playing field, although we are not there yet, and I think the fact that we are getting closer to that level playing field is due, in no small measure, to the influence that places like Jersey and Guernsey and others who have signed T.I.E.A.s have put the pressure on other countries who have maybe in the past been reluctant and we have seen in recent weeks a greater awareness of the situation by previously reluctant countries such as Lichtenstein, or even Singapore, to take a more realistic approach. I think that will lead to the second phase of the situation which was the second part of Deputy Southern's question, as to whether we expected T.I.E.A.s to remain in place, or whether we will have something greater than that. I believe that we will have something greater than that and I look forward to that. What we would like to see ultimately is information exchanged on request but that has to be done in the context of a more level playing field situation. As we move towards that level playing field more and more I think the chances of the wider effective exchange on request will become more likely but I suspect that may take a few years yet, but things are certainly moving in the right direction. Various speakers have commented on the Iceland situation and I would remind them that this is a tax information agreement, not a banking deposit agreement. That said, the agreement does talk of matters to commercial mutual advantage and I stress that in terms of mutual advantage Jersey decided, in its wisdom, that it would not directly involve in giving a

licence to Icelandic Bank such as happened in Guernsey. Those who have concerns about the arrangements with Icelandic banks should turn to the Tax Information Exchange Agreement with those territories that do have Icelandic banks operating within them. So, I think there is no reason not to sign this agreement, or ratify this agreement with Iceland. The fact that it is a commercial agreement and it is the taxation exchange information has no bearing on the bank.

**Deputy M.R. Higgins:**

If I can just interrupt with a point of information, the U.K. Government refused to give its consent to the I.M.F. (International Monetary Fund) giving a loan to Iceland to enforce a situation of getting compensation for its own depositors. Surely if we are looking after the interests of our own people we should use every means possible, just as the U.K. and other governments have done.

**Senator T.A. Le Sueur:**

I do not think that the signing or non-signing of a Tax Information Exchange Agreement with Iceland will make the slightest difference to the Icelandic Bank's ability to repay local depositors but I also believe that Jersey's activities in respect of giving banking licences to those appropriate to do so is the right one and we will continue to do so. Moving on to Deputy Duhamel and the question of whether this is a rubber stamping, it is States policy that we should enter into Taxation Information Exchange Agreements when the situation is correct and quite rightly too. If we had not done so, I believe the Island situation would be far worse than we currently have. The process is that the exchange agreements are signed by the Ministers of the 2 countries concerned and then each jurisdiction takes it back to their parliament for ultimate ratification. It is in that respect a rubber stamping but the suggestion that we would sign an agreement, as we did in October in Helsinki with these countries, and then renege on it for no good reason other than the fact that we have changed our mind, would give a very bad reputational image to this Island at a time when we need all the friends we can get. So, effectively the decision to sign Taxation Exchange Agreements has been made in general terms that we wanted to go into these things when the situation is right. The situation for the Nordic countries at that time was right, just as the situation earlier this month with the U.K. and France is correct and we will continue to sign Taxation Information Exchange Agreements when we believe that it is appropriate for the Island to do so. That being the case, I see no reason to vote separately on these matters.

**Deputy G.P. Southern:**

May I ask for a point of clarification? The Chief Minister seemed to say that the signing or not signing of a T.I.E.A. with Iceland would do nothing for their ability on the payment of depositors. Surely the point being made by Deputy Higgins was that it would bring pressure on Iceland to fulfil its obligations and surely in those circumstances it may well be appropriate to vote individually on particular countries.

**Senator T.A. Le Sueur:**

No, I disagree. If Iceland has any obligations at all it would be the obligations in those territories where the banks operate and so Jersey's involvement in this would have no influence on the Icelandic Government whatsoever. I maintain that Deputy Southern is no doubt well-meaning in trying to help the Icelandic depositors, as we would all want to do, but this is not the tool with which to do it. My proposition as a whole.

**The Deputy of St. John:**

The appel please, Sir.

**Deputy G.P. Southern:**

Sir, is there any way in which the House can request that the items be taken separately?

**The Deputy Bailiff:**

I fear not, Deputy, under the rules the proposition is as put before it and it is a matter entirely for the proposing Member.

**Deputy G.P. Southern:**

I suspected it might be.

**The Deputy Bailiff:**

The matter before the Assembly is the ...

**The Deputy of St. John:**

On a point of clarification, can the House not do something in the third reading on something like this? No? Thank you.

**The Deputy Bailiff:**

The appel has been asked for in relation to the proposition of the Chief Minister.

<b>POUR: 38</b>		<b>CONTRE: 7</b>		<b>ABSTAIN: 1</b>
Senator T.A. Le Sueur		Senator A. Breckon		Deputy M.R. Higgins (H)
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator T.J. Le Main		Deputy of St. John		
Senator B.E. Shenton		Deputy T.M. Pitman (H)		
Senator J.L. Perchard		Deputy A.K.F. Green (H)		
Senator S.C. Ferguson		Deputy D. De Sousa (H)		
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				

Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				

**8. Draft Taxation (Exchange of Information with Third Countries) (Amendment No. 2) (Jersey) Regulations 200- (P.21/2009)**

**The Deputy Bailiff:**

So, the next matter of business is the Draft Taxation (Exchange of Information with Third Countries) (Amendment No. 2) (Jersey) Regulations 200-, Projet 21, lodged by the Chief Minister and I will ask the Deputy Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Taxation (Exchange of Information with Third Countries) (Amendment No. 2) (Jersey) Regulation 200-. The States in pursuance of Article 2(1) of the Taxation (Implementation) (Jersey) Law 2004 and paragraph 1.8.5 of the Strategic Plan 2006-2011 approved by the States on 28th June 2006 and following the decision of the States, taken on the day these Regulations are made, to adopt Projet 20 of 2009, have made the following Regulations.

**8.1 Senator T.A. Le Sueur (The Chief Minister):**

This is just a procedural matter, having agreed the last proposition we now have to add the names of those 7 countries to the general regulations on Taxation Exchange Information with Third Countries Regulations which is a blanket regulation. So, we slot each of those countries in alphabetical order wherever they appear in the schedule. I propose the regulations.

**The Deputy Bailiff:**

Is the principle seconded? **[Seconded]** Does any Member wish to speak on the principles? Very well. All those in favour of adopting the principles.

**The Deputy of St. John:**

The appel please, Sir.

**The Deputy Bailiff:**

The appel is called for in relation to the principle. So, the matter is for or against the principles of the Regulations.

<b>POUR: 42</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 1</b>
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Senator T.A. Le Sueur		Deputy of St. John		Deputy A.K.F. Green (H)
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				

Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

Senator Ferguson, do you wish this matter to be referred to your Corporate Services Scrutiny Panel?

**Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel):**

No, thank you, Sir.

**The Deputy Bailiff:**

Very well. Chief Minister, do you wish to propose the 2 regulations *en bloc*?

**Senator T.A. Le Sueur:**

Yes please, Sir. It is really just amending the schedule. I propose the amendments *en bloc*.

**The Deputy Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on any of the individual regulations? Very well. All those in favour of adopting the ...

**The Deputy of St. John:**

The appel please, Sir.

**The Deputy Bailiff:**

The appel is called for in relation to Regulations 1 and 2 so the Deputy Greffier will reset the voting and I invite the Deputy Greffier to open the voting. This is pour or contre Regulations 1 and 2.

<b>POUR: 39</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 1</b>
Senator T.A. Le Sueur		Deputy of St. John		Deputy A.K.F. Green (H)
Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				

Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

Do you propose the regulation in Third Reading?

**Senator T.A. Le Sueur:**

I do, yes.

**The Deputy Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak in Third Reading? All those in favour of adopting the regulation in the Third Reading. All those in favour of adopting ...

**The Deputy of St. John:**

The appel please, Sir.

**The Deputy Bailiff:**



The appel is called for in relation to third reading. The Greffier will reset the voting and the Deputy Greffier will now open the voting.

<b>POUR: 42</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 1</b>
Senator T.A. Le Sueur		Deputy of St. John		Deputy A.K.F. Green (H)
Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				

Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

## **9. Waterfront Enterprise Board: appointment of States Directors (P.32/2009)**

### **The Deputy Bailiff:**

The next item of business then is the Waterfront Enterprise Board: appointment of States Directors Projet 32 lodged by the Chief Minister. I will ask the Deputy Greffier to read the proposition.

### **The Deputy Greffier of the States:**

The States are asked to decide if they are of opinion; (a) to appoint the Connétable of Grouville, the Connétable of St. Peter and Deputy Edward James Noel of St. Lawrence as States Directors of the Waterfront Enterprise Board Limited for a period of 3 years expiring on 31st March 2012; (b) to request the Greffier of the States to notify the company of the States decision.

### **9.1 Senator T.A. Le Sueur (The Chief Minister):**

I had hoped that we might be further advanced in a restructuring of the activities of the Waterfront Enterprise Board and property matters generally. Sadly, although that is pretty much in the offing and should take place shortly, we cannot at this stage implement that. Consequently it is necessary to appoint States directors for a further period of office since the term of office of the current members expires on 31st March 2009. Before I go any further I would like to pay tribute and thank those States Members who have served on this board up until now and those who have served in the past. Having said that, and I am sure they could give you their own comments about the appropriateness of having States Members on the board of directors of that company, the fact is that the Comptroller and Auditor General in a report late last year made certain recommendations as to the future of W.E.B., one of which did relate particularly to the appointment of States directors. Subsequent to that the matter of appointment of directors to the board and the activities of Waterfront Enterprise Board Limited generally were discussed by the Corporate Services Scrutiny Panel, who have recently presented their report SR1 of 2009 which Members will have received, I think, last week. In that they also feel that the proposals removing States Members from the Board is consistent with previous decisions. We are, as they say, where we are and we do need, in the short term, 3 directors for this company. In nominating those 3 directors I have tried to put into force the policies and the principles of the Comptroller and Auditor General which is that directors of a company should be able to contribute some commercial expertise to that company. I know we are all elected to the States on the basis of our abilities to represent the electorate, rather than as experts in commercial fields, so we do not necessarily have any star performers in terms of people experienced as company directors, but what I have tried to select is people with some experience of company matters and some experience of property matters, and on that basis I am nominating the

Constable of Grouville, the Constable of St. Peters and Deputy Noel of St. Lawrence, all of whom, as the report shows, have some contribution to give to this company, hopefully in the short term until such time as it is restructured, but even in the longer term I believe that they have a wealth of expertise between them which can only benefit that company. I know it has been suggested that there be a further nomination and that proposition will be made shortly and I can respond to that in due course in more detail, but I would say that the whole focus of this proposition is to have the best people for the job in terms of their ability to contribute to the running of a board of directors. On that basis I make the proposition.

**The Deputy Bailiff:**

Is the proposition seconded? **[Seconded]**

**10. Waterfront Enterprise Board: appointment of States Directors (P.32/2009) - amendment (P.32/2009 amd.)**

**The Deputy Bailiff:**

Very well, then there is an amendment to the proposition lodged by Deputy Southern and I will ask the Deputy Greffier to read the amendment.

**The Deputy Greffier of the States:**

On page 2, paragraph (a), after the words "to appoint" insert the words "by ballot, 3 of the following 4 Members, Deputy Trevor Mark Pitman of St. Helier.

**10.1 Deputy G.P. Southern:**

I rise to speak today because I do believe the Chief Minister has got the wrong end of the telescope. He must have picked up the wrong end because surely, it seems to me, the idea of W.E.B. is that it puts into action what this House asks it to do and that the appointment of States appointed directors on the board is not to bring expertise because they are States Members. They are not necessarily experts at running companies. That is for the other directors to have that expertise. They are on the board to represent this body, this Assembly, and to ensure that W.E.B. performs effectively what this body ultimately asks it to do. In particular, it seems to me, I would go so far as to say shocking when I read it, that none of the nominees to the board were St. Helier representatives. It seems to me almost a priority that we should have someone from St. Helier on the board because there can be no doubt that whatever decisions that the W.E.B. board takes to implement its plans the most direct impact, first and foremost and above all else, will be on the residents of St. Helier and more on the residents of St. Helier No. 1. So, why we should make appointments to the board without having that representation I, for the life of me, cannot understand. It reminds me of an occasion which was pleasantly surprising some years ago when Senator Le Main noticed that on the Home Affairs Committee of the day there was no single representative of the urban areas indeed of St. Helier where most of the crime takes place and yet there were only representatives of the relatively more peaceful country parishes on Home Affairs. At that time, although we are political opponents, and have remained so ever since more or less, he took the bold step of saying: "Out of principle there must be a St. Helier representative on the Home Affairs Panel and I nominate Deputy Southern." Good on you. That principle **[Laughter]** ... little did he know 7 years later.

**Senator T.J. Le Main:**

I have learned a lot since then. **[Laughter]**

**Deputy G.P. Southern:**

That principle which he espoused there is a principle that is a sound one, I believe, and particularly in this particular case. So, apart from being the representative, a sound business background and also a perspective on what W.E.B. should be doing, in particular given Deputy Pitman's concern for youth facilities and to cater for the youth, it has been one of the principles attached surrounding

the waterfront development since its very inception that it should be somewhere for everyone and, in particular, for the youth. We have just heard today in question time about problems on the waterfront with elements of young people. That must be addressed and that must be kept in mind when we look at what we do with W.E.B. I think it is entirely appropriate that we do appoint a representative of St. Helier on to this board and one who has that particular concern to ensure that this sector of society is not ignored in whatever decisions W.E.B. takes part in. So, I propose Deputy Pitman.

**The Deputy Bailiff:**

What you propose is the amendment, I think. Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment?

**Deputy M. Tadier:**

I am happy to give way to the Chief Minister if it is going to be brief. **[Laughter]**

**The Deputy Bailiff:**

I think you either have to give way or not, Deputy.

**10.1.1 Deputy M. Tadier:**

Just following on from the comments of Deputy Southern, I think he has not taken something into account. There are no wealthy businessmen that represent St. Helier and there are no accountants, so I think in some ways our hands are tied here. On a more serious point though I think it is a very salient point that there should be someone representing St. Helier, indeed I believe Deputy Pitman lives in St. Helier No. 1 which is where ... represents, sorry. Thank you for the correction. Indeed he represents St. Helier No. 1 which is perhaps the important thing. I just wanted to make the observation that I hope that this is not going to become sectarian as many votes do. I think that will be the case. I can predict probably that the Deputy of St. Helier No. 1, Trevor Pitman, will get the usual 15 to 17 votes, but I would hope that we would look at the bigger picture. I do think there is a very good case to have a St. Helier Deputy. I do not think we should take his political persuasion into account. I think, if anything, that could be a good thing to have a broad basis on W.E.B. That is all I wanted to say. I will be giving him my support, purely because I think St. Helier is always left under represented in the Island. St. Helier tends to get the raw deal and I think it needs representation on this very important body.

**Deputy T.M. Pitman:**

If I can ask for a point of clarification. I would just like the Deputy to explain my political persuasion because my politics are centre left and that is the way of the future. That is it.

**10.1.2 Senator T.A. Le Sueur:**

A matter of procedure really. Normally with an amendment one could vote on the amendment and then vote on the proposition itself. It strikes me that in this particular case what we are doing is to have the opportunity to choose 3 out of 4 people for this post. On that basis I would be tempted to accept the amendment on the basis that the Members have the right to democratic choice of who the 4 should be and then we should have a substantive debate, if we need to, on the 4 candidates concerned. I am not sure about the procedure.

**The Deputy Bailiff:**

I think you are right, Senator. I think that procedurally if the amendment is carried then we return to the debate on the proposition which would presumably be carried at that stage and then we would hold a ballot and then on the ballot 3 out of the 4 Members would then be elected.

**Senator T.A. Le Sueur:**

I have the right to reply to my proposition.

**The Deputy Bailiff:**

Yes. If the amendment is carried then we come back to the main proposition on which anyone can speak at that stage and then the ballot will be held at the end, on the assumption that your amended proposition is carried.

**The Deputy of St. Peter:**

As a point of clarification, is the Chief Minister accepting the amendment?

**Senator T.A. Le Sueur:**

Yes, I am.

**The Deputy of St. Mary:**

On a point of clarification, or order, I am not sure which, will the ballot involve some form of hustings?

**The Deputy Bailiff:**

Some form of hustings? No.

**The Deputy of St. Mary:**

I just want to know what form the ballot will take.

**The Deputy Bailiff:**

The ballot is a secret ballot. Each Member will vote for 3 out of the 4 candidates.

**The Connétable of St. John:**

Just on another point of clarification. When we come before the ballot, will Deputy Pitman be able to advise the House of his qualifications and the history in terms of being right for the job, as it were, Sir?

**The Deputy Bailiff:**

There will be no debate before the ballot, but it is open to Deputy Pitman to say what he wishes, either now, during the course of the amendment, or on the debate, such as there is, on the main proposition.

**10.1.3 Deputy R.G. Le Hérisier:**

I think what this nomination has brought out is a fault line in the management of W.E.B. I did bring out earlier the enormous public concern as to the rapidly escalating salary, for example, and maybe salaries, in the organisation. The Chief Minister just gave yesterday's reply, being that in order to get top-class business people we have to pay phenomenal salaries. That is yesterday's reply. The notion as stated by this Chief Executive that he could well get 5 times more the salary were he to put himself in the open market, again that must count, at its most polite, as yesterday's reply. What I would like to support is, oddly enough, Deputy Southern. While Deputy Pitman is a person of undoubted integrity and his political stripe may not be one to which we all subscribe, even though he has just rebranded himself as a moderate, I think States Members are there to represent the public interest. They cannot be both. I mean, if we want more people with commercial interest, get rid of States Members and put top-notch business people to add to those already there. Let us not play around and pretend we are putting the States Members there as some kind of commercial hybrid and political hybrid. My view is, despite those terribly unkind words I may have mentioned and for which I apologise, I think Deputy Pitman will bring an edge to the proceedings. I think it is needed. I think people have got to start asking some strong and awkward questions. There is a lot of public unhappiness about W.E.B., despite the very good publicity that is put out by the organisation, and I am sure they would welcome people who are prepared to ask those kinds of questions. I think those are the people we need on the organisation. If our 3 choices

or some of our 3 choices and Deputy Pitman are the people who will ask those awkward questions, who will really stand up to the prevailing orthodoxy of W.E.B., then I think they are the people we need, quite frankly. Thank you.

**The Deputy Bailiff:**

Can I just say to Members that is a speech which could very well have been made on the proposition after the amendment? The Chief Minister has agreed to accept the amendment. Unless anyone really wishes to speak on the amendment itself, may I suggest they reserve their comments for the proposition itself as amended?

**10.1.4 The Deputy of St. John:**

I would like to speak on the amendment, if I may. Could the candidate on the amendment please give us some of his background, as has been called for, while we are the amendment? Therefore we will know which way to vote when the time comes prior to that, if he does not mind doing so. Thank you.

**Deputy G.P. Southern:**

Surely, on a point of order, that is not speaking to the amendment. That is speaking to the potential vote in a minute.

**The Deputy Bailiff:**

It is a matter entirely for the Member if he wishes to. Does anyone wish to speak on the amendment?

**10.1.5 Deputy P.V.F. Le Claire:**

I think it is high time that an elected member of St. Helier No. 1 District had more of a say in what was going on in this district. I, for one, as an elected Member of No. 1 District, support the nomination of Deputy Pitman and I am pleased that it is accepted. I am speaking specifically to the amendment and will not participate in the main debate, so I am taking this opportunity to make the reasoning why I believe it is important that the elected representatives of this district have a strong voice in these organisations.

**The Deputy Bailiff:**

Deputy, could you not make that in the main proposition? It is perfectly open to Members to say why they would support one Member or the other and why there should be a St. Helier member or there should not, in the main proposition. At the moment, it is an amendment which has been accepted, and you will then have an opportunity of speaking. Does any Member wish to speak on the amendment? Do you wish to reply, Deputy?

**Deputy G.P. Southern:**

No, Sir.

**Senator S. Syvret.**

The appel.

**The Deputy Bailiff:**

Very well. The appel is called for in relation to Deputy Southern's amendment: for his amendment or against it.

<b>POUR: 47</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 2</b>
Senator S. Syvret				Connétable of Grouville
Senator T.A. Le Sueur				Connétable of St. Peter

Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				

Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

**Deputy G.P. Southern:**

Could I point out that is the first time I have got a nil against me?

**11. Waterfront Enterprise Board: appointment of States Directors (P.32/2009) as amended**

**The Deputy Bailiff:**

Very well. Now we return to the debate on the proposition as amended. Does any Member wish to speak on the proposition?

**11.1 The Deputy of St. John:**

When the proposer made the original statement, he said the candidates would be there long term. I was under the impression we were going to be reviewing how W.E.B. were going to operate at some time in the not too distant future and therefore the candidates would only be there short term. Could the Minister, when he is summing up, tell us what he meant by “long term”, whether it is a matter of months or is it a full term of 3 or 4 years, whatever the term of office is? Also, could the 4 candidates all get on their feet and give us some of their background of what they have been up to during their working life so that in fact we can get a feel of who is right for this particular job?

**LUNCHEON ADJOURNMENT PROPOSED**

**The Deputy Bailiff:**

It is 12.45 p.m., so the Assembly will adjourn and reconvene at 2.15 p.m.

**LUNCHEON ADJOURNMENT**

**PUBLIC BUSINESS - resumption**

**The Deputy Bailiff:**

Now we are on the proposition of the Chief Minister as amended, P.32. Does any other Member wish to speak on the proposition as amended?

**Senator F.E. Cohen:**

May I just make a comment? There is currently an application for the Esplanade Quarter by W.E.B. and Harcourt Developments. As the application has not been determined yet, I think it would be inappropriate that I enter a ballot paper, so I will not be doing so.

**11.2 The Deputy of St. Mary:**

The Chief Minister in his opening remarks on this proposition talked about establishing that we get the best people for the job. Before that, it might be worth mentioning his notion about the short



term and the long term. It seems to me that because we do not know what the short term means, and the short term, as we know from experience, can be quite medium term, I really do not think we should take this decision lightly or think: "Oh, well, it is only for a couple of months." Certainly in the remarks of the Chief Minister at the beginning, he did make it pretty clear that we do not know for how long we are electing these people to this position. So I think it is important that we do take obviously this whole process quite seriously and think who the best people for the job are. In that connection, I just wanted to remind Members that in a proposition which they will have had quite recently about the Community Relations Trust, in that proposition they will find that when they are asked to appoint people to a body which I believe is also very important but which has a budget of £100,000, the applicants for that post were asked to write a sort of job application, really, a presentation for the States, so that in that proposition they can read why the 3 candidates for that position on the Community Relations Trust think they should get your vote. It is interesting that when we come to look at who should be appointed to W.E.B., which has a budget rather more than £100,000, probably 100 times more than that, and where the Chief Executive is paid on his own more than twice the entire budget of the Community Relations Trust, we have no indication of the vision or the purpose or the methods which these applicants would bring to this job. I just point out that discrepancy and I do find it rather odd. When they are bringing forward these applications they usually put a little C.V. (curriculum vitae) in there. That is fine, but it would help the Assembly if we did know what these applicants for these various posts stood for and the kind of attitude they would bring to the job and, in this particular case, what their vision is for the waterfront; how they would go about making sure that the different stakeholders were involved and happy with the process, going forward. So that is the general point. It does seem that we were faced with a lack of information. We get these brief C.V.s and we should in fact know more. Specifically, the point I would like to make is I would like to support what the Deputy of St. John said before the adjournment and ask that the 4 candidates specifically get up and tell us what their vision is for the waterfront, what their purpose is in being on the board and what methods they would employ or ask the board to employ and the officers to ensure that the waterfront is a waterfront that we can all be proud of and which meets the needs of the Island. Given that this is not embedded in the proposition in any way, I would just ask the candidates as they are now - we now have 4 candidates - whether they would consider doing this in the course of the debate. Thank you.

### **11.3 Deputy D.J. De Sousa:**

I, like, my colleague Deputy Southern, was amazed that no town representative was chosen. The main development is in St. Helier District 1. Previously there was a St. Helier Town Deputy on the board, which was Deputy Huet, and I feel that we should be represented because the people of St. Helier are the ones that are going to be mostly affected by this development. It has already been reiterated that the States representatives are not there to impart knowledge. They are there really to back up the States representation.

### **11.4 Connétable D.J. Murphy of Grouville:**

As you know, I am one of the candidates for this position, and I just wish that States Members had read the C. and A.G.'s (Comptroller and Auditor General's) report on the Waterfront and also our latest Scrutiny Panel report on the waterfront because both of those reports make it perfectly clear that the job we are applying for, the job we have been asked to do, is very simply to hand over W.E.B. to professionals. We do not want States Members on there. We are all agreed on that, and none of us really want to be on it at the end of the day. We want to work ourselves out of a job. Very simple. If you had read the reports, you would know that, but unfortunately there seems to be a lack of readability here. As for myself, I am sure you want to know, I worked in banking in Jersey for many years, then went into the property business in the U.K. and London and merchant banking. I have done most things and I think I have got wide experience, certainly in property development and property maintenance. However, that is not going to be my job and it is not going

to be the job of any of the directors. The job is going to be that we oversee the board at the end of the day and we make sure the board are doing a proper job and a professional job. That is what I am going there for and that is the reason I am standing. Thank you.

**The Deputy Bailiff:**

Does any other Member wish to speak? Very well, I call upon the Chief Minister to reply.

**Deputy T.M. Pitman:**

I would like to speak.

**The Deputy Bailiff:**

Had you indicated before?

**Deputy T.M. Pitman:**

I did.

**The Deputy Bailiff:**

Well, please speak then.

**11.5 Deputy T.M. Pitman:**

I feel a bit awkward doing this. I did not know it was going to a sort of beauty contest if you are elected. I had better sit down now. **[Laughter]** I have got absolutely nothing bad or negative to say about any of the other nominees. I think we should have had a bit of prior warning, as my colleague has said, that this would be the process. I would just like to say a little about myself and I would like to say just a couple of things about my politics, as they have been mentioned a couple of times. My politics are very much the same as Deputy Le Hérissier's. In fact, I would say that they were identical but for semantics. I might talk about manning the barricades, Deputy Le Hérissier might talk about manning a fence, but there we go. **[Laughter]** I would also just say that anyone who visits my humble abode will find out that contrary to belief, I have a large portrait of Margaret Thatcher in one of my rooms and I do feel the fact there are darts in it is quite irrelevant. My concern here is just really with the Chief Minister. I am quite disappointed. I like the Chief Minister, but he talks a lot about inclusion and yet we never seem to get it. I allowed my name to go forward purely because no other representative from St. Helier had put their name forward, and I do think it is very important. We had that last time with Deputy Huet. It gives the impression that unless one followed a career in banking or accounting, that you do not understand money. Well, I had my first manager position when I was in my teens, as it happens. I was also the buyer for a very large company, who I will not name, who used to be based in St. John's. I have managed several businesses. I also think that my career before I stood for election and being an education professional also stands me in good stead because the waterfront should be about including young people, and it seems not enough people accept that fact. I agree with my colleague across the room. We do want to get States Members off this as quickly as possible. However, in the meantime, I think it is absolutely essential that St. Helier has representation. It is the residents of St. Helier who this will impact on. I believe we have to stand up and have someone there to stand up and fight and say that we will not just stick blindly to decisions that have been proved redundant by the passing of time. Do we need a multi-multi-million-pound finance centre down there? I do not think we do. I think that argument is absolutely untenable now. It has got to be the best facility we can have for the whole Island, and that is why my name has been put forward and why I am happy to do so. I repeat it again: I have nothing against the 3 other nominees. I just passionately believe there must be representation from St. Helier and we really must have a centre-based politician, i.e. me, down there. Thank you.

**The Deputy Bailiff:**

Does any other Member wish to speak? Deputy Martin.

## **11.6 Deputy J.A. Martin:**

Just briefly, there were a few comments that the Chief Minister has made right from his inception of being elected Chief Minister about being much more inclusive and across-the-board representation. As much as I respect the 2 Constables and the new Deputy Noel, peas in a pod come to mind. Not looks. **[Laughter]** Of course not looks. They are all very good looking in their own suitable ways **[Laughter]** and ages. But what I would say is I have obviously been here long enough to hear the Constable of Grouville speak on many occasions. The new Constable of St. Peter, we have had some private conversations, and Deputy Noel, their politics are very, very similar. We are also not only just losing a town representative in Deputy Huet, Senator Routier has always taken this part of St. Helier. He used to be a St. Helier No. 1 Deputy. His work on W.E.B., to me, very much related as well to the district. So, as I say, the Constable of Grouville says we have to get away from politicians being involved with W.E.B. I am again slightly confused because I thought W.E.B. was completely owned by the States and the States directed W.E.B. what to do. Obviously we are spending lots of money on some very so-called knowledgeable people, and maybe States Members time on W.E.B. have come to an end, and W.E.B. itself, as it is, is coming to an end, but who do I want on that closing W.E.B.? Do I want a cross-section of the States Members? Yes, I do. I want different points of view and I want reports back to the States that are giving that point of view, going in and coming back from the board. Not interpreted in one little way, and I say if the Chief Minister really, really believes that he is all inclusive and respects all different aspects of politics in this House, in his summing up ... it is a ballot; he can only recommend ... This is in St. Helier No. 1, the whole of the Waterfront. It is in its closing days. The Chief Minister himself should recommend Deputy Pitman to the board and maybe not one of the others. Very similar politics. That is all I can say. They are very similar in politics to me. Thank you. Not to me; for themselves.

## **The Connétable of Grouville:**

May I make a point of correction? The Deputy says that there should be political influence. There will be political influence. If she had read the papers from the C. and A.G. and from the Scrutiny Committee, we both advised that an oversight group of States Members should be looking at the board of that.

## **11.7 The Connétable of St. Helier:**

I am still in town. I think the last speaker really put her finger on what for me is the hub of the problem here. I think many Members, because it is a secret ballot, will be tempted to vote for the Members that they feel particular affinity towards, or against those Members for whom they do not feel a particular affinity. I think if I were the Chief Minister now, I would be thinking: "What can I do to restore public confidence in W.E.B. - it has clearly taken a knocking recently - and how can I ensure that it is going to be a credible body for as long as its current membership persists?" Let us not delude ourselves into thinking that this is some kind of caretaker administration that will have its work done in about 3 months. Remember when former Deputy Gerald Voisin was appointed chairman and stayed in office much longer than I think either he or anybody else expected. This body, I am sure, will have an extremely important piece of work to do, certainly as we consider the future of the W.E.B. developments, particularly the Esplanade Quarter, in the current economic conditions. To go back to my original point, if I were the Chief Minister, and I pick up on Deputy Martin's comment here, I would not want W.E.B. to suffer from a credibility gap in the public, and I think to have what will be seen as political representation would be a mistake and I believe the Chief Minister should, as Deputy Martin said, be recommending that there is somebody from the other side, someone who is young. I do not know how old Deputy Noel is but I am sure Deputy Pitman has the advantage of years. Perhaps he does not. It is the lack of hair that makes him look younger. I am sure that certainly with Deputy Trevor Pitman's known affiliation with not only the Parish but I think more importantly with young people, in his work with young people, it is really important we send out a message to the public that we are not just appointing similar sorts of

people with good accounting backgrounds but we are sending somebody into W.E.B. who knows what young people require, and he is prepared to roll up his sleeves and help to deal with some of the very genuine problems that are affecting our Island today. I know that Deputy Huet and I did not always see eye to eye. Indeed there was that memorable occasion when she said she would rather have the Constable of St. Martin, the predecessor, I should say, than the person who sits on my right, as her Constable, but having said that, she did provide that important sense to the majority of the Island's population who live in St. Helier that their interests were being looked after. I think it would be a mistake not to have a Parish Deputy and so I fully support the proposition that Deputy Trevor Pitman should be on the board of W.E.B.

### **11.8 Senator P.F. Routier:**

I am delighted this proposition is here today to have new directors on W.E.B. We have been short of a couple of directors for a number of months and we have also had an acting chairman. This, of course, placed additional burdens on the board with additional workload for the existing members, which I have to say that board has reacted, I have to say, very, very positively, with a great sense of duty, and they have been able to progress the work which the States themselves have asked the board to carry out. I would like to perhaps pay particular special tribute to the acting chairman who has acted up in the role as chairman while the States have been deliberating over the formation of what W.E.B. should be in the future. He has carried out his duties, I think, very, very well. It is quite amazing that during the period since the States decided to remove the chairman last year, the board has seen the most rewarding financial results that the board has seen ever. Members will have seen in the accounts that were published only last week that we have turned around the company from making a loss in the previous year to making over £5 million last year. Not only that, the board has also negotiated favourable heads of terms for some existing sites within the West of Albert which are outside of the Esplanade site, which will create new added benefits to the public by way of additional homes for people and also some real financial returns for the States. I was going to speak in a previous debate that Senator Shenton brought forward about some of the comments he has made about the way W.E.B. has operated, but I will resist reacting to some of the comments that he made because I do not think, for the purpose of today's debate, I need to go over those things, but I did at the time think that W.E.B. has obviously taken a knock from a number of people about the way they operate. I have to say that probably some of the comments that have been made do have a modicum of justification in people's minds, but the majority of it, I am afraid, is a distortion of what actually happens within the board of W.E.B. What people fail to recognise is that the board of W.E.B. has many constraints placed upon it. It cannot just do things as it wants to do. It has the constraints put on it by the States and we do try to achieve what the States ask us to do. If only W.E.B. did have unfettered act to do whatever it wanted to do on the Waterfront; that would be great. It would be, because we would have a hotel that would actually look quite nice. We would have a hotel with cars parked underneath the ground. We would have balconies on the hotel. That is what W.E.B. wanted, but the States, in their wisdom, and public opinion pushed all those things away and ate away at what W.E.B. was trying to achieve: a really good-looking hotel with balconies, parking underground. Unfortunately, the way it comes about, that is not what happens.

### **Senator B.E. Shenton:**

With all due respect, it was not the States; it was Senator Ozouf. **[Approbation]**

### **Senator P.F. Routier:**

The point is well made. It was not W.E.B. **[Laughter]** If W.E.B. had been able to do what they wanted to do, we would have had a hotel which looked really nice. It would have had a shape that was nice and also car parking underneath. We would have achieved that. Unfortunately, W.E.B. does not have the ability to overrule all those other options. The States established W.E.B. to deliver the wishes of the States, and only last year the States approved the Masterplan for the Esplanade with only 5 Members voting against and one abstaining. Of course, we are all aware of

the need to ensure that the project financially stacks up and can be funded, and that work is still to be completed; not only by W.E.B. but by many people, of course, within the Treasury, and of course the Assembly will have that say. Looking to the future, the States will need to have directors of W.E.B. who share the vision to create a waterfront which we can all be proud of. I have to say I was just a little bit concerned about Deputy Pitman's comments about going against what the States have already decided. There is an existing decision that the Esplanade Quarter should go ahead. Obviously it was a convincing debate that we had last year, but we know the financial circumstances have changed. It could only go ahead if the financial circumstances are correct obviously, but I was a bit worried that the Deputy had already come to the conclusion that that was the case. I would hope that whoever we do elect to the board does have an open mind and goes forward with a clear understanding of what the financial implications are before jumping to conclusions. Hopefully in the not too distant ...

**Deputy T.M. Pitman:**

With all due respect, the Senator is putting words into my mouth. I am talking about the changing financial constraints and he has really jumped to conclusions, I think. I would ask that he retract that because it is not what I am saying at all, with due respect.

**Senator P.F. Routier:**

Hopefully, in the not too distant future, Members will be asked to decide on the new Memorandum and Articles of Association of W.E.B. which will do away with requirements for 3 States Members because of the very obvious conflicts which have been emphasised by the recent report by the Comptroller and Auditor General. The States can have a more appropriate reporting mechanism with the new structure. I am sure that the States will want to ensure that the new structure of W.E.B. reflects the views of the Comptroller and Auditor General. After all, he has the independent expertise to advise us. We will want to ensure that the new directors have the skills to carry out their responsibilities effectively and, importantly, that they have the will and the vision to take forward the plans which the States have approved. Not wanting to put off Members who have agreed to allow their names to go forward as directors, but I have to say that being a director of W.E.B. has to be one of the most frustrating jobs I have ever had in my life. The C. and A.G.'s report highlights that very, very effectively. Obviously he has put on to paper the feelings of how the board have had to operate for a number of years. While I have found my time on the board of W.E.B. frustrating, it has been extremely interesting and I have had the pleasure of working with some very dedicated staff and fellow directors. For the record, I believe the way in which the States treated the previous chairman and directors leaves a great deal to be desired. One of the main difficulties being a States director of W.E.B. is achieving an understanding with the public, the media and other States Members that the needs and demands of commercial partners is that commercial confidentiality is preserved. When W.E.B. was originally established, this was understood, but in recent years this has become a bit of a challenge because people have wanted to get out into public but when you are working in partnership with a private company, they need to know that their confidentiality is maintained. I am confident that the directors which the Chief Minister has proposed will fully understand and respect the need for the maintaining of commercial confidentiality which is ordinarily part of dealing with W.E.B.'s partners. I hope that the new States directors find their time on the board interesting and that the recommendations of the Comptroller and Auditor General are put in as soon as possible and that States Members will entrust the new directors to carry out the will of the States. I wish them well ...

**Deputy G.P. Southern:**

If I may, in saying that he can trust the 3 Members put forward by the Chief Minister ...

**The Deputy Bailiff:**

Is this clarification, Deputy Southern?

**Deputy G.P. Southern:**

I believe the Assistant Minister, by neglecting to mention the other candidate that he also trusts, has impugned the motives of that particular candidate by suggesting he is not trustworthy. Will the Assistant Minister please include all of the Members up for election today in his expression of trust that they can maintain confidentiality? Otherwise, I believe he is impugning motives.

**Senator P.F. Routier:**

I certainly had no reason to not be in a position not to trust any of the candidates, certainly. I have no reason to believe that at all, but when I was thinking about what I was going to say about this, the Chief Minister has put forward 3 candidates and I have taken a view on that, but as you quite rightly say, I have no reason not to trust the other candidates. I am just saying what I felt about the 3 candidates which the Chief Minister is putting forward. I would finally like to say that my time on W.E.B., as I say, has been a challenging time but I do wish the new directors ... hopefully it will be very short for them and it will not be too painful.

**11.9 Connétable J.M. Refault of St. Peter:**

One of the points I wanted to raise has already been covered by Senator Routier in his submission just a moment ago, but I think the most important part of it is that as directors to the board of W.E.B., we are controlled by Companies Law and I think, as Article 17 ensures, that we must be totally confidential in the dealings that we deal with within W.E.B. and we cannot disclose, either to this House or to the general public. I think it is worthy of Members to realise that. The other point I wanted to make is that, certainly from my point of view, I have the airport in the Parish of St. Peter. Now, I took a very firm stance about the airport and I felt it would be totally inappropriate for me, although it is in my Parish, to be involved within the workings of the airport, because how could I be on the one side working for the advantages of the airport and on the outside working for the advantage of my parishioners, which may be totally at odds with what was going on within the airport? I think if the circumstance was changed now, I would like to invite Deputy Pitman to sit in on the airport's management team if there were a requirement. I think Deputy Pitman and I probably share more things than either of us would like to admit in open, but certainly open-mindedness is one thing which I would like to bring to the role if I were to be appointed as one of the directors.

**11.10 Deputy M.R. Higgins:**

I have similar views to Deputy Martin and the Constable of St. Helier with regard to these appointments. W.E.B. is seen by many people in this Island as a failure. The leisure pool and the cinema complex are unattractive, poorly designed and out of place in Jersey, and this can be laid at the door of W.E.B. Also, with regard to the recent court case in Dublin regarding Harcourt Developments, I have serious misgivings about the competence of the W.E.B. board, especially with their rush to commit to the Harcourt Development project which was outlined in that court case. It gave me really serious concern. I also believe that the W.E.B. board needs to be made more accountable. I do not think it is sufficiently accountable at the present time and it needs a strong States membership on board; an inclusive States membership. In that regard, I also believe very strongly that a St. Helier Deputy should be on the board because of the location of the site adjacent to St. Helier and part of St. Helier. Thank you.

**11.11 Deputy I.J. Gorst:**

I have for some while now been of the opinion that unfortunately confusion reigns at the heart of W.E.B. This debate has merely reiterated that once again, and we, as an Assembly, add to that confusion the more that we appear to speak. Therefore, I will try to be short. However, I will no doubt be adding further to the confusion. Are the directors of the board representing the States? Are they representing their Parish? Are they representing the desire of this Assembly or are they fulfilling their duties as directors under company law? I believe that each one of us, if we searched

what our desires were for the directors, would be hard pressed to come to a reasoned and rational conclusion about what it was we wanted those directors to do. Where do I believe that this confusion emanates from? Having had the misfortune, or fortune, you might say, of reading the Memorandum and Articles of Association of the Waterfront Enterprise Board, I believe that it springs from those. We have a board which has one executive director. The remainder are non-executive directors. To my mind, that means that it is not able to function in the way that it ought to, holding decisions properly to account. Who is responsible to whom? Who is accountable to whom? I do not believe that I can give an answer to that question. Nor do I believe honestly that most Members could give an answer to that question and answer it clearly. The Comptroller and Auditor General, along with Scrutiny, have undertaken excessive reviews regarding the operation of W.E.B., and I believe that the Comptroller and Auditor General's review goes some way to addressing a number of the issues. That will require a new Memorandum and Articles of Association. It will, in my view, require a body of political oversight so that we, as Members of this Assembly, will finally be able to satisfy ourselves to which body we or they are accountable and that line of accountability and how it will operate in practice. I believe that that is critically and vitally important if we are to see whatever development we want to see on the St. Helier waterfront. I believe that we can only see it happening in an accountable fashion once we have redesigned the way that W.E.B. operates. Having been somewhat negative, I am prepared to support the Chief Minister's proposal to ask States Members to remain on the board at this time, only on his commitment which he has given me, and I know we have heard it before but in this instance it has got to be undertaken that he will bring forward, in very short order, a proposition to this Assembly. I think it will be including the revised Memorandum and Articles of Association and revised accountability structure. It is only having that undertaking that I am prepared to, shall I say, drop my colleagues in it by allowing them to go forward and operate as directors of this board. Therefore I believe that we as Members today must try and look beyond the confusion and ask ourselves and make our decision and vote upon whether we believe the Members before us and their ability to perform the duties of directors as required by Jersey company law. That, I am afraid, should be our sole consideration as the Memorandum and Articles of Association stand today.

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

At the risk of throwing yet more confusion into the argument, it seems to me that the directors of any company have a prime duty to act in the interests of their shareholders. Who are the shareholders of W.E.B.? I thought we were. I thought it was solely owned by us. So in the interests of this Chamber, we are electing 3 Members to act in our best interests. That does not necessarily contain a dichotomy. There is a balance. Would the directors be acting in the best interests of W.E.B. if they were not to say, for example, that the plans proposed, be they the best plans in the world ... they might, for example, involve digging a great big hole, causing lots of mess and disrupting traffic for years on end. The best interests of W.E.B. then might be to have a little bit of advice from somebody whose prime duty was to represent his members in St. Helier and say: "Well, hang on. That may well be the best way forward and you are going to dig this big hole and create enormous chaos, but you had better get your P.R. (public relations) right and you had better sell it right, from the very beginning. Here, let me help you. Let me persuade you how to convince people that this is the best way forward because I know from my soundings that you have not convinced them yet. If you do not want trouble along the way, you had better do a better job than you have been." That is the sort of advice perhaps a body wants to hear or should hear in its best interests if it is to progress what it sees as the best plan in the world. It needs to take the people of Jersey, the people of St. Helier with it. Otherwise, the recipe is for chaos and is for confusion and is for disaster. That person, I believe, sitting next to me, is Deputy Pitman.

#### **11.13 Deputy P.V.F. Le Claire:**

I had not intended to speak on the main debate, even though I did say in the original amendment I was not going to and then I was encouraged by you, Sir, to confine my comments to the original debate. After a brief lunch, I thought that perhaps I might forego that urge and as you nearly passed to Senator Le Sueur, I was quite relieved that we were moving on. However, I cannot move on after Senator Routier's speech. He seemed to underline the fact that the way forward is to take political control and oversight out of this in some way, and in some way how we had a modicum of rights to be a little miffed about the current development. In my view, the whole waterfront development since 1970 onwards has been an unmitigated disaster. We have had the hotel which has won the Carbuncle Award. We have had the swimming pool that is losing money faster than a sieve leaks water. We have the compost site which is a blight upon the locals in Havre des Pas costing £750,000 a year, making less than £50,000. We have the one-gate marina that was given one gate because the estimates were done on the cheap with the university team and we did not get the calculations right. We have got the steam clock. We have got the inadequate depth of water in relation to the berthing of vessels at the Elizabeth Marina to the point where people who have even paid for their trips on the boats, if they can afford them, are left stranded if the vessel has to leave because the water is becoming too shallow. We have the tourism office, we have the new tourism office, and perhaps in time we will have again the tourism office. We have the toxic ash pits. We have the car park that was failing financially and yet, at a time when I first joined the States, was being left unoccupied. We have Les Pas. We have the fuel farm with need for removal and mitigation, and without going on for ever, I went down there this afternoon at lunchtime to look at the skateboard facility and marvelled at it and the people using it, and was a little perplexed that it was causing us some issues, walked across to the Albert Pier and saw some other children on the Albert Pier skateboarding on 3 pallet boards, on a piece of 2 by 4. We have even had the previous Vice President of Planning, Alistair Layzell, or Mr. Layzell, who was a Member of the States at the time, complaining about the interference of W.E.B. when he was on the planning board. We have had the previous chairman of W.E.B., Mr. Horsfall, pilloried in the media from Members after what was an in camera debate had been spoken about and disclosed to the media, and the last but not least unfortunate incident was when ... and I do say "unfortunate" because I did and still really like Mr. Voisin who was unfortunately removed because of a pecuniary interest that was marginal, however such that he was removed due to a disclosure and a resignation on behalf of Senator Perchard. If it had not been for Senator Perchard's conduct at that time, many of us would not have known what had happened. So I am sorry. A modicum of interest? No. The reason why it has been a complete and utter total unmitigated disaster is because the Members on W.E.B. for years have been chosen by the grouping of political people who have been steering it in that direction. There needs to be political accountability on this board, and the only way you can have political accountability is if you have representation from among the electorate in that district. How would the Constables feel if huge unpopular developments were occurring in their Parishes and the political masters of those schemes were not even members of the Parishes, they were Deputies from town? How would they feel if 6 Deputies from town went to their Parishes and made a glorified inveterate? And at the end, the icing on the cake with the cherry: the incinerator. So, no. F minus.

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

Deputy Gorst, I think, was attempting to relieve the confusion. It obviously did not work, and so I will do my bit. As anybody who had read the Comptroller and Auditor General's report and the Corporate Affairs Scrutiny Panel report will have noted directors are bound by company law and therefore they cannot report back to the States because they have to treat the company affairs as confidential to that company. In fact, I would hate to correct one of my learned colleagues, but under company law, a director's duty is to the company, not the shareholders. The shareholders benefit from his duty to the company, but the law is that his duty is to the company. Now, both the Comptroller and Auditor General's report and my panel's report pointed out that States directors are put in a position of great conflict of interest because on the one hand they are trying to think about the States interest; on the other hand they have a duty towards the company. I think what



States Members perhaps have forgotten is that representation, direction and accountability is by the Minister. If you want to have a go at what is going on at W.E.B., you go for the Minister, not the directors. Under the suggestion in the 2 reports, there would be political oversight by a separate body. The board would be doing its proper job, working for the company, and the accountability would be very clearly defined to reside with the Minister. So I ask Members to keep these things in mind. There is confusion. There is confusion because States Members as directors are expected to be able to talk to the States about what is going on. They cannot. Their duty is to the company. Certainly under the new system, any queries can go to the oversight committee but most properly should go to the Minister.

**11.15 Deputy M. Tadier:**

I will keep it very brief. Just to say that I think we have left the terms of reference, if I can call it that, for the actual debate. I think there are some very interesting points that have been raised, certainly from Deputy Le Claire, that there seems to be a case to be answered in the future as to whether there should be any political ... you can either call it interference or involvement on W.E.B. I certainly think that is something we do need to discuss in greater detail. There has also been some sophistry and some semantics being dealt here as to who are the shareholders, and I do believe that ultimately whoever we appoint to the directorship of W.E.B. must also represent the public and the States. So I would basically just reiterate my full confidence in Trevor Pitman. As Senator Paul Routier said before, I have confidence in all the candidates being put forward, especially in Deputy Pitman.

**The Deputy of St. Mary:**

Can I seek a point of clarification on a remark made by Senator Ferguson? May I?

**The Deputy of Bailiff:**

You want to seek a point of clarification?

**The Deputy of St. Mary:**

Yes, I do, because the Senator seemed to be talking about a state that does not exist, which is this future state about when there is an oversight board and so on and so on, but we are talking about electing Members to the board as it is now.

**The Deputy Bailiff:**

I have to say, Deputy, that that did not sound very like a point of clarification to me. **[Laughter]** Very well. I call upon the Chief Minister to reply.

**The Deputy of St. John:**

Please, Sir, before the Chief Minister replies, are we not going to hear from the fourth candidate, Sir?

**The Deputy Bailiff:**

It is up to the Members whether they speak, Deputy. I have called upon the Chief Minister to reply.

**11.16 Senator T.A. Le Sueur:**

I am grateful to those who have spoken and I am grateful to those who have put their name forward to stand for office as director of W.E.B. I trust they know what the office entails. I think there have been probably division into 2 counts between those who are pressing for an inclusive approach which would have representatives of here, there or everywhere, against the alternative approach of one based on what company law requires. Had I followed the intransitivity approach, then clearly I would have nominated a representative of St. Helier or a representative or 2 of the area, but that is not the objective. Had that been my objective, then I would not ... I had 10 Parish representatives to choose from as well as some from neighbouring parishes who might equally fit

the bill, but the whole purpose of this, as I thought the Comptroller and Auditor General had made quite clear some months ago, was to underline the status of the director and the responsibility of the director. I do hope that this will be a short-term arrangement, but whether it is a short term for a week or a longer term for a year, it would still have the same obligations on those directors to act in the interests of the company. Having said that, and just to confirm to Deputy Gorst and others, I will commit to bringing forward revised proposals for the Waterfront Enterprise Board before the States rises in the summer so that we can debate that and come to a longer-term conclusion which I believe will serve the Island and serve the company better. In the meantime, we have to appoint the directors will serve a company to the best of their ability in the intervening period. I do hope that Members have had a chance to read the Scrutiny Panel comments and I will just echo what is contained in a couple of those paragraphs: "A director, in exercising his powers and discharging his duties, shall act honestly and in good faith with a view to the best interest of the company. The primary duty of a director is to the company and not to the States." The Comptroller and Auditor General in his report advised: "I would love to say that there were no advantages having States directors on the Board." The Comptroller and Auditor General advised that States Members could make a contribution. However, in his view, and it is his view but his is an objective and independent view, the difficulties faced outweigh those advantages. So, I emphasise that it is not a question of trying to find directors who are inclusive. It is a matter of trying to find directors who will act in the best interests of the company. On that basis I do not propose to go into any greater length than that. I leave it to the Members to choose the appropriate 3 candidates and I do urge Members to use their 3 votes wisely and in the interests of the company. Before I conclude, it just reminded me that some people have questioned how we should set policy for W.E.B. and who should set policy for W.E.B. Can I reiterate that this Chamber, on many occasions now, has debated one or other aspect of the waterfront including, most recently, the plan last summer where the Masterplan was agreed. Those major policy decisions do come to the States for approval. They are then implemented by the company but I do stress that we do have a chance to have our input and so, in his delivery, the Minister has a duty to be accountable. Nonetheless, I conclude by reiterating we should now move to a ballot. I do not see that there is much to take a vote on this proposition other than to say ...

**The Deputy Bailiff:**

Well, I think technically, Chief Minister, the Assembly must approve your proposition, as amended.

**Senator T.A. Le Sueur:**

Very well.

**The Deputy Bailiff:**

The 3 directors should be appointed from one of the 4.

**Senator T.A. Le Sueur:**

For the sake of formality I maintain my proposition that the States should elect 3 directors for W.E.B. from the 4 names submitted and listed on the paper.

**Deputy J.A. Martin:**

Can I just have a point of clarification. At the beginning of his speech, did the Chief Minister say that being a St. Helier representative and keeping the confidence under the Companies Laws was mutually exclusive? He basically said a St. Helier representative could not keep confidence under the Companies Law, that is why he had not nominated one. Can he confirm or deny that, please? If he can confirm it, can he retract it?

**Senator T.A. Le Sueur:**

I do not believe I used those words at all, so I do not think I have to confirm or deny them.

**The Deputy Bailiff:**

Very well, so all those in favour of adopting the proposition, as amended, kindly show. Those against. The proposition is adopted with the result that we will now move to a ballot. The ballot papers will be distributed. May I remind Members that they are being asked to vote for 3 vacancies out of 4, so they may vote in favour of one, 2 or 3 people but no more. Have all ballot papers been collected? Very well, I will ask the Viscount and the Deputy Greffier to act as scrutineers, please.

**12. Health and Safety Appeal Tribunal: appointment of member (P.33/2009)**

**The Deputy Bailiff:**

So we move on next to the Health and Safety Appeal Tribunal: appointment of member, Projet 33, lodged by the Minister for Social Security. I will ask the Deputy Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to appoint Mr. Timothy Paul Darwin as the Member of the Health and Safety Appeal Tribunal in pursuance of Article 17, the Health and Safety at Work (Jersey) Law 1989 and Regulation 2, the Health and Safety at Work (Appeal Tribunal) (Jersey) Regulations 1989 for a period of 3 years commencing 1st April 2009.

**12.1 Deputy I.J. Gorst:**

The Health and Safety at Work (Jersey) Law 1989 provides for the establishment of an appeal tribunal to hear appeals against the serving of administrative sanctions, prohibition and improvement notices served by Health and Safety Inspectors and decisions by the Minister in relation to licensing provisions. The Health and Safety at Work (Appeal Tribunal) (Jersey) Regulations 1989 set out the arrangements for the tribunal including the appointment of Members for a 3 year period. Regulation 2 provides for the tribunal to consist of 4 members; a chairman and deputy chairman who both must be advocates or solicitors of the Royal Court of at least 7 years standing and 2 other members. The term of office of one of the members of the Tribunal, a Mr. Tim Darwin, expires on 31st March 2009. The terms of office of the other 3 members of the tribunal do not expire until April 2011. In accordance with the recommendations of the Jersey Appointments Commission for a lower tier public body, in addition to inquiring whether Mr. Darwin was prepared to serve a further term of office an opportunity was provided to other persons to apply to serve on the tribunal through a notice placed in the *Jersey Evening Post*. While 2 other individuals did put their names forward to be considered, I am recommending that Mr. Darwin serve a further 3 year term of office and maintain the proposition.

**The Deputy Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition? Deputy Le Claire?

**12.1.1 Deputy P.V.F. Le Claire:**

I support the proposition. I think it is our obligation to make safety more healthy and health more safe.

**The Deputy Bailiff:**

Does any other Member wish to speak? Very well. I call upon the Minister to reply.

**12.1.2 Deputy I.J. Gorst:**

I thank the Deputy for his commonsense approach to health and safety. It is that common sense approach and a risk-based perspective that my department of Health and Safety take. They are to be congratulated on the approach that they take but that is another story. I have pleasure in recommending Mr. Darwin and I maintain the proposition again.

**The Deputy Bailiff:**

All those in favour of adopting the proposition kindly show. Those against. The proposition is adopted.

**13. Payment of Statutory Notice payments: establishment of precedent (P.34/2009)**

**The Deputy Bailiff:**

We come next to payment of Statutory Notice payments: establishment of precedent, Projet 34, lodged by Deputy Southern.

**Deputy I.J. Gorst:**

Perhaps I could intervene at this point. I do have an amendment to Deputy Southern's proposition. Unfortunately, due to a slight miscalculation I did not get it lodged in time for it, strictly in line with Standing Orders, to be taken today. I am not sure how Members would wish us to proceed. I am loathe to suggest that we take it at the next sitting, however, if that is the way Members wish to take it then I would be in their hands but, obviously, the proposer would have to make that proposition. What I do hope is that, however, Members might allow it to be taken today under Standing Order 26 (7).

**The Deputy Bailiff:**

Are you making a proposition under Standing Order 26 (7)?

**Deputy I.J. Gorst:**

Yes, I am, Sir. I feel very strongly that this proposition should be taken today. Equally, I feel that the amendments that I am proposing are absolutely required in order that myself and the department can support it.

**The Deputy Bailiff:**

Standing Order 26 (7) says: "The States may reduce a minimum lodging period if they are of the opinion that the proposition relates to a matter of such urgency and importance that it would be prejudicial to Jersey to delay its debate." Do you wish to say why you say that ...

**Deputy I.J. Gorst:**

Indeed, I think it would, Sir, because if we are going to make the main proposition today then I believe that my amendments absolutely fall into those criteria.

**The Deputy Bailiff:**

Is the proposition seconded? [**Seconded**] Deputy Southern, do you wish to speak to it?

**Deputy G.P. Southern:**

Yes. On the matter of urgency, all I would do is point out in the balcony some of the ex-employees of Pound World who might well be affected by this proposition and for whom they received their last pay cheque on Friday and some of them may well, already having paid the rent, be starting to run out of money. So, in terms of the urgency of these particular amendments I am concerned that it is debated today so that we can get on with it because there is direct impact upon people out there.

**The Deputy Bailiff:**

The proposition before the Assembly is that the amendment lodged by the Minister for Social Security can be dealt with today, that is, one day ahead of time, on the basis that is a matter of such urgency and importance that it would be prejudicial to Jersey to delay its debate. All those in favour of adopting the proposition kindly show.

**Deputy I.J. Gorst:**

Sir, can I ask for the appel, please?

**The Deputy Bailiff:**

Yes, the appel is asked for in relation to that proposition. I invite Members to return to their seats, so the matter is for or against the proposition of the Minister for Social Security and the Deputy will open the voting.

<b>POUR: 46</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				

Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

### **The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to refer to their Act dated 4th February 2009 in which they agree to request the Minister for Treasury and Resources to enter into negotiations with former employees of the Jersey branch of Woolworths, made redundant following the collapse of the parent company, to seek agreement with them on the assignment to the States of any claims that they might have on the administrators of the company and providing that these negotiations were successful, to further request the Minister to allocate a sum calculated under the statutory notice terms in the Employment (Jersey) Law 2003 to provide compensation to these employees and to request the Minister for Social Security, (a) to recognise that the above decision of 4th February 2009 constituted a precedent which must be followed in similar cases of redundancy through insolvency in Jersey; (b) to establish an easily accessible and well-publicised system within the Department of Social Security to deliver payments on a similar basis to all Jersey workers made redundant by insolvency from 1st December 2008 and to maintain the system of payments until the Employment (Amendment No.5) (Jersey) Law 200- relating to redundancy comes into force; and (c) to liaise with the Minister for Treasury and Resources to agree on the most appropriate manner in which to fund the scheme set out above.

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

Well, this is the third time I have come to the House on this particular issue and the issue of redundancy. The first time I got it completely round my neck and brought the wrong proposition. The second time I put it right and brought the correct proposition which the House supported, which organised for the Woolworths workers a system of payment of statutory notice in place of the still absent statutory redundancy pay which we still do not have in place. This is the third time and, to be honest, I did not expect to have to be doing this. It was clear to me and, I think, to many Members of the House because it was used as an argument against my proposition, that we were setting what was called a moral precedent; must not lose that word. I believe we were, in fact, setting a precedent and, certainly, members of the public out there thought we were setting a precedent. We finally got something in place which was going to deliver support for people made redundant by insolvency when they most need it, which is when they are made redundant or shortly afterwards, not 3 months down the line pursuing a claim against the company or the receivers of the

company, not 6 months down the line, but when it is needed, at the moment of redundancy. That is key. So, what the proposition says: “(a) to recognise that the above decision [the Woolworths decision] constituted a precedent which must be followed in similar cases of redundancy.” That we have established a precedent can be illustrated by 2 statements, the first from the Council of Ministers in their comments to the previous documentation: “Not to make similar payments to all those who find themselves in the same predicament as the former Woolworths employees would be inequitable.” Clear statements that we have to do the same thing for all workers having done it for Woolworths workers. Then the Minister for Treasury and Resources, in talking about his alternative, which was to pay only for legal representation for people made redundant through insolvency, said, first of all, and this is the giveaway: “The costs of any such precedent would be considerably less than those established by P.9 of 2009” so his reasoning is, it will be cheaper this way, less cost to the States, which is a worthy motivation for the keeper of the royal purse but not necessarily the only argument to be used, particularly as while the current cases were pursued through the Royal Court, case law would have been established to guide future decisions and potential actions. So, clearly, the Minister for Treasury and Resources, in his comments, is saying once you do it effectively what you do is establish case law and it must, therefore, apply to all. So I think we found an answer, the best answer we could, to the problem of redundancy through insolvencies with Woolworths. This seeks to establish that for all workers. Now part (b) says: “To establish an easily accessible and well-publicised system within the Department of Social Security to deliver payments on a similar basis to all Jersey workers made redundant by insolvency” and that is key. One of the criticisms you have heard from me time and time again about the Department of Social Security, under this Minister equally as under the previous Minister, is they do not publicise, they do not make easily accessible, the benefits that are available. If you are worried about being made redundant, if you are worried about your company becoming insolvent, you need something easily accessible in terms of advice and then in terms of support from the department. It must be crystal clear. Worried by redundancy, phone this name on this number to receive advice and get support. Worried by your company being made insolvent, phone this name on this number to get advice and receive support. That is what is needed. It has to be crystal clear and we have to publicise it so that workers out there, worried by what is happening to them, can seek assurance and get assistance very, very easily. Then it says: “1st December 2008” and without spending too long on that, because the amendment will be coming soon, that date was not picked arbitrarily. I did want to make sure that we included as many employees made redundant through insolvency as we could. I was then faced with the decision as to how far back to try and make this go and I stopped at a relatively late date of 1st December 2008 because my understanding was, and certainly any ex-employee has contacted me over, the issue of his redundancy from Mercury Construction where, I believe that not all people received proper payments at the time. Some people were just told: “Here are your cards, you are finished. On your bike.” There is at least one case, I think, where there may be a case where somebody has been made redundant in the recent past, in the month of December, and may need that help. That is why that date was selected and we will argue the toss about 1st December or a date in February later. The Minister for Treasury and Resources has made comments this time on this proposition and his comment boils down to: “The Minister for Treasury and Resources asks States Members to seriously consider whether they can agree to such an open-ended commitment to all workers made redundant through insolvency or whether it be preferable for the Minister for Social Security to consider further occurrences on a case-by-case basis.” I believe it is absolutely appropriate. I believe the precedent has been set and that we must, even though the Minister for Treasury and Resources is reluctant to do it, say that the cost must be borne. We do not have redundancy law in place; we have been shilly-shallying about it for 9 years. We should have some support in place, so this is the way to deliver it and we do not know, nobody can say, hand on heart, they know how much it will cost. We do not know how deep the recession is, we do not know how many redundancies and how many insolvencies, in particular, will occur. Nonetheless, I think we have got to bite that bullet and send a message to employees out there: “Do not worry, you will get support in these circumstances.” That is the duty of this Government to do,

despite the reservations of the Minister for Treasury and Resources. Having argued for that, if Members will turn to page 5 of my proposition they will see, with perhaps some relief, that we are not talking in this particular case about enormous sums of money. We are talking of the order of £16,000, if every one of the 17 employees were to come forward and, in fact, I believe that is not the case. I believe 4 of the ex-employees of Pound World who are directly affected have already sought and found work elsewhere and have not been made redundant. They have left; they have jumped the ship before it sank, as it were. So, the sum is not an enormous sum. It is by no means comparable with the Woolworths sum in the first place. Certainly, in the area of relatively low pay, these sums involved will not be enormous. I think Woolworths was exceptional because Woolworths had a certain loyalty and had a great number of long-serving employees there which does not often happen in many other companies. We know redundancies are continuing and will continue. In this particular case, until last week, I heard that the receivers had promised the Pound World workers not only their holiday pay backed to any due in 2008 when they were not their employer, they guaranteed: "We will make that offer, if you are owed any days in lieu we will make those up and we will also pay you statutory notice." So, for one moment last week, Pound World employees thought: "Oh good, we are being treated better than Woolworths workers. We will get our statutory notice and we will not have to pursue this route." Indeed, I thought I would be coming to the House saying, in this particular case, it does not apply. However, they have been told that they cannot do that. Their first duty is not to their employees. Their first duty is to the shareholders and the other debtors and that statutory notice will not be paid. So without accepting this proposition today all of those workers will not get their Statutory Notice paid and will not get any redundancy paid. Obviously, there is a whole variety of different forms of redundancy. We heard last week, a fortnight ago perhaps, that 62 or thereabouts Royal Bank of Scotland workers were being laid off but, again, because the company continues it has a contractual obligation to them which will be met. They are having some package to ease them into redundancy from the company. This, as the Woolworths solution, only applies where companies are going bust. So, without much more ado I propose this proposition. I think the precedent has been set. I think we are duty bound to apply the same solution to all workers made redundant through insolvency and I look forward to hearing what the Minister says about accepting, or otherwise, what is contained in here. What I was surprised about and why I was disappointed to have to bring this a third time was that, quite frankly, I thought the Minister would have got on with delivering exactly what this says, a system to get that support into redundant workers. I was shocked when I went in, just over a fortnight ago, to say: "What is in place, what advice can you give these people, what contact has been made, what is happening?" and I was told by the staff there: "No decision has been made and nothing is happening and we have not managed to make contact with, in particular, these Pound World workers." So, it should not have been down to me to do that. It should have been down to the Minister but, nonetheless, if the Minister can make up for that now by saying: "I have got a super-duper system all lined up and ready to go" then I would be very relieved to hear it. I maintain the proposition.

**The Deputy Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak? We have an amendment, I beg your pardon, so the Deputy will then read the amendment of the Minister.

**14. Payment of Statutory Notice payments: establishment of precedent (P.34/2009) - amendment (P.34/2008 Amd.)**

**The Deputy Greffier of the States:**

On page 2, paragraph (b), (a) for the date "1st December 2008", substitute the date "4th February 2009"; (b) for the words "the Employment (Amendment No.5) (Jersey) Law 200- relating to redundancy comes into force" substitute the words "an Insolvency Scheme is in place."



#### **14.1 Deputy I.J. Gorst:**

This is a relatively straightforward amendment and, hopefully, we can deal with it reasonably quickly and then get back to the main debate about the moral precedent which was set. I hope that Members have had time to read my report. It is quite straightforward and Deputy Southern has, to some extent, I am not sure whether wittingly or unwittingly, added a little bit of weight to my rationale for bringing forward this amendment and that was simply to allay any moral precedent that the States might go on to agree later with this proposition with the actual date that we previously considered this. The Deputy himself said he asked himself this question. How far back should he go? Then he told us he picked an arbitrary date in a way to spread the net. That date, he said, was picked around contact that he had had from a Mercury employee and he made the decision that Mercury should be in, in effect, and that anybody else made redundant through insolvency prior to that should be out. So, in my opinion, that is a somewhat arbitrary decision. Why choose Mercury and not, for example, the Luggage Shop or other institutions which have been through the same process. I believe that it is far better and safer, and it is a practice which Legislative Assemblies usually take, that the law is in place or the precedent is in place from the date of the decision and not retrospectively. I believe that without accepting my amendment we would be arbitrarily picking a retrospective application of the decision that we made on 4th February. So, I believe it is better, it is safer, it is in line with normal practice, that we should go with the date of the decision that we, as an Assembly, took when we approved or we agreed that individuals recently employed by Woolworths who had assigned their rights to the State, that we would make them a payment in lieu of their notice period. That was 4th February and, therefore, I am proposing that that is the most reasonable and suitable date to do so. I am sorry, I cannot recall whether the Greffier read out my amendment part (b) or not.

#### **The Deputy Bailiff:**

Yes.

#### **Deputy I.J. Gorst:**

If I just talk to that as well. That is also a relatively simple amendment. Deputy Southern proposes that a scheme be in place until we approve redundancy or, I hope, we approve and implement redundancy legislation which is due for debate the next date sitting but legislation will then, of course, have to receive approval from the Privy Council before it comes on to our statute books. I maintain that if we are going to do this, if we do accept that this is a moral precedent and, again, that will be a decision for the States, it is only fair that that remains in place until we have the creation of an insolvency fund. This debate today is going to be quite difficult because there are some technical issues. I hate to say it but the Deputy in his opening speech has already used the words "redundant" and "insolvent" as though they were interchangeable. I am sure he did not mean to but they are not interchangeable. One could be made redundant without one's firm being insolvent and, therefore, we need to be careful. I believe that if we are going to go down this route, we should allow the precedent to stand until I have come forward with legislation and an insolvency fund is in place. Members might recall that I have given a commitment that my department will have a paper on an insolvency fund with me by the end of this month which means that that will be next week. I would need to then make some decisions about that and then come forward to the States for approval, obviously, in consultation with Scrutiny. That is not going to be an easy process. We will make it as quick or as speedily as we possibly can but I believe that if we are going to approve this amendment today it is only right that that precedent remain in place until there is a proper insolvency fund which would allow people to claim their redundancy pay and their payment in lieu of notice from that fund rather than from the Government in the future. Therefore, I hope that they are not controversial and I hope that Members will see that my amendments are sensible and reasonable and will therefore support them.

#### **The Deputy Bailiff:**

Is the amendment seconded? **[Seconded]** Deputy Southern, do you wish to speak on the amendment?

**14.1.1 Deputy G.P. Southern:**

Having problems getting a seconder? That sometimes happens to me. Yes, the amendment, second part (b), absolutely right, spot on, well spotted. Thank you, yes, this shall be in place not until redundancy law is amended but until insolvency law is amended because that is what it covers. There is no confusion in my mind that we are only covering here redundancy through insolvency and the appropriate time is when the insolvency law and fund is in place so that people have got absolute, cast iron, guaranteed coverage or protection when they are made redundant in those circumstances. So, the Minister is absolutely correct there but in arguing that the time is wrong seems to imply that my date is arbitrary and his is not. 4th February or 1st December; it looks like we just toss a coin. Equally, I would argue that both are arbitrary because it so happens that on the second go at asking I got something through this House that happened to occur on 4th February but the real decision being made about precedent is not contained there. It was underlying and it was part of the argument and part of the comments but it was not part of the proposition. Today we are making a decision that the precedent has been set and it will be set by us saying: "There is the precedent, this will now apply to all people made redundant through insolvency." In doing so, it does not matter whether you say the start date is 4th February, or 1st January or 1st December. You are still saying on the date we make this decision, you are saying, in effect: "It is retrospective because we want to do the right thing and include as many people who are affected by this condition as possible." Now, I happen to know that there is a potential case where one of the Mercury workers was made redundant in December literally: "Here are your cards, on your bike." and received no bonus whatsoever, or so he claims. Therefore, I decided that we should, if we possibly could, include them, include that particular individual and any others likewise affected since 1st December. I do not think there is a clear argument about when we should make this start except that I suspect there is at least one person who will be extremely relieved if we can deliver some support to him even now, who is still not employed and was made redundant under these circumstances in the month of December. To arbitrarily exclude that person seems to me 2 wrongs which do not make a right. The fact is if we vote this in today to apply to all employees made redundant under these circumstances it really does not matter when we start it except the practicality of not going too far back and saying a reasonable start date is this one. I would argue that 1st December is no worse than 4th February because both of them say we are making a decision today that is going to be retrospective. So I will be opposing the 4th February date to the amendment, that particular aspect in (a), because I think the date that should be in there is 1st December 2008.

**14.1.2 Deputy M. Tadier:**

I tried to follow on from some of the comments about this arbitrary date which has been chosen and, presumably, if we follow on from the Minister's logic that if 4th February is the deadline, so to speak, or the date from which the law comes into force, then, presumably, the Woolworths staff would not qualify for it because they were already made redundant beforehand. So, perhaps the date that we should be looking at would be the date where the Woolworths staff were made redundant and I do follow on from Deputy Southern's comments that both dates can be seen to be arbitrary in the sense that we did happen to be just sitting on 4th February. We could equally have been sitting on 31st January or if we had been sitting over Christmas, in fact, when all this discussion was first being entered into, the date could well have been 1st January or 25th December, for example. So, I do think that again we are entering into semantics and I suggest that the date should be somewhere in the middle, perhaps, but we should err to the side of caution and go for the earlier date. That is how I will be voting.

**The Deputy Bailiff:**

Does any other Member wish to speak on the amendment? Very well, I call upon the Minister to reply.

**14.1.3 Deputy I.J. Gorst:**

I thought it might be short but not quite that short, but there we are. I would like to thank Deputy Southern for accepting part (b). I think it is only fair that if we are going to agree that a moral precedent was set then it should be until payments can be made from some other process and that, I hope, will be the insolvency fund. Unfortunately, I could not disagree with him more and Deputy Tadier in regard to the date. Deputy Tadier, had we sat and decided on 25th December, that would be the date I would be proposing because that is the date that this Assembly, the legislative body of this Island, made the decision. So we cannot start setting a precedent whereby we retrospectively say that the decisions of this Assembly are suddenly acceptable for people who might have encountered a particular case or experience many years before. I do not believe that that is acceptable. I do not believe that either Deputy Southern or Deputy Tadier made a case. I believe it is quite clear this Assembly made a decision on 4th February and that, I believe, is the decision that we should stick with. I maintain my amendment and I call for the appel.

**The Deputy Bailiff:**

Very well, the appel is called for in relation to the amendment of the Minister for Social Security.

**Deputy P.V.F. Le Claire:**

Is that taken in 2 parts or one?

**The Deputy Bailiff:**

Yes, Minister. Do you wish to take it in 2 parts? I think as one has been accepted that would be advisable.

**Deputy I.J. Gorst:**

Indeed, Sir, I am quite prepared to take them (a) and (b).

**The Deputy Bailiff:**

I invite Members to return to their seats and the first vote will be upon paragraph (a), that is, for the date 1st December to substitute the date 4th February 2009.

<b>POUR: 36</b>		<b>CONTRE: 14</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Senator F.E. Cohen		
Senator P.F. Routier		Senator A. Breckon		
Senator T.J. Le Main		Connétable of St. Helier		
Senator B.E. Shenton		Connétable of St. Peter		
Senator J.L. Perchard		Deputy of St. Martin		
Senator S.C. Ferguson		Deputy J.A. Martin (H)		
Senator A.J.D. Maclean		Deputy G.P. Southern (H)		
Senator B.I. Le Marquand		Deputy P.V.F. Le Claire (H)		
Connétable of St. Ouen		Deputy S. Pitman (H)		
Connétable of Trinity		Deputy M. Tadier (B)		
Connétable of Grouville		Deputy of St. Mary		
Connétable of St. Brelade		Deputy T.M. Pitman (H)		
Connétable of St. Martin		Deputy M.R. Higgins (H)		

Connétable of St. John		Deputy D. De Sousa (H)		
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

Very well. Do you wish the appel for paragraph (b), Minister, or are you content to ask for a standing vote?

**Deputy I.J. Gorst:**

We might as well have the appel, Sir, as our fingers are being exercised.

**The Deputy Bailiff:**

The Deputy Greffier will reset the machine and the appel is called for on paragraph (b) of the Minister's amendment and the Deputy Greffier will now open the voting.

<b>POUR: 49</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Connétable of St. Peter		
Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				

Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				

Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

So that is the amendment. Now, before we return to the debate perhaps this would be a convenient moment for me to inform Members of the result of the ballot for the directors of W.E.B. The votes cast were as follows: the Connétable of Grouville, 30 votes; the Connétable of St. Peter, 30 votes; Deputy Noel, 30 votes; Deputy T. Pitman, 23 votes. I declare, therefore, that the Connétable of Grouville, the Connétable of St. Peter and Deputy Noel are elected as directors of W.E.B.

**15. Payment of Statutory Notice payments: establishment of precedent (P.34/2009) as amended**

**The Deputy Bailiff:**

We return, therefore, to the debate upon Deputy Southern’s proposition as amended by paragraph (a). Does any Member wish to speak? Deputy Green.

**15.1 Deputy A.K.F. Green:**

Again, I find myself in a dilemma. We talked in February about the lack of a redundancy scheme. I am going to ask a couple of questions which the Minister for Social Security and, perhaps, Deputy Southern may be able to answer for me later. I think I understood that Deputy Southern said that these employees received no statutory notice. I would like to know why not. I know that Deputy Southern said that the shareholders’ benefit was put before the employees but unless I am mistaken we knew for some time that Pound World was going down and I would like to know why these people, this company did not fulfil its statutory obligation. I wonder if the Minister for Social Security could review this law and ensure that rigorous application is applied of this law in the future because we have a law that requires statutory notice and this is a second time, to my knowledge, and there may be others, where the company has chose, even though it perhaps could have done in liquidation, not to obey the law. I would like that looked into. I think we have a moral obligation now to support this proposition while we are bringing in a redundancy law and I am delighted that the Minister for Social Security has plans to bring that fairly promptly. So I will be supporting the proposition but I would ask that we look into why companies feel that they can flout the law with apparently no action being taken against them whatsoever.

**15.2 Connétable S.A. Yates of St. Martin:**

I am not at all happy with this. It says on the front of this projet: “Payment of statutory notice payments.” I would like some clarification probably from a legal brain, the Solicitor General is not in the Chamber ...

**The Deputy Bailiff:**

He is on call if we need to ask him.

**The Connétable of St. Martin:**

The payment of statutory notice is an obligation and the fact is that it says in the proposition, in the report, the company is in the hands of the administrators. My understanding is that they will be paid outstanding holiday pay and one week's wages worked in hand. Now who says? Who are the administrators? I am sure the directors have a legal obligation to pay statutory notice and that employees would be a preferred creditor. These are the things which I am not too sure and this is why I would like it explained, because if the employees are ...

**The Deputy Bailiff:**

I will ask the Greffier to ask the Solicitor General to come in.

**The Connétable of St. Martin:**

... the preferred creditor, why have they not been paid before any other payout to directors or to other creditors. I cannot support this as it stands and I am very unhappy about it.

**Deputy I.J. Gorst:**

I am not sure if the Connétable would like to give way but I, and I imagine that Deputy Southern could answer some of these questions as well, but I could however if the Solicitor General is on his way then I could let him do that.

**The Deputy Bailiff:**

Are you happy to give way to the Minister?

**The Connétable of St. Martin:**

Yes, I am happy.

**Deputy I.J. Gorst:**

I am going to have to be careful I do not give my speech several times over if this is the case.

**The Deputy Bailiff:**

This is just a point of clarification for the Connétable.

**Deputy I.J. Gorst:**

In regard to why they are not preferential creditors; preferential creditors in Jersey are covered by a different law, not by the Employment Law. The only elements, as I understand it, of preferential creditor covered by the Employment Law are wages owed and holiday pay, and that is the situation. Therefore, any payments in lieu of notice or other obligations that ... Senator Le Marquand is frowning, perhaps I bow to his legal superiority, but that is my understanding and therefore it is not that straightforward, the inter-relationship between the Employment Law, insolvency *en désastre*, these are new areas.

**The Connétable of St. Martin:**

I am still not happy. [Laughter] I am not sure exactly where we stand here because it says the company is in the hands of the administrators. They may be insolvent. Who are the administrators? I do not think they are *en désastre* in which case we could go to the Viscount and find out what is going on, but I would have thought the administrators would have to supply information of where the financial assets, the remaining financial assets, of the company have disappeared to and what was the actual series of transactions that happened in the last month or 2 months or whatever, but I am not very happy about the fact that we have just been told there is no money, go away. Under the present law I cannot support this proposition.

**15.3 Senator T.J. Le Main:**

I rise to follow the Constable of St. Martin and I am also very uneasy about the whole procedure in this area. It seems to me ... well, I just cannot understand how businesses can fold up, give no

redundancy to their employees, yet the directors of some of these companies are running other businesses which are, in fact, very profitable and in one case mentioned today, one of the businesses owning commercial property all round the Island, yet they have got one particular part of one of their areas of business goes down the Swanee and we are expected, as a taxpayer, to pick up the crumbs. I am trying to get my head round the whole issue, even going back to Mercury, where Mercury said this afternoon by the Deputy that one employee was given notice in December, but I understand that all the employees of Mercury were picked up immediately by the developer of the Highfield Hotel and they are all continuing work and not one of them lost any days. Whether that is true or not, that has been the case in several cases where companies have folded up and the employees have managed to get work virtually straightaway. I cannot ... as I say, I just cannot get my head round the issue that the public, the taxpayer, has to pick up redundancy payments as a right or as a precedent now as being promoted by Deputy Southern. I can understand assisting employees and I am sure that the Social Security Department have ways and means through the low income scheme to assist employees, but just to give it to everyone, whether they have found work the following day and have known for weeks that they were going to be ... the company was folding up, whether they sought work or not, but just to give out public monies I find that very difficult. I am not today convinced, and I am like the Constable of St. Martin, I am not convinced today that we are looking after the public interest in supporting this proposition today. As I say, I know of one case where the directors of one of these companies mentioned has property all over the place in the Island. In fact, only some weeks ago I was asked to go and have a look at one of the properties they are trying to change housing qualifications on. So it is totally, totally, to me, unfair that we are being asked today by Deputy Southern to pick up the tabs on behalf ... hard-earned taxpayer's money. There are people in this Island really struggling, paying their taxes, and yet willy nilly, without any real investigation in the background of some of these directors, in the background of some of these companies and otherwise, we are prepared to give funding on the basis of that. I will say I know of cases where people have found employment straightaway and yet we are being told, it is a precedent and it is a right that all employees made redundant should seek, as highlighted by these cases. Deputy Southern says we are duty bound to accept his proposition. Well, I am sorry, there is no one more interested in assisting people than I am and working with ordinary people but there is a huge danger here today on the precedent we are going to be setting again today. There is a huge danger. It is all right to say they are only going to cost £16,000 in this case, but ... I am delighted we have accepted the amendment of the Employment and Minister for Social Security, but really I am very, very uncomfortable. I am not comforted at all. I am like the Constable of St. Martin and for me I cannot support this proposition today. We are getting this all the time by certain Members, come in, give it all away, you know, it is very easy. Just give it away. Someone at the end of the day is struggling to pay their taxes. Somebody is struggling in this area. Not only the ex-employees of a company, there are other people equally struggling and yet we are determined sometimes to override all the responsibilities we have of protecting the public purse and giving some responsibility of the people that I know are really struggling, particularly with children at university and what have you, to keep their children going and their families going. So I today will need a lot of convincing to support this open-ended proposition which is something that I think the public of this Island do not all of them want. Just a minority.

#### **15.4 The Connétable of St. Peter:**

Just listening to the Minister for Housing there a moment ago; there was a point he was trying to make that there is no precedent made, and I see Deputy Southern across the Chamber saying the precedent has been made. I will agree with the Minister for Housing. It has not been made. The case was very soundly put in the Woolworths debate that we were looking a unique situation where the beneficial owners were off-Island and they were not touchable within Jersey and that is why this House, I believe, were swayed to support them. This is not the same case. I believe the beneficial owners of Pound World are locally based and therefore are pursuable within the local clause. You will also know that I voted against both the Minister for Employment and Social



Security's amendments and I did so because what we do not know is the scale of the problem that we have got, which is why my proposition P.24, which may or may not come later on today, hopes to sort of address. Deputy Southern talks about one member from Mercury going back into last year, what I do not know and he does not know, and the figures have not been given to me from E.S.S. (Employment and Social Security) is how many other people were made unemployed over that same period of time. How many of those will be queuing up if we support this proposition today with their hands out, not for government money but for taxpayer's money, the people who put us in this House to make the right decisions on their behalf. The only figures that I have been able to achieve during the research of my proposition is that unemployment is rocketing. That is the only information I can give you. I cannot give you actual figures. I am also told there are people out there who are worrying today about losing their jobs; not just the people in the Chamber today from Pound World, but many other organisations where they are downsizing, they are rationalising, people that may or may not be getting redundancy payments, there are people who have not been getting annual rises for the last 2 years, people are not getting the bonuses they have been promised. It is always too easy to give away public money. It is not public money, it is taxpayer's money. I will not support this proposition in the same way I did not support the Woolworths proposition.

### **15.5 Deputy P.V.F. Le Claire:**

I was looking to see where the comments from the Council of Ministers were on this because they did comment on 3rd February in relation to the Woolworths employees payment of statutory notice, and part of that comment was: "While on balance as with P.2/2009 approving the proposition appears unlikely to set any legal precedent, it is clear to the Council of Ministers that a moral precedent would most definitely be established and any argument otherwise would be unjust and unfair to those who may well find themselves in the same unfortunate circumstances as the former employees of Woolworths plc in Jersey." So no comments from the Council of Ministers today to rely upon except to perhaps reflect on what they were saying in relation to Woolworths. They said it may not set a legal precedent but it would most definitely set a moral precedent. In their own words - Senator Le Main is a member of the Council of Ministers - they said: "Any argument otherwise would be unjust and unfair to any other group of workers." Unjust and unfair. £16,000 is what we are speaking about today. There has been no obvious comment from the Council of Ministers. There may have been direction through the Council of Ministers **[Interruption]** ... There may have been some comment from the Council of Ministers through to the Treasury Minister to help the Minister for Treasury and Resources formulate his opinion but we go back to that debate and it was a bit of an innocuous issue because of the fact that it was an English company and we did transfer the rights of the employees to the States with the precedent that we were going to then seek as one of the claimants ourselves - or request that we did anyway - the money back through the courts as one of the entities. But we were speaking in rather larger sums of money than we are speaking today. We are talking in the order of somewhere approaching, I do not know, a huge amount of money somewhere, approaching the sort of salary we give some of our quango board members. Here, however, we are talking about £16,000 for a group of individuals that are sitting in the balcony. They have paid their taxes and are taxpayers and will go on and pay tax but what will they think about this grouping of representatives that they are looking at and hearing today. They all think that in the Woolworths case the Council of Ministers can make the argument that to do so and not do it again would make us unjust and unfair, but we seem to have forgotten what we said in February. Surprisingly, Deputy Southern went to the Social Security Department and found that they had no point of contact and there was no rationale behind what we hoped would have been in place, there was no support system and therefore, I do not know what he did, if he went running around trying to find the members that had worked there or not, but it did say - this is going all the way back to February 2009 - and they said: "However it is self-evident to the Council of Ministers that in such cases it is already incumbent upon a responsible government to ensure that every support and advice is provided." If the States has not quite got it right again,

then it is because the States has not bothered to sharpen its pencil. It is because the Council of Ministers, I am sorry to say, in this instance, has not learned from its lessons. It cannot preach to us in argument against Woolworths that to not do this again in the future would be morally unjust and unfair and expect us to swallow it this time round on the grounds that we are being fiscally prudent to the electorate of the Island because generally speaking we are not. What we need to do is we need to pass the £16,000 proposition today and move on and put into place a responsible effective and self-evident, all incumbent, all singing, all dancing, system for people so that they are protected in cases of insolvency, and I agree with Deputy Green. We also need to make sure that in cases where there are companies and individuals that have assets, as pointed out by Senator Le Main, perhaps substantial assets in housing, et cetera, then we need to make sure that the law is tightened. If we do now hear from Her Majesty's Solicitor General to enlighten us all as to whether or not this falls within another law and that these other 2 issues fall outside of that law, we get back to the bottom line, whatever the laws say at the moment, we are speaking about £16,000 and 4 individuals who will not be claiming from that money because they have got themselves re-employed, so they will not qualify under that anyway. We are talking less than £16,000. Before anybody else steps up and says that they have trouble with this proposition, I would ask them to reflect upon what we said all those days ago, not even months. A moral precedent would most definitely be established and any argument otherwise would be unjust and unfair to those who may well find themselves in the same unfortunate circumstances.

#### **15.6 Deputy J.A. Martin:**

I probably did have just a sort of niggle about was this different because albeit Woolworths was not a Jersey company and Pound World, for all intents and purposes, is a Jersey company. But if anybody has completely read the proposition, again what we set was the precedent for the workers of Pound World to assign their claim to the States and the States, who have very, very good lawyers, to pursue and if the Constable of St. Martin and Senator Le Main are correct, and the people who are the owners of these companies are in Jersey and have a lot of money, I can assure you our law officers will be able to get it out of them. A lot easier than they would Woolworths, and we are talking £16,000. If anybody cares to look, why I say the precedent is set, and it is lawyers like the States can employ at the wages we pay, look at the wages that the people of Pound World were receiving. Minimum pay, many of them, for many hours. I mean 42 hours at £276 a week. Do you really think that any of these people can afford a lawyer to chase these so-called rich Jersey businessmen around the Island and get their money, no, they cannot. So they are asking us, like Woolworths did, and that is exactly what we are doing. I am heartened to find out that the businessmen are still in Jersey. I am heartened to learn that they have very deep pockets with lots of money in it because, as I said, we have very good lawyers who will be chasing them if the Pound World ... Senator Le Main makes a huff in the air, well obviously he does not have the faith I do in our legal representation who will chase these deep pocketed businessmen and get back our £15,605.36 because they can afford to do it. It is their job to do it if they are assigned, but there is not one person who is employed at Pound World who can afford this sort of money, and it is not covered by legal aid because they cannot get it. All I can say, we did set a precedent and we paid out ... we did not just pay out as the Constable of St. Peter, taxpayers' money, we assigned the debt to the States and if he does not have the confidence and everybody else does not have the confidence like they did in Woolworths, do not vote for this. I certainly have the confidence. If there is rich men running around in Jersey owing money to poor people, workers, our legal representatives will find it for us. I fully support this and I hope these poor people who have been working on a very, very small sum of money for lots of hours will get the support that Woolworths did as well.

#### **The Deputy Bailiff:**

Before calling on Deputy Tadier, who is next I have seen to speak, the Connétable of St. Martin, I think you had a question for the Solicitor General who is now here.

**The Connétable of St. Martin:**

I have a question because I was not happy with the actual wording in the report inasmuch as the report says that 17 workers had been made redundant by Pound World on 14th March and they are in an identical position to the ex-employees of Woolworths - I do not accept that they are - the company is in the hands of the administrators, my understanding is that they will be paid outstanding holiday pay and one week's wages worked in hand. The question is: who are the administrators? There is not a *désastre* order on this company I presume, they are in the hands of administrators. Do the administrators have the right to declare what they are going to pay and what they are not going to pay, i.e. holiday pay and one week's wages worked in hand, bearing in mind that the statutory notice payment is an obligation to the directors and if there are funds in the company they should be paid in what pecking order with the degree of preferential creditors because there are several questions there, and there might be a couple more but I cannot think of them.

**Mr. T.J. Le Cocq Q.C., H.M. Solicitor General:**

I will be as helpful as I can, but I think I should begin by saying these are not entirely straightforward questions and much will depend upon the contractual relationship about which I can express no view because I do not know anything about it. If this were a company *en désastre*, in other words subject to a declaration of bankruptcy under statute, then there would be an order of payment of priority of claims which is set out in the statute. As I understand it, all arrears of wages or salary of any employee we do at the date of declaration and during the 6 months immediately preceding the declaration would be paid together with holiday pay and bonuses. Those are the circumstances ... that is what will be paid subject to a minimum cap which is provided by regulation, which I am afraid I have not been able to look up in the time before I have come down here, but those kind of payments would be made if the company were *en désastre* and they would be made in priority over ...

**Senator B.E. Shenton:**

Can I just point out to the Solicitor General the company is not *en désastre*, it is just a reorganisation of business affairs by some very wealthy businessmen.

**The Solicitor General:**

I am most grateful. A question was made in connection with *désastre* so I will conclude the thought, if I may. Though some can afford to be paid as a priority out of the realised assets of the company subject only to the first charge of the costs of the Viscount in administering the *désastre*. So they would effectively be paid above everyone else, other than the Viscount if there were a *désastre*. If there is not a *désastre* it seems to me that one falls back upon the contractual obligation that the company then has to its members of staff, and I am afraid that I do not know the detail or the information relating to this company and I cannot offer an opinion, but the Connétable is correct when he says that there are minimum periods of notice that apply and it seems to me that there may well be a contractual obligation to meet payments, the consonant with the minimum periods of notice, but without knowing more I am afraid I do not think I can be more definitive for the Assembly at this point. I am sorry.

**The Connétable of St. Martin:**

Could I just try and reinforce for the clarification? With a statutory notice payment, surely that is prescribed by law and it is an obligation for the directors to pay it, is it not?

**The Solicitor General:**

There is a minimum period of notice and I take it that that is what the Connétable means by his description of statutory notice period. In other words, any one who is being released from employment has to be given a minimum period depending upon the length of time they have served

already. It seems to me that they would be paid up to the expiration of that notice period, and if they have not been then there would be a contractual obligation in normal circumstances upon the company to make that payment. What should be payable after the event is far less certain and, again, I think in the absence of a declaration of *désastre*, would depend upon the contractual circumstances between the company and its employees.

**The Connétable of St. Martin:**

I just read here that it says there is one week's wages work in hand, whatever that means. Is that statutory notice?

**The Solicitor General:**

No. I do not wish to be too definitive about it, but I am not aware that that period, although circumstances sound in any Jersey statute, I think that is simply ... that would appear to be what either the administrators have elected to do or what they may be contractually obliged to do but it does not appear to me to appear in any of our statutes. I apologise I cannot be definitive about it in the time available for me to look at the point.

**The Connétable of St. Martin:**

I thank you.

**Deputy A.E. Jeune of St. Brelade:**

Can I ask a point of clarification from the Solicitor General? My question is, you mentioned *en désastre* and we are talking about insolvency, is there a difference between being *en désastre*, going insolvent or just shutting up shop?

**The Solicitor General:**

Yes. **[Laughter]** A declaration of *désastre* is a formal declaration by the Court of an insolvency, the effect of which is to vest all of the assets held by the insolvent entity in the hands of the Viscount who has an obligation in accordance with the relevant statute to get those assets in, distribute them in order of payment and for the benefit of the body of creditors as a whole. It is not every circumstance of insolvency which can or should give rise to a *désastre*. An insolvency can be dealt with in a number of other ways during the course of a winding up, a voluntary winding up, creditors winding up and various other mechanisms under the Companies Law. Simply shutting up shop may not involve an insolvency at all. It could well be that the company who shuts up shop does so while perfectly solvent and perfectly able to meet its debts.

**Deputy J.A.N. Le Fondré:**

Could I ask a further point of clarification? Sorry, for the Solicitor General. Just to get it hopefully clear in my mind. If it is a Jersey company, it is a just and equitable winding up, an orderly process, then that company is still bound to pay statutory minimum notice periods?

**The Solicitor General:**

I believe that that is right. Again, I apologise to the House for sounding slightly equivocal about it because it is something that I have not been able to look at in detail.

**The Deputy Bailiff:**

Perhaps, Mr. Solicitor General, you could check on that aspect while the debate continues.

**The Solicitor General:**

Yes, perhaps I could make a much more careful note to the question in that case if perhaps the Deputy would repeat it.

**Deputy J.A.N. Le Fondré:**

If it is a Jersey company, it is an orderly winding up or just and equitable winding up, that the company and/or the directors or the administrator is therefore bound by statutory minimum notice periods?

**The Deputy Bailiff:**

I think the question is whether the statutory minimum period overrides anything in the contracts and whether it is payable no matter what under the statute.

**Senator B.I. Le Marquand:**

Could I add a question to that?

**Deputy G.P. Southern:**

May I add another question?

**The Deputy Bailiff:**

The Solicitor General will regret coming back I should think.

**Senator B.I. Le Marquand:**

The question in my mind for the Solicitor General is not just whether the administrators are bound by the statutory periods of notice but also whether it is true that the principles of priority for creditors such as employees would also be binding upon the administrators?

**Deputy G.P. Southern:**

If I may, also, ask whether the Solicitor General can comment on the parallel nature of what is happening here. When we found a solution for the Woolworths workers it was about assignment of the debt. In that case we could not chase the debt in the U.K., we could in theory chase the debt, having had it assigned here through our lawyers rather than asking shop floor workers to chase their debt in the courts or through the system over the next 6 months. The question is, is there a parallel between what we did for Woolworths and what we are doing in the case of this which is a local company?

**The Deputy Bailiff:**

Do you mean can the rights of the employees be assigned to the States?

**Deputy G.P. Southern:**

Yes.

**The Deputy Bailiff:**

I think, if I may, the Solicitor General has enough to answer at the moment. Can we carry on with the debate?

**Senator S.C. Ferguson:**

It might be of assistance to the Solicitor General because I believe there was an action in the Royal Court between Pound World and ... I cannot quite remember the details. I was going to go downstairs and get it but you can probably get it on your computer there. There was an action where Pound World were asking for goods to be released from Customs so they could sell them, and I am not sure but there may well have been mention of the fact that they were in administration at the time. I am not totally certain of this. If that is the case, would the period of time since the action count towards the statutory notice payments that they have paid to their workers?

**The Solicitor General:**

I am sorry, I do not understand that last question.

**Senator S.C. Ferguson:**

If there is a court action and if the company states that it is in administration could the company then say that the period of time for which they have employed their workers since that action count towards the statutory notice period?

**The Deputy of St. John:**

There is just one question, he may as well take it while the poor gentleman is doing all the work. Are the directors not liable for the debt under Jersey law if the companies are insolvent, so therefore would there not be a call on the directors own personal assets?

**The Solicitor General:**

I can perhaps field that one straightaway. There are provisions within the statute for insolvency trading by which I mean in certain circumstances directors can become personally liable if they permit the company to trade while insolvent. But there are certain legal tests and thresholds to be met, and it is far from certain that ... I certainly could not offer any kind of view whether those thresholds could be passed in the present place. Could I also say that I have an electronic failure and I will need to leave the Chamber for the purposes of looking at the ...

**The Deputy Bailiff:**

Very well. Your return will be awaited with baited breath.

**15.7 Deputy M. Tadier:**

We seem to find ourselves in a similar situation which we were in last month and many of the arguments I will come out with will probably be rehashed although I will not be quoting James, that might be a disappointment to Senator Le Marquand. I think there has been a lot of double standards here when people talk about taxpayers' money, effectively everything we use is taxpayers' money of course. I was quite fascinated to hear Senator Le Main's comments earlier about this is hardworking taxpayers' money that we are wasting. I think we are talking about relatively small amounts in this case, although I do appreciate that when a precedent is set we can never be sure exactly how much money may be called for. Let me just put it in perspective though. Senator Le Main would call himself a champion of the people but at the same time he supports things like G.S.T. which is harming ordinary people on the street, I believe. The irony of course is that G.S.T. is probably responsible for the closure of Pound World. As we know Pound World did have very **[Interruption]** ... we seem to have bouts of coughing in the States Chamber. I hope it stays over that side of the Chamber. That said, of course, there may be multiple reasons and I am willing to acknowledge that fact. Let us get back to the point of taxpayers' money. If we wanted to save, let us say, £16,000, which I believe is the rough figure we are talking about here, that could easily be saved on States sandwiches, I would suspect, in a year. We have all had a very good lunch today which has been paid by the taxpayer and we thank them for that. It was very tasty. But that is something I would be quite happy to give up if I thought it would make some efficiency savings. I do not hear these kind of things being pointed out as taxpayers' money by the Senators and the Back-Benchers across the way from me. Strangely we are quite happy to waste millions of pounds if it is going into private hands. We are quite happy to give money to corporations but when it comes to giving public money to our own who have been working, and I would also suggest that the Pound World staff, like the Woolworths staff, are very hardworking individuals and they have been made unemployed by no fault of their own, then they also have a right to be looked after. That said, I would acknowledge the fact that it is not an ideal situation that we should be using taxpayers' money to fund insolvency. I think that ideally we are moving to a situation which is going to be a lot more satisfactory for everyone in the setting up of insolvency fund and I would congratulate the Minister for Social Security for taking that on. I think that it would be helpful ... there were comments earlier which said that this precedent would be set for an indeterminate amount of time. Actually, I think it would be a good thing if we did pass this proposition today because that would put extra pressure for speed in the setting up of such an insolvency fund. I would go on to suggest that there should also be some kind of statutory right for

unemployment so anyone who is made unemployed, if they contribute for it, like in a National Insurance scheme, if they paid for it then they should have some kind of cushion. It should not necessarily all fall under the banner of one type of income support payment, but that is a discussion for another day, I feel. Just to recap, we are talking about a relatively small amount of money here and ultimately it is we the States and the previous States, some Members have been here for 20 or 30 years, they have never thought of setting up an insolvency fund. To be fair to them there probably was not much demand for it at the time, but certainly there will be today in the current economic climate, as we like to call it, which seems to be getting more and more rainy as time goes on. We will certainly need funds like this which will be funded by employees, employee contributions, so I will be supporting this proposition. That does not mean of course that we should not look to recoup the money in other ways, as Deputy Martin has alluded to before, if that can be the case. But ultimately the buck stops here. We are the Government. We have a responsibility to the vulnerable members of our society. We should have had a system up in place so that we were not in a situation. Let us just pass this proposition and let us get the insolvency fund up and running as soon as possible.

#### **15.8 Deputy T.M. Pitman:**

I think it is quite insulting, although I am sure it is not intended, to hear some Members state that we must consider taxpayers' money yet evidently not the taxpayers who worked for Pound World. Perhaps this is a similar sort of outlook to the A.G.'s (Attorney General) approach to Electoral Law, only applies as and when suits dependent on who you are. Nevertheless, I do agree with our Senator Le Main, probably the first time since I voted for him in 1978 and I hope it will be another 30 years, but we must, as he says, get to grips with the local owners of some companies who are prepared to treat this all as a game. A game with people's lives. Nevertheless, a moral precedent has been set as far as I am concerned and the bottom line is that it is high time the States got to grips, bit the bullet and implemented legislation to prevent these scenarios happening again and again. £15,605.36, I think that is a quite reasonable jolt to speed us up in our actions and I will support the proposition.

#### **15.9 Senator P.F. Routier:**

Members are quite right to identify and remind us of the decision we made with regard to Woolworths and it did obviously set a precedent with regard to companies which have gone insolvent and are based outside of the Island. The status of this company, I am afraid, is different. There is quite a considerable difference. The proposition does not make it clear the status of the company. We have not got any evidence that the company has become insolvent. What we need to know is evidence of that. There is certainly ... the shops have closed but the status of the company itself we do not know what funds they have. It may very well be that they do have funds who could pay the money which is due to the people. The money is definitely due to the employees, there is no getting away from that. The legislation is there and if there are people within this Island who are ignoring the legislation of this Island, they need to be found out and forced to pay this amount of money. They are sort of disregarding the legislation of this Island. What I really need to ... I am becoming more and more uncomfortable ... when I came to the House today I anticipated that I would be supporting this proposition but the more and more I hear about it, the likelihood that there are wealthy people within this Island who are ignoring the legislation, that we just cannot let them get away with that. **[Approbation]** I think this proposition has come too soon. This proposition, if we had known that the company was definitely insolvent, fair enough. Perhaps we could progress it and agree this proposition. But we do not know that. I am not sure what the position is with regard to referring this back because it is not to a Minister or to ... it is not an option open to us, but certainly I would suggest to the House that we should perhaps put off this decision or move to the next item or something like that until we have a clarification of the status of the company. The Senator behind me said if I do not support it, do not vote it. I do support those workers of Pound World getting what is due to them. I am not moved from that position, they should have

their money. But if we are being hoodwinked by businessmen who are trying to get around and relying on us just to put our hand in our pocket to cover their misdemeanours, well, I do not think that is appropriate.

**Deputy G.P. Southern:**

If the Member will give way perhaps I can make a point of clarification. The argument that the Minister is making is totally spurious it seems to me because what we are talking about here, as in the Woolworths case, is assignment of debt. Yes, if there are funds there, if this is millionaire employers who can afford to pay then which way should we do that? Should we deliver some support to these workers now when they need it and have the might of the States and our legal representatives chase that money, and if it is there make sure we get it? Or shall we set the massed ranks of Pound World employees to chase it? Which do you think is more likely to be successful in punishing this ...

**The Deputy Bailiff:**

I appreciate the Senator gave way but that was not really a point of clarification.

**Senator P.F. Routier:**

I believe that the position of the company needs to be resolved before we make this decision. We have not got evidence here to say that the company does not have any money available to pay this money at all, so I am afraid, as much as I regret it, I cannot support this proposition because of the fact that we need to know the status of the company.

**15.10 Senator B.I. Le Marquand:**

The proposition is about the issue as to whether or not the House sets a precedent on the previous occasion in relation to Woolworths and, if so, what precedent is set? A quote from subsection (a) of the proposition which refers to a precedent which must be followed in similar cases. Now, the question is what are similar cases? The only guidance that we are given in the report is contained in (i) and (ii) on the next page, and that is redundancy is through insolvency occurring and that financial support was required to compensate those made redundant in a timely manner. I never got to make my speech in relation to the Woolworths case. I was about to speak when the Council of Ministers decided to change its view. If I had spoken I would have indicated that I did not think that a dangerous precedent was then being created because I felt that there were a number of different criteria involved, and the criteria that I was basing my decision, and it was a decision on a balance in that case, where firstly we had a long established business; secondly, it was run by a U.K. company which was insolvent; thirdly, that there difficulties in relation to the inter-reaction of the laws of insolvency of the 2 jurisdictions as to what priorities would be accorded to the Jersey employees, and also that there was public criticism of the administrators; fourthly, that as a result of that individuals had not been paid and were not going to be paid the money which was due by way of notice; and fifthly, that it was a high profile case for substantial public sympathy for the employees, for their numerous employees, many of whom had been working there for long periods. Now those were the criteria which, in my view, and in my decision on that occasion, which were being set. I do not agree that the 2 factors set out in (i) and (ii) of the report create satisfactory criteria because this is not a proposition directly about the Pound World people for whom I have, and I am sure all Members have, sympathy that they have lost their jobs at this difficult time. It is not. The proposition is about defining what is meant by similar cases and defining what precedent has been set. It then goes on to ask the Minister for Social Security to set up a system which will allow them to recover their money, in similar cases, very similarly. Now the difficulty I have got, the primary and first major difficulty that I have got in relation to this matter is we are still not setting any clear criteria. How can the Minister be asked to set up a scheme when there are absolutely no clear criteria which are to be applied in relation that scheme? It is an impossibility. So I have to vote against the first part, that is part (a), simply upon the basis that we are not setting appropriate and clear criteria, and also I have to vote against part (b) for a similar reason. But I



have further comments to make; there is criticism of the Minister for Social Security that he is being slow in putting forward such a scheme when he has no criteria. No way of knowing on what basis the States made their previous decision. He has, in fact, in my view, moved very quickly in bringing the Employment (Amendment No. 5) legislation, proposition 27 of this year, and should receive due praise for that. It is suggested that he should at the same time have provided some proposals to carry out this situation with no criteria and with many other urgent things to do. The proposition does simply not create an acceptable set of criteria; until we get clear criteria it is impossible for the Minister to produce a scheme. Furthermore, the Woolworths case was a very different proposition. If we are now going to apply my criteria to this proposition I have come out with the following result. This is not as long established a business, it has been around for about 10 years. It is not run by a U.K. company. We do not even know, as has been said by Senator Routier, whether this insolvent. That is one of the criteria set out by Deputy Southern. We do not know. Is the company insolvent or has it simply wound up for reorganisation? I have certainly heard rumours it has done exactly the latter. There is not this issue of tensions in priorities between the 2 different jurisdictions - we are going to hear no doubt later on from the Solicitor General. My understanding from the previous debate was that if it had been a Jersey company then the priorities would have been afforded, but I could be wrong in relation to that. We do not know whether individuals are not going to simply get their money in the normal way as part of the administration process. This is not as high profile a case for substantial public sympathy and it does not involve anything like the same number of employees if you look. Most of the employees have worked for very short periods. For all those reasons I am going to vote against the proposition, but I also point out to those who wish to vote in favour of the proposition that it does not clarify the position in relation to the Pound World people because Pound World people, and their figures are just tacked on as an addendum right at the end, almost as an illustration of a case, and there is no part of the proposition which tells anybody how this should be dealt with.

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

I believe that the States in the past has failed workers in this Island by not bringing in legislation to deal with redundancy and insolvency matters, and for that matter in many other areas. I also believe that this States Assembly has a duty to make up for this failure until such time as it enacts a legislation that the Minister for Social Security has said will be brought to this Assembly next month or until it enforces its will with regard to the statutory notice period. Senator Le Main is not convinced that we are doing the right thing and believes that we should not be using taxpayers' money to help workers who have been treated badly, if not illegally, by administrators or company directors. I cannot accept the Senator's argument that we should not use taxpayers' money at this time or for this use. I do not believe that Ministers can argue against a payment when through lack of oversight when we have already lost over £3 million of States money, and are likely to lose £10 million by the failure of one Minister to oversee their department to ensure that the euro value of the incinerator contract was hedged. Senator Routier says that the proposition has come too soon. It has not come too soon for the Pound World workers. Let us support the employees of this company and pursue through the States lawyers those who have failed to obey the law and their obligation to their employees. I will support this proposition because I believe it is morally right to do so, and I urge Members to do the same.

#### **15.12 Deputy S. Power:**

When I first read this proposition I was minded to support it but as I have listened to the debate and as I have gathered my own thoughts, as I normally do in a debate, I realise there is so much that is not said in this proposition that worries me. For instance, it mentions Pound World for the first time on page 4 and Pound World is only mentioned twice in the whole proposition, which I struggled to understand because, as the Minister for Home Affairs said, this is not really about Pound World; it is about setting a precedent. There are a number of points I would like to make. I was a regular in Pound World. I used to buy light bulbs, batteries and even kitchen paper in there,

and I did get to know the staff on a nodding basis, and I have to say that when I first heard that the company was ... that the directors were proposing to appoint an administrator, that it would cease trading, I did ask the staff on the desk if they were aware of what was going to happen. I gave them my card and I said: "Well, if you need any help let me know" and that had to be 6 or 7 weeks ago and, to be honest with you, I have been in the shop up to about 10 days ago and I was not ... nobody engaged me as to there being a problem which brings me to my point. My point is, are we debating something, are we debating about a situation that has not actually happened? In other words, the shops have closed but we have got no indication in this proposition that either the administrators or the directors are going to renege under statutory rights, and I think we are debating about something that has not happened. The important point that has been made is this is a local company with local directors and the manner and method of the administration which has just started remains to be seen as to what happens. So I think we need to not be doomsayers in terms of what is going to happen with this company. There is no evidence in this proposition that statutory payment to these employees is going to be reneged on and I am not sure, as I think Senator Routier said, that it is appropriate to have this debate today. I feel that Deputy Southern needs to clarify all of my comments when he sums up because an awful lot of what is in this proposition is unclear. So from where I stand this afternoon I feel that I cannot support this proposition and I look forward to Deputy Southern's summing up.

**15.13 Senator B.E. Shenton:**

I am very mindful that we have some Pound World employees in the gallery. The proposition states that payments will be made to Jersey workers made redundant by insolvency. We do not appear to be certain that Pound World workers were, in fact, made redundant by insolvency. They may well have just been made redundant because the directors decided to cease trading. If that is the case then we could pass this proposition and the Pound World workers would still get nothing at all, and I would just like the proposer of the proposition to comment on that because I do not believe that Pound World did go bust, so to speak. I think it was a convenient way for the directors to reorganise their liabilities, and I am exceedingly worried that the workers will go away from here if the proposition is passed thinking they will get a payment only to be told at a later stage: "Well, because of the way the proposition was worded you will not get anything."

**15.14 Deputy I.J. Gorst:**

I have sort of hesitated to rise because I thought it might have been helpful if the Solicitor General was back in the Assembly to correct me when I go wrong, or perhaps even it might be more helpful for me to wait until tomorrow morning because so many comments have been made that I would like to perhaps address. As I tried to indicate when the Connétable of St. Martin asked about preferred creditors, we have entered a complicated and, to some extent, new area. I have been on a steep learning curve with many duties of the Social Security Department and this has probably been the steepest. We, as a jurisdiction, have entered a time when the inter-relationship between a firm going insolvent and how it might approach that, and the relatively new employment legislation has been a difficult course, not only for my department but I also believe for lawyers involved in those insolvency areas. I am not sure whether I am speaking in a way that I should but I can confirm to Senator Routier, or the way that I should not, that it is my understanding that in the case of Pound World they have sought and been granted an order for a just and equitable winding up and in that case, again because this is relatively new and you perhaps would know more than I do in these areas, it is my understanding that probably the Royal Court when winding up those arrangements would consider English common law in how to deal with that but that is, again, something the Solicitor General might correct me on. I think because it is a relatively new area we are, to a certain extent, charting new waters and it is important that Members bear that in mind. This proposition asked me to recognise that a precedent must be followed in similar cases of redundancy through insolvency. It also asked me to establish a system to deliver payments on a similar basis to all Jersey workers made redundant by insolvency. I have been on record not only in answer to

States questions in this Assembly, but also in the local media, saying I for one believe that a moral precedent was set. That was one of the reasons why I was unable to support the payment for the Woolies employees. It would, I believe, be disingenuous of me now to suddenly say no moral precedent was set. If, and this is a big if, Members wish to support this proposition, and it is for each Member to decide if they believe a moral precedent was set, then I will accept it. However, as I will go on to say, I will need to establish and confirm some fundamental details of a suitable scheme because as Senator Le Marquand so aptly said, the proposition is light on the details of those schemes. Deputy Southern gave me and my department, if I may use this terminology, a little bit of stick in his opening comments for being slow off the mark. The reason for that is because these situations evolve day by day. My department has been in communications not only with the liquidators, but the Viscount and sometimes the news that we have had has changed from day to day, hence Members questions this afternoon about what is the state of play when it comes to Pound World. Perhaps I might address some of what I consider to be the differences between Woolworths and Pound World. Deputy Martin made great play of the States being able to employ law officers and recover the debts. In the case of Woolworths, one of difficulties that I had, and I think probably the Members had, was that Woolworths plc had considerable assets in our jurisdiction and it was felt, and I still believe it to be the case, that although it is a difficult legal precedent that those assets should, in the first instance, be, when realised, used to meet local creditors. That created a difficulty and continues to create a difficulty. The States decided that it was only just and fair for the ex-employees to assign their rights to any payments to the States and we, as a Government, would then seek to make good those payments in the local courts, bearing in mind, however, that the liquidator appointed to Woolworths were agents of the United Kingdom court and insolvency law. As I tried to say earlier, the inter-relationship between that and employment legislation is quite difficult and the payments that we made to the employees are not strictly speaking preferred creditors, however I do not want to speak too much about that because those cases are still in progress. I think we must be quite clear that I believe that some of the reasons that Members made that decision were around the fact that there were Jersey assets to that company that we felt could be used to meet those debts, we are yet to see whether that is the case. It is my understanding that that is not the case in relation to Pound World, however some Members this afternoon have intimated various situations which I personally was not aware of. Having said that, I am not certain that they are wholly relevant either to this proposition or to the Pound World situation, but I could be wrong, and I will certainly be asking my officers to talk to those Members later to ascertain if that is possible. However, I suspect, as the Solicitor General answered the question of the Deputy of St. John, that is not possible, but we shall wait and see. I think we need to be certain that there are differences in those 2 particular cases. I believe that if we are going to approve this proposition then individuals would still have to assign their rights to any payments that we as a Government made to them, probably to myself, much as I loathe to take on extra work, but I think that realistically would have to be the way that we went. Perhaps it might be useful now if I outlined the elements of a scheme that my departmental officers have been working on. This has not yet been agreed by myself and obviously we were awaiting to see what the States decision is today. I would like to say that although great play has been made of Pound World, in particular, what this proposition calls for is not in relation to Pound World. Pound World happens to find themselves in the situation that they do today, but what we are talking about here is acknowledging that a moral precedent has been set and then saying ... well, we do not say this but I will be going on to say shortly what I think that precedent might look like with a scheme. The first thing that I think I need to say in relation to that is, it will cost money. Some Members have said we are only talking about £15,000 or £16,000, well that is in relation to Pound World, and it would only be fair for me at this point to point out that Deputy Southern's chart attached to his proposition calculates an amount of £15,600 although I must say, and I do not want to disappoint those individuals in the gallery, but some of the people listed on this chart would not be liable to receiving a payment if we are to agree this proposition, because they are working less than 8 hours a week. That needs to be made absolutely clear. As Senator Shenton said, one thing that is critically important is that we do

not raise people's hopes and then they find that we are not going to be making a payment to them should the States approve this proposition. That is an item there. So, money - it is not simply £15,000. We are not able to say at this point in time how much it will be because it will depend on how many or if other companies go into liquidation or a just and equitable winding up or avail themselves of the *en désastre* provisions. The Treasury and Resources, I think Members might have a comment from him, has made some monies available, a small amount of monies from carry forward, so I hope that he will. If that money expires under a scheme like this then he would need to come forward to this Assembly and ask for extra money to pay for that scheme. That is only just and fair, it is not fair of me to say that I could meet it from my departmental budget. That would not be the case. I should also say to Members that dealing with the Woolworths task has been resource intensive. I was disappointed in the Deputy's proposition to say that he felt I could meet it from within my current level of employment when he knows only too well some of the struggles I have and he has been a champion for my department to say that officers are overworked with all the extra work that we seem to take on; if you have a problem give it to Social Security. I hope that is because we will make it better not because we will make it worse. That is an issue and I raise that to Members now to be upfront about it. I believe that this precedent would relate to compensation of notice payments only and no other statutory or contractual rights. It is only fair again that I should say to Members that not every person who could have assigned their rights to payment from Woolies has done so, some for various reasons. That is entirely up to them and that is right and proper that they make the decision on legal advice whether they feel that is the best way forward. I do not believe that the precedent that we would be agreeing, and I keep saying this, if the States approves it today, relates to helping those employees with their legal advice. I would expect and write into a scheme that they should seek assistance from the Jersey Advisory and Conciliation Services, J.A.C.S. are aware that I will be making that statement today and are quite prepared to help any individuals with that particular process or, in fact, perhaps they might like to seek their own legal advice. It would be right that they assign their rights to us and that they do take advice upon assigning those rights, that would be the right and proper thing for them to do. As I have said, in probability they should be assigned to me and my department to deal with it because we are aware of employment issues and have a relationship with J.A.C.S. As I said, we have started to develop a possible scheme. Again, I have to keep adding the caveat, should the States support this proposition. Now I come to what some Members might find the difficult bit. I would intend to run a scheme, if it is approved, along the lines of the U.K. and Isle of Man insolvency scheme as it stands now, but I must be clear, only in relation to notice periods. That scheme allows for mitigation of amounts that individuals might receive. Those mitigations might be notice period, they might be that employees have currently found work, they might have received benefits and it is only right and proper, in my mind, that any payment made to individuals should be mitigated in that way in the same way that it is in the United Kingdom and in the Isle of Man, because in all likelihood that would give the type of scheme that I would be proposing later in the year. We then come to another thorny issue, and that is when is "notice period" notice period and when has it or has it not been given. One of the reasons that I have not acted perhaps in the manner that Deputy Southern would have liked is because it has been very difficult and certainly remains unclear to me exactly whether, in the case of Pound World, they have received notice. I believe it should be or it is right for me as Minister if we set up this scheme to be able to make a decision as to when notice can reasonably considered to have been given. For example, has notice been given verbally or in writing by a director to the employees prior to the firm going into insolvency or into administration. There are some technical issues there, as I am sure you will be aware. One might consider that once the court order to grant a just and equitable winding up, some might consider that that is when the individuals have been made redundant even if they are taken on by the insolvency firm to keep or to increase the assets during the winding up. So, these are difficult areas which is why, again in a States question, I felt at that point it was best if I and my department were able to deal with them on an individual basis. It is not yet certain to me whether the Pound World employees have been given notice. Moreover it would not be certain, and is not certain to me, if they have not when I

might consider that notice to have been given for, as some other Members have said, if Members of the public are aware that a shop or a company is closing its door on a set date is it reasonable to assume that that period that we have known can be considered to be notice period. These are some of the elements that would need to be included in a scheme if the States are to approve the Deputy's proposition. I would just like to say one other thing in defence of my departmental officers. It has been said, and I am sure it was not intended by the Deputy in his opening remarks, that my department had offered no support. It was a while ago now, perhaps I have forgotten exactly what he said, but just to make it clear, my department has offered support as we do as soon as we are made aware of a firm going into liquidation or insolvency or, in this case, just and equitable winding up. We do offer support, we do phone that branch, we speak to managers. Unfortunately in this instance the management of Pound World were not prepared or did not want us to go down and offer the same support that we offered to Woolies, which was a disappointment to us as a department because these are difficult times for employees and I believe that they should be able to access all the help that they can and we, as a department, are more than willing. We see it as one of our functions to help in these difficult situations. That particular problem, hopefully, we have addressed for the future. As I said earlier, we have had meetings with the Viscount, with liquidators, we will continue to do that in the process of developing a scheme and trying to ensure that firms do allow us as departmental officers to go in there and offer all the support that we can to their employees, and also that the department knows a little bit perhaps in advance of it being displayed in the Gazette that something is happening so that we can help again in those particular areas. Any Member that perhaps doubts that it will just be Pound World and then we can leave it, I am sure I do not need to remind them that principles also will be going into ... well, I am not sure what the term will be, but it might be insolvency, it might be liquidation, it might be just and equitable winding up. That again is a U.K. company so we will have U.K. administrators and not the local ones. I should just say, I know some Members have poured scorn on the local insolvency practice. I do not hold that view at all. I have met with them, they have been more than willing to talk with us and try and help the individuals concerned. I hope that I have covered everything. I know I have rambled but it is a difficult area. I have tried to take it slowly so that Members followed me. As I say, personally I believe that we did set a moral precedent which is why I did not support the Woolies payment, but it is for each Member to search themselves and ask if that is what they believe that we did on 4th February. If Members believe that we did then I will set up a scheme similar to the one that I have outlined.

**The Deputy Bailiff:**

We will now hear from the Solicitor General.

**The Solicitor General:**

With apologies for repeating myself, I would have to ask the indulgence of the Assembly in understanding that these are not straightforward matters and the view that I will express now will be somewhat tentative because I do not know the full circumstances of the company that is being talked about. But several questions were put to me and I hope I have noted them down correctly. The first is in the circumstances of a just and equitable winding up would the company or the directors be bound by the statutory minimum notice periods as, I take it, set out in the Employment Law. Those are statutory obligations. Those obligations, it seems to me, would continue whether or not the company was subject to an order for winding up for so long as the company continued in existence during the winding up process. It would no longer be an obligation of the directors, it would be an obligation of the liquidator appointed pursuant to the winding up but that obligation would continue. That does not mean that those obligations give rise to a priority in terms of payment. An obligation to make a payment depends upon the money being available to make it and all I can say at this point is that in my view the obligation would continue and would not come to an end merely by reason of a just and equitable winding up or any other kind of winding up. The next question was, was the priority afforded to creditors in the bankruptcy proceedings echoed,

were the company to be subject to either a just and equitable winding up or otherwise. In the circumstances of a just and equitable winding up, which is a winding up under Article 155 of the Companies Law, this depends upon what order the court makes when it makes the winding up because the court has the power to give directions relating to how that winding up will take place. If it were a creditors winding up under the following section of the law there is an express statutory provision which imports the order of priority of payments from the bankruptcy law, the *désastre* law, into that kind of winding up. In the present circumstances, whereas I cannot be definitive, this appears to me to be a just and equitable winding up but on the papers that I have just been shown, it also appears to me that the liquidators are purporting to apply the priority provisions set out in the Bankruptcy Law that I mentioned before I left the Chamber on the last occasion. I cannot say for certain that the figures that I have seen in the documentation before me are accurately reflected in the regulations made by the Assembly because I have not been able to compare the 2, but it appears that the liquidators are proceeding on the basis that they have an obligation to give the priorities due as if the bankruptcy rules applied. It also appears that they would be proceeding on the basis that any other claim, that is claim under the minimum periods of notice, would be not preferred and would not have a priority and therefore the claimants would rank as ordinary unsecured creditors in respect of those claims. I was asked, I think, whether to make comment upon the similarity between the current circumstances in connection with the company that is under discussion now and the Woolworths claim on the earlier occasion when this Assembly debated an earlier proposition. There are similarities and dissimilarities between the Woolworths situation and the current situation. As I understand and recollect the Woolworths position a figure was hit upon for the payment by the States which was calculated on the basis of the minimum periods of notice and it was on the basis that whatever rights were vested in the employees at the time were assigned to the States and the States could recover whatever sums were recoverable when those rights fail to be vindicated. To that extent I cannot see any immediate distinction between the current circumstances and the circumstances relating to the Woolworths case. There are dissimilarities however, the location and extent of assets would be one, and what I would have to advise the Assembly is that were the Assembly to adopt the proposition it could not do so certainly safely on the assumption that claims could be ultimately vindicated. I think the most that one could say is that whatever claims existed could be assigned, whether those claims would give rise to any money at the end of the day is something that I am not in a position to advise the Assembly on. I hope that has covered the various questions that were posed, and I have nothing further to add on those aspects at the moment.

**15.15 Senator S.C. Ferguson:**

Yes, I do have every sympathy for the Pound World staff, however insofar as the main proposition is concerned, it is a blank cheque. I do not write blank cheques and I do not think governments should write blank cheques. It is very poor financial management. In particular, in the court case on 5th February, the judgment which was made on 6th March, the indications are that Pound World operated on 100 per cent mark-up so I do wonder why it got into the position of having to be wound up. In the judgments it was directed that notice be given to all creditors. I wonder if the employees were included in this. Other speeches have spoken of action against the directors with which I concur. There are obviously all sorts of legal questions which should be answered. It has been commented that perhaps the company is being reorganised at the wish, or should I say whim, of the directors. I cannot, however, put my name to a proposition which is effectively a blank cheque. I welcome Deputy Gorst's constructive speech but it is this blank cheque concept that bothers me and just how big a hole the States is digging for itself. I am sorry, I cannot support this proposition.

**15.16 Senator S. Syvret:**

I have listened to some very interesting comments today. When Senator Routier was speaking one of the points he was very keen to re-emphasise was there was no defined criteria in this kind of

proposition that we have before us today, and such things ought to be set. I have written on my notes here the comment, the observation what ... just like our land rezoning decisions that we took with absolutely zero criteria or frankly even any attempt to set a criteria, notwithstanding the gravity of those decisions. Likewise, the idea that the rich businessman, as the Senator described them, being held to account for their due debts, yes, indeed, that is as it should be but it is difficult again to take these kind of remarks entirely seriously coming from a Member of the Assembly who decided to scrap entirely prescription charges, quite regardless of the fact that they will be massively beneficial to the rich as well as the poor, which was entirely at odds with his previous stance and I think his current stance on G.S.T. exemptions, so there is a great deal of very confused and inconsistent thinking going on here. Senator Ferguson said repeatedly that she does not like writing blank cheques. Well, I have got some news for the Senator, the States of Jersey's entire finance system is a blank cheque. It is. It is a blank cheque that in their wisdom or otherwise, our predecessors over the decades have written and the sum that might one day be on that cheque simply grows and grows. It is a metaphorical cheque that inevitably is going to bounce sooner or later. I think if the Senator wants to be taken a little more seriously rather than worrying about the £16,000 we are talking about potentially in this proposition, her efforts would be far better directed to addressing the fundamental insustainability of the States of Jersey and its various apparatus and outgrowths itself. The sums of money we are considering here are, by States expenditure terms, slight. I mean we have just quite blithely blown just under £4 million because of the failure for euro hedging. Some officer in the Treasury will get a slap on the wrist and a black mark in his book but that is £4 million of taxpayers' money gone and here we are arguing about £16,000 for people whose security is unknown at the moment. I was interested to listen to the comments of the Solicitor General because I think he did make it clear that the obligations in the preferred priority claimants may not, in fact, include employees in the event of the wind up proceeding and the company becoming insolvent, so the fact is although, as Senator Shenton said, it is entirely correct for him to have pointed out that the approval of this proposition today does not necessarily mean that the people will qualify for the sums of money we are talking about. Nevertheless it is important to people to have some kind of security, some knowledge, however slight it may be, that if circumstances do unfold in that particular way then there will be some small kind of safety net for them in the future, should events unfold that way. It seems to me that that is the purpose of the proposition we have before us today. I will just conclude by saying that it is difficult I suspect to convey to probably a majority of Members in the Assembly just what it is to struggle, really struggle, financially and to not know where you are going to get enough money from to buy your next loaf of bread and your pints of milk and where you are going to feed your children. Most Members of this Assembly have not endured such uncertainties and hardships, so while these issues might seem comparatively minor, such as the security, a little bit of confidence there might be some funding available, might seem a comparatively minor issue to most Members, but to people, ordinary working people in Jersey, who struggle very much to live in an environment which has a cost of living at least equivalent to that of central London, these small things do matter, they matter tremendously and personally I think it would be a disgrace if we reject the proposition today.

#### **The Connétable of St. John:**

Just a point of clarification from the Solicitor General now he is back in the Chamber again. Did he just state that a company that was not insolvent and that chose to wind up could go the *désastre* route if they so chose?

#### **The Solicitor General:**

I do not think I made any statement about that at all. The position, it seems to me, is that a *désastre* is, of its nature, made in circumstances of insolvency when a company cannot pay its debts when it falls due or any of the other tests relating to insolvency. If a company cannot pay its debts when it falls due then a *désastre* can be declared. There are other circumstances in which a *désastre* can be

declared but they are very narrow and do not really apply to companies that carry on business or anything like that.

**15.17 Deputy A.E. Jeune:**

We in the States of Jersey do not have a redundancy law or an insolvency law, and laws, as I understood it, are not dealt with retrospectively. When we discussed the Woolworths proposition I did not go for the day's populist vote and I said to the effect of I could not support a proposition which I believed to be unfair and inequitable. I would go on today to say that that applies to employee and employer. What signal are we sending out at the moment? We are being asked to pay for notice period because we understand employers are not giving that to the employee. Good employers will do that but others will say: "Well, I will not give you the notice period, you can go and see the States." I find that very concerning. We do have an Income Support Law, agreed by the previous House and at this time will ensure that no one who qualifies is left without adequate provision. So who pays for this? We are using, as others have said, taxpayers' money which has never been allocated for this purpose. No one to date has contributed into a fund for such a purpose. As with the previous Woolworths proposition I will not be supporting this one.

**ADJOURNMENT PROPOSED**

**Senator S. Syvret:**

Can I propose the adjournment?

**The Deputy Bailiff:**

I was just going to ask whether any other Member wished to speak or whether we just call upon Deputy Southern?

**Deputy G.P. Southern:**

I have received some information in the last 10 minutes which I think is important and relevant to the debate. I have also agreed to have a chat with the Minister for Social Security overnight if possible so I would be loathe to sum up tonight.

**Senator S. Syvret:**

I know that certain Members have to leave at 5.30 p.m. due to other commitments. I think it would be appropriate to propose the adjournment.

**The Deputy Bailiff:**

Do the Assembly agree to adjourn? The adjournment is proposed so the Assembly will reconvene at 9.30 a.m. tomorrow morning. Sorry, before that can I just inform Members of certain matters. Projet 41 Electricity Tariffs: Regulation under Article 22 of the Electricity (Jersey) Law lodged by Senator Breckon; the Goods and Services Tax: exemption or zero rating for foodstuffs and domestic energy, and amendment, Projet 28 lodged by Deputy Green; the States of Jersey Law 2005 Delegation of Functions Planning Obligation Agreement presented by the Minister for Planning and Environment; and finally Land Transactions under Standing Order 168(3), the Work Shop, Drury Lane, St. Helier: proposed sale presented by the Minister for Treasury and Resources. Now we are adjourned.

**ADJOURNMENT**