

# STATES OF JERSEY

## OFFICIAL REPORT

**WEDNESDAY, 1st APRIL 2009**

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

### **PUBLIC BUSINESS – resumption**

#### **1. Goods and Services Tax: exemption or zero-ratings for foodstuffs and domestic energy (P.28/2009)**

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

I do hope that I will not be the only Connétable who is going to be supporting the Deputy of Grouville's proposition. As the fathers and mothers of the Parishes I believe that the Connétables are in a particularly good position to know how the tax on food affects their parishioners and their constituents. Certainly in St. Helier, while I have been approached by some proprietors of small businesses and urged not to support the proposition due to the problems they expect to have in adjusting their systems and the likelihood that they will see little reduction in the cost of the food they sell, I have had more comments from residents, constituents, parishioners who believe that a tax on food is quite simply wrong. In the first paragraph of the Deputy of Grouville's report she refers to pensioners on fixed income. Members will have seen recently, in the media, comments by Age Concern about the grim summer that many pensioners see on the horizon. While we all hope that that will not be the case and that for the Island and for Islanders it will be a very good summer and we will see recovery starting to happen in the Island in economic terms, I think it is very true to say that many pensioners, many people on fixed income, feel very hard done by. They are concerned about the fact that the petition to stop G.S.T. (Goods and Services Tax) being implemented at least while alternatives were looked at was not approved by the States. That was a petition - - I felt a great sense of honour when I was asked to bring it to the States. I still believe that the States were foolish in not listening. Perhaps not all 19,000 people who signed it should have been counted but I would suggest a great majority of those who signed it wanted us to think, to take a step back. So I believe that the Connétables and all States Members should think very carefully before they reject the Deputy of Grouville's proposition. It is interesting too that although, as I said, businesses, the I.O.D. (Institute of Directors), the Chamber of Commerce have told us not to tinker with the system, the fact is that again in the public mind it is the financial services industry that are responsible for the fiscal strategy. It was in order to make that very important pillar of our economy sustainable and to keep it working that we brought in the Zero/Ten and other proposals. Yet they see that many of these business leaders are not in fact touched in the personal and direct way that they are as people on fixed incomes, as people worried about their jobs, by the Goods and Services Tax. It may well be true that these business leaders have to pay G.S.T. on their food but constituents would argue it does not touch them nearly as hard in their wallets and in their purses as it does the many people who we represent. It is of course the case that Treasury have urged us not to do this. They have talked about the cost; the fact that we cannot afford it. It is curious we still see Jersey ranking second in Europe in terms of our G.D.P. (Gross Domestic Product) after Luxembourg. It is strange, is it not, that we live in such a wealthy Island and yet there are times when we see people casting envious looks across the water either at France or at the U.K. (United Kingdom), most recently with the change in the health arrangements. There really is a feeling out there - certainly in my Parish - that ordinary people, people with reduced means, are struggling and every time they look around for help they find things are only getting more difficult. The Deputy of Grouville refers in her report and mentioned in her speech the States have been talking about alternative ways of raising income for years. Certainly in the dozen years I have been in the States, they have been talking about 2 things a great deal: raising more income from other means and cutting their expenditure. These 2 sides of the financial argument against the proposition really after a dozen years fail to move me. I do not believe the States has really done enough to explore the alternative sources of income that it could have raised. The Deputy mentioned in particular the fact that land is going into development and the States are seeing no taxable gain from that, apart from of course when the buildings are constructed. But quite apart from that, how many of our constituents are convinced that the States have done enough to cut

expenditure when we see the almost cavalier way in which large items of expenditure - most recently the incinerator - are pushed through the House. Over £100 million of capital there and who knows what revenue budgets are already following in the wake of that decision. I do not believe the public are convinced that we know enough about saving money, that we know enough about alternative sources of income in the Island to justify maintaining a tax upon food and indeed upon domestic energy. I have no problem with this proposition. I have a problem because I know that some of my rate payers will be concerned about the adjustments they will need to make. But the vast majority ... and it is important that the major supermarkets support this proposition. The vast majority of my constituents will be pleased to know when they go shopping that G.S.T. has been taken off their food if this proposition is approved. Of course it may well go up on other things but I have no problem with a luxury tax. I believe if G.S.T. has to rise in due course - and it may have to anyway depending on the economic outlook - then I would much rather see a higher tax on luxury products than to see that tax go up on food as well. I think if it does go up we will have to come back later and exempt food anyway. So let us exempt food now. Then let us ask the Minister for Treasury and Resources and the Council of Ministers to really focus their minds on the kind of cost savings that Members in terms of managing their own budgets at home, that members of the community ... members of the community can certainly teach us a thing or 2 about saving money. I would urge Members to back this proposal because I think in the long term our constituents and our parishioners will thank us for doing so.

## **1.2 Connétable S.A. Yates of St. Martin:**

I am going to follow that presentation by my colleague in a slightly different way. My take on G.S.T. is social and practical rather than ideological. I was elected as Connétable in June 2006. One of the first things that I came to grips with was the administration of Parish welfare. I thought I better get to meet these people who I was supporting or who my predecessor had been supporting. So I met all of them - the 35 or 36 - within the course of about a month or 2 and I got to learn about their problems. I found that some of them were struggling, particularly single parents struggling with nursery care, not being able to work, not being able to get back into work and dealing with intermittent maintenance payments. I found that these parishioners were in need of assistance. I got to know them quite well. I came to the States during the last part of the summer session of 2006. Then in the autumn session of 2006 we had some debates on G.S.T. I think basically this is the first time I came into the States Chamber with something which affected me personally, in as much as I was having to deal with St. Martin's parishioners. I came to the Chamber very anti-G.S.T. The reason for that basically is that in October of each year the welfare grant varied according to the cost of living. I had a look at a previous year and it was a welfare grant for a single person of £113.75. The increased grant for October 2006 was a single householder excluding rent allowance £117.85. So I thought to myself that is not bad. That would be welcome. I looked at it and thought, hang on, what is the percentage? 3.5 per cent. I am thinking 3 per cent G.S.T., 3.5 per cent increase of welfare. That is not going to be much of a bonus. They are going to be exactly in a regressive, retrograde step because they are not going to be able to maintain a standard of living that they were already struggling with from the previous rate. So I came thinking that G.S.T. at 3 per cent was not going to be very helpful to the vulnerable in our society. As I have met the people who came to the Parish Hall every week to receive Parish welfare, I was very concerned. I listened to that debate having started coming in very anti and I heard that ... the debate was very interesting because in fact it became apparent the G.S.T. was part of a 4-pronged fiscal strategy which included I.T.I.S. (Income Tax Instalment Scheme), 20 means 20. I cannot think of the other one. But it was stated that the vulnerable would be protected. I was listening very carefully. I did speak. I stood up and said I came to the debate anti G.S.T. I have changed my mind because providing the vulnerable are protected and the tax was kept simple and low and steady, that I would in fact support G.S.T. because I believed it was probably the fairest tax available. I spoke on several occasions during the next few months and my stance was keep it low, keep it simple, do not vary it, do not use the G.S.T. method as a shiny bright brass tap as a source of

easy tax revenue. I think the Minister for Treasury and Resources then - now Chief Minister - will remember me saying that 3 years is not long enough because it was guaranteed for 3 years. He said I cannot guarantee because it is in the regulation for 3 years. I was hammering on. Members will remember I have no doubt that my stance was keep it low, keep it simple, keep it permanent. I think the Minister for Treasury and Resources - now Chief Minister - will remember making a comment that he personally could not guarantee it but he would think that at the present time - a year ago - that G.S.T. could stay at 3 per cent until 2015. Such was the financial atmosphere then. Of course it has changed now. I can say that Members of the previous Assembly worked very hard to make the tax simple, to keep it low and to protect the vulnerable and the low paid in our society. To a great degree this has been successful. We have had Deputy Le Fondré's motion to protect the people on income support, the low taxpayers on low wages who pay tax but with a 6.5 raising of the tax threshold and the people who are neither on income support nor paying tax to be able to get a G.S.T. refund. That is all very successful and those people are being covered. Income support was raised by 3 per cent on 4th May 2008. So people on income support were protected. The tax thresholds were raised 6.5 per cent. The people on neither income support nor paying tax were able to reclaim a G.S.T. on food. I was under the impression that in fact when I was told during the earlier debate that the vulnerable would be protected, they would be protected on all G.S.T. not just G.S.T. on food. We are still working on this. I still work towards making sure that the vulnerable in society are going to get their protection from G.S.T. So that is still ongoing. People in this Chamber now are still making sure or trying to make sure that social justice is done and the vulnerable in our society will be protected. Also at this time there was introduced the Stabilisation Fund. This was in fact to even out the peaks and troughs caused by the financial climate. We are still endeavouring to have social justice, in that the vulnerable people in our society are protected from the financial stresses and strains that G.S.T. causes. But the thing is that if we look at the proposition, the Deputy of Grouville is asking that G.S.T. is removed from food but also in part (b) she is requesting the Minister for Treasury and Resources to investigate whether an alternative progressive tax base can be brought forward to hold the payments to the vulnerable until such time as these are brought forward. It would seem to me that the Deputy would like to have her cake and eat it because the loss to the Treasury will be about £6 million for G.S.T. on food but we will still be boosting the 3 per cent which is already on income support and the tax threshold and the G.S.T. rebates. I have every sympathy for the people who are finding it hard but this is not the remit of this proposition because this should be from the Minister for Social Security to support the people who are finding it difficult. The trouble is that we have a 3 per cent G.S.T. which is mistakenly ... the global food crisis is at about 13 or 14 per cent. So on a £30 shopping basket, the G.S.T. is 90 pence. The global food crisis increase is £3.90. So although 90 pence might come off your shopping basket, you are still going to be paying the global increase. I am afraid you are not going to notice 90 pence out of a £33.90 shopping basket. I think basically the time to use the Stabilisation Fund is now but the time to play about with G.S.T. is not now. We have only had it for 6 or 9 months. Let it bed in. Let us see how it is after the end of the first year or 2. Keep it simple, keep it low and continue to make it work. It is the best tax. It is the fairest tax. I think quite frankly that is all I need say. **[Approbation]**

### **1.3 Connétable L. Norman of St. Clement:**

I cannot help but observe, Sir, that you have called 3 Constables in a row to speak, so clearly the Trappist image and reputation is well gone although some might wish that it would return. However, last September I supported the Deputy of Grouville's similar proposition. This time I will not be supporting the proposition. I should perhaps explain why. What has changed to make me change my mind? Well quite a lot has changed. We have had nearly a year's experience of shopping with G.S.T. Of course we have all had our own experiences and I have had my own experiences shopping. My experience shows me that the prices of some items are lower now than they were before G.S.T. was introduced. No doubt about that. But some items are more expensive than they were before we introduced G.S.T. A lot more than the 3 per cent by which G.S.T. has

increased their prices. So that tells me that G.S.T. has a very marginal effect on the prices on the shelves. What has a real impact on prices is the cost of the raw materials, local market conditions, the marketing policies of the shops themselves and of course traditionally competitive pressures. As I say I believe that if we adopt this proposition there will in fact be a minimal impact on prices on the shelves. But what else has happened? My colleague from St. Martin just reminded us of the Le Fondré proposals. For those on the lowest incomes, income support was increased to get over the increases in G.S.T. on food. For those in between income support and income tax, a bonus was and is payable and again has been increased. For those who pay income tax, we increase the exemption threshold to protect people from the worst impact of G.S.T. Think about it. How much better for the recipients of these bonuses, if you like, to have the certainty of these fixed payments rather than be at the mercy and the vagaries and whims of the shopkeepers who will vary their prices depending on market conditions. They have the certainty of the income support increase, the certainty of a G.S.T. bonus and the certainty of the tax threshold changes. If we adopt this proposition and remove these bonuses which we agree is what we would do last year when we adopted Deputy Le Fondré's proposition, there will be a darn sight more howls of anguish than there are over G.S.T. on food currently. I think we could also be tempted by the proposition to remove G.S.T. from domestic fuel. Not an unreasonable proposition on the face of it. But of course we do have the winter fuel allowance which we can adapt and amend and target that if we so wished, if we thought that was appropriate. Despite what I am saying, my philosophy is still against G.S.T. I do remain opposed to indirect taxation. Indirect taxation, be it impôts duty, G.S.T. or whatever, is regressive because it does impact proportionately more on those on lower incomes. There is no doubt that the fairest tax in my mind for all its weaknesses is income tax which at least is based on the ability to pay. But if we are to have G.S.T. - if we must have G.S.T. - I want the rate to be as low as possible and to have that low rate for as long as possible. The only way to do that is to have as few exemptions as possible. Quite honestly I think we already have too many. But the fewer exemptions, the lower the tax, the longer the tax remains low. As the Deputy of St. Martin says we all have our personal philosophies, ideologies, doctrines even. But we need to be careful about becoming too obsessive about them. There are times when we need to compromise these philosophies and ideologies in the short term for the greater good of the people we represent. So for all sorts of reasons that I have tried to explain and other Members have explained, this is the wrong time. This proposition is untimely. Therefore, I have no choice but to vote against it.

#### **1.4 Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel):**

The Deputy of Grouville quotes Bismarck: "Politics is the art of the possible." I do not really know that Bismarck is the example to follow but perhaps that is for historians. Firstly, I have been quoted incorrectly on the proposition. I did explain it to the good Deputy but perhaps she did not read my amendment or understand it. My amendment would have added 0.4 per cent to the increase in allowances already planned. No matter. But my reason for bringing an amendment to the budget was to divide the moneys allocated more equitably between middle Jersey and income support. The Deputy is particularly concerned with middle Jersey. I do have a few figures but I will keep them simple for the benefit of Deputy Martin. With great respect of course. Part of the Le Fondré amendments were concerned with allowances. Based on the fact that most people in the Island do not pay tax under the 20 means 20 regime but are in the marginal tax band - I think we are talking about 65 to 70 per cent of taxpayers - the advantage of this tax band means that taxpayers get certain reliefs in full and not the discounted reliefs, including the full wife's earned income relief and full relief on their mortgage up to the £300,000 limit. The top limits of the marginal tax band are - and I will take the worst possible case - for a single working person with no mortgage, £41,935 or thereabouts depending on my trusty computer. So we are talking a very high level of coming in on this band. If you take a married working person with 2 children and a mortgage of £300,000, they do not start paying tax until they earn £119,000. So when we are talking about taxing the high rate taxpayers to the hilt, we are not talking about a married working person with 2 children and a mortgage of £300,000. The increased allowances, therefore, have

supported middle Jersey in raising the top limit of marginal relief and allowing the full undiscounted reliefs. I have heard a lot of moaning about our Chief Minister and his forebears. Now that the results of their prudence are plain to see - £550 million in the Strategic Reserve, £140 million in the Stabilisation Fund and effectively no debt - where are the plaudits and praise? Even our cousins in Guernsey wish they had G.S.T. No one likes paying taxes. The best thing about G.S.T. is that it is less open to avoidance than any other tax. There is no hiding place. You can plan to reduce your tax burden and avoid income taxes but you contribute to G.S.T. every time you purchase anything. It is much better to take a little from a lot of goods than a lot from only a few goods. If you turn it round slightly, consider the humble biro. Baron Bic has made a great deal more money from selling a lot of cheap bios than Parker Pen have made from selling a few expensive pens. My panel has just submitted a report on the proposal for deemed rent which I understand will be returning to the States. The necessity for that is dictated by the fact that companies owned by overseas shareholders should contribute to the Island and should not be given an unfair competitive edge over local companies. Similar arguments apply to a low, broad-based G.S.T. Why should not all visitors to the Island, whether they be tax evaders, avoiders or tourists, not contribute to the Island? What about the detrimental effect on tourists, you say? Why not? When I go to the U.S. (United States) or anywhere abroad, I do not quibble about the sales tax. After all I am benefiting from their infrastructure. Singapore recognised that a complex system with multiple rates could potentially lead to more abuses. In other words as other speakers have said, make it simple, make it low and there will be little avoidance or evasion. Copy the U.K. and we are getting into the worst of all possible worlds where the complexity provides loopholes for the unscrupulous. A simple system also means there will be less argument on what is taxable. In our previous debate as referred to by Deputy Le Fondré, we discussed the U.K. rates on various goods. The one I remember is nuts: roasted nuts, salted nuts, chopped nuts, nuts in their shells. They are all differently rated. Complexity equals cost. As a corollary to this, we are told that the number of people of working age is shrinking and with it the tax base. According to the Deputy Commissioner of Goods and Services Tax and Property Group of the Inland Revenue Authority of Singapore, with an ageing population Singapore's income tax base was expected to decline. It was estimated in 1993 that there were 8 working persons supporting each aged person. By the year 2020, there will be 3 working persons supporting an aged person. The tax burden on the working population would be too onerous in order to maintain or enhance the level of social and health services. With a broad-based G.S.T. the tax burden will be more evenly spread among the population. I am indebted to ... now am I allowed to mention his name, Sir?

**The Deputy Bailiff:**

I do not know. Not generally unless it is unavoidable and essential to the matters under consideration.

**Senator S.C. Ferguson:**

I am indebted to a certain gentleman I think in the Parish of Grouville for the supply of papers discussing G.S.T. The latest which I have received is the comparison of the U.K. and New Zealand systems which has formed part of the research into tax reform in the *Mirrlees Report* which has already been mentioned in the handout by Deputy Noel. This was sponsored by the Institute of Fiscal Studies which I think people can say is a pretty independent setup. The aim of the study was to assess the extent to which the U.K. tax system conforms to the ideals of a good tax system in order to recommend how it might realistically be reformed. In other words, K.I.S.S. (Keep It Simple, Stupid). New Zealand met the problem of taxing food head on and addressed it in the original public consultations. The tax may be considered to be regressive but from the New Zealand experience they found that upper income households spent twice as much. For every 6.5 dollars spent by the low income households, the high income households spend 12 dollars. They found a similar experience in the U.K. and Singapore. This gives extra revenue available to recirculate into income support. What is wrong with this? The additional cost to the States of

administering the exemptions will reduce the amount available from G.S.T. revenue to re-circulate into income support. G.S.T. is a tax with a low cost of administration, provided you stay with a single rate and comprehensive coverage. Yes, it did appear complicated in Jersey to start with but it is just settling down; 9 months. It is producing the goods. Why on earth change it now? Like other Members who have spoken, the main complaints which I have received have related to areas where there are unusual activities. Professional organisations which contribute to the joint finance industry payment, they refuse to pay G.S.T. on milk deliveries but are quite happy to send their employees out to buy at the corner shop. It is these sorts of things where we are just sorting out the wrinkles. These difficulties arise on exceptional items and are part of the teething troubles. They will be sorted. All Members have received the letter from the local pharmacists imploring us not to complicate the system. I have been told in no uncertain terms about the cost of upgrading and changing computer systems, re-pricing goods, by a number of traders. Are we going to inflict more costs, particularly on small businesses just when they need our help? The Deputy made great play of the ease of conversion for large companies but most of our companies are small companies which will find the situation a great deal more difficult. It is also notable that the New Zealand paper discusses the regressive effects of the costs of compliance for small businesses if the system is more complicated. If business costs go up then judging from the U.K. experience recently with the 2.5 per cent reduction, it is highly unlikely that the reduction in G.S.T. will be passed on to consumers due to the cost of implementing the changes. I noted a letter from an accountant who was helping a client who was taking account of the 2.5 per cent reduction. He says: "The client is slightly panicking. He is updating accounting systems, price tickets, labels which is a pretty big task. The cost of change will almost certainly swamp an uptick in volume." This appears to be accountant speak. I am sorry, not a word I am used to. "And given most U.K. retailers are running big sales discounts at the moment, the 2.5 per cent will get lost in the noise anyway." Certainly the chairmen of both Next and M.&S. (Marks & Spencer) say that the 2.5 per cent reduction has made any difference to their sales. Implicit in our earlier G.S.T. debate was the rider that the new income support system would be an integral part of the G.S.T. implementation. A social bargain. A social contract, if you like. This is emphasised by all the papers. Proper provision must be made for the less well off and pensioners. If we have the revenue, we can do it. If we accept this proposition then we will not have the revenue. Where will we find the revenue? Increasing social security payments? A tax on jobs? The Minister for Social Security clearly explains supplementation in his written answer last week. The Deputy cannot in all conscience suggest reducing this payment in order to cover the tax loss from her proposition. That would hit the States pension for the low paid workers. However, the regressive effects can be cancelled out by attention to income support. If we do this then we have met the social bargain and the picture is complete. Age Concern have been supporting exemptions for food and heating oil. I rather feel that the benefit from deducting the G.S.T. will be felt by the better off with heated swimming pools and dinner parties. In the budget we have balanced G.S.T. with increased moneys to Social Security. We have also used the funds from the first year's G.S.T. revenue to provide a G.S.T. rebate for those people who do not pay tax. It does not sound much. It is £150 but that represents £5,000 in expenditure. We have increased the tax allowances as we have talked about to ease life for middle Jersey. This is a good start but it is clear we have more to do in relation to income support and for middle Jersey to ensure that we target assistance correctly. In short, the Deputy of Grouville, her well intentioned proposition is only looking at part of the picture. The full picture must look at income support and G.S.T. as an integral package. Implicit in the implementation of G.S.T. is the principle that there is a safety net for the less well off in society. If you are in favour of income support then you must consider how additional income support is to be funded. The simplest and most effective method is through a low rate, broad-based G.S.T. It would perhaps be helpful I think if the Chief Minister and the Minister for Treasury and Resources can underline that they are both aware of and will honour the social contract linking income support and a single rate G.S.T. For those of you who were originally in favour of the exemptions but may be reconsidering, perhaps Cicero had a point: "No well informed person has declared a change of opinion to be inconstancy." The facts are there



and I ask that all Members should consider them carefully. As my favourite Edmund Burke says: “Your representative owes you not his industry only but his judgment and he betrays instead of serving you if he sacrifices it to your opinion.” I trust Members will use their judgment and reject this ill-advised proposition.

### **1.5 Deputy A.E. Pryke of Trinity:**

In the very first debate I heard back in 2006 regarding exemptions, I did vote in support of food exemptions. But at the last debate I was persuaded keeping G.S.T. simple is the most effective way. I stood at election last November on that premise that I would not support exemptions. Some members of the public feel that removing 3 per cent from food and domestic energy will lower the price. But I would like to ask the proposer, will it? What evidence does the good Deputy have to support this and will shops remove it? As you heard, in the U.K. the V.A.T. (Value Added Tax) has come down from 17 to 15 per cent but has it really made any difference? I have not seen any major headlines in the paper ...

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

I am sorry to interrupt. Connétable, I think we will be inquorate if you were to leave now.

#### **The Deputy of Trinity:**

I have not seen any major headlines in the paper saying: “Great news. V.A.T. 15 per cent. Look how much has been saved in the weekly shopping basket.” There has been absolutely nothing. Taking 3 per cent off food will just add to the civil service bill as more staff will be needed. Whether it is one extra person or 10 extra people, that is not the point. The point is that staff will be required. You cannot get away from that fact. G.S.T. was part of the fiscal strategy and we should not tinker with it, especially in these current times. We need every penny we have and to achieve that we need to keep it as simple as possible. That is by far the best way. That way the level of 3 per cent will be kept low for however long it is possible. Income support and the Le Fondré proposal is there for the people who do have difficulty and need protection and need our support. That is so vital. It needs to be targeted and above all it needs to be effective. The proposition is to add an extra £6 million to the budget as it does not suggest the removal of the Le Fondré proposal. G.S.T. is a fair system. Scrutiny have looked and produced reports on this issue and they still find that the G.S.T. is the best system. If not, what else will be in place and where would we get the money? Nobody likes any tax. Regarding the energy bills, the States have allocated £1 million in our Business Plan last year to support vulnerable families with loft insulation and energy grants. Again that is another support for the less well off. But that will be a long term effect and that is the best way to do it. It will be targeted. The more exemptions, the more whole system will be lost. Simple. Keep it simple. That is the best way. In these uncertain financial times we will struggle to balance our books. I will not be supporting this proposition.

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

As an aside, in the coffee room later on I will have a word with the Constable of St. Clement because I would love to know where he shops. It certainly is not the same shops that I go to. As a principle indirect taxation is good. I think the Chief Minister - former Minister for Treasury and Resources - should be praised for having the fortitude - and I mean that with all sincerity - to bring in this indirect taxation [**Approbation**] because when we look at the income over the next few years, particularly with interest rates falling, we can see that income from indirect taxation will go some way to plugging that gap. I have a problem here though because fundamentally and morally I think it is wrong to tax the essentials of life, particularly food and fuel. I had the privilege recently to be at Highlands talking to students. I had a prepared a PowerPoint presentation to talk to them about the role of a new Deputy in the States. It never got out of my briefcase. They wanted to talk about G.S.T. I laid the case out quite balanced and fairly and clearly. I think one of the issues is that as an Assembly we have failed to communicate to the people outside, the benefits of G.S.T. as

a whole. Once I managed to lay it out to them, they could see what we were trying to do. But, like me, most of them could not see that it was right to tax the essentials of life. I knocked on 3,000 doors like the Deputy of St. Brelade. I will not say that at every door we talked about G.S.T. There were indeed some doors I knocked on where they were in favour of what was in place. But the great majority ... and that may be down to the social makeup of the different districts that we represent, the great majority were struggling with the concept of G.S.T. on food and on fuel because like me they felt it was fundamentally wrong. I was not influencing them. This is more or less the response as soon as they opened the door. I think in many ways perhaps the introduction of G.S.T. at a time when we have very high food inflation ... I believe the Statistics Unit has come out with a figure of around 13 to 14 per cent but we know that things like wheat and rice at the time increased by over 100 per cent. Over 100 per cent at the time that we add on 3 per cent G.S.T. We also know that fuel has gone up 24 per cent and we help the less well off by adding another 3 per cent G.S.T. At the same time I believe - and I am sure the Minister for Treasury and Resources will correct me - we can allow boat fuel to be sold free of G.S.T. I believe that is the correct case. I have great respect for people who have a different view because that is what it is about: arguing your view, listening to other people. But I feel it is wrong having stood on a platform, having made election promises, to then come back in here and say I am not going to support G.S.T. I would urge all those who said they were going to support the removal of G.S.T. from essentials to honour their promises. We hear how much it helps the better off in relation to how much it might help the less well off. The better off are making a major contribution to this Island anyway. If that means that they can have 3 per cent off their lobster, so be it. I do not have a problem with that. They are already contributing through income tax and in other areas. We have no problem helping the better off with prescription charges just before the election. We hear a lot about income support. People on income support are being helped. There is no problem with that. What about the elderly person who has saved for the whole of their life to provide for their retirement that fall just the other side of everything; middle Jersey? Those are the people we are hurting. Those are the people that are having to decide whether to eat or heat. I think it is fundamentally wrong to be taxing the essentials. We hear about how difficult it will be to make price changes. Food goes up so much and so regularly at the moment they must be making price changes on a daily basis. I know from my own shopping. I do the family shopping. I try to contain it as best I can. I put less and less in my trolley every day and I pay the same amount it seems. Prices are changing all the time. That is another red herring. In case anyone is not clear, I will be supporting the proposition.

### **1.7 Connétable D.J. Murphy of Grouville:**

I have listened with interest to the newer Members who have been speaking today because I was on the original Corporate Affairs Committee that discussed G.S.T. and did the critical analysis of it. Believe you me, we talked and talked for weeks as to whether we should make it an inclusive tax, i.e. on everything rather than nothing. We eventually decided that various health products, there were a couple of exemptions and that was it. On food we really battled our brains out on this one. Quite frankly today after another 2 debates in the past, this is like Groundhog Day number 4 to go through the same arguments again. I am not saying they are wrong arguments. What I am saying is as far as I am concerned we have heard them all before. I have made up my mind and I am going to oppose this basically if we have exemptions on food that money has got to come from somewhere else. We do not have an alternative. Where is it going to come from? No alternative has been presented. We are told that we might have to put 1 per cent on the rest of V.A.T. on everything else. Believe you me, the reason that we came to the conclusion that the G.S.T. should stay on food was because we had a promise from the then Minister for Treasury and Resources that he would freeze it for 3 years. If we exempt food now the shackles are off, the handcuffs are off. He can do what he likes. He can turn around and say I am putting it up 2 per cent. G.S.T. is a lifeboat for a Treasurer who needs money. If you give him the excuse to break this promise then he could open the floodgates to you tomorrow. I am not going to go into all the other aspects of it because they have been well covered by everybody else. I was relieved to be perfectly honest that

the Le Fondré proposals came out last time and I greeted them warmly. So I am just telling you now to think very deeply before you vote on this because you could be opening the floodgates to a huge increase in G.S.T.

### **1.8 Deputy A.T. Dupré of St. Clement:**

I am not going to quote figures and I am going to be as brief as I can. While I admit that in the same way as the Connétable of St. Peter when I was standing for election, I too spoke about removing G.S.T. from food as Deputy Pitman pointed out yesterday. However, since that time the world has changed in ways we would never have thought of. I now have to change my mind. I have listened to the advice we have been given and attended presentations and meetings and while I acknowledge that the Deputy of Grouville has made an excellent case, I feel at this time I cannot support the proposition. As I drive along the coast road, I see cars queuing up to visit one of the food stores, and I am always absolutely amazed how many people are willing to pay not just 3 per cent, but a total of 8 per cent on their food. The cost of removing G.S.T. from food, the price that small businesses will have to pay to process this and a lot of revenue has helped me to decide. However, I do agree with removing G.S.T. from fuel. Perhaps the Deputy will be prepared to separate her propositions. This I understand will be quite easy to accomplish. We are all about to receive our quarterly electricity bill, and I think that we are in for quite a shock: 24 per cent added to our bills on the coldest quarter will certainly hit the poorest of the community. Therefore I will not support the proposition to remove G.S.T. from food, but I will support removing it from electricity. Thank you.

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

Since my election, I have been greatly impressed on many occasions by the tenaciously fought battles of the Deputy of Grouville. She has been consistent and she has fought hard for the removal of G.S.T. on food, and on other matters of principle. When I first saw this proposition, I was happy to support it, and indeed, at the last opportunity, I did support the removal of G.S.T. on food. However, that was before I fully understood the consequences of part (b) of the proposition. I initially thought that the proposition gave a straight choice of either removing G.S.T. from food or the targeted benefits of what have become known as the Le Fondré proposition, but it does not give a clear choice. The choice offered is muddled by a suggestion that the Minister for Treasury and Resources investigates new taxation measures. I want to be very clear, I do not want to see new taxation, with the possible exception of a green field rezoning levy. I do not want to see a capital gains tax. I do not want to see a luxury goods tax and I do not want to see Income Tax raised. I want to see middle traditional Jersey helped. They are a huge silent majority. They have been hit by 20 means 20. They have been hit by hugely increased university fees and they have been hit by hugely reduced returns on their savings and investments. My choice would be to give these people the benefit of removing G.S.T. on food. I do not want them to be hit by new taxation as a result of the removal of G.S.T. on food. If part (b) were removed from the current proposition, I would support it on the basis that I favour the removal of G.S.T. on food from the implementation of targeted benefits, and I am sure that there are other Members who are in the same position. I would say that I would prefer a simple definition rather than using the complex U.K. V.A.T. rules, and I would say that I ideally would have preferred to have seen a healthy food option, which despite a number of officers' advice, I do believe is fully workable. So my conclusion is that despite my initial inclination to support the proposition, I cannot do so while part (b) remains. Thank you.

### **1.10 Deputy A.E. Jeune of St. Brelade:**

Last November, I stood for election, and in respect of G.S.T. I said we did not want it. We said so, no one listened, we had it. So long as the Le Fondré proposition is fully implemented, then the issue now is to keep it at 3 per cent and move on. That was 4 months ago, and I, like the Connétable of St. Peter, the Connétable of St. Clement, Deputy Dupré, I have re-evaluated that belief, and believe that remains the right decision today. If we accept this proposition do we reduce

the income tax threshold, ask those who have received the Le Fondré cash amounts to repay, reduce the monies given to income support recipients, et cetera, et cetera? I would reassure Deputy Martin and Deputy Green that I am aware of persons who fulfil the requirements for the bonuses and have applied and they have satisfactorily received those monies, so I consider if it is not broken, do not fix it, leave well alone. To our Minister for Treasury and Resources I say make sure you keep it at 3 per cent, and ensure we get some efficiency savings across the States departments, and let us move on. I will not be supporting this proposition. Thank you.

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

Only this week several of us met the captains of the finance industry, people that are involved in all kinds of the financial services in Jersey, and we meet on a regular basis so that we can understand more about jobs, training, give us a feeling of the future of the financial services, especially in the current economic downturn and climate. I have to say that they were very, very upbeat about the future of the finance services industry in Jersey. Yes, they did say there would be some levelling off in the short term, and they very much welcomed the agreement signed by the Chief Minister on behalf of Jersey with the T.I.E.A.s (Tax Information Exchange Agreements) as a co-operative, well-regulated and a sound judiciary place and an excellent place for people around the world to do business with. In general, as I say, they are very happy with our fiscal policies that have been set in the last 2 to 3 years. At long last they say they have certainty and they are certainly upbeat about the certainty of what we have been doing in the last 2 or 3 years, so they know where they are going and the road they are taking. But now again they have a little question mark about the uncertainty of again coming back to this Assembly with a change in fiscal policies. I can see that by what I am listening to, not only to them, but to small business. I heard Mr. Waugh on the radio this week or last week, representing the Chamber of Commerce and the small businesses, about the uncertainty, about the difficulty that they will face with again a change of fiscal policy and the costs that have to be borne by all. The last thing we need at this time of uncertainty is a change and a change of direction in fiscal policies. I have heard utterings in this Assembly on this proposition, about how we could change tax policies, how we could tax the rich more, how in New Zealand they do it from 12.5 per cent to 39 per cent, and again this is going to create much uncertainty in the business community in the Island. This morning, waiting for the bus, a lady stopped and asked me if I wanted a lift. This lady lives in the high-rise alongside me; a lady who has been on, she told me quite clearly, sickness benefit, wants to work, cannot find any work. The first thing she said to me: "Please do not take G.S.T off food and lose what we are being supported by the Le Fondré proposition and the proposal" and she did make it quite clear, and I have to say the same thing. I do not think for one minute it will make any difference in the pricing in the supermarkets. What we really need in this Island, if it is to bring food prices down, is real supermarket competition. We need a Lidl like they have in the U.K., France and in Ireland, particularly to bring down the cost of home brand, decent food. Everyone that I have spoken to are saying, particularly those in small businesses, keep it simple: "We are currently burdened with so much government paperwork filling, tax collecting, et cetera that it would be another burden too heavy to carry." The Le Fondré proposals now implemented is exactly what is being pursued or being demanded in the U.K., in other jurisdictions and as was said by Senator Ferguson, Guernsey are now wishing that they had G.S.T on everything. Like Deputy Green, I do the family shopping, and I shop all over the place, from Safeways to Checkers, to everywhere where I think I might get a deal; probably have not lost my old car dealing days. What amazes me, living where I live and having many people living in social housing around me, I am amazed on a daily basis to see the amount of people on very limited incomes; some of them have commented to me about taking it off food, coming back with their weekly Marks & Spencer shopping, and I see this on a regular basis, and I just cannot understand where these people are coming from. What I would like to say, I believe that in this economic climate we are treading very dangerously if we are now going to move the goalposts, and as I say, the people of Jersey, in my view those that I speak to in particular, including the working class of this Island, are fairly satisfied with the way it is going. Yes, it is very expensive. Yes, food is very

expensive, but they would like, in my view, less bureaucratic bureaucracy within business, and generally people would like to see this G.S.T on everything settle down and look at it in time to come. I will not be supporting this. I think it is a dangerous path to tread. It will create much uncertainty, and I urge Members not to support the proposition.

### **1.12 Connétable K.P. Vibert of St. Ouen:**

I have consistently opposed any tinkering with the G.S.T proposal which we have in place. I have to say that like many of the people who signed the petition against G.S.T, I was opposed to it originally as well, but when you sit back and look at the figures without emotion, you realise that the Island needed some form of taxation to address the problems which we faced. Having accepted that and having accepted that G.S.T, although not popular, was probably essential, I then quickly realised that what the public wanted was something which was simple, which could easily be understood. I think that ultimately, the G.S.T tax which has been introduced has had a lot more acceptance by the public because of the fact that there was an assurance that it would remain at 3 per cent. What I am meeting now are people of all walks of life, including pensioners on purely their pension income, who are telling me to be careful about looking at exemptions, because they fear that accepting this proposition will mean that there will have to be an increase in the overall price of G.S.T. I say it is easy to be emotionally swayed by the proposition because after all none of us want to pay extra taxes on anything, but I think that we have to realise that this proposition is about best use of monies available to Government. At the moment, without these exemptions, the Government is faced with a possibility of using £5 million to £6 million which is collected from this tax for the right purposes, for the purposes of helping those in our community who need financial help. Accepting this proposition takes away that £5 million or £6 million and means that we have in our pocket £5 million or £6 million less to help those people that we have committed ourselves to helping. I think that, as I said, it is very easy to be emotionally swayed by the proposition. I think that we need to be a little bit more cold in the way that we look at it, and realise that we have a system at the moment which is enabling us to help those in our community who need help and I think we should keep it.

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

Although this is the fourth or fifth G.S.T debate, it is going to be the first one for me where I do not have former Senator Vibert jumping up as I stand up, shouting out: "Co-op, Co-op" which if he is listening on the radio, he is probably doing it at home, so I should declare that I am a director of the Co-op, although this does not conflict me in this. Previously, I have made fairly long speeches on this, but I think a lot of people have come here with their minds made up, so I would just like to make a few sort of observations rather than a lengthy speech. There is a word called flip-flops, which describes a type of footwear. It also is used in investments when you buy an asset with a very short-term view and sell it fairly quickly; you flip-flop out of the portfolio. It is also a term that you can use to describe politicians, flip-flop politicians. Those are the politicians that stand at election time with a certain policy and then flip-flop it out as soon as they are elected. It seems to me that we have a number of flip-flop politicians in the House with us today. My second point would be the fact that by the forthcoming admission of the Minister for Treasury and Resources, it looks like G.S.T will raise around about £54 million a year, not the £45 million that was originally indicated. It is 3 per cent at the moment. That means that it is simple maths: each 1 per cent raises around £18 million. There are quite a few people that have said to cover the £6 million or £5.5 million we will need to put it up 1 per cent. Well, obviously 1 per cent raises £18 million, not £5 million or £5.5 million. I would hope that even those that are not going to support the exemptions on food will at least support the exemptions on electricity and utility on heating. I recently received my own electricity bill, fuel bill at home for oil and so on and so forth, and I wondered whether my wife had turned the house into a sauna. It was quite absolutely horrendous, and there is going to be a lot of people out there that are going to be in for a nasty shock - someone said an electric shock, but they are going to be in for a nasty shock - and I would like people in their own minds to split

the proposition into 2 and at least if you are not going to support one, to at least support the other. Much has been made of the bonus of £150. It is just to point out that this bonus is per household, so if you are a single person in a household, or whether you have 4 screaming children all requiring to be fed, it is still £150. This is not my definition of targeted. My definition of targeted is to target the benefits to those that need them most and to pay accordingly to those that need them most. Giving £150 to any old household is not my idea of targeting. A number of people have mentioned about New Zealand and the New Zealand model. Of course, I went into great detail in previous speeches, but New Zealand brought in a number of social benefit measures to compensate those when G.S.T came in in New Zealand, and then a few years later, when they hit a bit of an economic downturn, took them all away. This is again something that we have to bear in mind. With regard to whether it is in fact a regressive tax, of course it is a regressive tax. Whether you are rich or poor, a loaf of bread is the same price; a pint of milk is the same price. You do not eat 4 or 5 times the quantity of bread because you are wealthy than you would if you were poor, and surveys have shown that the amount spent on food in the richest households is very similar to the amount spent on food in the poorest. Obviously, the richer people probably eat out more, but of course they will suffer G.S.T when they do eat out more. These are the points I would like to make. I would also like to make the point that I find it immoral to charge G.S.T on food. I think we are fooling ourselves if we think that G.S.T is not going to go up in the future, and I think you are much better off to exempt it now than to exempt it in the future. I think it is a fallacy to say that it is as complicated as people make out to bring in exemptions on food. I think it is about time we had this right. I also believe that this is probably the last opportunity that we will have. I think this is probably the last time that we will see this coming to the House. Because it is a new Chamber, I think it is acceptable that it comes now, and I think it is right that the Deputy of Grouville has brought it. So it is very important that we make the right decision today. I have had disagreements with some people that say it is much simpler, and even the Fiscal Policy Panel have said: "Well, it is much simpler just to keep it simple" but at the end of the day, we have to do what is morally right as well. We cannot run this Island as accountants with the blinkers of an accountant. We have to take into account our social conscience and what we need to do socially and how we look after people. Of course, people will be aware of my wife's fight on Meals on Wheels, and this is what we are doing in many cases. We are taking tax off people and then asking them to queue up in income tax to give them the benefits back. I do not want to live in a society handing out benefits. I would rather not tax them in the first place. I will be sticking to my stance, which has always been for exemptions on food. I am not a flip-flop politician and I never will be. Thank you.

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

There does not really remain much to be said that has not been said in this debate and in other debates, no doubt though we will be hearing much, much more from Members. Really, what can be said from me that has not been said for me already is I am convinced in time G.S.T will increase. I am absolutely certain of that. It is unfathomable that it will stay at 3 per cent, in my view. The nature of the economies of the world, the nature of government, the nature of legislation, producing more necessity for government, and looking at other countries that have G.S.T, it is very likely in the future that it will rise to 7 or 8 per cent. Some Members are shaking their heads. Well, maybe they need to stretch their legs beyond these shores. What will occur in the future is the rate of G.S.T will increase, and if Members who have not gone beyond these shores doubt me, then all they need to do is review what has been said in this Chamber already. G.S.T is guaranteed to remain at 3 per cent for the next 3 years, no guarantees thereafter, so it is obvious in the future - some Members are shaking their heads, unbelievably, in disagreement - that G.S.T will increase. I am not a betting man, but I would begin to bet with anybody that disagreed on that issue. So it is not about keeping a fair and simple and easy tax at 3 per cent, it is about the moral point of whether or not we tax food. That is what it is about, because there are certainly other measures that we can introduce and new initiatives that we can introduce to raise thresholds, introduce new taxes and gain more money and cut expenditure, but we choose not to do that, because we want a simple

Jerseyfied solution. So it is 3 per cent today, but I guarantee in 5 years, it will not be 3 per cent, and I am going to support the proposition, because I do not think it is morally right to tax food and then administer in some bureaucratic charity-driven control freak way a system of benefits to people who have to go through hoop after hoop after hoop in establishing that they want the benefit that they are forced, through circumstances, to have to apply for. I spoke to a gentleman 2 weeks ago, who phoned me up and asked me if I could help him, because he was in a dire set of circumstances with his wife in hospital, and he was on low-income support. He needed help with rent rebates and he was facing a very difficult time, because he was also on long-term incapacity allowance and other issues such as that. At the time that he called me, I was too busy to start to address the matter as I perhaps should have. I feel bad about that, because I did not write down his name. I asked him to phone Senator Le Main, to talk to Senator Le Main and see if his officers could help him in the rent rebate issue, and asked him to contact me if he did not get any good result from Senator Le Main, and I assured him, as is the case, that Senator Le Main always answers his phone or gets back to people. Unfortunately, having spoken to Senator Le Main this week, the gentleman has not made contact with him. Now, there is an individual out there that has a set of circumstances that require assistance and he is finding it difficult. We have introduced a system of low-income support to balance the injustice of this moral issue, along with the other issues that people face that this Government has not addressed over the years. There are a number of things wrong with Jersey and they will take decades to put right. In fact some of them may never be put right and that is just life, is it not? But we can get something right, we can get the morality right, and taxing food is not right.

#### **1.15 Deputy T.A. Vallois of St. Saviour:**

As Members will be aware, yesterday I circulated further details taken from our own Government website in connection with Deputy Le Fondré's additional information. I did this because upon reading the information provided by Deputy Le Fondré I felt as though not all information was at hand to appreciate, or in some circumstances not appreciate, the full impact of the increase on exemptions for income tax. However, not being a tax expert, this posed another question such as with the implementation of 20 means 20 and these increased exemptions decreasing from 6.5 per cent to 5 per cent this year whether this all really does have a positive effect for middle Jersey in the not too distant future. We had a presentation for G.S.T. last week which, no, I did not attend but I did go to meet the G.S.T. Director and sat down and spoke to him on a number of issues with regard to G.S.T. Some interesting information came out of that. One was the civil servants administrating the G.S.T. seem to already be under pressure with administrating this G.S.T. and it seems to me they already require further staff. So, whether having an exemption on food or not, there could be a possibility of an increase in civil servants as well. Also what came out of that meeting was exemption of healthy foods would be a relatively easy move to make, apparently. So that could be another one that is on the table if this does not go through. Also that it is probably better to wait approximately 2 years before amending a tax such as G.S.T. to see how it goes and how the repercussions commence. In addition to this meeting, I have had correspondence with regards to G.S.T. effectiveness in other countries, namely New Zealand and Singapore, which many people have already mentioned. I would just like to point out that we are an island, 9 by 5 as I understand, 118 square kilometres. We have a very different tax system, we have a very different variety of people and a very different economic outset to these countries. New Zealand is a country of 268,000 square kilometres, a population of 4.3 million people. They have a tax system which graduates upwards on the income that you earn. So, for nought to 14,000 New Zealand dollars is a 12.5 per cent rate; over 70,000 dollars a 39 per cent tax rate. It is welcome to see that they did a full tax reform in their system in the 1980s. Just for example, just to point out, their cost of living is a lot lower than Jersey's. Sandwich bread is 1.45 dollars, and with exchange rates as of Monday that would be a total of 57 pence. I understand our bread is at least £1.12 for a loaf of bread, going up to £1.89 for a loaf of bread. Our cost of living is a lot different to New Zealand's so let us not compare. In Singapore: 637 square kilometres of land and 4 million population. I am quoting these

figures purely because Jersey is 118 square kilometres. We have a population of, I believe, 91,000. There is a big difference. Let us just not compare to these countries. We are completely different and we need to take that and move forward. Many people do not agree with G.S.T.; many people do not agree with taxes full stop. Unfortunately it is one of the certainties of life, as is death. From all this information I have received and looked at and looked at again I have to say that although I am not a fan of the U.K. system for exemptions I can still say I am not a fan of G.S.T. either. It seems to me that all we like to do in Jersey is make everything much more complicated and much harder for Joe Public outside to understand. Please do not stand here and tell us G.S.T. is simpler, because it is not, purely because of all the tweaks we have made to each and every other system in order to compensate for this tax. With regard to the Fiscal Policy Panel, as Deputy Le Fondré mentioned yesterday, yes, I agree we should listen to these highly intelligent and experienced people, therefore could the Minister for Treasury and Resources enlighten Members as to why we did not listen to them when we added £10 million on to the budget against their advice. It is another case of we will listen to what we want when we want to listen to it. Finally, I would like the Minister for Treasury and Resources, Minister for Economic Development and the Chief Minister to listen carefully and hopefully take on board what I say next, whether you agree or not. Just think about why these exemption propositions keep coming to the House. I have a sneaking suspicion it is not to do with G.S.T. but to do with the very high and the very real cost of living endured by all of us, whether outside, in here, round the Island. I have got some more V.A.T. information from our beloved website. It quoted: "Are we paying G.S.T. on top of V.A.T. in some shops? While goods and services bought in Jersey are not subject to a tax levy by any other jurisdiction, Jersey does however have a high cost of living and there are additional transport costs in bringing goods to the Island. Consequently the current retail prices in Jersey reflect the higher costs of doing business here. V.A.T. is a U.K. tax and supplies to Jersey are eligible for zero rating under the U.K. system but since there is no price control in Jersey it is up to suppliers to decide how much they will charge. With the introduction of G.S.T., suppliers will have to make a choice whether to absorb it in the prices already charged to the consumer or add it to the equivalent of the V.A.T. inclusive prices they are currently charging." On the information that I circulated yesterday you will see that 73 per cent absorbed G.S.T. but you will note that that survey was done only 2 days after G.S.T. was introduced. I would like to see whether that is the case now. That was just part of the information with regard to G.S.T. but also what I would like to mention, going back to the civil servants administering G.S.T., another quote off our website: "How many extra civil servants would be needed to administer the G.S.T.? The consultants, Crown Agents, believe that if the prototype tax they proposed is adopted then approximately 10 additional civil servants would be needed." If we introduce the exemptions we will require apparently a further 3 civil servants. Then it goes on to say: "What will the G.S.T. system cost to administer? If the additional civil servants identified are accommodated in the existing Customs/Income Tax departments then the overall cost would be about one penny for every one pound of revenue collected. This would mean that the administration of a Jersey G.S.T. would be very cost effective." The Minister mentioned yesterday that we have 32 million so far I believe. Okay, so one penny for every one pound. That is 32,000. That is £3,200 per civil servant. I do not think that adds up. So, correct me if I am wrong, it does say on the website it would be one penny for every one pound of revenue collected for the cost to administer this G.S.T. I would just like to finally say that no one else seems to be doing anything about the cost of living in Jersey and the way things are going. People are finding it difficult out there on the street and the Minister can sit there and carry on and say ... well, come on, do something about it. Help the people of this Island and hopefully we will see something positive for the future instead of allowing greed and selfishness to take reign in our society.

#### **1.16 Deputy S. Pitman of St. Helier:**

I will just keep this very brief. There are a lot of things that I would have liked to say, have been said many times. Firstly, I just refer back to Deputy Power's comment about him going round 3,000 doors during the elections and G.S.T. just was not a subject. Other Members have touched



on this subject saying that with their constituents it is not an issue now and do not tweak the system, it is too much. I will remind Members that 20,000 people in Jersey signed a petition. The point is G.S.T. is a huge issue. On small businesses, I have listened to a representative of small businesses talking about that this will cost them changing their computer systems, et cetera. So it is a huge impact on them. It will cost them money and lots of time and resources. They are finding just for 3 per cent it is not enough. But I say this G.S.T. will go up. There will be excuses to put up the rates because budgets are ever increasing. That is a fact and we will reach that. People have said 3 per cent on the ordinary person is not enough now, it is not really affecting our purses. Well, it is and people are cutting back. I have already told people in this House that I have a constituent, an elderly constituent, who has severe asthma and under the H.I.E. (Health Insurance Exemption) system he was having a doctor come in once a week to his home because the doctor advised him to do that, and that cost £60 a week. Now this constituent, he only gets the doctor when he absolutely needs a doctor. That is around once a month and the rest of the time he will go into A.& E.(Accident and Emergency) which he regularly does. I think it was Constable Crowcroft who brought up the fact that we are one of the richest jurisdictions in the world, yet we leave our people like this. This is what we are defining as helping people through G.S.T. There are alternatives and I appeal to the new Members of this House: do they really know enough about the alternatives. We hear Deputy Le Fondré, yesterday I believe, saying land development tax is too complicated and that is why we will not implement it. Well, how much work has really gone into looking at that? It was in the rural economy strategy in 2005 and left at that. What research has been done by this Government? To say: “We cannot bring it in? It is too complicated”, I am sorry, that is not good enough. It is not a good enough excuse not to look at it because it is too complicated. Taxing 1(1)(k)s. How much do new Members really know about that? How much do they know how much tax that could raise? **[Interruption]**

**The Deputy Bailiff:**

Senator, please do not have a conversation.

**Deputy S. Pitman:**

I will answer that, Sir. I know that 1(1)(k)s are not following the criteria that they are supposed to. It has been proven that we would get more tax if these people paid to meet the criteria. That is a fact. So why are we not looking at that? New Members, I ask please consider this. Please think if you know enough about the alternatives. I also ask Members, do they know enough about the new Income Support system? I have just said a huge failing of it was getting rid of H.I.E. There are many people living like that, many of my constituents, elderly residents, not going to the doctor because they cannot afford it. I just would ask, please, for the new Members to really think about these things because this tax will go up and up and income support will not follow. Will it be able to compensate in the future when this tax is up to 10 per cent? That is it. Thank you.

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

Members have spoken at length regarding the various arguments as to whether or not we should support Deputy Labey’s proposition. I would like to emphasise 2 points to Members. One is the very attractive simplicity of the present scheme. This is a scheme which we thrashed out at length in this Chamber and has yet to run for 12 months. There have been teething problems with businesses getting used to the new administrative requirements but it is bedding down now and proving, as promised, to be simple. It works. The price of food in Jersey is dictated by supply and demand. As one that does my own food shopping I contend that we are spoiled for choice and as a result it is impossible to make direct food comparisons because everyone’s basket is different. It is for the individual to decide, depending on their means, what they purchase. I feel the system that we have is the key to keeping the general G.S.T. rate down. This has been alluded to by earlier speakers and it is, I think, of paramount importance. The feel I get from the ground is that we must

keep it at 3 per cent. Any change will involve it going up and we want to avoid that at all costs. Accept the Deputy's proposition and I have no doubt that the rate will escalate to 5 per cent before you know. My second point is that the decisions to zero rate are not based on necessarily good government but more on social philosophy and political judgment. The evidence is, in my mind, crystal clear that good government dictates that we cannot support the Deputy's proposition. While I understand that many Members are easily swayed by populist pressures, I would urge them to consider hard the fact that they have been elected to this House to govern. Very often governing involves difficult decisions which are sometimes unpopular but I think they need to consider seriously the way they vote in view of the good governance of this Island.

### **1.18 Deputy M.R. Higgins of St. Helier:**

During last year's elections I consistently opposed G.S.T. I did so not because I thought I could cynically capitalise on the widespread anger and discontent among Islanders against G.S.T. and gain enough votes to get elected but because I was genuinely opposed to the introduction of this highly regressive tax. At the hustings and in my election material I stated that if I was elected to the Assembly I would try to find an alternative to G.S.T. and for that reason I have consistently advocated the need for a full and transparent review of Jersey's tax system by an independent tax body in order to establish the facts and restore the public's confidence in Jersey's tax system and policymakers. I also said that if I could not secure a replacement for G.S.T. I would fight for exemptions on food and energy which were and are crippling not only low and middle income earners in Jersey but also our senior citizens, some of whom have been foregoing heating in order to eat or vice versa. In addition, many of our senior citizens do not claim income support, some because they find the system demeaning or intrusive, others do not earn enough money from their investments or savings to pay income tax and as a result do not benefit from the so-called Le Fondré provisions. Other more financially independent seniors who have been prudent in the past and built up a portfolio of investments or savings from which they supplement their pensions have seen their investments decimated by the fall in equity markets brought about by the unprecedented financial meltdown and subsequent world recession and by attempts by governments to stimulate their economies through rapid interest rate cuts. Consequently they too are also finding it harder to cope with higher food and energy costs. So, unlike some of the other successful candidates in the elections for Senator, Deputy or Constable who appear to be willing to say anything to get elected, I believe in honouring my election commitments and promises. I shall therefore be voting for Deputy Labey's proposition. To do otherwise would only rightly compound the public's contempt for politicians in this Assembly. **[Approbation]** Although I have not succeeded in securing a full and independent transparent review of the tax system, I strongly believe that we should not look at taxes in isolation. The Minister for Treasury and Resources would like us to do just that because if we do so we will fail to see the big picture and recognise the overall impact of what we are doing. Jersey, unlike many other states, does not have inheritance, capital gains or property development taxes. It relies primarily on income tax, G.S.T. and import duties and, from this year, a 10 per cent corporation tax on financial service companies. These taxes can be described as progressive, proportional or regressive. Income tax under 20 means 20 is a proportional tax as at the end of the transitional phase all Islanders who pay tax will be paying 20 pence for every £1 of income earned. This is unlike the income tax systems found in most countries which are progressive in nature and under which higher income earners pay more tax the more they earn. This means that higher earning income tax payers in Jersey will retain more of their income and thus can accumulate wealth much more easily. It also means that they will be contributing less into the Jersey economy and thus providing less money to the States which can be utilised for the benefit of the less well off members of our society. The Zero/Ten corporation tax proposals are another example of a proportional tax with financial companies paying 10 per cent and utility companies 20 per cent of their income. These taxes, however, will not cover the loss of income from the exempt and international business companies that we had to forego under the harmful tax pressures that we received a few years ago. G.S.T. is another proportional tax in that everyone purchasing goods and

services in the Island is paying 3 pence tax for every £1 spent. It is also a highly regressive tax in that persons on lower and middle incomes will spend a higher proportion of their income on goods and services than those who are earning higher sums. We are in danger of creating a tax system that will exacerbate the wide gulf that already exists between the rich and poor in this Island. If we have no progressive taxes there will be no redistributive elements in our tax system which means that we are condemning many of our fellow Islanders to relative poverty and to dependence upon Income Support. We will also be creating a benefit culture. Ministers have appealed to us not to create a complex G.S.T. system by bringing in exemptions on food and energy. "Simple is best", they say but what they are really saying to us is: "Do not make it a fairer system." A simple goods and services tax may be cheap and easy to administer but it is also the most regressive of all such tax systems, penalising all those on low and middle incomes the most. Exemptions on such things as food and domestic energy costs have been introduced by many states around the world to ameliorate the punitive nature of this tax. I also find that Ministers are inconsistent when they argue against exemptions, having previously agreed to exempt such items as fuel for yachts, obviously an essential item for those who are relatively well off. Ministers have also quoted the Fiscal Policy Panel and stated that they have advised us not to make any long-term changes to our tax base. What they have not told you is, firstly, that when the Fiscal Policy Panel were in the Island a few weeks ago they also said that if food was exempted and another tax was brought in to replace it then such a move would be revenue neutral and, by implication, acceptable. Ministers also have not told you that they were advised prior to the elections last year not to enter into any other long-term expenditure and what did they do? They did exactly the opposite and came up with millions of pounds of pre-election giveaways, free childcare and free prescriptions, something which Senator Routier admitted was a pre-election bribe. **[Approbation]** Deputy Noel has handed out to Members this morning a copy of a newspaper report relating to an academic report known as the *Mirrlees Review* under the auspices of the Institute for Fiscal Studies and he has brought this to support Ministers' views. However, what the article does not say was that the report was an academic report which has to be peer reviewed to see how accurate it is and it has already been criticised publicly by leading tax experts. Finally, I urge Members to vote for this proposition and prove to the people of Jersey that they really care for the ordinary men, women and families of this Island. Thank you.

**Senator S.C. Ferguson:**

Sir, may I ask for a point of clarification? The Deputy refers to lower and middle income figures. I wonder if he would like to quantify what he understands by those terms?

**Deputy M.R. Higgins:**

I am not in the position to at the moment because I have no figures in front of me. Thank you.

**Senator J.L. Perchard:**

Could I also ask for a point of clarification or perhaps inform the Deputy that he is the second speaker to inadvertently misinform the House. There is no exemption of G.S.T. on marine fuel. G.S.T. is chargeable to marine fuel; there has never been an exemption.

**Deputy R.G. Le Hérissier of St. Saviour:**

Sir, on a further point, I wonder if the Deputy, much as I support elements of his argument, could he cite the occasion on which Senator Routier is alleged to have said it was a pre-election bribe?

**Deputy M.R. Higgins:**

Yes, I can. **[Approbation]** The Deputy can refute it if he likes. It was on the occasion of the previous Fiscal Policy Panel report, or when they addressed Members at St. Paul's Centre, and when I questioned the Panel I mentioned that they had given these pre-election bribes and Senator Routier, who was next to me, said: "Yeah. Right." Thank you.

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

Sir, this is the first opportunity that I have had in this House to speak on the issue of G.S.T. so Members will no doubt forgive me for perhaps being slightly longer than other speakers. In the election campaign I took the view that G.S.T. was a necessary evil and the least bad option, and I took that view because the alternatives, particularly the Guernsey alternative, would have meant double-hitting middle Jersey. There is no doubt whatsoever that 20 means 20 is going to very badly affect middle Jersey, particularly coupled with those people who have children at university and who are having to pay increased contributions. I took the view that the Guernsey system was not an acceptable system for Jersey. But time has moved on. We have a major financial downturn, the position in Guernsey now is very bad and the short-sightedness of their approach has been exposed. Without G.S.T. we would now be in the same mess as they are in Guernsey and I believe that the time is right for me to pay tribute to those who had the courage to steer G.S.T. through, although it was at the time unpopular. I was somewhat negative in my approach at election time but I now realise that without G.S.T. we would be in a terrible mess. However, today we are not talking about G.S.T., we are talking about the extent of the charge and the primary issue is as to whether G.S.T. should be levied on essentials, particularly food and domestic energy. In very simple terms, the clash is between those who want a simple, relatively efficient, flat rate system with no exemptions on the one hand, and those who strongly object in principle to the taxation of such essentials. I sit in the second group; I object in principle. But there are other reasons and there are other arguments. Some other jurisdictions do charge a similar tax on essentials but where they do they normally differentiate in rate. They have a 2-tier system. Now, with a low rate for general matters of 3 per cent, in a sense we could have a 2-tier system as well and that, of course, would be the zero rate, as the proposition suggests. When the States last debated this issue in December of last year they recognised that there was great public concern, exacerbated by large food and fuel price increases, and the States approved increased income tax allowances and Income Support. But there was still a problem which was then met by what was called the Le Fondré proposition which was to deal with the gap in relation to those who neither paid tax nor received income allowance and the solution was a flat rate payment of £150 per household. I have to say that that is a complete fudge. It is a complete fudge even from an accountancy point of view. It is not a rational approach because what it does is it gives £150 to a single person household and it also gives £150 to a household which might hypothetically have 6 children. It is a complete fudge. It is a convenient method of appearing to deal with the problem that existed. But I have a more serious objection to the Le Fondré approach and that is because it goes against the general principle of this House which is to seek to help people to be independent. It brings another tier of people, those in this middle range, into the welfare system. It creates a secondary welfare system and I object to that. With one hand we take from people in tax and, because we accept that we have taken too much, with the other hand we give it back to them. That is a bad principle. Now, it will be said that in hard times we cannot afford to lose the taxation represented by this exemption. In the short term, 2009 to 2011, we can afford to do that because of the prudence of those who planned to build the stabilisation fund. In fact, there is a counter-argument that in hard times, which we have, we should be considering amongst measures to assist the populace a fiscal stimulus by way of reduction of taxation. I was reading a paper within the last week which discussed the possibilities of this and came up with no possibility, but there is one and it is this. We could afford, as a matter of choice, as a way of giving money back to the population in terms of improving the economic situation, a fiscal stimulus and I recommend this measure to the House for that purpose. There is also another issue and that is the issue as to how we react to public opinion. There may be different views of where public opinion is at this particular time. I was quite clear during the election as to where public opinion lay and it lay in favour of food and other essential exemptions. I do not think that has changed. It is confusing for Members that those who represent constituencies in the town areas, the built-up areas - St. Helier, St. Saviour, St. Brelade - will be receiving one set of opinions, because clearly the majority there lies in favour of these exemptions, whereas those who live in the

country Parishes will receive different input. I accept that. Sadly, one of the by-products of the G.S.T. process, necessary though it was, has been a further polarisation between town and country and that was fairly evident in the senatorial results this year. I believe how evident that was was clouded by the fact that I was a candidate and ran against the generality of the approach. If you took me out of the picture; it would have been extremely evident. Now, I am not a rampant popularist; I am a person who seeks to live in accordance with principle. Indeed, I am a critic of those who are rampant popularists but the question still remains: what weight do we give to public opinion? Some would say: "We are put here to make a decision and we should give no weight whatsoever to public opinion. We are better informed, we are wiser, and we should make the decision." I think there is a touch of arrogance about that approach, if I may say so. The other direction would say: "We should give 100 per cent to public opinion. We should be democratic, we should go with whatever the current views are." That, of course, is entirely impractical; it is the view of a rampant popularist and I am most certainly not one of those. My view is that we are responsible to come to our own decisions but that we should give some weight to public opinion, and that I do, although I still seek to exercise my own judgment. So, on balance, my opinion remains the same as at the time of the election. It is not right to tax essentials unless the taxing of essentials is itself essential. There is a problem, as recognised by the House in accepting the Le Fondré proposition, but unfortunately the actual proposition is a fudge. There is no short term revenue reason why we cannot have a fiscal stimulus during the next few years. However, there will be an ultimate cost. The Island is facing hard times and the Island will be facing the need to raise additional States revenue from 2012. Members will know that that is clear from all the figures which we have seen and if we vote in favour of this proposition, as I shall, subject to the caveat that I want to bring later, then this change will mean that there will have to be increased revenue earned. The need to find extra revenue will be increased by the fact that there would not be G.S.T. on these essentials. I do have a problem with the proposition and that is part (b) because what part (b) is saying is that we should have exemptions on these essentials but that we should still maintain the very measures which were put in place in order to compensate for taxation on those essentials. That I cannot accept. It is a having cake and eat it proposition. I have exactly the same problem as was reflected before by Senator Cohen on this. From my point of view I would prefer, if it was possible, to take part (b) first so that if that is voted down people like Senator Cohen could come into play in favour of part (a). I will vote in favour of part (a) in any event, both parts, if it stands separately from part (b). However, if parts (a) and (b) are taken together as a package then, notwithstanding everything that I have said, I will be in most severe difficulties.

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

Sir, would you like me to clarify that?

**The Deputy Bailiff:**

I think you should deal with all the points in your reply, is the best thing, and you can at that stage say how you want the vote taken.

**1.20 Deputy M. Tadier of St. Brelade:**

It is always a pleasure to go after Senator Le Marquand, and it is interesting to note that I suspect we will be voting the same way unless something very drastic happens. Indeed, how can you argue with someone who has topped the poll Island-wide in the senatorial elections? Of course, it is not all about elections but let us have a look at what happened in the election. Obviously I was recently elected and I feel part of that was due to my stance on G.S.T. I do not necessarily need to reiterate the fact that I have been opposed to G.S.T. from the very beginning on the basis that it is a regressive tax. I will read out what I said in my 2 manifestos, one for the senatorial elections and then subsequently for the deputies, just for transparency: "I have consistently opposed G.S.T. on the basis that it is a regressive tax and I believe that taxing food and essential items is immoral and I would support moves to have G.S.T. phased out within the next 3 years. Failing this, I will

support the exemption of food if it is brought to the House.” That is just to put my whole campaign in context and part of the reason why I am here, and I will be sticking to that, certainly for my part. It was mentioned yesterday, and I am going to start my speech off, first of all you will have all received a circular and I want to put this in context. I was thinking about G.S.T. and for some reason this poem came into my head and I would like to take this opportunity just to pay tribute to one of my former schoolteachers. Some of you will know him here, you may have worked with him in various capacities. He was an English teacher at Hautlieu called David Thorne. Unfortunately he passed away earlier this year and I believe that many of us who knew him are sad because of that. He was a great teacher and I certainly appreciated being taught by him. This was one of the first poems that we studied in English when I was 14 in the context of First World War poetry and it is called *Five Ways to Kill a Man*. I will not read it out in its entirety because I know that time is at a premium here. It was originally written by Edwin Brock. It basically goes through history about the way that humans have been able to be cruel to each other and they found often quite inventive ways of putting their fellow man to death. I will just read the first part and then the last part which I have taken the liberty of adapting to the Jersey context. It starts off: “There are many cumbersome ways to kill a man. You can make him carry a plank of wood to the top of a hill and nail him to it. To do this properly you require a crowd of people wearing sandals, a cock that crows, a cloak to dissect, a sponge, some vinegar, and one man to hammer the nails home.” Then it goes through history, as I have said, depicting the different ways that man has found in order to make his fellow man’s life less ... well, to kill him, essentially. The last part: “These are, as I began, cumbersome ways to kill a man. Simpler, direct and much more neat is to see that he is living somewhere in middle Jersey in the early 21st century and attempt to tax him out of existence.” We have, of course, been told that G.S.T. is a simple tax, and I believe that in this context we have found a very simple way to hurt our fellow people, but just because something is simple does not make it moral and I think that is an argument that we heard a lot. To move to the main parts of my speech, I want to start by deconstructing what I see as some of the often very compelling but ultimately flawed arguments that we heard yesterday. There was an issue of public opinion on the G.S.T. matter. Of course, this will always remain a moot point, and we heard from my colleague in St. Brelade that it was not really an election issue. That depends, of course, who you talk to and I would suggest that perhaps in St. Brelade we have a slightly different demographic makeup to St. Helier. I would say that there are 2 things. First of all I would say that G.S.T. is an issue for the public. I did a little experiment last night on my Facebook account which is akin to a type of blog, for those of you who are maybe not aware of that. I just posted the question: “Should we take G.S.T. off food and energy?” and then I invited people to respond, and within the space of 3 hours - I posted it at 7.30 p.m. - there were about 35 responses, probably 25 individual responses. So it did generate a lot of discussion and I imagine if I checked again now there would probably be nearer to 70 or 100 responses. So I do not think it is a dead issue. I suspect the reason that people are maybe not making so much noise now is not because they do not feel strongly about it but that once you have been screaming for such a long time about something your voice tends to give up on you and you just simply do not have any voice left. I think that this is what has happened. We know that there were 19,000 people who demonstrated by signing a petition. There were also very large demonstrations in the Royal Square on 2 occasions, which by Jersey standards were very significant. I do not think that just changes overnight. As I said, people just get tired; they feel that they have no influence over government and they feel crushed. There is a quote from somewhere: “Hope deferred makes the heart grow weak” and I think this is exactly what has happened in this case. So I do not believe that there is universal apathy or that people do not care about G.S.T. Certainly the few people that I spoke to about it felt very strongly that it should be removed from food and energy. We heard yesterday about the 3 Ts test, that something has to be timely, temporary and ... perhaps someone else can help me with the third. Targeted, that is right. Interestingly I used the 3 Ts for my election campaign and it seemed to work as a good bit of alliteration. I would suspect that this does not apply in this case because we are not talking about purely stimulating the economy. The exemption for food has been going on for a long time and it

is quite independent of any recession or otherwise, so I do not think it is necessarily applied here. Of course, there are people who would not necessarily accept the 3 Ts test anyway. Next we move on to the losing £6 million. It is interesting how, of course, we do not like to lose millions of pounds if it is going to cost us losing a debate as well and make the Government look bad but we can lose millions of pounds and try and brush it under the carpet. That is not the real point I am trying to make. It is relative, of course. If you say we are losing £6 million: who is losing £6 million? It is £6 million is being saved if you think of it from a public perspective. They are getting £6 million back in their pocket which presumably they can reinvest into the economy. So that is relative, I think. We have heard about the economic argument and it seems to come up for almost anything. We say: "Oh, we cannot do this at the moment. We cannot have reform in the States because of the economic situation." Of course it is complete tosh and I think it also applies to the economic situation here. Indeed, this is a reason to exempt food. It will slightly decrease the burden for hardworking families, whether they be at the top or bottom end, but most importantly it will reintroduce money into the economy. You do not need to be an economist to know that during a recession you put money into the economy and during boom times you try and take money out of the economy. I certainly know that and I think we should know that, so for the recession, for both of those reasons, it is a good reason to put money into exempt food so you put money back into the economy, put it back into people's pockets. Exemptions benefit the rich, do they not? Well, of course, this is a flawed argument because we know that they benefit the poor percentage wise even more because people lower down the quintiles tend to spend more on G.S.T. and on food, as has been shown today. So, to show that we will be benefiting the rich is again at best specious but then again, even if we do benefit the rich, we are giving them more money back, are we not, so they can invest that into the economy, which is good during the time of a recession. I have touched on the simple flat tax. Just because it is simple does not make it fair. I am sure we could think of lots of things which would be simple but would not be fair so we do not need to dwell on that. We have heard the argument that G.S.T. will go up. I suspect it may well go up. If we are saying that it is not going to go up for 3 years the implication there is that after 3 years it will go up. I think it is a very bold decision to even guarantee in these times that G.S.T. will stay at 3 per cent for the next 3 years. I find that very difficult to say and in fact very imprudent but not to say, of course, untrue. If we can turn to page 12 of the handout that Deputy Le Fondré gave yesterday. While I find the correct part I just want to say that both speeches of Deputy Le Fondré and Deputy Labey I thought were very well put and both had very compelling arguments. If we turn to page 12, we hear about this group called Amos which is a group of Christians Together in Jersey, and this has been included in the report as if Amos is some kind of authority on whether we should take tax off food or not. I found this very strange. It seems to be the minutes or the report of a meeting that happened on 7th January at St. Thomas' church and there are various points which have absolutely nothing to do with G.S.T. in Jersey. Then they make a comment at point 7: "We hope that G.S.T. will not be removed from food. It introduces more complexity, especially for hotels [I do not know why they have singled out hotels there; it is not something that we have particularly talked about. Maybe one of them is a hotelier] instead of an increase in income support which is much better targeted." First of all, I question why this group has been selected and why no other group. Secondly, I know several people who would normally go to this meeting. I will not name them but I spoke to them last night and one of them, who I did not know, I phoned last night and that lady in particular said she was not sure about exemptions. I asked her on the phone: "What do you think about exemptions on food and energy?" She said: "To be honest, it is quite complicated. I do not really know what I think." Another person I know who does leave messages for me regularly, who is also on that body that meets together, said: "I definitely think it should be taken off energy. I think food would maybe be slightly complicated", although he did not commit one way or the other. So there certainly is no kind of universal accord, so to speak, from that group. I would also be interested to know whether the first person on that list is related to Senator Le Marquand. I suspect she may be, although she may not be of course, so we perhaps do not want to go down that road. But it is interesting to note that Senator Le Marquand, a devout Christian, is also coming out

in favour of exemptions on food. So it is not as if there is some kind of lobby from the church that is saying: "We want you to not put exemptions on food", I think. So we can completely dismiss this part of the argument that was given. Let us move on to page 16. For the people at home, this talks about some of the alternatives that could have been used to generate G.S.T. Of course, we are not talking about G.S.T. here in the whole, we are talking about exemptions, but it is good to recap sometimes and I will quote. It says: "Introducing a higher rate of tax for those who earn more [to paraphrase] would not generate sufficient revenue. For example, 30 per cent income tax for incomes over £80,000 would raise £11 million, perhaps less if some of these individuals chose to leave the Island." Again, the scare tactics. Why are they going to leave the Island? They have bought a house here, they work here. **[Approbation]** That is complete nonsense. We hear this argument again and again but, to get back to the question in hand, it would only raise £11 million so we cannot have it. Well, £11 million is a lot more than £6 million; it is almost double by my mathematics, and, again, I point out that I am not an economist. So that leaves us £5 million to play with. Obviously on its own it is not enough to fill a black hole but if we are looking at all these measures, if we are looking at the social security cap being lifted so that people who earn more pay more - quite common sense - then that would generate money. Graduated tax system, property development taxes, there is a whole host of these things which could be introduced which in isolation, obviously, would not fill a black hole but seen in the context of a whole tax plan would be ultimately more progressive, which include a G.S.T. or a V.A.T. with exemptions. I have no problem with that as long as it is in the context of a progressive structure. Okay, one of the arguments was about consistent income - again, to somehow reject these other alternatives - but there is no such thing as a consistent income in tough economic times. That is why you need to diversify your tax base. You do not just introduce a regressive tax like G.S.T. and say: "That is all we are going to have" and for some reason that is going to be consistent. Of course that is not going to be consistent either. I was talking to the adviser out the back. I will not quote him because the conversation was off the record but I think the general attitude from economists is that we do live in very unpredictable times and no one can predict what the income tax yield, what the corporate income tax yield is going to be from companies and neither can we do it from G.S.T. So the whole argument about fixing at 3 per cent is a myth. We need to exempt food now, as has been said by previous speakers, because G.S.T. may well go up. I would ask you the question: if G.S.T. was at 10 per cent now would you be more likely to vote for exemptions on food? I suspect a lot of you would, so best to do it now before we get to that position. We do not want to have another 2 or 3 debates on this issue in the next 3 years, I certainly do not want to. We can put exemptions on food now. I believe the majority of the public would be behind us and I do not think that it would affect businesses excessively. We know certainly that the large retailers have categorically said we can take it off and it will come off and it will start doing people good across the board straight away. We do need to look at our tax system. I did not get a chance to ask the question during question time to the Minister for Treasury and Resources but if I had I would have asked why on 24th March the Chief Minister went on record being asked an oral question without notice about the sacrosanct nature of the 20 per cent tax rate and the question was: "Do you think that the 20 per cent tax rate is sacrosanct?" and he said: "No." Obviously he qualified that answer but ultimately he said no. On 10th March in a written question submitted by Deputy Vallois to the Minister for Treasury and Resources the question was asked: "Is the 20 per cent tax rate sacrosanct?" and the answer was yes. So already there we have a split between what the Chief Minister thinks and what the real Chief Minister thinks. **[Laughter]** I am sure at some point he may want to come back on that but he does have a speech. **[Laughter]** I hear the word from Deputy Rob Duhamel calling me the Mischief Minister. **[Laughter]** We do have a wealth of wit in this Assembly. Let us get back to the debate in hand. Let us get back to the body of this. I am sorry it is quite long but it is my first speech on G.S.T. in the House. You will notice at the end of the poem I talk about middle Jersey. I am not satisfied with the definition that has been given of middle Jersey here. When Deputy Le Fondré was talking about middle Jersey and saying they are covered, that is not how I define middle Jersey. The way I define them would be people who do not get Income Support and



who do not get any kind of G.S.T. bonus but who on the other hand are not sufficiently well off, who may have children at university, they may have 2 children at university, a child at school, who do not qualify for any kind of benefit but at the same time they are being hit by G.S.T. on food and on the other basics like energy. It is probably a good point to point out that my father's electricity bill for 3 months over winter was £900. Now, a part of this is probably because he is not afraid to put the heating on, and that is a good thing in my opinion and possibly we could do with a bit more insulation in the house, but irrespective of that, if my father is having to pay £900 for electricity, just imagine some of the other people who are perhaps more wary about dishing out money and having to choose between eating and heating. As we know, Daphne Minihane has pointed out earlier this week that older people are really finding it difficult at the moment and exempting energy and food as well would definitely help them in a material way. I would remind the House that Daphne Minihane, who no doubt supported many of the G.S.T. proponents in this House, is asking you to reconsider your position on exemptions and I would hope you would heed her words. The redistribution aspect of the Le Fondré propositions is certainly to be welcomed and I do think that they were well intentioned. However, what I would question is ... well, first of all, we can get rid of G.S.T. on food and energy and we can keep the redistributive nature that has been brought in with the Le Fondré proposition. However, we need to have a different source of income for it. So let us redistribute the money. I have no problem with that, no problem with looking after the most needy in our society, but you do not do it by taking with one hand and giving back with the other. It is degrading, to say the least. There were comments from certain areas that G.S.T. is in fact a progressive tax because everyone gets it. That is quite a jump in logic there. It gets the tourists, it gets the rich who would otherwise avoid paying tax. Of course, the assertion that this tax is progressive is as completely laughable as it is contemptible and I do not need to rehash the well rehearsed and universally acknowledged arguments that show exactly why such a tax is regressive. But let us look at the spurious assertion that it gets everyone is a good thing. The most common argument, of course, for this tax is that it gets the rich, and we have heard this earlier from Senator Ferguson. It gets those who otherwise could avoid paying tax. The obvious flaw here, of course, is that if the main argument you are putting forward for a G.S.T. and a G.S.T. which is right across the board at a flat rate is to get the rich then surely there are other taxes which are better targeted towards the wealthy and in particular towards capital because it is not ideal to tax salaries as such. Then there are many other taxes that you should be looking at first, namely taxes that target the wealthy, and we can talk about capital gains tax, graduated income taxes, lifting the cap on social security contributions, land valuation tax, greedy landlord tax. Why not? Let us make a new one. There are a whole host of them which together, as I have said, in themselves may not be enough to raise £100 million or however big the black hole is going to become, but in themselves added together they can be used and combined. G.S.T. is by its nature regressive. A G.S.T. with basic exemptions for food, heat and gas and the necessities of life is less regressive. Of course, the principle of taxing people on their disposable income tax exemptions, so if you only earn £10,000 a year you do not get taxed because in reality you will be spending that £10,000 in its entirety. I was amazed to hear the good Senator Ferguson who was on the radio at the weekend, advocating - and I can understand the attractive nature of a simple tax - an income tax with no exemptions at all. Can you imagine such a thing? So you would have start paying from the first pound you earned. The point of any kind of taxation, especially income tax, is that you pay from the excess of what you have. So in reality if you are taxed on the first £10,000 or even £20,000 in Jersey, because let us face it if you earn £20,000 a year even if you earn £30,000 you are not going to have any money left to spend, so you are paying tax on money that you do not have. The point of exemptions on food is that everyone has to buy food, everyone has to heat their homes, everyone has to cook so you do not tax them on these things. You tax them on the luxuries.

**Senator S.C. Ferguson:**

Correction, I was advocating a simple tax system.

**Deputy M. Tadier:**

I hope I did not misrepresent the Senator because I did acknowledge the fact that she is in favour of simple tax systems, but she was on record as saying that she would favour income tax and perhaps we can listen again on the radio, but I do not want to go into this now. My intention is not to misrepresent the Senator in any way. That brings me on to tackle the next argument for those who are a little smarter, but only slightly. G.S.T. without exemptions is a regressive tax, but overall the package is progressive. So when people who are not on the extreme right point out the fact that G.S.T. on food and other basics of life is immoral, that the countries that either exempt them completely or at least have lower rates on these items and services, and that such a flat rate tax is, in fact, pushing more and more people who are marginal into poverty, they retort with a glib answer: "That is okay, they will be covered by income support", income support that we know is not working properly although that is notwithstanding the very good work of Deputy Gorst sitting on my left. The point is, of course, the income support system will never catch everyone. We are not here, as I said, to debate the rights and wrongs of income support so yet again we find ourselves in the paradoxical situation where we have a government who tends towards being right-wing, but it is at the same time encouraging people to be more reliant on the welfare state. We are forcing our own people into poverty and then taking their pride away so they have to go cap in hand in public to Social Security to beg for a hand-out because G.S.T. has forced certain people over the line, certain people who before that would not have had to claim any kind of benefit or bonus, but now who do because that is the straw that has broken the camel's back so to speak. Remember, this is coming from the Government who uses trite aphorisms such as "hand-ups not hand-outs" while the very same government taxes its people on the very bread that they lift to their mouths as if that bread was not expensive enough. We have heard that already. I think one brand of bread is called Island Gold and it is probably quite appropriate to call it that. **[Laughter]** So it is okay, it is only 3 per cent; they can afford it and they can claim income support. Is that the message we really want to be giving out, that if people have to spend money on essentials on heating and say: "It does not matter, you can go to income support, you can queue in an open public office" and some people, and perhaps they should not be like this, have a certain pride. I know that is certainly the case for certain members of the older generation. They are not used to having to go down, cap in hand and I think that is one area - and the Connétables may agree with me - in which the old system where you could talk to someone in private who knew you would certainly work. I am not going into the rights and wrongs of income support, but that certainly is not happening at the moment. Of course, this does not take into account the things I have mentioned, those folk who are just above the limit who may not qualify for income support or the G.S.T. repayment. Perhaps more importantly, as I mentioned, there are many people who are simply too proud to seek help from government, very decent folk it has to be said who rather perish in poverty than lose their pride and fill out the demeaning and intrusive forms to claim money back. Let us be honest, if they were living in the U.K. or elsewhere they would not even have had to pay that money in the first place. Let us bring that back to the £6 million argument. We are saying it is going to lose us £6 million. As I have said that is relative, but if we take it from the Government's point of view if that is £6 million that we should not have had in the first place then it is hardly a loss, is it? Can it be right that we do not discriminate between a loaf of bread and a gold Rolex, a packet of teabags and a Ferrari, yet this Government does not, even though it is obvious who can afford to pay more? I would ask once again why are we forcing our own people into the trap of income support, more reliance on the state, when we could just do the decent thing and tax G.S.T. off food and off energy. I will leave my speech there. I would welcome, as previous speakers have mentioned, that the proposition be taken in 2 parts, if possible one for energy and one for food. I will certainly be supporting both of them and I would encourage Members to do the same and let us finish by addressing the point of Cicero who said it is okay to change your mind. I quite agree, so anyone who has supported G.S.T. up until now and who has voted against exemptions, you are also at liberty to change your mind and I would encourage you to do so.

### **1.21 Deputy D.J.A. Wimberley of St. Mary:**

I do not think I can match the wit of the Chief Wit and I am not going to try unfortunately. Yes, I want to start by dealing with the flip-flopping question and public opinion and go through a few points that for me are not the main focus of my speech and then get to tax as a whole, the whole tax system with particular reference to environmental taxes as one might expect. I might as well be true to type. I did look up my election website for the purpose of this debate because I think the points made by Deputy Pitman yesterday were very important. If we go to the electors and we say: "We are going to do this" or: "I am going to stand for that" or: "I am going to vote this way" then there really has to be very compelling reasons if it is a specific commitment why one should do a flip-flop in the memorable words of Senator Shenton. I just had a look at my website and I think I can stand by what I wrote. Our tax system. The ideal tax system is fair, transparent, simple and should tax social and environmental "bads" and encourage "goods". This is far from the case as things are now here in Jersey. In the detail I start with scrap G.S.T. It is hated - I might go back on that a bit. I think that is a tiny bit strong a word, but it is hated and seen as unnecessary and regressive. My second policy was introduce a carbon levy to fund the carbon saving scheme and I will come back to that. Elsewhere, in one of my leaflets, I also used the word "inclusive" and I think that is very important and it has not been touched on apart from by Deputy Tadier in his debate, so I will say a few words about that. Inclusivity in the tax system is very important. At the moment because of G.S.T., because G.S.T. was brought in, everyone is in the net and that is quite an important plus for G.S.T., like it or loathe it, because it does mean that, for instance, if a Scrutiny Panel goes into a school to do some of that scrutiny work inside the school - which I think is very valuable - we can include in our work with the students the fact that every single one of their parents is a taxpayer. I think that is very important because it relates then to this Assembly directly: you, your parents, your family pays tax therefore, you want to know how it is spent. I think that link is very important and is probably the strongest argument for G.S.T. in my view. Of course, there is a contradiction with saying that and also saying scrap G.S.T. There is a contradiction there and the only way that I would say that we should scrap G.S.T. is if it is in the context of a tax system that is right as a whole, because then the reason for scrapping G.S.T., which is that it is regressive, falls by the wayside. That is the first point and I will return to the tax system as a whole. Just to pick up though on a few points before I get there. Public opinion. Public opinion is important and one or 2 speakers have referred to it, in particular Senator Le Marquand. I was very glad that he did because we are not in a vacuum. There are 90,000 inhabitants of this Island and they do expect us to listen to what they say and take notice of the petitions that they sign. I would nuance this a little bit and qualify it. I have thought quite a bit about the responsibilities of States Members. I think that public opinion on matters of principle, for instance the death penalty is a classic example, I would vote according to my conscience and even if 95 per cent of the population was to sign a petition saying that they thought that hanging the likely criminals, the convicted criminals who deserve to be hung should be hung, I would still vote against it because I have a principle objection to that. The other case where you might not go with public opinion is in matters of evidence. We are asked to make judgments and in many cases it is technical matters and so you look at the evidence and by and large we should be better informed. After all, we have the civil service to inform us, so by and large we are better informed and should be able to make those decisions. But this decision is a political decision and so we need to take public opinion very seriously. It raises the whole issue of connecting, which the Connétable of St. Peter raised in his now put off proposition about the remuneration of States Members where he made a lot of play about connecting with the public. Yes, indeed it is very important so I think we should bear that in mind when we decide how to vote. The second thing I want to just make a few comments on is complexity. I do think this is an issue. There are just a few points I would like to make. The first is that we are piggy-backing on the U.K. as I understand it. We are simply borrowing their entire system. There are complexities in that system and it is quite funny to read some of the exemptions from exemptions that are included in that. We do not have to go there because the work has been done for us and that will simply apply across the board according to the proposition. We saw in the debate on the amendment about school meals how this argument can be over-played, terribly

complex, but it was not and I suspect that these things are less complex than they look, but I would like the proposer to come back to that point in her summing up and reassure us on this matter of complexity, in particular how it affects small businesses. I think there is a genuine concern there and if she can put our minds at rest on that I would be very grateful. The third aspect is this matter of progressivity. We are assured in the comments by the Minister for Treasury and Resources and also by the Council of Ministers that we do not need these exemptions because the system is already more progressive because of the Le Fondré and because of the G.S.T. bonus and so on. I think Deputy Higgins' speech exploded that idea. It may be marginally more progressive now than it was before those various things were put in place, but I am not at all sure that the tax system in Jersey is progressive and I do not think it has ever been studied in that light and that is what I would like to see. I do know from the work of the Scrutiny Panel on income support that the Loughborough University study which defined how much money you need to live in Jersey at a basic level was sidelined. They came up with a figure and income support was set at a figure lower than that. I just do not quite understand this argument about progressiveness and I just do not think you can use that to justify not voting for the exemptions. Moving on to the tax system as a whole, this was referred to by Deputy Le Fondré among others, that the overall effect of our system is progressive and it is all fine and dandy. I would like to see a full review, and I think others have called for this too, of our tax and benefits system. Others have spoken of the different ways of raising money: the land lottery tax, I call it. Other people have called it land windfall tax, land development tax, land valuation tax; we still have not got it. As people have pointed out last year with the rezoning suddenly there were some instant millionaires who had done absolutely nothing to earn that money. I think that brings up the issue of fairness which I will come to later. There are options for raising money. I will not repeat them all; we know what they are. The tax system is clearly in need of a fresh look to make it truly progressive. Then in that context I do not have a problem with an inclusive, universal, simple G.S.T. I will now go on to this concept of fairness because it really is important. Whether our tax system is fair is truly important. The reason is that in particular in the new world which we are facing in conventional economic terms things are going to get worse, and I do not think there is any doubt about that. In my view there is no recovery around the corner because as and when the world's economic growth starts to kick in again, instantly the price of oil will go up and the opposite of the recession will be knocked on the head and we will be back where we are now. So times are going to be tough in conventional economic terms and we have to build our community and our society. Part of that is solidarity, part of that is that the tax system is fair and is seen to be fair. In the light of rising food prices, which is what will happen over the years to come, and rising energy prices, which is also what is going to happen, we do have to be very careful to make sure that we look after those who are less well off. That is again part of the context of where we are trying to go with this whole taxation debate. Now I get on to the environmental side. People have mentioned no-go areas. I think it is a very good phrase to encapsulate the thinking on tax of the Council of Ministers and their predecessors as well. There are certain places in the tax system where we just do not go and one of them is environmental taxation. We have tinkered with it. We have had the odd idea and then we draw back, or the relevant Ministers draw back. I believe that it is essential in a modern taxation system to tax carbon, in fact, to discourage the use of carbon and to apply those funds to reducing our need to consume carbon and to reduce carbon emissions. I think it is a really important point because if we want a taxation system that is fair and applicable in a modern world then we do need to look at climate change and we need to look at peak oil. I went to a recent conference on behalf of the Environment Scrutiny Panel in London entitled "Sustainable Development U.K. 2009" and it was called "Time for Change", quite amusingly, or "Time to Change" or something. One of the speakers there was Jonathon Porritt who, as Members may know, is one of the leading environmentalists in the U.K. He is Chairman of the Sustainable Development Commission set up by this government to advise all government departments on sustainability and development.

**The Deputy Bailiff:**

Deputy, I am sorry to interrupt and of course it is right for you to say that environment taxes might be another way to raise money, but I am not sure it is right to go into too much detail about the types of environmental taxes. This is a debate on whether we exempt food.

**The Deputy of St. Mary:**

I take the point, Sir. That is true, yes. I just want to make the point that in his view the science is moving on all the time, that the prognostication for the future in terms of climate change is getting worse. I will not go into the detail as pointed out, but we do have to take that on board when we are looking at these issues. At the conference also, representatives of both the Government and the opposition, the respective leaders for the 2 parties (the Conservatives and the Labour Party in the House of Lords), both put themselves on record as saying that climate change is absolutely critical and that we had to tackle it urgently. I would just like to say just a few words on peak oil because it is not just climate change, is it? The world is running out of oil and maybe that is also an item for another time. I was going to quote the Chief Economist of the International Energy Authority who has revised the predictions for the decline in the output of oil year-on-year. The rate of decline in oil production was 3.7 per cent in 2007 and in 2008 they are reckoning on a rate of decline in the world's oil fields of 6.7 per cent a year. There is no way that energy prices are not going to increase and increase dramatically as soon as there is an economic upturn. It is in the light of those sorts of considerations that I am very supportive of the exemption on domestic energy, but even more supportive of action by the Government, by the Council of Ministers, to spend some serious money on reducing the amount people have to spend on heating their homes in particular. I noticed in the proposition that it said people have to eat and have to heat their homes - at the top of page 4 - and that rang alarm bells because the amount you spend on heating your home obviously depends on the energy efficiency with which your home is insulated and that will determine how much you spend. I would rather see the Government saving people money than giving exemptions on G.S.T. on domestic energy. As an example, I did look up what was going on in the U.K. in this regard and Gateshead is a beautiful example of what should happen here in this regard, then we would not need an exemption on domestic fuel because we would have insulated people's houses instead. Gateshead has a scheme where there is free home insulation for over-60s, families with children under 5, people on certain benefits, those who are spending too much on their heating bills, all those living in a council house. So far since October 2005 the scheme, which is run by an independent not-for-profit organisation called Warm Zone, has visited 80,000 homes, made 48,000 assessments and put in measures in 20,000 homes and saved £2.8 million in heating bills per year; a £2.8 million reduction to citizens of Gateshead per year. I think that sort of compares with the sort of sums we are looking at here i.e. 20,000 homes. So I do think that we are possibly looking at this slightly through the wrong end of the telescope, but as people many times say in debates, we are where we are and there is not a scheme comparable to the Gateshead scheme. I am very supportive of the Minister for Planning and Environment's £1.5 million fund which I think will do about 1,000 homes if I remember right. The scale in Gateshead, and there are other towns as well that Warm Zone are active in, is completely different and that is the sort of way that we should be thinking. To conclude, there are a few things. One is that the G.S.T. is 3 per cent now and what they were looking at with this proposition is an exemption off the 3 per cent rate, but it is not going to stay at 3 per cent. The whole point of G.S.T. is that it is absolutely easy to go 4 per cent, 5 per cent, 6 per cent, 7 per cent, 8 percent. That is why it is there. I would urge Members to reflect that they are not voting on exemptions off a 3 per cent rate. They are voting for exemptions off whatever the rate will be in 2, 3, 4, 5 or 6 year's time. I think it is unrealistic to suppose that it is going to stay at 3 percent. In fact, it is fantasy and the public know this too. The second thing is that the taxation system we have must be fair and environmentally sound. In that connection I would be quite happy to stick with a flat rate G.S.T. applicable across all products because of the simplicity and because of the inclusiveness provided that the Council of Ministers could assure the House in a credible way that they would review the tax and benefits system to ensure that it was fair, progressive, transparent, simple and environmentally sound and there would be no no-go areas in this review so

that we did achieve real progressiveness and real fairness, and that G.S.T. would stay at 3 per cent because of its inclusiveness and because it is in place already, but not go up beyond that. That is the score as far as I am concerned and unless I hear that commitment, which I do not really expect to hear, then I will be voting for the proposition.

**Deputy T.M. Pitman of St. Helier:**

Sir, having mentioned the Deputy of St. Mary in my speech yesterday could I just say that I am very happy to accept correction of what he did say at the elections last year?

**1.22 Senator P.F. Routier:**

When I think about all the times we have had debates about G.S.T. and the general principle of G.S.T. and the exemptions and all the issues related to it I have to say there are times when I have struggled with this debate. It really has been quite a difficult one to come to terms with. There have been a couple of times where I have changed my views over the period. Each time we have debated G.S.T. we have been in very different economic circumstances every time. In the early years, the early debates, we found ourselves in a position whereby we were preparing for Zero/Ten and repositioning our tax base in the knowledge that financially we were at that time stable, but we were preparing and saving for the future. What we know now, of course, is that what we decided in those days was one of the cleverest prudent decisions this Assembly has ever made. As Senator Ferguson mentioned the Finance and Economics Committee of the time had the foresight to make the very savings we are now going to have to call on to see us through the economic downturn we are facing right now. The most recent debate on food and fuel exemptions we had last year was still at a time when the economic situation was reasonable and at that time I felt I could support food exemptions because we had just had indications that G.S.T. returns were favourable and unlike today we could possibly afford the loss of income. Of course, that was not the outcome of that debate. Fortunately, the States went on to protect those on income support with additional payments, also went on to give the G.S.T. bonus to those who do not qualify for income support and also went on to increase tax allowances for those who pay income tax. Those 3 measures were put in place to protect not only low income people, but also middle Jersey from not only G.S.T. but also an element of inflation over and above the G.S.T. There have been comments about the desire to consider the needs of middle Jersey and I got the feeling that there was recognition that those on lower incomes had been protected and that we should be taking a holistic view for middle Jersey. I tend to agree with the view that middle Jersey should be protected. Of course, there are different ways of protecting them. I would prefer to protect them from increasing the G.S.T. on all other products. I would prefer to protect them from other increases in taxes because as light follows day if this proposition is carried in the full knowledge of the falling tax receipts and the inevitable disappearance of the stabilisation fund there will be no other realistic option other than to increase other taxes or cut services.

**The Deputy Bailiff:**

I am sorry to interrupt. I was advised by the Greffier yesterday that when that noise occurs it is because a mobile telephone is on somewhere in the vicinity of the microphone even if it is on silent.

**Senator B.E. Shenton:**

I believe it is the Ministers and their Blackberries, Sir.

**Senator F.E. Cohen:**

It is not if the Blackberries are connected to the Wi-Fi rather than the telephone.

**The Deputy Bailiff:**

I see. Anyway, I do not know whether anyone has their mobile telephone on.

**Deputy M. Tadier:**

Sir, given that there is a natural break can I ask for a point of clarification? **[Laughter]** I am having trouble hearing from here. I did not hear earlier if the Senator mentioned that it was due to the change in economic situation or the change in the election situation. Could he clarify? **[Laughter]**

**Senator P.F. Routier:**

My comments were about the economic situation. As I said, I would prefer to protect them from other increases in taxes because as night follows day if this proposition is carried in the full knowledge of falling tax receipts and the inevitable disappearance of the Stabilisation Fund there will either be increases in taxes or we will have to cut some services, the very services which middle Jersey and in fact all of Jersey expects to be provided. Members will have no doubt of the flavour of the way I am going to vote this time; It has been pointed out to me that prior to the elections I voted to exempt food and, as I explained earlier, the Island's financial circumstances are very different today from what they were then. Since that decision the States have quite rightly put in other mechanisms to protect the very people who I wanted to protect last time. During the last few weeks the proposer has asked me whether I would be supporting the proposition and I have quite clearly said that I would not this time. I have, I believe, quite rightly assessed today's circumstances and arrived at my decision. I certainly would not consider the Deputy's choice of changing her view. When I read last year's summer edition of the *Grouville Gazette* I was, I have to say, pleased and relieved to read the article written by the Deputy in which I was left with an impression that she recognised that the G.S.T. was then settled. Just to remind Members of what was said in that article, it was entitled "Welcome to the World of Politics" by Deputy Carolyn Labey: "Now that low income support is up and running, not without some initial teething problems, it has to be said that G.S.T. will, despite Senator Norman's last ditch attempt to defer it, have come into force on 6th May 2008. It was very tempting to vote for then Senator Norman's proposition to defer the tax especially in an election year, but with retailers and organisations with their systems in place and training undertaken it would have been irresponsible to expect them to go through the preparation again in a year's time. I still believe G.S.T. should be introduced with exemptions on basic food, children's clothing, newspapers and books. However, we live in a democracy and the majority of my fellow States Members voted against them." I fully accept that the Deputy has every right to change her view, I understand that, just as I have **[Laughter]** and just as the Constable of St. Peter has. I understand others are also moving along that way so we live in a democracy as the Deputy says in her piece. I think it is particularly important that we should have the ability to recognise that we are living in very different circumstances and challenging financial times and we need to make decisions that we think are appropriate for today's circumstances. I must just comment on the statement by Deputy Higgins previously about the provision of free prescriptions, a statement I made to him - I recall it very well - and as Deputy Tadier said, this House is full of wit. We have a wealth of wit within this Assembly and I can recall the context of it very clearly. It was said in a sarcastic joking manner. It was one of those circumstances where I just made a joke. It was a rash comment and I recognise that I will never, ever tell a joke to Deputy Higgins again. **[Laughter]** The decision about free prescriptions was a very carefully considered social improvement which is now being followed by other jurisdictions on very strong health arguments. As I say, no more jokes for Deputy Higgins, and I look forward to inviting him to the new temporary restaurant on top of the new air traffic control centre at the airport. I believe that considering all the information that we have today that we need to maintain the income that we currently are getting so that we can continue to provide the services which people expect us to provide. I would like to touch on the realities of retailing just for a minute or 2. The proposer has quite rightly spoken to the larger retailers who achieve the majority of food sales in the Island and got their views. It appears that the views of the smaller retailers are not being taken into consideration. They are, some of them, horrified and really worried about the disproportionate impact it will have on the costs to their business. If Members are concerned about competition and are concerned about choice and concerned about the local shops, and especially the

farm shops which are becoming more and more popular, then keeping G.S.T. simple has to be the way to go. All Members are concerned about the cost and affordability of food and fuel for the whole community and I certainly am. When I go shopping for food for my family I continually compare prices. Recently there was one well known branded item which one week I bought from the largest retailer in the Island and it was £2.22. At the time I was a little shocked at the price of the particular item, but we did buy it. The very same day I decided to also check the price in town and at the small shop it was £1.84 and at another larger retailer it was on offer for £1. As the item had no eat-before date I decided to buy a load at £1. In the vast majority of cases the low 3 per cent is a minor consideration when the retailer is deciding on a selling price. When a retailer is deciding what price to offer something at they would firstly take into consideration the cost price of the goods and the overheads of the business, things like rent, staff wages, rates, insurance and also fuel. While I think of it, this proposition does not seek to exempt business fuel which could have had an impact as well. The businesses also take into consideration all the other sundry items which make up the costs of running a business. Once all this is taken into consideration there is the delicate matter of how much profit a retailer wants to make. Retailing and deciding on selling prices is what I call an art. It is not a straight mathematical decision and I have to say that the removal of 3 per cent G.S.T. will not guarantee 3 per cent lower prices for the public even if a statement is made by a retailer that they will reduce their prices immediately. If I was a retailer of food I could make exactly the same statement but what happens the following week when the wholesale price has increased by 3 per cent, 5 per cent or 10 per cent? The customers are going to lose track of what that 3 per cent G.S.T. was all about. What customers need to do is focus on the retail price. The 3 per cent is quite a minor amount when it comes to deciding on what the customer is going to pay. I would like to think that all retailers would make a price reduction, but I do not see the reduction of prices by 3 per cent will be achieved by approving this proposition today. It could be easier for larger businesses to cover the costs of implementation, but it will be a lot more difficult for small, medium-sized retailers to change yet again their systems and also cover the costs of implementation. Although they may not have to charge the customer G.S.T. they may have to maintain some or all of the 3 per cent within their retail price to cover the additional costs involved in administration. So the customer may not see the real benefit in a price reduction. I had a call from a small catering establishment a couple of evenings ago whose main business is making fresh sandwiches and wraps - under this proposal he feels that he will be classed as a caterer. He would have to continue to charge G.S.T. but against a shop only a few doors away who is a supermarket who could sell their pre-pack sandwiches and wraps free of G.S.T. He sees that as unfair competition and I would tend to agree with him. On reflection this proposal will create complexity which should be avoided and may not give any benefit to those we are wanting to protect. If I am not mistaken from what I hear in this debate, I have felt that people are beginning to recognise that income support is coming of age. It is settling in and it is supporting people. I thought that might create a little titter on the other side of the Chamber, but I recognise that there are people who are being supported very well by income support now. I accept that the proposer and others want to protect middle Jersey and the best way to support all people in Jersey including middle Jersey is to retain a stable, effective, simple G.S.T. system.

## **LUNCHEON ADJOURNMENT PROPOSED**

### **The Deputy Bailiff:**

The adjournment is proposed so we will reconvene at 2.15 p.m.

## **LUNCHEON ADJOURNMENT**

### **PUBLIC BUSINESS - resumption**

### **The Deputy Bailiff:**

Does any other Member wish to speak? No? Very well, I call upon the Deputy of Grouville to reply.



### **1.23 The Deputy of Grouville:**

Firstly, I would like to thank everybody who has contributed to this debate and our democratic process. I will make a few general points about the people who have spoken already. Deputy Le Fondré made the point about his fiscal panel and the 3 Ts. Well, I would suggest that we target them in future to perhaps look at some foreign-owned company, taxing foreign-owned companies, taxing a windfall levy and other such measures. I think that is what has brought me to bring this back to the Assembly. I think it is the unfairness that is perceived out there. People think that they are being unfairly taxed when other areas are not and could be, and have indeed been promised in the past yet nothing is forthcoming. Deputy Le Fondré got out his biscuits and chocolates, and what I referred to in my opening speech as “how to drive a car manual” in the most complex way, and it is a wonder anybody eats anything in the U.K. if they have got such a complex system, how they cope with it all. However they do and it works just fine. Most things are bar coded and away they go. Deputy Martin referred to the forms that have got to be filled out to go and claim the tax back at Social Security, and I think the parts that she read seemed extremely complex to me. However, ordinary people are expected to fill those out and get the tax back. So it might be very complex having the tax bar coded on, it is equally complex to go and get the tax back in the Social Security Department. The Constable of St. Saviour talked about looking after his parishioners, and that is why he does not want to do away with the allowances. Well, I would suggest that he reads clause (b) of my proposition because that is not what I am proposing. I am not proposing to do away with any of the allowances. What I am doing is requesting the Ministry for Treasury and Resources to investigate whether alternative tax measures can be brought forward.

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

With the respect, Sir, I did not say ...

#### **The Deputy of Grouville:**

I am not giving way, everyone has had their chance to speak.

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

... do away with allowances. I said I did not want a tax that was going to be dearer to operate.

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

Connétable, if the Member will not give way, then the rules say that you can stand at the end in order to clarify if you say she has misunderstood something in your speech.

#### **The Deputy of Grouville:**

I shall read clause (b) again: “To request the Minister for Treasury and Resources to investigate whether alternative progressive tax measures can be brought forward for approval to restore the revenue foregone under paragraph (a), as an alternative to withdrawing the increases in income support, income tax exemptions and allowances and the food cost bonus.” So to be clear, if we are going to exempt food and domestic energy I am asking the Minister for Treasury and Resources not to increase the rate but to bring forward additional alternative progressive tax measures; increasing the rate he might choose to put as an option, but it will be for this Assembly to decide how we make up the £6 million. Certainly some of the suggestions that I have come up with, and I am not a tax expert, the Blampied proposals which we are told - but as I said in my opening remarks we have been told for the past 6 years are coming forward, this House still has to approve them and we could tax developers. At the moment they contribute nothing. They are allowed to make huge gains here, and they contribute absolutely nothing to our economy. Sorry, I have got so many notes here. The Constable of St. Helier gave a speech which I felt was a true speech coming from a Constable speaking for his parishioners, rather than the voice of the I.O.D. and the Chamber of Commerce that we seem to be getting from those benches at the moment. We seem to have moved away from speaking for the people, their parishioners, and we are now taking on a more corporate

thinking. That is indeed what I and many Deputies here are trying to do; they are trying to speak up for parishioners and, what many feel, that middle Jersey is simply not recognised. Senator Ferguson, I would just correct her. I did understand perfectly what she meant, and that is why I removed her name from my proposition, but some people felt that some of the allowances were going to be targeted at more middle Jersey to people on low income support.

**Senator S.C. Ferguson:**

If I have misunderstood the Deputy of Grouville I apologise.

**The Deputy of Grouville:**

I did in fact recognise the influence of my parishioner in her speech. What she and he so collectively failed to recognise or acknowledge, when quoting New Zealand and Singapore, are the points that were made in my opening speech and the very eloquent speech of Deputy Vallois, where she highlighted all the different tax ranges in these different jurisdictions, the different rates of corporation tax, different rates of income tax. So obviously they can simply quote a nice flat rate and look at them, they do not mind paying it. So I would suggest if we are going to quote other jurisdictions we compare like with like because we are not, at the moment, when we quote New Zealand and Singapore. The Deputy of Trinity said there have not been any headlines in the U.K. highlighting the V.A.T. rate when it was reduced to 15 per cent, there have not been any headlines highlighting the differences in the food basket. Well, of course there would not be because the food basket in the U.K. is mainly exempt. Their basics - their essentials - are exempt so they are not going to notice a huge difference there. They might in other quarters, however. I thought the Constable of Grouville opened his remarks with a very apt quote that was also referred to by the ex President of the I.O.D., which rather sums up my point about caring more for the corporate than the people.

**The Connétable of Grouville:**

I did not say anything at all about that I am sorry.

**The Deputy of Grouville:**

Groundhog Day. The 3 per cent ... **[Interruption]** Have you finished? The 3 per cent: he was very concerned about the rate, the 3 per cent rate going up. Well, most thinking people will realise that the per cent rate will go up in 2 years' time. I just wonder how many people are going to be prepared to sit back and wait while this rate goes up. Are we still going to tax food at the same rate as everything else, so when the G.S.T. rate goes up to 10 per cent are we still happy to charge a G.S.T. on life's essentials? So I would ask Members to consider that. Deputy Tadier highlighted - as I did in my opening remarks - about all the other tax measures that we could be pursuing, but that seems to have fallen on stony ground and seems to be taking such an incredible long time. We have introduced G.S.T. and certainly the enthusiasm for introducing other tax measures that would, I am sure, enable our society to feel that there is a more just system. Deputy Wimberley wanted me to say something about small businesses, and certainly other Members mentioned them. In my opening remarks I did say that Treasury could be bringing forward some measures to assist small businesses whereby the last year's returns could be used as a basis, and a percentage of their takings could be taxed, so it would make it an awful lot easier for them. Senator Routier - I am certainly glad that my *Grouville Gazettes* get such wide readership but I think it has probably just come from a couple of seats away rather than travelling across the Parishes. He very kindly pointed out that I have not changed my mind about exemptions. So thank you for that, but in the same breath he did point out that we are in very different circumstances now, which I would agree with and which is exactly why I have brought my proposition now when we have electricity rises running at 24 per cent and food, last year 13 per cent and this year so far 11.3 per cent. So, yes, we are in very different circumstances and I am asking the Assembly: is it right - morally or otherwise - that we capitalise on this and charge a tax on those commodities at this time. I got accused in this

evening's *J.E.P. (Jersey Evening Post)* of requesting the Assembly to consider taking the tax off food and electricity as wrecking our economy. Well, the U.K. do not have tax on food, domestic energy and a whole range of other things, and I do not believe their economy is wrecked. **[Laughter]** It may not be very healthy but it is certainly not down to food exemptions. So in summary, taking tax off food and domestic energy relieves the effects of these global price rises just a bit. It is a one-off and we will not have to consider bringing it back to this Assembly to increase tax allowances and bonuses to try and keep pace with food and energy inflation. These items will not have to change every time the States alter the G.S.T. rate, which retailers could find themselves changing every few years. With regards to tax allowances, we altered them - we altered the thresholds - when G.S.T. was introduced, but it is useful to note that our tax threshold had not changed for 10 years. So it was very convenient that they were changed at the time that G.S.T. was introduced. Tax allowances and tax thresholds had been frozen for 3 years before G.S.T. was introduced. So when they were brought in and updated they had not been altered for so long and they certainly did not alter relative for those 10 years. What we altered them to was I think 5.4 per cent. We will take that over 10 years. It was not much. So the allowances did fall behind quite considerably and it was sold to us that this was part of the G.S.T. rate. In actual fact if the tax allowances had kept pace with inflation, as they should have done, it would not have been solely because of G.S.T. For my part I still think it is simpler and less bureaucratic than charging a tax and then requiring people to go down to Social Security, form fill and make claims. Surely the obvious thing to do is not to charge the tax in the first place. If it is taken off food and domestic energy it is a one-off and it is done at a stroke. We do not have to keep coming back to visit it time and time again as prices go up and as the G.S.T. rate goes up. The people of this Island are paying for Zero/Ten in order to keep our finance industry competitive. We need to remember that. The people of this Island will be paying an economic stimulus package to kick start our economy. The people of this Island are paying for low income support for the least well off. The recession is not affecting only business, it is affecting the backbone of our Island, and that is its people. The current interest rate figure is zero. Current food inflation is 11.3 per cent and electricity is 24 per cent. What Members have to ask themselves is: are they content to add to this burden by adding a tax on top of this? A tax that is only going to go up. It might stay the same for 2 years but it is going to go up after that. Are they content to put a tax on top of food and keeping warm, when foreign-owned companies trading alongside Jersey companies pay nothing? Are they content to put a tax on top of food and keeping people warm when developers derive their millions from rezoning transactions when not one penny is derived in tax? Taking tax off food and domestic energy I feel levels the playing field to our society. Do we really want to create what we seem to be in this eat or heat or welfare society? I believe that this is the right thing to do now with the global food increases, Jersey electric rises and certainly other commodities. I think if we give our society, if we give our community, a fairer tax system - and I think this is a fairer way of doing things - that is what is important to our community in these uncertain economic times. I make my proposition and I have been asked how the vote should go. I cannot do it out of order. I cannot request it out of order, so I would like to take the vote as (a)(i) and a separate vote for (a)(ii) and a separate vote for (b) and (c).

**The Deputy Bailiff:**

The appel is called for. So I invite Members to return to their seats. The first vote therefore the Assembly is on paragraph (a)(i) of the proposition of the Deputy of Grouville. That is foodstuffs.

<b>POUR: 21</b>		<b>CONTRE: 29</b>		<b>ABSTAIN: 0</b>
Senator S. Syvret		Senator T.A. Le Sueur		
Senator B.I. Le Marquand		Senator P.F. Routier		
Connétable of St. Helier		Senator P.F.C. Ozouf		

Connétable of St. Lawrence		Senator T.J. Le Main		
Deputy R.G. Le Hérisier (S)		Senator F.E. Cohen		
Deputy J.A. Martin (H)		Senator J.L. Perchard		
Deputy G.P. Southern (H)		Senator S.C. Ferguson		
Deputy of Grouville		Senator A.J.D. Maclean		
Deputy of St. Peter		Connétable of St. Ouen		
Deputy J.A. Hilton (H)		Connétable of Trinity		
Deputy P.V.F. Le Claire (H)		Connétable of Grouville		
Deputy S. Pitman (H)		Connétable of St. Brelade		
Deputy I.J. Gorst (C)		Connétable of St. Martin		
Deputy of St. John		Connétable of St. John		
Deputy M. Tadier (B)		Connétable of St. Saviour		
Deputy of St. Mary		Connétable of St. Clement		
Deputy T.M. Pitman (H)		Connétable of St. Peter		
Deputy T.A. Vallois (S)		Connétable of St. Mary		
Deputy M.R. Higgins (H)		Deputy R.C. Duhamel (S)		
Deputy A.K.F. Green (H)		Deputy of St. Martin		
Deputy J.M. Maçon (S)		Deputy J.B. Fox (H)		
		Deputy of St. Ouen		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		

### The Deputy Bailiff:

The Greffier will now reset the machine and we will turn next to paragraph (a)(ii). That is domestic energy.

<b>POUR: 23</b>		<b>CONTRE: 27</b>		<b>ABSTAIN: 0</b>
Senator S. Syvret		Senator T.A. Le Sueur		
Senator B.I. Le Marquand		Senator P.F. Routier		
Connétable of St. Helier		Senator P.F.C. Ozouf		
Connétable of St. Lawrence		Senator T.J. Le Main		
Deputy of St. Martin		Senator F.E. Cohen		
Deputy R.G. Le Hérisier		Senator J.L. Perchard		

(S)				
Deputy J.A. Martin (H)		Senator S.C. Ferguson		
Deputy G.P. Southern (H)		Senator A.J.D. Maclean		
Deputy of Grouville		Connétable of St. Ouen		
Deputy of St. Peter		Connétable of Trinity		
Deputy J.A. Hilton (H)		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. John		
Deputy of St. John		Connétable of St. Saviour		
Deputy M. Tadier (B)		Connétable of St. Clement		
Deputy of St. Mary		Connétable of St. Peter		
Deputy T.M. Pitman (H)		Connétable of St. Mary		
Deputy A.T. Dupré (C)		Deputy R.C. Duhamel (S)		
Deputy T.A. Vallois (S)		Deputy J.B. Fox (H)		
Deputy M.R. Higgins (H)		Deputy of St. Ouen		
Deputy A.K.F. Green (H)		Deputy J.A.N. Le Fondré (L)		
Deputy J.M. Maçon (S)		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy I.J. Gorst (C)		
		Deputy A.E. Jeune (B)		
		Deputy E.J. Noel (L)		

**The Deputy Bailiff:**

Very well, then paragraphs (b) and (c) fall away in view of the results from paragraph (a).

**Senator S. Syvret:**

If I might make an observation as a senior Member: this reminds me of the infamous debate on the Airport Capital Funding write-off of £10 million which took 20 minutes and the key players did not speak. I think it is frankly absolutely appalling that we have had a debate of this nature and we have not heard from the Chief Minister, the Minister for Economic Development nor the Minister for Treasury and Resources. **[Approbation]** It is absolutely disgraceful.

**Senator P.F.C. Ozouf:**

I would just like to apologise to the Assembly for not being here at 2.15 p.m. I was intending to speak but I was detained and I should have been here at 2.15 p.m. If I had been I would have spoken and I will circulate the speech that I would have made to Members.

**2. Draft Employment (Amendment No. 5) (Jersey) Law 200- (P.27/2009)**

**The Deputy Bailiff:**

Very well, then we turn to the next matter of business which is the Draft Employment (Amendment No. 5) (Jersey) Law 200-, P.27/2009, lodged by the Minister for Social Security, and I will ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Employment (Amendment No. 5) (Jersey) Law 200-; a law to amend further the Employment (Jersey) Law 2003. The States subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

**2.1 Deputy I.J. Gorst (The Minister for Social Security):**

I am pleased to be able to propose this long awaited new right for employees. Members will recall that activity on Jersey's employment legislation programme began in earnest in 1998, with the former Employment and Social Security Committees Fair Play in the Workplace consultation. That consultation resulted in a report and proposition which proposed a 2-phased approach to the introduction of employment rights. The States adopted the proposition which placed measures relating to redundancy rights in the second phase of legislation. During 2006 the Employment Forum consulted with the public on redundancy issues - Members might recall in tandem with issues relating to transfers of undertakings - and issued its recommendation in February 2007. The previous Minister issued his response as a report to the States in April 2007. That was report 43 of that year. The legislation was drafted on the basis that most of the Forum's recommendations were accepted. The Minister had identified in his response which recommendations had not been accepted and had explained the reasons why. By the time of my appointment as Minister for Social Security the redundancy legislation had already been drafted, for which I am grateful to the previous Minister. The draft amendment that I am proposing, however, includes a number of additional variations from the recommendation. I will explain these in more detail when we come to deal with each article. However, these are primarily intended to recognise and to offset the effects of the economic slowdown which has occurred since the legislation was initially prepared. We must recognise that the introduction of this law will come at a cost to employers who intend to make redundancies. My proposals are, however, very similar to equivalent legislation in other countries and in particular those in the U.K. In summary, the amendment inserts rights relating to the following provisions in the Employment Law: the qualifying period for the right to redundancy payment; the method of calculating a redundancy payment; provisions for re-employment and paid time off to look for work or training prior to redundancy; collective consultation requirements, including the procedure for electing and consulting employee representatives, as well as giving those representatives additional rights and protections and enforcing via the Employment Tribunal the new rights provided by this amendment. To clarify, this amendment does not make any additional provisions for the projection of redundancy payments in insolvency situations. I am committed to progressing that next step as a priority and intend to bring a report to the States as soon as possible this year. The preparation of that legislation will be complex and is likely to require amendments to other local legislation, including the Bankruptcy Law. Subject to Members adopting this amendment, I will seek to ensure a speedy passage through Privy Council. However, I am sure that Members will appreciate that that is outside of my powers. There is still some work to undertake in the intervening period giving employers sufficient notice to prepare for the introduction of the legislation; the publication of guidelines; preparing the Jersey Employment Tribunal to adjudicate under the new legislation, and the development of training sessions. I am pleased to report that the Jersey Advisory and Conciliation Service has already started to provide free training courses on the draft law. I believe that there is strong support - both publicly and politically - for employees to have a statutory right to a redundancy payment and I make the proposition, Sir.

**The Deputy Bailiff:**

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

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

I am very much in support of this, but my one concern is basically - as it is in the insolvency cases - that of enforcement and I would hope that the Minister for Social Security can address those concerns because once again I do not want to be in the situation whereby companies are able to get away, whether they be Jersey or English, with not having to pay employees because I believe that a company has a direct responsibility to pay what they owe to their employees and my question is about how it is going to be enforced and how that can be done. Thank you.

### **2.1.2 Connétable P.F.M. Hanning of St. Saviour:**

I find myself in a difficult position with this proposition because I do like the idea of bringing in the Redundancy Law. I think it is right. But I am afraid this law as it is brought in is seriously flawed. It is retrospective legislation. It is no use the Minister saying he is giving employers time to prepare. He is not. An employer who has staff that has worked for him for a long period of time is going to be put in a very difficult position immediately this law comes into effect. The Minister is saying he is giving them probably 6 months to prepare. That is just insufficient time for a company who may be trading in great difficulty to build up the sort of money that is going to be necessary as a buffer in case there is redundancy. I was worried about this a couple of years ago; I have a small company, my staff have been with me 35, 25, 16 years and I was seriously worried when this was being talked about. I went to J.A.C.S. (Jersey Advisory and Conciliation Service) for advice and was told that, yes, if I carried on and this was brought in my company would be trading in a position where it would not be able to fund the money required and therefore I would not be able to trade. I said: "What can I do about it?" They said: "It is quite simple, you have to give your staff notice. They have to work out their notice. They then have to spend a period of time, the time they asked me was for a week, and then you can re-employ them if they want to come back and then their term of employment starts from that time." I put to the House this is what an awful lot of companies are going to have to do. They are going to be saying to their staff: "I am sorry. You are being given notice. You have got to work it out and your terms of employment will start from the time that we take you on again." To make it worse, this is being done at a period of time where economically it is hard to trade; profit margins are down and some of these companies - should we say the less scrupulous ones - are going to say: "We are not in the position we were 6 months ago. I will take you back but you will not get the same conditions that you are having now. Your money may be less" and they are going to put staff in a very difficult position. This is being forced on them by the introduction of this law. It is wrong. If we were going to do this in a fair way, we would say: "Yes, this Redundancy Law is coming in. From the day it is enacted that is the time that your period of employment starts counting towards redundancy." That should happen for everybody because at the moment this is a charter for people to say: "Get rid of the staff that have worked for me for a long time. It is too expensive to maintain them. I can only keep people for a short period of time so that I do not have a liability for redundancy." It will be the only way that these companies can trade legally if their margin of profit is small. So this law is going to be putting a tremendous burden on the sort of employers that want to keep their loyal staff. It is going to be a benefit for those who turn them over regularly, but it is just a burden on those who keep staff for long periods of time. As such, I believe it is seriously flawed. It really is. We have got this new seatbelt legislation coming in. That was voted by this House 6 months ago and if not coming in now, within the next short period of time. If somebody had an accident a month ago and then is up before the Magistrate in 2 months' time, because they have broken the law with that accident, they would not be charged and fined because the rear passengers were not wearing a seatbelt 2 months before the law was enacted. This would be nonsense, and this is what you are asking employers to carry this liability with this law. It is seriously flawed and unless the Minister

can assure me that he is going to make all sorts of arrangements to make this feasible I do not see how I can support it.

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

As the Minister who originally worked on the principles of this, I have to say I am a little bit disappointed with the previous speaker's observations. I think what is being brought forward today is in recognition of fairness towards all employees. I do accept the point he was making as an issue but I personally believe it would not be an appropriate **[interruption]**...

### **The Deputy Bailiff:**

I am not entirely sure whether that is a second fine today Senator Maclean or not.

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

Twice today he has done it to me. **[Laughter]** I do think that what is being brought forward is a very fair option for the relationships between employers and employees and I do hope that Members will support this legislation.

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

I rise to my feet to congratulate the Minister for bringing this much needed piece of legislation to the States, albeit after taking a decade of waiting. Not waiting for this Minister to act over a decade but previous Ministers. This puts us on a par with most of the industrial nations in the world which have some form of redundancy payments and compensation in the case of redundancy, in order that the shock of redundancy - and it is a major shock for anybody - is properly dealt with in law. The fact is that we have been waiting for this piece of legislation for 10 years following a decision of this House at the behest of what was, back in 2000, the old Industries Committee, that this was not a priority and other issues were. It is high time in fact that this particular issue went to the top of the table. I just feel sorry that it has taken this period of redundancies and the fact that we are having redundancies en masse at this stage, to bring it to this House. It should have been done years ago. So congratulations for bringing this.

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

Having been an employer who had staff with him for some of 20-odd years, many of them, 15 others, I understand exactly where the Connétable of St. Saviour is coming from. Given that if something is retrospective ... and many small firms of less than 15, 20 staff probably are running on a very tight budget, very tight returns, and would not have been able to build up large funds in reserves, as some of the bigger companies would have done. Therefore, I think that the proposition is flawed. The Minister should have put something in place to start it off from a specific date in 2009, not go back to, if my employee had been with me 25 years, over that 25 year period. I am not saying he was not worth that but the funding would not be in place because as the business could only grow to a certain size within this Island, I think it is asking too much for small businesses to be expected to find money if you have got half a dozen guys who have been with you for 20 years and all of a sudden this is put in place and you find yourself in a position that the business is not really viable. So what do you do? You want to close the business down because you are in a position that you could find that you are going to put people down and they are going to claim this money through a redundancy that has now been put in place. It is a real worry that small businesses ... and being an island it is inevitable that we are going to have a lot of small businesses and people will have stayed within those businesses. Unless money had been put away over the years on an annual basis, as we do with holidays and everything else, it is going to be an absolute nightmare for somebody employing a few members of staff with long service. I think the Connétable of St. Saviour is absolutely right, we will see those companies probably closing - and some of them may not bother to open again - because of the nature of the business climate as it is today. Because some of those businesses will just be holding their heads above water and this is the extra bit of lead that is going to drag them under. I think Members ... and I am looking at



Senator Routier making comments over there. He can smile but at the end of the day everyone is trying to make a living and keep their staff employed at a very, very difficult time and I do not think anybody in this House could remember a more difficult time. I think the Minister for Social Security in fact should take this away and come back and give us an actual date when this is to start. I think it would be more honest to take it away and come back with it in another format a little later in the session.

#### **2.1.6 The Connétable of St. Martin:**

I find this quite surprising. I have been listening avidly for the last 5 minutes. When you look at the mathematics, if a small company has got 5 or 6 people who have had 20, 30 years' time working for the same company, the actual redundancy pay is going to be amounting to about £15,000 per person. So multiply that by 6. Mathematics - how much is that? Quite a lot of money: £90,000. I think this is going to put that company into insolvency. They will not have £90,000 in the bank to pay that liability. So what is going to happen? I think the Minister for Social Security ought to come back with some scheme to address this. I cannot support it as it is. Thank you.

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

I was not going to speak and I very rarely speak against one of my fellow Ministers but I am concerned after the comments by the last 3 speakers. As someone who ran a small business often on a knife edge over a period of years, I am really concerned about the comments made by, particularly, the Connétable of St. Saviour. I would ask the Minister whether he would consider taking this back now to satisfy some of us about the issues raised by the last 3 speakers.

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

Does any other Member wish to speak? Very well I call upon the Minister to reply.

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

Perhaps I could deal with the issue of Deputy Maçon first. That is that enforcement will be via the Employment Tribunal in the respect of someone who feels that their employer has breached this legislation, and they will make an application to the Employment Tribunal just in exactly the same way that they do now if they feel that their employer has breached the current employment legislation. It is important to remember, as I said in my opening remarks, that this will not cover the situation for insolvency because an insolvency fund will not be put in place by this piece of legislation, so that is a secondary piece of legislation which, as I said at the start, that we hope to bring forward some time during this year. I am not sure whether I was more shocked by the comments of Deputy Southern or some of the other speakers this afternoon. Just to put Members minds at ease, Deputy Southern and the panel might be supporting me on this particular subject but I am sure they will be able to find many other subjects with which to disagree with me on over the next 3 years. However, I do, on a serious note, thank him for his support because I think he understands, and his comments show that he understands the importance of employers recognising the service that their employees give to them and appropriately rewarding them when they have served well if, for what would be for most of them very unfortunate reasons, they do need to make them redundant. So I was disappointed to hear the Connétable of St. Saviour say that employers have not had time to prepare for this law. I am not sure how much more time they could have had. Let us remember that these proposals were first consulted upon in 2006. The recommendations were made in 2007; the Minister quite categorically and clearly said that he would support the vast majority of recommendations in 2007 and, as I said in my opening remarks, what I have done, the amendments that I have made that we will go on to discuss if Members do support this amendment, the principles of it anyway, is to make it more acceptable to employers to try to address and produce some balance in the recommendations that were proposed by the Employment Forum. Why do I say that? I say that because I took the decision to introduce a cap on the amount that an employer would have to pay up to in regard to weekly salary. The Employment Forum

recommended no cap whatsoever. So I am not sure just how I could have made them more acceptable. It is important that we recognise and realise that this is an amendment to an existing law. So we might be looking at the amendment today and feeling that it will produce the action by employers that the Connétable outlined. Then the Connétable of St. Martin and my fellow Minister seemed to be getting a little bit jittery as well. We must remember that it does not stand alone. It sits alongside something called “unfair dismissal”. There are penalties for employers who make the arbitrary decision that those 3 Members were suggesting employers might make in the light of this amendment. So I believe if an employer were to say: “Oh, we believe that the redundancy amendment is coming forward to the Employment Law and it might be in place by the end of the year, we are going to make people redundant” I believe that those employees would be within their absolute rights to make an appeal to the Tribunal for unfair dismissal. That obviously would be a case for each individual employee and I cannot tell them how to act, but I believe that that is what they would do. There is a scale of penalties for breaching that particular provision up to a maximum of 26 weeks’ uncapped pay. I appreciate what the Members are saying but I fail to see that if they read it, in balance with the existing law, how they can reach the conclusions that they are reaching this afternoon. With regard to the retrospective element: I am absolutely surprised and shocked that Members should be suggesting or expecting employers to behave in the way which they are suggesting. It has been an unfortunate occurrence in western societies that employers perhaps have not valued long working members of staff and older members of staff in the way that I believe they ought to. It can only be right that if an employer has a long serving member of staff that the full length of their employ with that employer should be taken into account when a redundancy payment is being made or they are considering making someone redundant. When we introduced the other elements of the employment legislation we did not say: “Everybody currently employed we will not bother giving you an employment contract. We will not bother giving you those rights.” We gave people employment contracts.

**The Connétable of St. Martin:**

Point of order.

**The Deputy Bailiff:**

A point of order, Connétable?

**The Connétable of St. Martin:**

Yes, a point of order. I did not say that I would recommend that employers dismiss their staff. I was merely pointing out that with that degree of liability a company might become insolvent because it would not have enough funds to meet its obligations and that was not at all implied that I should even consider dismissing a member of staff.

**The Deputy Bailiff:**

Right. I think that is a point of clarification.

**The Connétable of St. Martin:**

Clarification, thank you, Sir.

**Deputy I.J. Gorst:**

I thank the Connétable for his point of clarification. I think we must remember that making an individual redundant should, and I hope would, be the last course of action for an employer. There are many other ways, as Members will have heard the director of J.A.C.S. only today in the media suggesting ways that employers could deal with the financial difficulties and the turmoil that they might be experiencing, perhaps in their order book. They could suggest that people take not only a pay freeze but a pay reduction. They could suggest that people work a shorter working week. Employers need to be creative about how they deal with their employees in these difficult times, and I believe that redundancy should be the last course of action. Certainly it would be the last

course of action to a long serving, hard working, respected employee. So I am, I am afraid to say, disappointed by the remarks that some Members have made. I do appreciate why they have made them but, as I said earlier, I have tried to alleviate some of those possibilities by introducing a cap to the maximum amount paid. I think I have probably answered everyone's questions, perhaps maybe a little too fully, and I maintain the position and call for the appel. Thank you.

**The Deputy Bailiff:**

The appel is called for then on the principles of the Draft Employment (Amendment No. 5) (Jersey) Law. I invite Members to return to their seats.

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

Could I just seek a ... it is probably and I do not wish to be out of order or insulting, it is just that the comments that did come from Constables ... **[Interruption]** I will teach him one day. I am ever so sorry about that. **[Laughter]** I was standing, Deputy. I have a slight concern, and it is to do with interest and it is not the personal interest of the one Constable that spoke, but all the Constables, especially the Constable of St. Helier, are employers and employ directly staff. Obviously they can vote. I was just wondering if it would be safer if they declared an interest before they did vote or would they be conflicted? I just find this a bit worrying.

**The Deputy Bailiff:**

I do not take the view that it is a direct ...

**The Connétable of St. Saviour:**

Point of clarification: I was pointing out the advice that I was given by J.A.C.S. which was to stop employing them and give them a period when they were not employed. They had to work out their notice because it was not legally possible for the company to trade.

**The Deputy Bailiff:**

It is a different point the Deputy is raising.

**The Connétable of Grouville:**

If I can, Sir, I think Deputy Martin has got an extremely good point and I quite agree with it. I was going to abstain anyway and that has just reinforced my determination to abstain.

**The Deputy Bailiff:**

It is obviously a matter entirely for the Connétable. Now the matter before the Assembly, as I say, is the principles of this law and the Greffier will now open the voting.

<b>POUR: 35</b>		<b>CONTRE: 6</b>		<b>ABSTAIN: 6</b>
Senator S. Syvret		Senator T.J. Le Main		Connétable of Grouville
Senator T.A. Le Sueur		Connétable of Trinity		Connétable of St. Brelade
Senator P.F. Routier		Connétable of St. Martin		Connétable of St. John
Senator P.F.C. Ozouf		Connétable of St. Saviour		Connétable of St. Mary
Senator B.E. Shenton		Connétable of St. Peter		Deputy of St. Ouen
Senator J.L. Perchard		Deputy of St. John		Deputy J.A.N. Le Fondré (L)
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				

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. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
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 A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

This is a matter I have to ask if the Health, Social Security and Housing Scrutiny Panel wish to look at it. The chairman, Senator Breckon and the vice-chairman, Deputy De Sousa are not here. I think the Connétable of St. Martin or Deputy Southern could speak for them.

**Deputy G.P. Southern (Health, Social Security and Housing Scrutiny Panel):**

No, we have taken a look at this and we have produced amendments in my name and comments to go with it. By and large we are largely supportive of this document. We do not want to see it again.

**The Deputy Bailiff:**

Then we come to the individual articles. Minister, would you wish to propose Articles 1 to 4 then Article 5. Would that be sensible?

**Deputy I.J. Gorst:**

Yes please, Sir, if that is possible.

**The Deputy Bailiff:**

Would you propose your Articles 1-4 then.

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

Yes, the first article is interpretation. The second inserts a new definition into the Employment Law, affected employee and affected date of determination; the third Article amends the statutory period of notice that an employer must give to an employee on termination of employment. The generous periods of notice were doubled in 1994 to compensate employees for a lack of redundancy legislation at that time. Therefore, I took the view, and remain of the view, that it is important and fair that these periods are reduced on the introduction of this redundancy legislation which will make payments. I have considered various options and concluded that the U.K. notice periods are set at an appropriate level below our current inflated periods, while being more generous than the notice periods that applied in Jersey prior to 1994. I believe that U.K. notice periods compare favourably with modern standards in other jurisdictions. I will not read them out because I think it probably would be excessive. Article 4 amends the Employment Law, so the definition of employees, effective date of termination applies also to these new redundancy provisions.

### **The Deputy Bailiff:**

Are Articles 1 to 4 seconded? **[Seconded]** Does any Member wish to speak on Articles 1 to 4? Very well. All those in favour of adopting Articles 1 to 4 kindly show. Those against. Articles 1 to 4 are adopted. So would you then propose Article 5, Minister.

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

Yes, Sir, I do. However I would like your guidance. I have had the guidance of the Greffier. Perhaps if you could just clarify it for me. Article 5 will propose several new Articles numbered from 60A through to 60S.

### **The Deputy Bailiff:**

I would suggest, unless you feel otherwise, that you propose the whole of Article 5, explaining what they are, and then we will consider the amendment which amends 2 or 3 parts of Article 5.

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

That was what I was going to suggest, Sir, unless you wanted the amendment to be after the particular new Article that I was proposing. But I will speak about all those Articles. So if Members bear with me that will take some time because there are complications, then we will move on to the amendments. So Article 5 inserts a new part 6A into the Employment Law providing protection for employees in redundancy situations as I have just explained. The new Articles in this part will be numbered 60A through to 60S. Articles 60A and 60B provide that an employee has the right to a redundancy payment where they have been continuously employed by an employer for at least 2 years. The continuous service requirement is significantly longer than that required to qualify for protection under unfair dismissal because the redundancy payment is intended to compensate employees for loss of job security, where they have remained in that employment for such a period to justifies them to having a stake in it. The same 2 year qualifying period applies in the U.K. and in the Isle of Man. 60C provides that an employee is entitled to one week's pay for each year of service with their employer and that a week's pay is subject to a maximum weekly amount. As I said earlier, the Employment Forum had proposed that a week's pay should be uncapped for the purpose of the redundancy payment in order to provide a straightforward calculation which would reward all employees proportionately to their earnings. The Forum did note that an excessive redundancy payment might prevent employers from staying in business at all with a potential loss of more jobs. If the Forum were considering redundancy measures this year I believe it is likely that many of the consultation responses would have called for caution, as a number of the Connétables did earlier today, and I believe that the Forum would have been bound to take into account the current recession. My intention in proposing a cap is to prevent further

business collapse which could jeopardise the jobs of employees that may remain due to employers potentially having to make huge payouts. A week's pay is calculated by reference to the weekly average earnings as reported by the Statistics Unit's June average earnings report, which is released in August of each year. The figure that applies will be the most recent figure published at least one month before the employee's effective date of termination of employment. The advantage of the cap increasing in line automatically with average weekly earnings is that it removes the need to increase the cap on a regular basis and it will also ensure that it stays in line with average earnings. A different maximum weekly amount may be set by order. However, I plan to use only this power if it becomes necessary in the future, having given notice to employees of any new figure. Why do I say "if it becomes necessary"? Simply because it may be that the Statistics Unit cease to calculate what the weekly average earnings is at which point the Minister would then need to make an order. Based on the current weekly average earnings figure of £600, the cap will continue to protect the long-serving low and middle earners, giving some protection while the individual is seeking new employment. The cap compares favourably with those that apply in the U.K. and in the Isle of Man. Article 60D provides that no time limit applies with respect to an employee's right to claim a redundancy payment provided that at least one of the following 4 events has occurred in the 6 months following the effective date of termination of employment: the payment is agreed and paid; the employee makes a written claim for the payment to the employer; the employee refers the claim to the Employment Tribunal; the employee makes a claim of unfair dismissal to the Tribunal. If an employee has made a claim in writing to the employer within 6 months and subsequently the amount is disputed, the employee can present a claim to the Tribunal at any time. If an employee fails to make a written claim or apply to the Tribunal within 6 months, they may lose the right to a payment. However, if during a further period of 6 months the employee makes a written claim to the employer, refers a redundancy claim to the Tribunal or presents an unfair dismissal complaint to the Tribunal, the Tribunal has the discretion to award a redundancy payment if it considers it just and equitable to do so. The same procedure in respect of the time limit of redundancy payment rights is applied to the U.K. and the Isle of Man. A strict time limit on redundancy claims would unnecessarily force all redundant employees to submit a claim to the Tribunal as a matter of precaution, regardless of any progress being made with their employer. Redundancy is not like the other sorts of claims made to the Tribunal where the nature of the claim necessarily involves a dispute between the employer and the employee, such as unfair dismissal which has an 8-week time limit for Tribunal applications. Article 60E provides that the right to redundancy payment does not apply if the employee has unreasonably refused an offer of the same or other suitable employment to start within 4 weeks of termination of employment, or the employee has unreasonably terminated such new employment within 4 weeks of starting work. Reasonableness and suitability will be determined by the Tribunal, for example, where the similar terms and conditions of employment apply, including hours, location and remuneration. Unless the new terms and conditions of employment are identical to the previous terms and conditions, employees will be allowed a trial period to include any retraining of 4 weeks which may be reviewed and extended for a further period as necessary where the employer and employee both agree. Employees would continue to be entitled to redundancy pay if they reasonably refuse the alternative employment at any time during the trial period. Article 60F makes provisions related to collective consultation. Good practice requires employers to consult with employees regarding redundancy at the earliest opportunity to avoid complaints of unfair dismissal and the Tribunal will take the matter of individual consultation into account as one of the 4 ordinary principles of fairness. Further to this, the amendment will require employers to consult with employees collectively instead of individually where 21 or more redundancies are proposed at one establishment in a 90-day period and that consultation must begin at least 30 days before the first dismissal is due to take place. Collective consultation means that one of the following must happen: where a registered trade union is recognised by the employer representatives of that union will represent employees in collective consultation. Secondly, where a union is not recognised representatives from within the establishment may be nominated and elected by the employees for the purpose of taking part in

consultation about redundancies on their behalf. This may include representatives of trade unions or staff associations that are not recognised by the employer for collective bargaining purposes. Where those elections fail the employer must provide the required information to all employees individually. As with the rights provided for employee representatives in disciplinary and grievance hearings, that is part 7A of the current law, these employee representatives will have the right to a reasonable period of paid time off work to represent employees and will be protected against detriment or dismissal on the grounds of any action taken as a representative or in elections to act as a representative. The information that the employer must provide to the representatives or individual employees includes the reasons for the proposals, the number and descriptions of employees proposed for redundancy and the proposed method of selecting those employees. Sir, following your guidance, I will carry on now through to 60S. Article 60G sets out the procedure for the election of employee representatives where a recognised and registered trade union does not already represent the employees, including the employers' responsibilities regarding fairness in the arrangements for those elections and voting. Article 60H and I provide that an employee may complain to the Tribunal within 8 weeks if the employer has not fulfilled the requirements regarding collective consultation and the election of employee representatives and provides that a protective award may be made by the Tribunal. The Tribunal may order the employer to pay each affected employee one week's pay, as defined by Schedule 1 of the current law, for each week of the protected period up to 13 weeks. When considering making a protective award the Tribunal make take into account whether that employer took such steps as were reasonably practicable in the particular circumstances, including the seriousness and deliberateness of the employer's failure to consult. The purpose of the award is to provide a sanction not compensation for losses suffered. Article 60J provides the circumstances in which an employee would not be entitled to a protective award, including where the employee has been dismissed fairly by the employer during that period other than for reasons of redundancy; where the employee terminates employment during that period or the employee unreasonably refuses or terminates an offer of other suitable employment during that period. Article 60K, L and M provide that an employee who is under notice of redundancy will have the right to a reasonable period of paid time off work equivalent to at least 2 normal working days, as in the U.K. This time may also be used to arrange training to improve future employment prospects. The Articles set out a method for calculating pay, time off and the right to complain to the Tribunal within 8 weeks if the employer fails or refuses to comply. The Tribunal may direct the employer to pay a sum greater than the equivalent of 2 days as a penalty for refusing to permit or failing to pay for that time off. Article 60N provides that where an employer proposes to make at least 21 employees redundant the Minister for Social Security must be notified and it gives me the discretion to consult with other Ministers as appropriate. This is to ensure that relevant departments and services are alerted and ready to take action, for example, in assisting with benefits, retraining and job seeking assistance. The notification must be made at least 30 days before the first of the dismissals take effect and a copy must also be sent to employee representatives. The notification must contain the following information: the numbers of employees proposed for dismissal; the reasons for the dismissal; identify any representatives and the start date for consultation with them. Article 60O and 60S give employees additional protection in relation to any actions they take as representatives of employees in the collective consultation process. An employer must not subject an employee representative to any detriment on the grounds of participating in an election of employee representatives or on grounds of taking any action of such a representative or candidate and must allow an employee reasonable paid time off work to act as an employee representative. An employee has 8 weeks or a longer period as the Tribunal thinks reasonable to complain that the employer has breached any of these rights. The Tribunal may award up to 4 weeks' pay and declare that any other action taken against the employee by the employer other than dismissal is void. If the complaint is well founded the Tribunal must order the employer to pay the employee the remuneration to which they would normally have been entitled if their employer had allowed him or her the time off work. Hopefully that explains to Members those Articles.

**The Deputy Bailiff:**

Is this seconded? [Seconded]

**3. Draft Employment (Amendment No. 5) (Jersey) Law 200- (P.27/2009): amendment (P.27/2009 Amd.)**

**The Deputy Bailiff:**

Very well, we have an amendment to Article 5 lodged by Deputy Southern. It is all of a package, Deputy, is it not? We can take all the amendments at once? The Greffier will read out the amendments.

**The Greffier of the States:**

Page 23 of Article 5, in the inserted Article 60F: (a) for paragraph (1) there should be inserted the following paragraph: “(1) Where an employer is proposing to dismiss as redundant at one establishment within a period of 90 days or less; (a) 2 or more employees of a description in respect of which a trade union is recognised under the Employment Relations (Jersey) Law 2007 and recognising in accordance with the Code of Practice approved under Article 25 of that law; or (b) 6 or more employees of a description in respect of which there is no trade union, as described in sub paragraph (a), the employer shall consult about the dismissals or the persons who are the appropriate representatives of the affected employees.” (b) For paragraph (3)(a) there should be substituted the following paragraph: “(a) If the employees fall under the description in paragraph (1)(a) representatives of the trade union; or”; and (2) page 31, Article 5 in the inserted Article 60N (1) for the number “21” there should be substituted the number “6”.

**3.1 Deputy G.P. Southern:**

Do I get one speech? Do I have to address all of the amendments to all of the Articles or am I addressing where I am making material change?

**The Deputy Bailiff:**

You will speak to your amendment which will only amend 2 of the articles.

**Deputy G.P. Southern:**

One aspect of it, okay. I will speak to that first.

**The Deputy Bailiff:**

Then speak again on the main proposition.

**Deputy G.P. Southern:**

Thank you, that was my dilemma. When I was asked to look at this particular piece of legislation by the Health, Social Security and Housing Panel, which I will refer to from now on as H.S.S.H. because I cannot get my mouth around it, I was quite pleased. I thought for a moment I would be amending it in several places because there are several places in which one might consider improving what was being proposed. However, I quickly came to the conclusion that that was not appropriate and while the whole package may not be perfect there is only one area, I believe, where serious concerns might be expressed and they are, as suggested, in Article 60F where we talk about consultation and, in particular, about collective consultation. I consider it is absolutely essential that where possible if there is more than one redundancy taking place collective consultation is absolutely vital. That communication channels are open all the way through the process is essential to the smooth running of any process but, in particular, with such serious matters as employees being made redundant it is absolutely vital. It seems to me if Members would care to turn to page 6 on my amendment they will notice that what I have done is carefully examine (a) the recommendations of the Employment Forum and (b) the response of the Minister to those recommendations. In the little quote box in the middle of page 6 Members will notice that a wide



variety of concerned stakeholders suggested that consultation was of vital importance. Ogiers: "For the purposes of unfair dismissal, fairness dictates that individual consultation must be undertaken." J.A.C.S. says: "Not to provide the consultation would be contrary to international good practice and E.U. (European Union) labour law directives." Another employer, a utilities employer: "Good practice communication avoids guesswork, bad feeling and fear factors. To ensure a fair procedure, reasonableness should begin as far in advance as possible and before notice of dismissal is given to inform on selection processes that will be used." Individual consultation then is not in doubt. However, when it comes to collective consultation we have a split. We have institutions in which the members or employees are represented by a trade union or its equivalent and is recognised. The big advantage of being in a union for both sides, the employer and the employee, is that the means of communication are readily there. People elect their representatives; people have meetings with their employer, with management, all through the process. Good communication can take place. It seems to me then in looking at what was being proposed that it is absolutely vital where unions are recognised and in place that we should make use of those unions to deliver an effective mechanism. For example, on page 7, it suggests that J.A.C.S. comments: "Collective consultation, rather than simply with those at risk, may well lead to innovative suggestions from others to help prevent redundancy or volunteers for redundancy from those not at risk." So spreading the consultation process means that it is likely to be more effective, for example, the union or representative might start talking about: "Well, how about a wage cut, a wage freeze?" "How about reducing hours across the board?" or we may be talking about: "Are you sure you are making the redundancies in the right place?" "Are you sure that these numbers are correct?" "Are you sure that we cannot get away with fewer redundancies?" That sort of communication and about the selection process: "How have these people been selected?" The most common complaint one hears around redundancies is: "Why me and not Fred down the road?" "What are the criteria?" "What is my work record like?" "What is my lateness record like?" "What are my customer relations like?" "Why have I been picked when Jack next to me has got a far worse disciplinary record than me and he has not got the sack but I have?" That is the sort of issue that only often a brave employee can take on but the union can readily and will just to examine the fairness of the process. That sort of thing should be happening. The Forum, therefore, recommends that employers should be required to consult collectively where 2 conditions are met. Consultation must begin at least 30 days before the first dismissal is due to take effect. So, a timely period and a lengthy period if possible. However, the Forum then goes on: "The Forum also recommends that where there is a recognised union or staff association that is registered under the Employment Relations law, collective consultation requirements should be triggered where there is proposed to be more than one redundancy. So as soon as there is multiple redundancies, and that means 2 or more, then where the union is in place please, please, it is saying, make use of the channels and collectively consult. It seems to me that is an absolutely solid principle. For some reason the Minister has chosen to ignore that particular recommendation and to suggest that that right should only apply where 21 or more redundancies are made. It seems to me the only reason for adopting that number is that it is a number contained in U.K. legislation. To adopt that number wholesale into the Jersey situation, I would suggest, is inappropriate for the simple reason that only 7 per cent of Jersey employers employ 21 or more workers. Only 7 per cent - a relatively small number to whom this would apply. What happens in the U.K. 21 is the magic number for "you are a small business". In Jersey I do not know what that number is to qualify as a small business but is certainly far less than 21. I have suggested that the recommendation of the Employment Forum having consulted that as soon as there are multiple redundancies and a union in place you should rightfully consult with the union. The 21 number is entirely inappropriate and what it does, I believe, is it limits the right to representation where you have a union to such a small number as to be unfair. So on page 8 I say the Forum's recommendation deserves support since every individual employee has the right to representation in an employment grievance or disciplinary issue under Part 7A of the Employment Law and what more important issue could there be than: "Is my redundancy fair or not?" That is the issue and what more important significant act could there be than being made redundant? I

suggest in the employment scenario there is none, short of death by an accident. The Forum also says: "It would be very dubious practice under the Employment Relations Law not to allow collective representation over 2 or more redundancies." Yet the Minister has chosen to ignore that advice. That is the first part. The second bit too also refers to where there is not a trade union in place and the channels are already there then the law places an obligation on the employer to collectively consult with members and to arrange, if necessary, some form of election so that they have representatives who can be relied on to be the medium of communication. What I am suggesting there is because of the difference in scale of Jersey employees and Jersey institutions and the U.K. employees and institutions that that number limit at which that requirement is required should be much lower. I am suggesting the number 6. Think about it, only 7 per cent of employers employ 21 or more employees. The likelihood of 21 redundancies at any one time is very remote; it is once in a blue moon. We have had that blue moon with the Woolworths situation. It is highly unlikely that in any other situation we are going to get more than 21 redundancies. So what the 21 does it takes this right away. It denies the right which we are trying to establish by limiting the scope of who it can apply to, inappropriately, I believe, in Jersey. I do not know what the magic number is but I have suggested the magic number of 6; where 6 or more redundancies take place then please collectively consult. That will then engage most employers who are making redundancies and most employees and ensure their rights. I have not received comments from the Minister as to why he thinks this magical 21 can be transferred from the U.K. and applied to our situation but I look forward to his argument. The final bit of the amendment then takes that number 6 and where the Minister says: "If you are making numbers of people redundant I wish you to notify me so that I can set in place the provisions I need to cater for these numbers", again the 21 - it happened once, it is unlikely to happen again - it makes the notification redundant, it renders it extremely unlikely to be used. So the warning: "Look out, there are significant redundancies coming your way, you better get your act together and get the system up and running so you can cater for them" I think it is far more appropriate that a warning of 6 or more, 10, for example, 15 is an appropriate number: "Whoa, we are making people redundant, get ready", and that is what it says. The number of 21 is too big and is inappropriately adopted willy-nilly from the U.K. I urge Members to support this amendment.

### **The Deputy Bailiff:**

The amendment is seconded? [**Seconded**] Does any Member wish to speak on the amendment?

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

When I was first involved with thinking about this issue I obviously looked at other jurisdictions to see what was best practice around the piece and I think what this amendment is doing is taking things a step too far because it is going to affect small businesses within the Island in a quite draconian way. The principles of consultation, which the Deputy had highlighted, are, of course, correct. There is no doubt about it that employers need to consult with their employees if there is any likelihood of redundancy coming forward. The Deputy himself sort of said that 21 was a figure which he felt was too big, but I have to say the amendment he has brought forward, 6, has gone totally to the other extreme. There may have been a figure somewhere else in the middle, it might have been 15. But I think for the size of the businesses within Jersey, 6 is far, far too low. My understanding when I reviewed the number of 21 in the U.K. was that it was more about the practicalities of the consultation process as opposed to the size of what was appropriate for a jurisdiction, because if there was going to be a large number, 21, admittedly for Jersey it is a very, very rare occasion. But the practicalities of negotiating and consulting with organisations and enforcing it for that figure of below 21 do become a bit more impractical. I do think that the Deputy has come forward with a figure that is far too low for Jersey. As I say, the principles of consultation are correct because it is within what is being proposed in the legislation. Unfortunately I am unable to support this amendment.

#### **3.1.2 The Connétable of St. Saviour:**

This will probably come as a surprise to Deputy Southern but I am going to support him on this because I believe if jobs are being lost there should be consultations, regardless of the number. It is just as important to the person whose job is being lost whether he is one of 6 or one of 21. I think to argue about the difference is just irrelevant. There has to be consultation if the jobs are being lost.

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

As Deputy Southern had said, his amendment really falls into 2 parts and I will take the part that reduces the number for collective consultation from 21 to 6 first. I hope the Connétable of St. Saviour does not feel that I am getting at him this afternoon because I really have no intention to do that but I hope that if he listens to what I say perhaps he will change his mind because this is not about consultation, it is about collective consultation and they are quite different things. I suspect that the Connétable might even be coming at me later when we get back to the main Articles about some of the things I have said there and I would reiterate to him that that is in relation to collective consultation that I suspect he finds unpalatable. I am extremely concerned about this proposed amendment to reduce the threshold from 21 to 6 when it comes to proposed redundancies, and let us remember it comes down to 6 where there is no recognised union. Why am I concerned? Because the penalties for not consulting are heavy-handed where an employer may only have 6 staff. Deputy Southern claims that the reasoning behind the proposed threshold of 21 or more in a 90-day period compared with 20 proposed redundancies in the U.K is weak and he argues that comparison with the U.K. threshold is entirely inappropriate. He claims that the scales do not match as the vast majority of businesses are far smaller than in the U.K. However, a comparison of the U.K. Inter-Departmental Business Register from the office of National Statistics, which is like our Statistics Unit only slightly larger, reported in September 2008 that the Jersey manpower figures and the Jersey manpower figures for June 2008 shows that in fact the figures are very similar. In the U.K. 89 per cent of business enterprises employ less than 10 employees compared with 93 per cent employing 10 or fewer in Jersey; 98.1 per cent employ less than 50 employees in the U.K. compared to 97 per cent employing 50 or fewer employees in Jersey. Not that dissimilar to my reckoning. The Deputy also claims that the threshold is a disproportionate restriction on employees' rights as it denies the right to all but a minority, as he said again this afternoon, as only 7 per cent of employers employ 21 or more staff. However, that 7 per cent of employers employ two-thirds of the employees in the Island. So that covers two-thirds of the employees in the Island. This amendment if Members were to accept it would have the greatest impact on smaller employers who are much less likely than larger employers to have structures and procedures in place to deal with these matters collectively. The amendment, I believe, would impose something very new and unknown for most small employers who do not have the experience or the facilities for collective negotiations with employees. The question of whether collective consultation provisions should be required by law was considered in great detail by the Employment Forum. I am aware that some employers are of the view that the consultation requirement as currently drafted are excessive for Jersey and that Jersey should have followed the example of the Isle of Man by putting in place good practice guidance rather than law, again probably an opinion agreed with by the Connétable of St. Saviour. In fact, the Isle of Man does not legislate for collective consultation. Guidance advises that employers should consult recognised unions, employee representatives and employees about redundancy and that where possible a redundancy policy should be drawn up in advance of redundancies. Ireland's threshold that triggers consultation requirements is different from the U.K. Collective consultation is required where 5 employees are proposed for redundancy in one establishment but only where more than 20 and less than 50 employees are employed at that establishment or where more than 10 employees are proposed for redundancy in establishments normally employing more than 50 and less than 100 employees. Both these approaches are permitted by the E.U. Directive. Deputy Southern's amendment unfortunately does not take this additional step to limit the size of the employer in addition to his low threshold which could have made the amendment more manageable for smaller employers in particular. Contrary to Deputy

Southern's assertion in his report, the threshold as drafted does not limit an employee's individual freedom to be represented by his or her trade union nor does it affect an employee's individual right to represent or be represented in a formal disciplinary or grievance hearing, again under part 7A. The threshold introduces additional requirements for an employer to consult with an employee's representative instead of the individual employees and the law introduces fairly severe and costly penalties for failing to meet those requirements beyond those that are already provided for in the Employment Law. The potential for unintentional contravention is far greater if the amendment is adopted. An employer is more likely to inadvertently propose 6 redundancies over a 90-day period without recognising that this leads to collective situation requiring collective consultation. Members will be aware that the Employment Relations (Jersey) Law also refers to a threshold of 21 which sets the minimum number of employees that an employer must employ to allow a trade union to enforce statutory recognition of the employer. Although the 2 thresholds are not comparable in their effect, the use of the same figure serves a purpose. Where there are 21 or more employees there is a greater likelihood that the employer will already recognise and negotiate with the union and be accustomed to such consultation with staff. U.K. legislation and the European Directive include a threshold of 20 or more employees being proposed for redundancy. Although the proposed figure is not vastly different, unlike Deputy Southern's amendment, the Forum had always strived to provide consistency across qualifying periods and other figures referred to in employment legislation unless there is a practical reason why it should be different. Early consultation respondents had indicated that clarity and ease of reference between such periods would be beneficial to avoid the confusion that has arisen in the U.K. I must say that I have begrudgingly accepted the provisions for collective consultations for the reasons I have outlined on the understanding that a high threshold would be required to trigger the requirement for collective consultation. If Members adopt the amendment I may be forced to re-consult with the Employment Forum with a view to possibly amending the law before it comes into force. With regard to the second item, the Deputy claims that the Forum's recommendations have been ignored. That is not the case. The previous Minister, who has already spoken for himself, as it were, clearly stated that the Forum had not provided sufficient background or explanation for this recommendation and that a more detailed recommendation would be required otherwise it would be very easy for employers again to inadvertently contravene the requirements. In particular, there was concern that it was unclear from the recommendation whether the 2 or more employees proposed to be made redundant or simply any 2 affected employees, must be (1) members of the registered and recognised union in order for the collective consultation requirement to be triggered and (2) whether the employees proposed for redundancy, represented by 2 different unions or staff associations, would again trigger requirements to consult with both or every recognised union. There is no precedent in U.K. legislation or a European Directive. Similar to our proposals in the U.K. an employer must consult collectively where he is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. He must consult a trade union where one is recognised in respect of the affected employees or employee representatives where there is no trade union. Prior to 1999 collective consultation with a recognised union was not required at all in the U.K. The employer could bypass a recognised union and consult collectively with employee representatives. The E.U. Directive has been implemented in various ways in different jurisdictions; however, there is no precedent for triggering collective consultation requirements at a lower threshold simply because the members of a recognised trade union are being proposed for redundancy. When I also became aware that there was not sufficient information in regard to this recommendation I decided that an amendment could be brought at a later stage if necessary, as I said earlier, avoiding risks to any delay to the main body of the law. I will and I do intend to seek further information as to why it is necessary to make additional provisions and why Jersey should go beyond other jurisdictions and European principles.

#### **3.1.4 Deputy T. Pitman:**

Firstly, I would congratulate the Minister for bringing the law a step forward, although not perfect. I would also congratulate the Constable of St. Saviour for really saying what needed to be said very briefly and very well. Possibly the Minister has never been told this by anyone but size is important. I think in Jersey we need to cut our cloth accordingly. Small businesses in Jersey; I think we would have to accept that definition is very different in the U.K. I am afraid it does not seem to me that 6 is a very low number at all, I think it is very, very appropriate. As the Constable of St. Saviour said, it is just as important in redundancies whether you are number 6 or 21. Again, consultation, as he said, is absolutely important and it should not be a problem to consult in the way it is being portrayed. Maybe I am missing something but, as I see it, unamended the legislation does limit an employee's rights to be represented and I think what Deputy Southern is asking us to do is wholly appropriate. It is certainly not an extreme step and it is possibly the missing link in what the Minister has put before us. So I would urge everyone in the House to support the amendment wholeheartedly.

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

I think all Members will agree that the steps that have been taken today in amending this law to provide appropriate redundancy legislation is absolutely right. I think it is possibly with some regret that the business community in particular will view the timing of such a move as unfortunate. We cannot always choose exactly what the timing is going to be but to make such a move at a juncture of economic downturn is clearly not favourable. I think Deputy Southern made the point and he was, I have to agree with him, absolutely right this should have come some considerable time ago, in which case the business community would not have found itself in the slightly more difficult position as it currently does. However, as far as this amendment is concerned, I am afraid that is where the Deputy and I part views. I do not share his need for this particular amendment; I do, however, understand where he is coming from. I think it is a question of getting an appropriate size and I think it is also important to remember that Jersey is very much a community of small businesses. We have a large small business community and at this particular time where the economy is facing probably its largest challenge since the Second World War to start imposing elements of additional cost to the small business sector is a risk too far. I really feel that I would encourage Members not to support this particular amendment at this particular time. We need to ensure that we have the right size and shape and although there is some argument that 21 may indeed for the sake of Jersey be on the high side, equally I feel that 6 is very much on the low side, looking at the makeup of the business community within the Island. I think the other point that I would like to make is - and this is in agreement with Deputy Southern, he is absolutely right about an industrial relations issue that consultation and communication is absolutely of paramount importance - I do believe that the Minister has taken what I consider to be a sensible and pragmatic approach, first of all, and I am sure that the Deputy will agree with this, to have moved as quickly as he has needs some degree of congratulations. He has brought forward the redundancy amendment, as he should have done, in very quick time but equally I think he is measured in his approach in terms of his comments regarding this particular amendment. I do wholeheartedly support the Minister for Social Security and I do encourage Members to reject this amendment on this particular occasion. At this time we have to support all businesses but, in particular, the small businesses within our economy that are so important to both the enterprise and entrepreneurship that drives the success of the economy.

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

Just briefly, I listened with interest to the former Minister for Social Security and he plucked out the figure possibly 15 would have been better. He does have a lot more knowledge than most people in the House and I would maybe have liked to have seen an amendment with that number on it with a good explanation, unless it was just plucked out of the air. I know we are not there yet, we are just doing the first 2 amendments but the number 21 concerns me greatly when the Minister said although it is only 7 per cent it is two-thirds of the workforce in Jersey and then I read words

like “collective bargaining”. “Collective” to me puts people - especially if they are in smaller businesses - in a slightly better position and from my position I think that is a good thing and they will be told everything together. Now, as I say, why 6 is not the right number and 21 is too many, I think 21, in my opinion, because it has just been drawn down from the U.K. legislation and this very much mirrors it that we have this number, I would err on the side of caution and although the reason the Minister, Deputy Gorst, gave that this would have the biggest effect on small employers, he did slip and say small employees, but I still do think he meant it as well, it will have the biggest effect on small employees from small companies - not the little people, not the elves! Anyway, unfortunately, as I started to say, I will keep this brief, as the person who was as much in the know, the ex Minister, did not find it possible to bring an amendment he may be right, 6 may be too few but I am absolutely certain 21 is too many. So I am going err on the side of caution and I am going to vote this time with the amendment.

### **The Deputy Bailiff:**

Does any Member wish to speak? I call upon Deputy Southern to reply.

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

An interesting debate and lest I forget I must thank the Constable of St. Saviour for his support and hope he sticks with it, he was right in the first place. Senator Routier and perhaps Deputy Martin have already said this; Senator Routier is a long-serving Senator in this House, he knows the way to do things and although it has been a while since he spent time as Assistant Minister he, nonetheless, should be able to get his act together and if he thinks 10 or 12 is the appropriate number, or 15 is the appropriate number, it is not a very difficult thing to bring that simple amendment. The question is where is it? It is remarkable by its absence. The Constable of St. Saviour reminded us that this is about redundancies. It does not matter whether you are one of 6 redundancies or whether you are one of 21 redundancies, that redundancy affects you in the same way. Turning to Deputy Gorst, he said, first of all, that E.U. practice and international practice law does not apply to Jersey. I never claimed it did and neither did the Employment Forum. If I may just remind people of the importance of, and this is collective consultation not just consultation - their words - this useful piece of advice from J.A.C.S: “Although the international and E.U. law referred to does not extend to Jersey the Forum is mindful that best practice dictates that employers should consult their employees or their representative at the earliest opportunity by providing them with the relevant information with a view to reaching agreement on key issues such as ways of avoiding redundancies, reducing the number of employees to be made redundant and mitigating the effects of redundancies. Where employees are already represented or wish to be represented in this process it would be unreasonable of an employer to fail to consult with these appropriate representatives.” That is absolutely essential and in order to best do that - and people perhaps can get this feeling - when it is your job that your boss has just told you is going it is a brave man that then starts arguing with his boss saying: “Why me? Why not him? How come? What has happened?” What they need is that representative who is not directly affected, who can take a neutral calm approach to it and discuss rationally why it is appropriate, the extent to which it is appropriate, and to negotiate on behalf of people, certainly to consult on behalf of people, who goes and who does not. If it an arbitrary issue of first in last out then to argue the toss on behalf of the people affected. That must be extended, I believe, to as many people as possible. Now the Minister has made allowance in 2 other areas - I have not mentioned them yet) - he says, for example: “Limiting the age of 65 is likely in the near future to discriminate against older people, therefore, even though the Employment Forum says put it in there I have not done it.” Limiting the access of this law by making it only apply to people who work 8 hours or more is likely in the near future to be discriminatory against women who take most of the part time jobs. Therefore he has not gone there. What discrimination is involved in the process of saying only in the case of 21 redundancies? Now that is a big number for Jersey, 21 redundancies - not employees of the company, 21 redundancies - will you get this coverage? So for you, Jack, you are all right, you get

collective consultation. For you over there, you do not. What form of discrimination is that? Indeed, it is a wide one. It might be legitimate if it did not apply to a third of workers in this case ... I will stay on my feet but he did succeed in distracting me so I may as well give way to him, go on.

**Deputy I.J. Gorst:**

I am sorry I have distracted the Deputy that certainly was not my intention. I am not certain how he draws the conclusion with regard to discrimination, it is quite clear the 2 areas that he has outlined, and I am grateful that he supports those particular areas, but as I have tried to say, and I said earlier, the 21 is what the United Kingdom does, it is what the E.U. Directive suggests, therefore, I fail to see how the Deputy can make the assumption that in short order that is going to be discriminatory. However that would, I believe, be a legal matter.

**Deputy G.P. Southern:**

I believe, while I welcome the intervention, the Minister is misinterpreting me because where the key figure is, in terms of 21, is 21 as the size of the employer, not to be confused with the number of redundancies. The 2 are clearly distinct and, as the Minister said in his speech, these 2 figures of 21 are not comparable. The 21 employers, that is the key figure, not 21 redundancies because 21 redundancies at any one time is by Jersey standards a large number and thereby eliminate most employees from having this collective consultation. That is the reality, not that 21 employees; it is about 21 redundancies. Let us take a look at the examples that have happened in recent almost days and weeks. Woolworths employees had very little consultation about what was going to happen to them. They had to form their own committee. They did so very well. They had a tremendous bunch of people and they elected representatives and got their act together, stayed together, and came out and lobbied this House. They came out of the process with some compensation and they are to be praised for that but the consultation process was non-existent as far as their management was concerned for their employees. Trinity Coal Distributors, on the other hand, with a much smaller number of redundancies, but one which would not have qualified under this for collective consultations, the management there and the employers treated their employees with utmost respect. They held a meeting, they consulted, they talked to each other: "This is the package." When I went to see them, because they asked me to come in, they were very clear about what was happening, who might be re-employed, who was going and what the circumstances were. Perfect example, not a problem; a good employer would always do that. It is the bad employers that we are after, otherwise we would not have laws like this. Pound World, no information given to the 17 people, 17 redundancies. "Oh", I hear you say: "17, that is under 21." Not for them, then, this particular protection in the law but there were certainly more than 5. There were 6 or more. There were 17 affected, eventually 13 made redundant under the 21 notice. Let us look at this number realistically in the Jersey context. I think the number is right and just saying: "Oh, it feels a bit low and the other one feels a bit high" is not good enough. It is for the Minister to justify 21, I believe, because that eliminates a large number of employees from receiving this protection. That, I believe, is a disproportionate limitation on that protection and should not be the case. Finally, Senator Maclean, despite agreeing with me, despite our differences, talked about a risk too far in my amendment. Again, where was his amendment as Minister for Economic Development, a more reasonable number, and a more reasonable and charming man one could not expect to meet. Where is his reasonable compromise? At 8, 10, 12, 15? It was there to be brought. It was not brought. Let us vote on this projet. I urge you to accept the amendment which has the wholehearted support of the Health and Social Services and Housing committee, the H.S.S.H. panel. I call on Members to support this amendment and I ask for the appel.

**The Deputy Bailiff:**

Very well, the appel is called for on the amendment lodged by Deputy Southern.

<b>POUR: 23</b>		<b>CONTRE: 21</b>		<b>ABSTAIN: 2</b>
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Senator S. Syvret		Senator T.A. Le Sueur		Connétable of Grouville
Senator B.E. Shenton		Senator P.F. Routier		Connétable of St. Brelade
Connétable of St. Helier		Senator P.F.C. Ozouf		
Connétable of St. Martin		Senator T.J. Le Main		
Connétable of St. Saviour		Senator J.L. Perchard		
Connétable of St. Clement		Senator S.C. Ferguson		
Connétable of St. Lawrence		Senator A.J.D. Maclean		
Deputy R.C. Duhamel (S)		Senator B.I. Le Marquand		
Deputy of St. Martin		Connétable of Trinity		
Deputy R.G. Le Hérissier (S)		Connétable of St. John		
Deputy J.B. Fox (H)		Connétable of St. Mary		
Deputy J.A. Martin (H)		Deputy of St. Peter		
Deputy G.P. Southern (H)		Deputy J.A.N. Le Fondré (L)		
Deputy J.A. Hilton (H)		Deputy of Trinity		
Deputy P.V.F. Le Claire (H)		Deputy K.C. Lewis (S)		
Deputy S.S.P.A. Power (B)		Deputy I.J. Gorst (C)		
Deputy S. Pitman (H)		Deputy of St. John		
Deputy M. Tadier (B)		Deputy A.E. Jeune (B)		
Deputy of St. Mary		Deputy A.T. Dupré (C)		
Deputy T.M. Pitman (H)		Deputy E.J. Noel (L)		
Deputy T.A. Vallois (S)		Deputy A.K.F. Green (H)		
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				

#### **4. Draft Employment (Amendment No. 5) (Jersey) Law 200- (P.27/2009) as amended**

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

Very well. We return to the Articles as amended. Does any other Member wish to speak on Article 5 as amended?

##### **4.1 The Connétable of St. Saviour:**

Perhaps not surprisingly, yes, I will speak on this. I will not repeat what I have said at length. I do support this projet in all its aspects except the one and that one is the way it starts, which will be retrospective. Companies will not be able to continue trading legally if they cannot meet their redundancy liabilities. If the Minister thinks that companies in this economic climate are going to be able to make provision for long-term employees in the 6 months' time they have, he is living in cloud cuckoo land. It is just not going to be feasible and, therefore, I am not happy with that aspect of it. However, we have voted. If this part of it is voted down, it will destroy the projet in its entirety. We have accepted this in principle and therefore, somewhat reluctantly, I will be abstaining on this.

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

Does any other Member wish to speak on Article 5? Very well, do you wish to reply, Minister?



## 4.2 Deputy I.J. Gorst:

I think I probably replied to the point that the Connétable of St. Saviour made earlier. I recognise the difficulty that employers will face which is why I have made the amendments that I talked about earlier. I am afraid that perhaps the Connétable's concerns are a little bit late in the day because the Assembly, in a democratic process, has accepted the amendments now of Deputy Southern and that will make it more difficult for employers. That is the will of this House but that is what I would say in response to the Connétable of St. Saviour and I maintain those Articles.

### The Deputy Bailiff:

All those in favour of adopting Article 5, kindly show? The appel is called for in relation to Article 5. Very well, I invite Members to return to their seats and the matter is for or against Article 5 as amended and I will ask the Greffier to open the voting.

<b>POUR: 33</b>		<b>CONTRE: 6</b>		<b>ABSTAIN: 4</b>
Senator S. Syvret		Senator P.F. Routier		Connétable of Grouville
Senator T.A. Le Sueur		Senator P.F.C. Ozouf		Connétable of St. Martin
Senator T.J. Le Main		Senator S.C. Ferguson		Connétable of St. Saviour
Senator B.E. Shenton		Senator A.J.D. Maclean		Connétable of St. Mary
Senator J.L. Perchard		Connétable of St. Brelade		
Senator B.I. Le Marquand		Deputy J.A.N. Le Fondré (L)		
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. John				
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. Peter				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
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 A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

Very well. Minister, do you wish to propose the final 2 Articles, Articles 6 and 7?

**4.3 Deputy I.J. Gorst:**

Yes, please, if that is possible. Article 6 repeals Article 74 of the Employment Law. That law currently provides that an employee over the age of 65 or the normal retirement age for that job is not protected against unfair dismissal. Redundancy payments as drafted are calculated, including years of service beyond the age of 65. This Article removes the upper age limit from the unfair dismissal provisions, giving employees the right to protection against unfair dismissal beyond the normal retirement age. If the unfair dismissal protection continues to be limited by age, an employer could make an employee redundant at age 65 and claim that the grounds for dismissal were for reasons other than redundancy in order to avoid the redundancy payment, leaving the employee with no recourse to the Tribunal to claim unfair dismissal. Article 7 provides for the citation and the law to come into force on the date to be appointed.

**The Deputy Bailiff:**

Are Articles 6 and 7 seconded? **[Seconded]** Does any Member wish to speak on either of those Articles?

**4.3.1 Deputy G.P. Southern:**

Perhaps you will allow me a little latitude on this one, since I failed to talk about any other part of Article 5. Just briefly to warn the Minister that I will be keeping a watching brief on particular aspects that I have failed to mention so far. For example, we do not have a capped redundancy payment.

**The Deputy Bailiff:**

Deputy, I am sorry to be over-strict but I think I should probably confine you to Articles 6 and 7.

**Deputy G.P. Southern:**

Therefore I will be keeping a watching brief on that. In particular, I have worries and I think I do owe it to my Panel to communicate them to the Minister. In particular, whereas he has set a cap of £600 a week so that high earners only have limited protection, where a mortgage is involved this may cause a problem. I expect him to be coming to the House at some stage with something to add to protection for workers made redundant where they are in difficulties with mortgage repayments which is an essential element, maybe not in here, but elsewhere.

**4.3.2 Deputy M.R. Higgins:**

I just want to comment on Article 6 and say I am pleased to see this brought forward as a first step against age discrimination. Considering that we are all going to have to work much longer in the future before retiring, I would like to congratulate the Minister for making sure that it was part of this law.

**4.3.3 Senator S.C. Ferguson:**

Perhaps when Deputy Southern thinks about making allowances for mortgage payments, he will also come up with a system for funding these. I am sorry, he is not here, so he cannot reply. I was referring to the previous speaker, carrying on the thread of the debate.

**The Deputy Bailiff:**

Yes, but as I had said that he should only speak to Articles 6 and 7, I think you must do likewise.

**Senator S.C. Ferguson:**

Yes, absolutely. Perhaps the Minister will bring amendments to mitigate the effects on small businesses of the amendment that the House has just passed. As somebody who has worked considerably in small businesses, I am appalled and I think that we should be mitigating the effects of the punishments that are available for those who work for small employers.

**The Deputy Bailiff:**

I am sorry, Senator, but you are talking about Articles 6 and 7, are you?

**Senator S.C. Ferguson:**

I have made the point. I will sit down.

**The Deputy Bailiff:**

Very well. Does any Member wish to speak on Articles 6 and 7? Minister, do you wish to reply?

**4.3.4 Deputy I.J. Gorst:**

I thank those who have spoken. I believe that this is a small step towards some of the issues that we will face as a Government, as an Island, in regard to the ageing population and I am delighted that Members seem to be supporting it.

**The Deputy Bailiff:**

Very well. All those in favour of adopting Articles 6 and 7, kindly show? Those against? Those Articles are adopted. Do you propose the Bill in the Third Reading, Minister?

**4.4 Deputy I.J. Gorst:**

Yes, I do. If I perhaps could just address the issue that Senator Ferguson raised talking about Article 6, I endeavoured, in bringing forward this piece of legislation, to bring forward a balanced piece of legislation. It is notoriously difficult for governments to balance the rights of the individuals and employees against those of employers and in actual fact, I think it is fair to say that in the past, Jersey has probably had a balance in favour of employers. This legislation goes some way to correcting that balance. I did believe that the legislation as it stood was the appropriate balance. The Assembly has taken a different view. As I said in my remarks, I will have to consider the effects of that amendment in due course. May I also take this opportunity to thank the officers in my department. A particular policy officer has worked on employment legislation for a number of years. I think that the support that the Assembly has given to this legislation today reiterates the grateful thanks that I give to that individual for all the hard work that she has put in over the years and I would like to publicly thank her for that work. **[Approbation]** I maintain the proposition.

**The Deputy Bailiff:**

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

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

I think I would just like to rise to congratulate the Minister and his department and Assistant Minister. Although it took an amendment to put across the views of the Chamber, he has demonstrated how a Minister can take post and hit the ground running and I think he is to be congratulated on that because that is a breath of fresh air. Some Ministers seem to take years to get

into their stride and this one has got into it rather quickly so I am pleased about that. **[Approbation]**

**4.4.2 Deputy G.P. Southern:**

May I too, at the risk of over-egging the pudding, take the opportunity to congratulate the Minister on bringing this proposition to the States at short notice and in such a reasonable manner. **[Approbation]** I believe the way in which he conducts himself is a delight and an example to the House. **[Approbation]**

**The Deputy Bailiff:**

No doubt he will remind you of that the next time you cross swords. **[Laughter]**

**Deputy G.P. Southern:**

I assure him we will cross swords politely. **[Laughter]**

**The Deputy Bailiff:**

Does any other Member wish to speak on Third Reading? Very well, I call upon the Minister to reply.

**4.4.3 Deputy I.J. Gorst:**

All I can say is that Members obviously do not know me very well. **[Laughter]** I maintain the proposition and call for the appel, please.

**The Deputy Bailiff:**

Very well. The appel is called for on Third Reading.

<b>POUR: 39</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 6</b>
Senator S. Syvret		Deputy of St. John		Senator S.C. Ferguson
Senator T.A. Le Sueur				Connétable of Grouville
Senator P.F. Routier				Connétable of St. Brelade
Senator P.F.C. Ozouf				Connétable of St. Saviour
Senator T.J. Le Main				Connétable of St. Peter
Senator B.E. Shenton				Deputy of St. Ouen
Senator J.L. Perchard				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				

Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
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 A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**5. Ex gratia compensation payment: Mr. and Mrs. R. Pinel (P.29/2009)**

**The Deputy Bailiff:**

Very well. The next matter on the order paper is Projet 29, *ex gratia* compensation payment, Mr. and Mrs. R. Pinel, lodged by Senator Shenton. I will ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether of opinion: (a) to approve the making of an *ex gratia* payment of £297,467.59 to Mr. and Mrs. R. Pinel (Reg's Skips Limited) as compensation for costs incurred in defending the *voisinage* action brought against them as set out in the Appendix; (b) to request the Chief Minister, in consultation with the Minister for Treasury and Resources, to make provision in the Annual Business Plan 2010 to meet the cost of the payment.

**Deputy J.A.N. Le Fondré of St. Lawrence:**

Before we start, could I just declare that I use Reg's Skips as a company from time to time as a customer and therefore I will not be taking part in the debate.

**The Connétable of St. Martin:**

May I declare an interest, non-financial? I will not be speaking and voting but I will stay and listen.

**The Deputy Bailiff:**

Very well, thank you. Senator Shenton?

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

Most of the time when we bring propositions to the House, we do it because we want to. Sometimes we do it because we have to. In this particular case, I felt that I had no choice because it was the only avenue left open to me. I rather hope that Members will approach this proposition with an open mind. It is not a proposition about the former neighbours of Reg's Skips and it is not a proposition with political motives. It is simply a proposition that needs to be brought to the House. Like all of us, I entered this Assembly determined to represent the people of the Island, determined to make tomorrow as good as possible for my children and determined also to do what is right. I am fighting for Mr. and Mrs. Pinel not because I want to have a go at the Planning Department, not because of any animosity towards the Bailiff, but because Mr. and Mrs. Pinel have been badly treated and there was no other avenue that was open to me. I am not seeking compensation for 3 years of worry and stress. I am not seeking a return to Heatherbrae Farm or Beaumont Hill, despite the fact that Reg's Skips no longer has a permanent home. All I am seeking is recompense of legal bills, legal bills that were rapped up because of, in my opinion, the failings of Planning and the failings of the judiciary. This proposition, more than any other, will indicate to the public what type of people Members are and whether they truly represent the people. It will tell us whether they are the type of person that will put their hand up when they have done wrong or whether they are willing to defend the undefendable. Most of us stood for election to represent the people of Jersey. Unfortunately some, when elected, represent only the Government. The problem lies in the fact that, in my opinion, both the Government and the judiciary have failed Reg and Rita Pinel. Indeed, they are the cause of the problem. Neither has offered a solution and so I find myself reluctantly lodging this proposition. As I said before, there is no political agenda behind it, just one of fairness, accountability and a quest for higher standards. As some Members will quite rightly agree, there are no complaints procedures in Jersey, just carefully designed cul-de-sacs where complaints are taken and then quietly strangled. Reg's Skips is a skip business owned and operated by Mr. and Mrs. Pinel, Reg and Rita. They have built the business from scratch, operate 5 lorries, one lorry is a spare, and employ 4 drivers, all locally qualified. Their children, Corina and Alan, live in Jersey and unfortunately the youngest, Martin, needed a heart transplant aged 5 and died aged 11 from cancer. Corina has been ill since her early years and is registered disabled. She is dependent on family support. Alan works in Jersey. Heatherbrae Farm in St. John was a dairy farm established by Chris Taylor in 1980-1981. Due very much to economic conditions and, some would argue, mismanagement of the dairy industry, it was forced into a restructuring in 2002 during which time the Island's herd was reduced by over 1,000 cows. During this period, it is Mr. Taylor's contention that the Agricultural Department did not consult with the Planning Department concerning the ramifications of this policy. Mr. Taylor took the option to leave the agricultural industry and turn the farm into dry storage. In 2005, Mr. Taylor was visited by the Planning Department together with Mr. Pinel and Reg's Skips. The planning officer explained that Reg's Skips occupied a site in St. Peter that was beside the main road and was unsightly. Indeed, I remember the site well. It was near the roundabout at the top of Beaumont Hill. Reg's Skips were legally operating from the site and there was no way that they could be forced to move. Mr. Taylor and the planning officer walked the site and Mr. Taylor was asked if he would be willing to take Reg's Skips as a tenant, as it was the ideal site. Mr. Taylor was requested to make an application for a change of use from dry storage to commercial. He was also instructed by Planning to make a personal application rather than a commercial application. In May-June 2006, Heatherbrae Farm was visited by an Environmental Health officer. He explained that the Planning Department was obliged to seek the consent of the Environmental Health Department prior to granting permission for change of use to commercial use, as this could involve noise, dust and other nuisances. It would appear that the Planning Department attempted to bypass the environmental health obligations in their desire to move Reg's Skips from a site that they were legally operating from near the airport. The Environment Department were unaware at this time that Reg's Skips were behind the application. Mr. Taylor has produced a statement stating that the planning application in 2005 was

a personal application and that all correspondence to him was headed "Change of Use, Reg's Skips Limited". It is difficult to understand why Planning deliberately failed to disclose that Reg's Skips were behind the application when consulting with the Environmental Health Department. As a result of Mr. and Mrs. Pinel's kindly nature and their wish to work with Government, they ended up occupying a site that may not be satisfactory. Mr. Taylor believes that the Planning Department acted with malice by withholding vital information from Environmental Health, despite their requests to know the identity of the tenant. In a subsequent court case between Mr. and Mrs. A., the neighbours of Reg's Skips - and you will note that I have not used their name, as I did in the proposition, as this case is not about them - versus the Minister for Planning and Environment, I question whether it is in order for the Bailiff to have heard the case due to a close family connection. In this case, he recommended to Mr. and Mrs. A that rather than sue the Minister for Planning and Environment, they would be better off taking action against a third party, namely Mr. and Mrs. Pinel, who own Reg's Skips. Until this point, Mr. and Mrs. Pinel had been outside of any legal action. The court document clearly states: "17th November 2006, before Sir Philip Bailhache, Bailiff, sitting alone. In all the circumstances of this case, it seems to me that the appropriate remedy for the applicants to pursue is a private action in *voisinage*." Here, the Bailiff is advising Mr. and Mrs. A. that they would be better off suing Reg's Skips rather than the Minister for Planning and Environment and advising him of the law and which action should be taken. Furthermore, the Bailiff makes no order for costs against Mr. and Mrs. A., even though the case was lost and the respondents would have incurred legal costs. Indeed, the taxpayer ultimately bore the costs of defending the action. The Solicitor General has provided some comments on this aspect, for which I thank him. I should point out that I did work with the Solicitor General in the late 1970s when we both worked at Barclay Trust Company although, to this day, I have no idea what he did. **[Laughter]** The Solicitor General states in his comments that the Royal Court in the case of *Hirshfield v Abacus (C.I.) Limited & Others* set out the principles of circumstances in which a judge should recuse himself. It is always the judge beside him who considers whether or not he should step down, although a decision by that judge could be appealed. The tests to be applied in deciding if there is an apparent bias is (1) the objective test of reasonable suspicion, namely, would a reasonable, objective and informed person, on correct facts, reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case. That is a mind open to persuasion by the evidence and the submission of counsel. (2) An impartial judge is a fundamental prerequisite to a fair trial and he should not hesitate from recusing himself if there are reasonable grounds on the part of the litigant apprehending that the judge was not or will not be impartial. Certainly, if I were a judge, and my daughter played in a band for a number of years with the son of one set of parents standing before me, I would have deemed myself to be severely conflicted and I believe a majority of people would do the same. Under the test, I consider myself a reasonable, objective and informed person. I consider the many people that I have discussed the case with to be reasonable, objective and informed people and every single one of them believes that the Bailiff was conflicted. The very fact that the lawyers for Reg's Skips did not request the Bailiff to recuse himself says more about the legal profession than it does about justice, albeit that is assuming that the family connection was known, which I very much doubt. In accordance with advice received from the Bailiff, Mr. and Mrs. A. sued Reg's Skips Limited under the ancient and subjective law of *voisinage*. The Solicitor General states that the Bailiff was correct in giving this advice and it would be wrong for him not to suggest litigation. Yet, as we saw from the A.G.'s (Attorney General) comments relating to P1, the Bailiff would also have been aware of the costs of litigation, a burden that he was now putting on to Reg's Skips and also aware that never before in the history of *voisinage* had a tenant been sued. Indeed, in *Searley v Dawson*, it was stated that the duty in *voisinage* is a duty that cannot be delegated or avoided by the owner. You also have to ask why the Statutory Nuisance Law, which would have been a much cheaper alternative and a fairer alternative, was not mentioned. Going back to the fact that Reg's Skips was a tenant, as I mentioned before, in *Searley v Dawson*, *voisinage* is a duty that cannot be delegated or avoided by the owner. This is perhaps for good reason. Landowners own assets; tenants often

do not. If you are advising someone to sue another and you are responsible for justice on the Island, you should give just as much consideration to the person that you are advising to take action against and the consequences of that action as you do in respect of the family acquaintance in front of you. In the actual court case, the judge was, once again, Sir Philip Bailhache. It is surprising that no one appears to have raised any objections to this. In a letter from Appleby on behalf of Mr. and Mrs. A., it is stated that the findings are made by the jurats who, according to the Solicitor General, do not deliver a separate judgment on facts or say anything during the hearing. All interaction between the court and the parties is conducted through the presiding judge. The letter from Appleby also states that I do not have a full understanding of the law. I can assure you that my understanding of *voisinage* is certainly a lot better now than it was 12 months ago. Sadly, when I discussed the case with one of the jurats sitting on the case, it became apparent very quickly that he did not have a very good understanding of the law himself, that jurats are, at the end of the day, laymen directed by the judge and if the judge is conflicted, the judgment is flawed. Not only was the Bailiff conflicted, in my opinion, due to family connections, he was also conflicted because he had knowledge of information presented in a previous case. In the above judgment of 11th December 2007, the Bailiff states: "In broad terms, we accept the evidence of the plaintiffs. We were particularly impressed by the evidence of Mrs. A. who spends more time at the property than anyone else. It was clear that she was not a person given to complaining." It is difficult to ascertain how such a sweeping statement: "She was not a person given to complaining" could be made without knowing that person quite well. The Solicitor General argues that this was the view of the jurats but the same problem arises. How can you know this on the facts received? Surely the Bailiff and jurats cannot start basing judgments on impression or conjecture, otherwise the whole basis of justice collapses. Never before had *voisinage* been used to sue a tenant. Never before had *voisinage* been used to address a complaint of noise solely. However, with subjective ancient laws, in my opinion, this does not seem to matter. Paragraph 35 is interesting as once again it demonstrates a failing by the Bailiff: "By way of postscript, we would direct that any application for costs of these proceedings should be pursued only after a directions hearing before the Bailiff at which consideration can be given to the question whether any other party or parties should be convened." What this means, in layman's terms, is the Bailiff is effectively showing some sympathy for the predicament that Reg's Skips find themselves in and is requesting the Planning and Environment Department to contribute to costs, as their negligence caused the problem. The request for costs was defended by Planning, represented by the Solicitor General, albeit the previous one, who has produced comments on the basis that they were not a party involved in the case. After all, it was Mr. and Mrs. A. versus Reg's Skips. At the time of the case, there was some consternation among the legal community as he could have set a precedent which would have had numerous implications. Members of the public, for example, could have been asked to pay costs in respect of cases that they were not directly involved with. Lawyers that I spoke to at the time could not believe that the Bailiff could have made such a direction without full consideration of the potential consequences. My personal opinion is that the action for Planning to contribute costs was lost on the basis that it set a dangerous precedent rather than on the merits of the individual case. We have now all heard of *voisinage* and, as previously stated, the law of *voisinage*, like the ancient Les Pas laws that cost the Island millions of pounds, has no place in modern society and, I would argue, no relevance to modern justice. The law itself, as applied, is seriously flawed. For example, if it was accepted that the right of relief from excessive noise was owed to a neighbouring property's owners under the law of *voisinage*, only the adjacent property would be able to bring a claim whereas the owner of the property down the road, also seeking relief from the same noise, would not be able to do so as *voisinage* applies only to neighbours whose properties are touching. I think that came up in the *voisinage* debate that this legal opinion was countered by the Solicitor General in the case, who did not agree with it. Also bear in mind that *voisinage* is a local peculiarity with no place in Norman or English law. The Court of Appeal was heard by experts in English law, Dame Steel, M.S. Jones Q.C., McNeill Q.C. None had specific backgrounds in the Jersey law of *voisinage*. As a direct result of the above case, Mr. and Mrs. Pinel have received



legal bills in excess of £280,000 which includes over £125,000 costs claimed by Mr. and Mrs. A.'s lawyer. In the case brought by Mr. and Mrs. A. versus Planning, the action was thrown out and lost by Mr. and Mrs. A. and the Bailiff awarded no costs in favour of Planning. However, sadly, when Mr. and Mrs. A. successfully sued Reg's Skips, they were awarded costs, and bills in excess of £125,000 were received by Mr. and Mrs. Pinel. I find it difficult, as a layman, to justify the discrepancy whereby when one case against Planning was lost, no costs were awarded, yet there was obviously a cost to the taxpayer in defending the case. As previously stated, Reg's Skips moved to the St. John site, Heatherbrae Farm, from a site legally occupied near the airport at the specific request of Planning who located and identified the site for them. It would appear that Planning failed to obtain the correct approval from Environmental Health. This information may have deemed the site unsuitable, thereby saving Mr. and Mrs. Pinel over £250,000 and a lot of hassle for Mr. and Mrs. A. Another twist was the fact that the Bailiff took the unusual step of requesting Planning and Environment to contribute to costs in a case where they were neither plaintiff nor defendant. This appears to have been an admission of responsibility placed on the States department and a belief that they are to blame for the predicament Mr. and Mrs. Pinel find themselves in. In the judgment to the case, the Bailiff states: "We reached this conclusion not without considerable sympathy for Mr. and Mrs. Pinel who were permitted, if not encouraged, by the Planning Department to establish their business at Heatherbrae Farm which they did in good faith." Can the Minister for Planning and Environment honestly state that his department has absolutely no responsibility for the predicament that Mr. and Mrs. Pinel now find themselves in? Contrast the Bailiff's assertion that his family's relationship with Mr. and Mrs. A. did not make him conflicted with the decision of the Minister for Planning and Environment when he withdrew from determining the Heatherbrae Farm application in the name of Mr. Chris Taylor. When I requested his explanation as to why he withdrew, the Minister for Planning and Environment wrote: "Dear Ben, I have known Chris since Prep School. I served for many years in St. John's Honorary Police with him. I therefore decided that when things became complicated, that it would be better if I did not deal with the matter." The Minister for Planning and Environment felt conflicted because he went to the same school over 30 years ago and happened to serve in the Honorary Police at the same time. They were not friends at school and their relationship could be described at best as acquaintances. The Bailiff, in his position to make a subjective *voisinage* decision, had a much different relationship with those before him in court. I do not believe that objectivity was possible in this situation. Consciously would be difficult, subconsciously impossible. In addition, he was aware of the facts disclosed in the previous case on the same subject matter which may have affected his judgment. However, the Minister for Planning and Environment is not exactly blameless in this saga. He encouraged the landlord to apply for a coverage facility to be used by Reg's Skips saying that it would be passed and after the landlord spent £35,000 on plans and acoustic research, the application was rejected. I believe there are 2 types of persons in this world, those that put their hands up and take responsibility for their actions and those that hide behind excuses, precedents and procedures. Should we, as an Assembly, defend Government at all costs, even when the Government lets the public down? There will be many members of the population that will have sympathy for Mr. and Mrs. Pinel but will be against payment because it is taxpayers' money. Yet, what is government if it cannot take responsibility for its actions? Why is it that the public have to suffer for the failures of government? There will also be those that consider this to be an unacceptable attack on the Bailiff and to be embarrassing at a delicate time, yet perhaps those critics should look at the weakness of their arguments. If they want to lay blame at my door for taking up the case, they should perhaps examine their own standards of responsibility, ethics and accountability and ask themselves whether the behaviour detailed is acceptable. With regard to the law of *voisinage* and other ancient laws, it is perhaps worth remembering that Sir Philip has a reputation to be a great protector of tradition even when, in my opinion, it is past the sell by date. I ask Members to redress the balance, to give back to Mr. and Mrs. Pinel their financial security and to act in a decent way for the benefit of decent people. I did not plan to go through the letter delivered by Appleby highlighting the errors in it, as this would take some considerable time, but as

it was delivered to all States Members, I feel I should comment on it. Instead of going through the whole letter, I will just look at paragraph 1. Paragraph 1 states that an action was only taken by Mr. and Mrs. A. as a last resort after attempts to find an acceptable solution had been rejected. Now, I believe that most of us, if we were having trouble with a neighbour, would initially pop round and try and sort things out over a cup of tea. The first that Reg and Rita Pinel knew of the problem was when they received a 4-page letter from lawyers stating: "If we have not had a satisfactory response, satisfactory, that is, to our clients, within 14 days from the date of this letter, legal proceedings will be issued without further notice. Such proceedings will seek, among other things, a permanent injunction restraining you from continuing with any nuisance on the site and an order requiring you to pay all costs associated with such proceedings. We look forward to hearing from you or your lawyers with constructive proposals as to avoid such proceedings if at all possible. Yours faithfully, Michael O'Connell, Managing Partner, Appleby Hunter Bailhache." I do not call this a last resort to find an acceptable solution. They never even tried to speak to Reg and Rita directly and this is not the type of world that I would want to live in. Laws were designed for the people of the Island. They were not designed for the lawyers. Furthermore, that Health Department were working towards a compromise under the Statutory Nuisance Law. As I stated before, there is no argument pursuing the tenant under *voisinage*, especially a tenant that is 2 other tenants away from the neighbour. I believe that the judgment was flawed. I close by reiterating what the Bailiff says in the judgment of the case: "We reached this conclusion not without considerable sympathy for Mr. and Mrs. Pinel. They were permitted, if not encouraged by the Planning Department, to establish their business at Heatherbrae Farm, which they did in good faith." As a result of this good faith, they have been left on the verge of bankruptcy. This proposition goes some way to alleviating this financial burden incurred through the fault of others but it still leaves them without a permanent site to operate from. Mr. and Mrs. Pinel are good, genuine people that have been dealt some fairly rotten cards over the years. The accusation of Appleby, that they would somehow run off with the money and not pay their legal bills, is repugnant. They have given an undertaking that the funds will be used solely for the bills detailed in the proposition and if these bills are reduced, as they should be, any excess funds shall be returned. Indeed, I promised to publish the settled amounts hopefully when they have been negotiated down. I have not enjoyed bringing this proposition and it has been a considerable amount of work. However, I cannot sit back and watch a family bankrupted through the failings of others. If you feel that they were let down by Planning, remember that they only moved near to Mr. and Mrs. A. at the specific request of Planning and please vote in favour of the proposition. Even if you feel that they were let down by Planning but not by the judiciary, I ask you to vote in favour. However, if you believe that this family deserves to go bankrupt for the failings of others and that government is a machine without responsibility, then vote contre. I put forward my proposition.

#### **The Greffier of the States (in the Chair):**

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

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

Firstly, I commend Senator Shenton in bringing forward a proposition of this nature. He is continuing a long tradition of Shentons protecting and representing Islanders from all sources. It is a sad case that relates specifically to high legal fees of nearly £300,000. Whether those legal fees are justified, I am not able to tell you but for those who are faced with the legal fees, it is clearly a virtually intolerable burden. However, having said that, there are very significant differences in the facts as stated in the proposition to those facts that the Planning Department believe accurately represent the circumstances. I will not go through the proposition and the comments that I have lodged line by line, as Members will already have read both, but I will single out a couple of points and I will deal with some of the chronology. The first is that this sad case straddles the period of

the Environment and Public Services Committee and the period of the Planning Department under a Minister and that Minister was clearly me. The application in relation to moving to Heatherbrae in the first place was not dealt with by me but the application in relation to the covered shed covers the term of which I was Minister. Firstly, I will start by saying that the operation prior to Heatherbrae was an operation with a legal permit to store skips. It did not have a permit to sort skips and most specifically it did not have a permit to mechanically sort skips, and it is the mechanical sorting of skips that I believe is the cause of the potential nuisance. The next point is that the application for Heatherbrae was properly advertised in the *Evening Post* on 22nd March 2005 and I have the advertisement in front of me. It says: "Heatherbrae Farm, La Rue de la Chesnaie, St. Olaves Investment Company Limited, change of use of area to the south and part of the building to the north east from dry storage to commercial for Reg's Skips Limited, reference P/2005/0423." The original consent to operate at Heatherbrae was granted on the basis that the use was the same as at the previous place of business. That use, the Planning Department believed at the time, did not include substantial mechanical sorting of skips but it is very clear that the condition on the permit controlling the use was not sufficiently precise, and that I accept. Once the company was at Heatherbrae, they began significant mechanical storage and the business expanded in that form and it was the noise associated with this that was the primary cause of the complaint. I visited the site in September 2006 and we did discuss the possibility of reducing the noise by erecting a covered structure. Simply, in layman's terms, it was the idea that if you cover the structure and you funnel the noise away from the neighbours that should to some extent mitigate the noise nuisance. But I made it absolutely clear there was no point in progressing this solution unless the applicant was absolutely certain that Health Protection's noise requirements would be met by this measure. The application for the covered shed came in in 2007 and there are various letters from Health Protection making it clear that they were not satisfied that the proposed covered shed would meet the requirements and prevent a noise nuisance. The most important letter is a letter received in January 2008 stating that the proposed works will reduce noise levels but not enough to abate the nuisance caused by the skip business. So I repeat that the noise levels will be reduced but not enough to abate the noise nuisance caused by the skip business. I would also point out that this letter was received from Health Protection when Senator Shenton was the Minister for Health and Social Services so it was within his area of responsibility. As a result of the various legal actions that you know of and have read of, Reg's Skips finally left Heatherbrae in 2008.

**Senator B.E. Shenton:**

Sir, sorry, I was not Minister for Health and Social Services at that time.

**Senator F.E. Cohen:**

Sir, I believe that Senator Shenton was Minister for Health and Social Services on 23rd January 2008.

**Senator B.E. Shenton:**

Sorry, the letter I have in front of me is saying that they would not oppose the application in 2007.

**Senator F.E. Cohen:**

I would refer the former Minister to a letter dated 23rd January 2008 signed by Mr. D. Binet, Environmental Health Officer, from the Health and Social Services Department. I think it is quite clear that that letter was sent at the time that Senator Shenton was Minister, albeit he may not have had sight of the letter, but he clearly was Minister at the time. If we are going to cross-question each other, Members are going to cross-question one another over the various letters from Health and Social Services, I do think I must point out that the facts as stated in one of the pieces of information distributed early today by Senator Shenton are not accurate and one of those states that the Minister's response is, therefore, untrue. I assure Members that the statements I have made to you are entirely true to the best of my belief and, where I have quoted directly from Heath

Protection letters, they are direct quotes that I checked myself so I am certain they are correct. Reg's Skips then finally moved to the McQuaig's Quarry where they are operating without consent presently and we have had a number of complaints. I have offered to do whatever I can to help them and to mitigate the cost of making a planning application and applying for a waste licence but, to date, they have not submitted an application of which I am aware. I have told the department to adopt a soft approach to Reg's Skips and to help them as much as we can but where complaints are received we have an obligation to investigate those complaints, albeit that we can interpret the complaint with sympathy, which is what I have instructed the department to do. There is no conspiracy, I am not a liar and the statements that I have given to you are entirely accurate, to the best of my belief. Skip operators are noisy. It is a noisy business, we are a small Island and it is very hard indeed to find the ideal site for skip operators but in each case, and there have been others, I have indicated that I will do my very best to help them and to take a sympathetic approach. I do believe that it was right to step out of a potentially controversial decision in the manner outlined by Senator Shenton previously. I did that because I have known Chris Taylor for many years, certainly over 30 years. We were at school together and as my good friend Deputy Le Hérisier has pointed out to me on a number of occasions, it is the impression that counts. Those looking from the outside may say why was I dealing with an application from someone who I have known for 30 years, albeit we are not close friends, and who not only was I at school with but I served for many years closely in the St. Johns Honorary Police Force. So I believe it was the right decision although others may have taken a different decision in the same circumstances.

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

Sir, I wonder if the Minister would give way just for a moment. Regarding the complaints that you have had regarding the operation at McQuaig's Quarry, could you inform the Assembly whether they are traffic related or what they are doing on the site?

**Senator F.E. Cohen:**

Certainly. What I have had at the Parish Hall are traffic related rather than the operation itself. I believe the current complaints relate to the general operation of the skip business and that would, I presume, incorporate both traffic and operation. I will ensure that the precise nature of the complaints are presented in anonymous form. I will not, obviously, want to release the name of the complainants to the Constable of St. John in confidence, within 24 hours. So in conclusion, this is a very sad case and the legal costs do seem to be an enormous sum. Whether they are justified or not, I am afraid I am unable to say. While, as I have said initially, that the condition attached to the original consent in 2005 was not sufficiently precise, I have no doubt that there are issues relating to nuisance and I am satisfied that Health Protection, when they assessed the proposal for a covered shed, were not in a position to say that the nuisance would be abated and, therefore, there was little purpose in proceeding with the covered shed. I will leave it at that and I will urge Members to vote with their conscience.

**5.1.2 Deputy E.J. Noel of St. Lawrence:**

I merely have a question for Senator Shenton. I do not understand why Mr. and Mrs. Pinel find themselves in such a position as they traded as a limited liability company and it would be that company that should have been involved in these proceedings and not the Pinels directly. Perhaps he would kindly explain.

**The Greffier of the States (in the Chair):**

It is not question time is it? Is there anyone who will wish to speak? If not?

**Deputy R.G. Le Hérisier:**

I wonder if this is a natural break in the proceedings and we could reconvene tomorrow morning.

**The Greffier of the States (in the Chair):**

I do not think so. I have a number of Members waiting to speak. I will call Deputy Green.

**5.1.3 Deputy A.K.F. Green:**

I really have come to this with an open mind today and to me if ever there was a case for an ombudsman, this is one. Unfortunately, we do not have an ombudsman and I will listen to what everybody says but I find it very difficult to judge, and that is what we are being asked to do today, to judge the evidence given to us without any means of measuring whether it is robust or correct. We have got 2 versions, we just have to accept one or the other. I am very, very uncomfortable about this. I wonder whether, and I am new at this game, without spending an awful lot of money we could have some sort of short independent inquiry to look at exactly what happened and come back to the House.

**5.1.4 Senator S. C. Ferguson:**

I would certainly support Deputy Green's suggestion because there are a number of things in the case that do bother me. I have every sympathy for the Pinels but, for instance, I query Senator Shenton's requirement that the States should pay the whole of the legal fees. He may argue that if it is Planning that were to blame then the States should foot the bill, however, there is also the case of individual responsibility. The Pinels apparently expanded their business without precise approval. I would be interested to know why they changed their lawyers halfway through the case, which is very unusual. I can appreciate that they are perhaps inexperienced in these matters but (a) you do not usually change your lawyers and sometimes if the advice is: "You cannot really get any further", perhaps you should just cut your losses and pull out. Did they have that sort of advice? It is a bit like the Judgment of Solomon, do you just cut the baby in half? I really feel that I am reluctant to say that the States should foot the whole bill. Perhaps the Pinels should pay part of it, and this is why I think that to go to an independent review would probably be the best thing for this House who, with the best will in the world, are not experienced in these sorts of legal matters.

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

I wonder if it is appropriate to ask if Members would be willing to request this is referred to Scrutiny at all, if there is an opportunity to do so, for a short review in relation to some of the issues that have been raised. I am at a loss. I do not believe that the Commission of Inquiries has got any greater powers to deal with this quicker or easier than, perhaps, a suggested review by Economic Scrutiny that could conduct a short review, if Members would be willing to at least put that to them. I was going to suggest the Chairmen's panel might consider it but I believe that is Senator Shenton. I, for one, came to this very open minded but at the same time I have been looking, over the last couple of years, at nuisance law and how it has been affecting people in various areas of the Island. While I am quite concerned, to say the least, about what I have heard this afternoon, I am of the opinion that there seems to be some discrepancy about exactly what was imprecise about the original permit that has been mentioned on 2 occasions by the Minister. So it seems to me that there is something that is not quite as evident as it should be for us today to make an informed decision, and I wondered if it would be possible for a short review for us to be made available that information as to what was not precise rather than going for another day and a half on this. We might be able to get that referred and, also, what would be the case if an appeal for these costs to the Bâtonnier were made and under what process of law would that be facilitated. So if I am within Standing Orders, I would like to test the mood of the House to see if we could refer this to Scrutiny for their consideration and if it is going to create another debate, then I will not make the proposition, that is for certain.

**The Greffier of the States (in the Chair):**

I just state from the Chair, Deputy, I think you would possibly be perfectly entitled to make a proposition under Standing Order 79 to ask the Scrutiny to consider whether they wish to review it. I think I shared the mood of some Members of the Assembly when I heard the reaction to your

suggestion. I am not sure it is a matter that really is the sort of thing that Scrutiny would normally look at. It is also difficult to know which panel would be competent to pick this up and there is the structure of the Committee of Inquiry that could be used or perhaps some other form of independent review if Members wish to go down that route. It is up to the Assembly. Senator Syvret?

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

Can I make the observation that, for the people concerned, this is a matter of great urgency. They are facing bankruptcy, they do not have time for us to spend 3 months engaging in any kind of inquiry. I believe, personally, that we should agree and support the proposition and if there then needs to be an inquiry to work out what went wrong, how, why then so be it, we undertake that afterwards. These people need assistance urgently and we must proceed to make the decision.

#### **The Greffier of the States (in the Chair):**

Do you wish to speak on the proposition, Deputy Le Hérissier?

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

Very briefly, not on the proposition but on a point of information from the Solicitor General. Have all the available legal routes been exhausted and, if not, what routes still remain, for example, complaints to the Law Society, outside the so-called traditional legal process?

#### **Mr. T.J. Le Cocq Q.C., H.M. Solicitor General:**

If by legal routes the Deputy means routes available to Reg's Skips Limited, it seems to be within the judicial process there is a theoretical ability to appeal any case, ultimately, to the committee of the Privy Council. However, the time for that has long since passed and I believe that that is an avenue that would effectively be closed. In terms of the liability of an unsuccessful litigant to have the costs claimed against it by the successful party scrutinised, there is a process within the courts called taxation. The taxation is a line by line, if required by the unsuccessful, the paying, party scrutiny of the lawyers bills to resolve whether they are in a reasonable amount and reasonably incurred. My understanding of the present case is that the costs were ordered to be paid on the standard basis which means that any doubt about whether they were of a reasonable amount and reasonably incurred would be resolved in favour of the paying party, in other words, Reg's Skips, in these circumstances. I cannot say with certainty whether that process has been gone through but, in the time available, I would expect that that has been undertaken by now and has been concluded and I cannot say whether the costs set out in the schedule to the proposition are costs of a tax nature or of a raw untaxed nature. In terms of the ability to scrutinise the cost claims by your own lawyer, that does not have an official mechanism that you can go down. Disputes as to costs are normally referred to the Law Society and, unless the system has changed since I was in private practice, which it may well have done and I am not aware of it if it has, the process would be that the Law Society would appoint independent lawyers to take on board the complaints and to scrutinise the bills and to make recommendations. It used to be the case that the Law Society would only do that if the legal advisers whose bills claimed were being looked at in that way agreed to be bound by the result. It is, of course, and I mention this merely as a theoretical possibility, not with application to the present case because I certainly do not have anything like enough information to make it applicable to the case, but of course, if the lawyers have badly advised one party or another, it is open to their client to sue them.

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

In conclusion then I think, given the time, it does not seem appropriate that a request to scrutinise this is appropriate. Could I just, before we obviously will be requested to convene for this evening, sum up by asking if it is possible for clarification from the Minister for Planning and Environment what, precisely, was not precise about the original Planning permit?

**Senator B.E. Shenton:**

I can let the Deputy have a copy of the Planning permit.

**The Greffier of the States (in the Chair):**

Yes, thank you. Clearly, Members wish to think on the way forward. It is 5.30 p.m.

**Senator S. Syvret:**

Sir, I would propose the adjournment.

**The Greffier of the States (in the Chair):**

Members can consider and, obviously, I am available to advise any Members who wish to discuss any options to find a way forward.

**The Deputy of St. John:**

Could we not go on until 6.00 p.m. because we have a long day tomorrow if we get really into this? We might get some more done this evening.

**Deputy T.M. Pitman:**

Some of us have meetings, I am afraid.

**The Greffier of the States (in the Chair):**

Well, the adjournment is proposed. Those in favour of adjourning, kindly show.

**Deputy F.J. Hill of St. Martin:**

Sir, could I just speak beforehand? I did have my light on. What I was going to ask was how long are we going to go on with Senator Shenton's because if it was just a comeback for mine, I would be quite happy to put mine back for a month to 28th April. If we are going to come back for Senator Shenton's and mine, well, we just might as well come back for tomorrow, but that was the question.

**The Greffier of the States (in the Chair):**

I do just fear, from the Chair, that if we do continue tonight that we will continue this confusion as to should we debate this ...

**Senator B.E. Shenton:**

Sir, yes, this involves some people that are going to be bankrupted. I am not rushing it through so that Deputy Hill does not have to come in tomorrow. I am sorry.

**The Greffier of the States (in the Chair):**

Well, do Members agree to adjourn and reconvene tomorrow to continue?

**Deputy M. Tadier:**

Before we go, can I test the mood of the House? It seems that there is quite a lot of appetite for an inquiry, notwithstanding Senator Syvret's comments. Could I ask the Senator in question whether he would be willing to withdraw this, with the consent from the House, an undertaking for the House to pass an independent inquiry?

**Senator B.E. Shenton:**

Sir, my experience of inquiries is not very good. I mean, we had the Connex Inquiry which found a lot of fault and did nothing.

**The Greffier of the States (in the Chair):**

Well, a quick "yes" or "no" I think, Senator.

**Senator B.E. Shenton:**

We do not have an ombudsman. This is the only way forward so the answer is no.

**The Deputy of St. John:**

Well, therefore, can I ask to test the mood of the House, that we sit till 6.00 p.m. and get some more business done?

**The Greffier of the States (in the Chair):**

I thought we had voted on that but if you really wish to put it to the Assembly.

**Senator S. Syvret:**

I thought I had already proposed that we vote on the adjournment.

**The Greffier of the States (in the Chair):**

Well, I will take the proposition. We cannot take lots of votes but we will take a proposition from the Deputy of St. John. Is it seconded? **[Seconded]** Very well, the appel is called for. The Deputy of St. John has proposed the Assembly should sit until 6.00 p.m. before adjourning.

<b>POUR: 13</b>		<b>CONTRE: 31</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator S. Syvret		
Senator T.J. Le Main		Senator T.A. Le Sueur		
Senator F.E. Cohen		Senator P.F.C. Ozouf		
Senator A.J.D. Maclean		Senator B.E. Shenton		
Connétable of Grouville		Senator J.L. Perchard		
Connétable of St. Saviour		Senator S.C. Ferguson		
Connétable of St. Clement		Senator B.I. Le Marquand		
Connétable of St. Peter		Connétable of Trinity		
Deputy of St. Martin		Connétable of St. Brelade		
Deputy R.G. Le Hérisssier (S)		Connétable of St. John		
Deputy I.J. Gorst (C)		Connétable of St. Lawrence		
Deputy of St. John		Connétable of St. Mary		
Deputy A.K.F. Green (H)		Deputy R.C. Duhamel (S)		
		Deputy J.B. Fox (H)		
		Deputy J.A. Martin (H)		
		Deputy of St. Ouen		
		Deputy J.A. Hilton (H)		
		Deputy P.V.F. Le Claire (H)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy S. Pitman (H)		
		Deputy K.C. Lewis (S)		
		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 J.M. Maçon (S)		

**The Greffier of the States (in the Chair):**

The Assembly stands adjourned until 9.30 a.m. tomorrow morning.

**ADJOURNMENT**