

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 11th JULY 2012

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[9:30]

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

PUBLIC BUSINESS – resumption

Connétable P.J. Rondel of St. John:

Sir, before we start, yesterday I passed a comment about Senator Le Marquand. I would like to withdraw that comment after mature reflection. It was to do with the petroleum debate. Thank you.

The Deputy Bailiff:

I am sure the Senator will be gratified to hear that.

Senator F. du H. Le Gresley:

Sir, may I say something? Before we start today's proceedings, Members will see that Deputy Southern has circulated a document which is on our desks. I have to inform Members that he received this under a confidential agreement when he was head of the relevant scrutiny panel and I would ask your opinion, Sir, whether it should be part of his proposition?

The Deputy Bailiff:

I think I need to know more about the circumstances if there is a formal objection. Deputy, have you got any comments to make?

Deputy G.P. Southern of St. Helier:

Sir, it is true. The document is circulated by me. It is marked "confidential". It was received by me when I was head of the Health and Social Services and Social Security Scrutiny Panel and I have circulated it today. It was confidential on 16th September 2009. We are 3 years on. It is draft legislation. It is the legislation that we are talking about today. It was written.

The Deputy Bailiff:

Very well. I have been asked to express a view from the Chair and my view is that this is not a matter for the Assembly. If there is a disciplinary matter that arises, it is for you, Minister, to raise it with the Privileges and Procedures Committee in the usual way. A Member is entitled to bring to the attention of other Members particular material, on the face of it. That does not prejudice whatever the Privileges and Procedures Committee may make of it because we have not had all the facts, but the document is there before Members and so we are going to proceed.

1. Transfer of Undertakings Protection of Employment (T.U.P.E.) legislation (P.60/2012)

The Deputy Bailiff:

We come to P.60, the Transfer of Undertakings Protection of Employment (T.U.P.E.) legislation, lodged by Deputy Southern, and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion (a) to request the Minister for Social Security to bring forward for approval by the Assembly not later than the first quarter of 2013 legislation for the protection of employees involved in business mergers and acquisitions (Transfer of Undertakings Protection of Employment 'T.U.P.E.' legislation) and, provided that the draft legislation is approved by the States, sanctioned by Her Majesty in Council and registered in the Royal Court in time, to take all necessary steps to bring the legislation and any necessary subordinate legislation into force no later than December 2013; and (b) to request the States

Employment Board to refrain from reaching any final agreement on schemes to privatise or outsource services currently delivered by the public sector until the legislation referred to in paragraph (a) is in place.

1.1 Deputy G.P. Southern:

Let us start with the comments made by the Minister for Social Security about the circulating of this confidential document from 2009. I did not do so last night. I did not widely circulate it. I have put it on Members' desks this morning because Members are going to make a decision about this legislation and I do so to illustrate 2 things. First of all, the law, which may require a little tweaking, is drafted. This is the seventh draft. Draft 7, Members will notice, 16th December 2009. It has been drafted and parked. In addition to all the consultation which I have given you in the appendix to my proposition, after all that work was gone into, this, Members, is typical of what happens. Material gets worked on and good ideas get parked. It has been sitting there for almost 3 years, 2 and a half years. No justification for that whatsoever. It was a perfectly viable piece of legislation. It has been drafted. It is a simple amendment for the Employment Law 2003, amendment number 6 at the time. In order to enact this is not a difficult process and yet we have got 2 and a half sides from the States Employment Board and a couple of sides from the Minister for Social Security saying it is near impossible to do this with their workload and their schedule. The fact is it has been done, drafted and dusted. It is dusted because it has been sitting on a shelf for 2 and a half years. Now, I know it is a stretch of the imagination, but imagine you are manual worker working for the States of Jersey now. You are going through your second wage freeze in the past 2 years. Next year you have also got virtually a wage freeze. At the same time, there is all this talk - I have not seen anything concrete yet - about modernisation of the delivery of public services. If you are a gardener, you are sitting there wondering if this time next year you are going to be working for A1 Gardens or Grafters; whether they will have outsourced the job, along with your job, and transferred you. Now, you know, because you have heard about it for years, that in the U.K. (United Kingdom) they have got a piece of legislation called T.U.P.E. (Transfer of Undertakings Protection of Employment) and that that is an additional bit of protection for workers on transfer of undertakings on change of ownership of their job, effectively. It especially applies to the public sector. You might, in your anxiety about what is going to happen to your job, your terms and conditions in the next few years, feel a little bit more secure knowing that T.U.P.E. is in place. You have got some protection - limited, extensive, whatever, but some protection - for the transfer of your job and conditions and it might make you feel a little bit better about your life. Equally, it also applies to teachers and nurses and all the other civil servants who are sitting there worrying about what is going to happen over the next few years. What does "modernisation" mean? Some of the modernisation is privatisation, outsourcing and transfer of delivery of your services to another body. With T.U.P.E. you know that your terms and conditions are protected to a certain extent and that you do not have to deal with the vagaries of market forces unprotected. I believe we need that protection in place. The previous Minister for Social Security and this Minister for Social Security says: "We do not need that. We are too busy doing other things" or: "I do not believe it is necessary." The previous Minister for Social Security simply parked it and come up with a whole set of reasons as to why we cannot do it: "We cannot do it now. We cannot do it in the timescale. We just do not want to do it" effectively. "We can do it another way" is what he is saying: "We do not need this. It is too complex." They say it will be a cost to the people who run it, which is J.A.C.S. (Jersey Advisory and Conciliatory Service). What does J.A.C.S. say? As far back as 2009 in his annual report, the Chairman of the Jersey Advisory and Conciliatory Service, who is going to have to administer this and hear hearings, was anticipating further Employment Law developments: "While proposals to introduce new legislation have been delayed over the next year or 2, we expect to see the introduction of a number of new laws or amendments to the Employment Law covering

redundancy and transfer of businesses (T.U.P.E. legislation), as well as proposed discrimination, maternity, paternity, family-friendly laws.”

[9:45]

So a lot is happening. Yes, but back in 2009 J.A.C.S. was saying: “We are expecting T.U.P.E. down the line. It will be with you soon.” They also say, and this is repeated in his statements in 2010 and 2011: “There is still a great deal to do in regard to Employment Law in order to meet the basic standards expected of a fair society.” Now, in the U.K. that includes T.U.P.E.: “The basic standards of a fair society.” The director of J.A.C.S., who is the person who will be working with this law, considers that along the lines previously envisaged, i.e. relatively simple - description by J.A.C.S. This is relatively simple, it is not enormously complex, hard to run or costly and it is timely - then he does not consider there would be any financial implication for J.A.C.S. So he can do this with his current workforce. He does not expect a mass of legislation. Transfer of undertakings will take place probably rarely. We do not know; 5 years down the line it might be more often. Nonetheless, he does not expect a great deal of appeals from this particular legislation. T.U.P.E. first raised its head on the potential sell-off of Jersey Telecom and at that time Senator Shenton, a businessman probably first and not a Member of the States anymore, had the following to say: “The wholesale privatisation saga and timescale sums up the attitude of the type of Government that we have been saddled with during the past 10 years. Everything has been done to facilitate the sale, to make money, to add to the coffers, but no one gave a thought to the real people of Jersey, the workers that we the politicians are meant to represent. Where is the employee protection? Should we not have considered this when we started down any privatisation path?” That is from Senator Shenton. No fellow traveller of mine, but wholeheartedly supportive of this type of legislation. He went on: “However, if you read the T.U.P.E. requirements, they are not onerous and this proposition seeks T.U.P.E.-type legislation, tailored to the Jersey marketplace. In fact, the regulations are no more than an employee would expect faced with a takeover. Change is disconcerting and, as a Government, we have a duty to ensure that we look after our workers.” Not my words, Senator Ben Shenton’s. So the then Minister for Treasury and Resources had to run around saying things like: “I am willing to guarantee that I will not bring proposals for the States to sell Jersey Telecom unless employment benefits at their current level are protected.” So: “I will find a way of fudging some protection.” Does that sound familiar? Like the current Minister for Social Security and States Employment Board today are saying: “We will do it case by case. We will find a fudge. We will find some protection. We will not embody it in the law.” Further on, on that same issue, he promised safeguards at a sufficient level, equally as good as would be under T.U.P.E.: “If I cannot do that, I shall not bring the proposition.” Well, we all know that eventually he did not bring the proposition, but what did it do to employees? Are we going to get a repeat of the statements like one employee here who says: “I do not have any faith in what will happen to the company or the staff if we are sold to a large company.” We have seen it in so many companies throughout the world, that the least of their worries is the staff and their wellbeing. That sort of doubt in people’s minds, I am afraid, we are about to put back in our public-sector employees. One employer’s comment, Employers’ Association, said: “It is important to maintain good employee relations and to treat employees fairly and with respect. There is often a lot of uncertainty and concern when business transfers occur and it would be beneficial for employees to understand what the transfer means and how it affects their future concerns.” That is an employer. Employer and employee united that this sort of protection can usefully be in place and would calm the fears of many in the public sector that their jobs are about to go one way or another, either terms and conditions or their jobs. I do not think that is what we should be doing now. I go back to the previous Minister for Social Security, Senator Routier, who received the consultation document that I refer to extensively in my proposition and Members will note that throughout this consultation, time and time again, he says things like: “The Minister understands the similarities

and differences between the importance of consulting and informing employees in these 2 different situations and approves the Forum's recommendation." In the consultation process, the previous Minister for Social Security but one approved the legislation and ended up saying, in 2007: "I will now request that the drafting of these proposals begins, with the intention of preparing draft legislation during 2007. I hope to bring the draft law to the States in early 2008." Well, that was a tight schedule and the Minister failed, but by 16th September 2009 draft 7 was drafted. It was there. It was ready to go. It is still ready to go. It may need some minor political decisions to be made as to how the protection is put in place, but it is drafted. It can be done not quite at the drop of a hat, but it can be done relatively straightforwardly and simply. I am sure they have, but if Members have read through those recommendations I am sure they will agree that, with one or 2 tweaks, it is fairly straightforward. It is a fairly straightforward amendment to the Employment Law and the Minister accepted but 2 of the recommendations wholeheartedly. Now, also in his comments the Minister for Social Security says, in conclusion on page 3 of his comments: "The second phase of employment legislation is being introduced in a measured timescale. In the period 2009 to 2011, the department has introduced redundancy rights for employees, including the right to statutory redundancy pay, and a duty for employers to consult employee representatives in collective redundancy situations as well as making provision to compensate employees where their employer is insolvent." Members who were in this Chamber will surely remember the measured timescale associated with redundancy payments. We got caught with our pants down. Members will remember the Woolworths saga where Woolworths workers in the U.K. did have the right to redundancy payments and, lo and behold, we did not. We did not. Why? Why did we get caught with our pants down? Because, yet again, this measured timescale we are so proud of included parking redundancy payments on an even higher shelf for almost a decade while we got on with tidying up the Employment Relations Law to govern trade union activities. It got parked. It had been there for 10 years and all of a sudden we were getting hit with redundancy after redundancy with no measures in place. Some of us scrambled around quite effectively and we finally got that in place, but it was done post hoc, after the impact. Now, I do not want see again us scrambling around sometime down the line when privatisation, outsourcing, transfer of undertakings ... public services are being transferred in a large scale to the private sector without the protection of T.U.P.E. I do not want to see a repeat of: "Oh dear, maybe we should have had T.U.P.E. in place some time ago and then we could have coped with all of this." That is the reality, perhaps, that we face. It seems to me that if we put T.U.P.E. in place in its simple form, which is the previous draft, we do not do any harm and maybe we have got belts and braces there. We do not do any damage and maybe we reassure our public sector workforce that they have got no need to take extreme action, that we do care for them because we put some protection into one of the options for modernising the workforce that we have. While we are at it, the Minister for Social Security, I think, and the States Employment Board make several references to: "Oh, now we have moved on. We have moved on now" and point out that, as a result of a proposition that I placed, we are now working on Anti-Discrimination Law and family-friendly practices. But, again, I would say hang on, let us look at family-friendly practices. If you go to the right site you can find 75 pages of consultation that has already been done, for example, of one aspect of family-friendly policies. It is the recommendation on maternity leave. Seventy-five pages, clear recommendations covering the employer, maternity rights, paternity rights, adoption rights, flexible work rules, parental leave, time off for dependents, alternative leave. Consulted, done and dusted. What is the date on this? Issued by the Employment Forum on 17th June 2008. Another piece of legislation. This one needs drafting, yes, but it is there. The framework is there: "We have consulted on it. We have got support on this. We have got support on this." A whole raft of recommendations. Not hard to do. Not impossible to do along with T.U.P.E., which is already drafted. Simply 4 and a half sides of comments and, new Members, please note this. When you see a set of comments going around, what you see is sometimes factual but often it is as if somebody has said: "Here, civil servants, go

away and bring me a list of objections to doing what I am asked to do by that man.” What you see there are all the reasons you can possibly invent for not voting for T.U.P.E. Terms of reference: “Give me all the objections. Do not give me any of the good case at all. Do not give me a balanced argument.” That is what happens with comments time and time and time again. Lo and behold, there we are; 4 and a half sides: “It is almost impossible to do this.”

[10:00]

It is certainly impossible to do it in the timescale that I am asking. I think my timescale is by the end of 2013. That is 18 months away. Please, for a piece of legislation that is already drafted. Members I am sure, as ever, will vote on the basis of the information in front of them and I hope they will vote for this proposition. At the very worst it will do no harm and may be of substantial benefit in the short term and indeed in the long term in assuaging the concerns of our public sector workers now, at this time of recession. Please, Members, will you support this proposition?

The Deputy Bailiff:

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

1.1.1 Senator F. du H. Le Gresley:

I was driving to the States Chamber this morning and some other Members may have had the radio on, as I did, BBC Radio Jersey. There was an announcement that Frances O’Grady is going to be the General Secretary of the T.U.C. (Trades Union Congress) and I misheard. I suddenly thought: “Goodness me, have I woken in the right Parish, in the right country?” It is pertinent because, after I had realised it was not me, Frances O’Grady - who is a lady by the way, for those of you who do not know - comes from quite a humble background and has been an employee and has risen through the ranks of the T.U.C. and very much supports workers and their rights. That is very much where I come from. I have been an employee for some 20-odd years in the finance industry but I have also been an employer and I have also, as most of you know, run a charity. So I have a background of being supportive of workers and I can assure Deputy Southern, because he was quite scathing of the comments that have been produced by my department, that I did not ask the department officers to give me a list of reasons why we could not introduce T.U.P.E. in the timespan that the Deputy requests in his proposition. I intend to oppose this proposition for 3 reasons. Firstly, I believe that it is not appropriate to tackle a particular public-sector issue, which is now perhaps upon us with modernisation of the workforce, by introducing employment legislation that would affect the private sector as well. Secondly, to meet the proposed timescale resources would have to be diverted from discrimination legislation during the next 18 months. This would prevent me from delivering that legislation within the timetable that the States agreed last year, following a proposition from the very proposer of this new piece of legislation T.U.P.E., Deputy Southern. Thirdly, if business transfer legislation were to be introduced, I would need to carefully consider what problems we are trying to address: the interaction with existing legislation and the impact of any new legislation for employers and employees. For example, is legislation likely to encourage employers to contract out services to other providers to avoid redundancy payments? Could a requirement to preserve terms and conditions put jobs at risk? In the current economic climate, with 1,700-plus people unemployed, this is of great concern to me. I would just like to give Members a possible example of the risks that we take. This would be a situation where perhaps a purchaser has been found for a business that is struggling financially but still trading. The sale would only go ahead if a pay-out can be applied to all transferring staff. The staff, quite understandably, have agreed that they are willing to receive a lower rate of pay, but there is no clear way of agreeing changes to terms and conditions. To avoid the risk of protective pay for employees the rescue attempt fails, the jobs are lost and numerous numbers of lives and changes are affected upon those workers. Rushing business transfer legislation could have serious

consequences. I would want to be certain that the circumstances in which a business would transfer under T.U.P.E. was clear. I would like to give Members another example. Is there a relevant transfer when a lease of an Italian restaurant premises is terminated and is granted to a new Italian restaurant or perhaps an Indian restaurant or even a café. As there is potentially a relevant transfer in any of these cases, there is a strong disincentive for businesses to take on new premises. If only the sale of a business is protected under the law this potentially leaves a loophole. This proposition assumes that we will follow the U.K. approach, but we have the opportunity to create our own unique system. The U.K. regulations are currently under review because they are seen as burdensome for business. Whole books are devoted to the interpretation of T.U.P.E. Each word and phrase of the U.K. regulations regularly get analysed in courts. There is no doubt that further consultation will be required. In the 6 years that have passed since the Employment Forum consulted on business transfers, the U.K. position on T.U.P.E. has become more complex and the economic situation, of course, has altered dramatically. The draft law, amendment number 6, which Deputy Southern, in my opinion, was wrong to circulate and I have already made that point, nevertheless, is a document that is, as he says, in its seventh draft but we are told now, in view of what is happening in the U.K., that it is no longer fit for purpose and that we will have to basically start again. Progress on phase 2 of the employment legislation has not perhaps been as quick as we had all anticipated when the States approved 2 phases of employment legislation in the year 2000. However, as I have said in my comments, phase 2 has not been quietly dropped as Deputy Southern's proposition would suggest. As part of phase 2, in the past 3 years we have introduced the right to redundancy pay, rights relating to collective redundancy situations and provisions to compensate employees where the employer is insolvent. I hope that Members will rely on me to set the timetable to ensure that the remaining components of the second phase of employment legislation, in particular family-friendly rights - Deputy Southern quite rightly said we are much closer to bringing those legislation changes forwarded - are progressed in an appropriate sequence, taking into account the state of our economy and the impact on businesses. I urge Members to reject part (a) of this proposition.

Male speaker:

Sir, may I raise the défaut on Senator Maclean?

The Deputy Bailiff:

It is proposed that the défaut on Senator Maclean. Do Members agree? The défaut is raised.

1.1.2 Deputy J.M. Le Bailly of St. Mary:

Any attempt to introduce extra legislation on business in a recession is short-sighted. The proposition will devastate small business. We need to encourage businesses to employ people, our unemployed. This proposition will have the opposite effect. Already small businesses are suffering with trying to keep their staff employed, many cutting back to sole-trader status because of unbearable costs relating to employment of staff. This proposition will only encourage employers to offer zero-hour contracts or short-term contracts. There is no job security as a small-business employer. So how can an employer offer this to staff? Having employed people in small business for 40 years, I know that introducing this to small business will have a detriment effect on staff. There is no such thing as a job for life. Life is a risk. Employing people is a risk. Employees have to accept part of that risk. This proposition needs to be put back on the shelf where it belongs.

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

I do not know where to go from that speech. I do not think the Deputy is reflecting what the Minister for Social Security and Deputy Southern and many other Ministers are trying to achieve. I have read the comments. I have read what Deputy Southern has produced and I do not necessarily

agree that the T.U.P.E. U.K. legislation is something that can be completely transferred across to Jersey. Again we have this impasse where Deputy Southern is trying to achieve what this and the last Minister for Social Security want to do and we have a date and we have a few issues of how best to do it for Jersey. Why could you not all get together? I believe it cannot be done by January. I believe maternity rights, paternity rights and all that need to come in much sooner. Why can you not get together and say: "Yes, Deputy Southern, in principle." This does not even say that. We have a comment from the Deputy of St. Mary who wants to put this on the shelf. The Minister does not want that. I do not think the Chief Minister wants that and he is the ex-Minister for Social Security. All I can say is that I do agree there are things that need tweaking. I am quite annoyed I was not in here last night to put this debate back to next week and maybe suggest this, because we are having a row over something that we all agree with. We want to protect all the people. We want to create more employment. For those that are employed, you are in that position as long as you have got a job with good terms and conditions. Most employers in Jersey and employees do get that because it is a small place and I will give them their due. However what the comments of the Employment Board say on page 3 about a guidance and a code and all this, that is what Deputy Southern wants. We do not want a guidance and code. We have had a maternity code and guidance since I had my second child in 1990. It does not apply. I have got people I know work for Jersey firms who do not get it. Work for an English bank or head office, get all their maternity. It is not fair. So these things need to be brought in, but if you could just show Deputy Southern... maybe the Chief Minister could give a commitment that he would talk to the Minister for Social Security, bring something in from Social Security. I know realistically I do want other legislation put in before, but bring something in that is fair to Jersey and achieves what I think Deputy Southern is trying to ... I might be putting words into his mouth but I think he is flexible enough to want to be realistic in this economic climate. I think I understand where he is coming from. With all the outsourcing, what Deputy Southern is trying to prevent is already happening. State employees are not replaced and then suddenly there is not enough to do certain gardens. So you do not employ a States employee. You employ a contract company who bring in their... what they are paid we do not know, but obviously they are paid the minimum wage. There is a middle ground here and I am trying to find it and hopefully we can have some sound words from the Chief Minister and we can end this debate and hopefully achieve the outcome that everybody, I think, really wants in this House.

1.1.4 Deputy M.R. Higgins of St. Helier:

It probably will not surprise people that I shall be supporting this piece of legislation and I do so for a number of reasons. One, many people are working in this Island under extreme stress and a lot of it is to do with whether they are still going to have a job or they are going to be transferred to somebody else and what is going to happen. We all know that this sort of stress affects people, both their physical and their mental state, and there are an awful lot of people really worried, for example in the public sector, about what is going to happen if they are transferred across. I think we need to take away those worries by putting in a framework that will give them reassurance that they do not have to worry about that side of it. They get on with their job and also look after their families in a proper way, without all the stresses that they are under.

[10:15]

Secondly, I have also had experience of a transfer from the public sector to the private sector. I joined the Financial Services Department in 1995 and it was turned into a commission in 1998. All the employees at the time were given assurances: "You will be transferred. You will have all your terms and conditions. You will be fine." They broke those promises and basically we were just strung out. In fact, we were told at the time if you did not move across you were effectively handing your notice in. That is a great sort of situation to start with, but then all the other promises

were there and when the first members, including a Member in this House, left the commission they did benefit from the package or part of the package that was supposedly in place. Because of their success, they immediately clamped down on all the terms and conditions for all those who remained. I will say today that there are very few people of the original people who transferred across at the Financial Services Department and their terms and conditions are so totally different, and I would not say to their benefit, than they were when they transferred across. So I have a jaundiced view about the transfer of anyone from the public to the private or incorporated sector, certainly based on that experience. For example, I know that, when we were looking at the public-private partnership for tourism and there was talk of transferring the Tourism Department employees across to a new body that was going to be created, there was major concern on the part of all the employees who gave evidence to us about the transfer and what was going to happen to them. We also knew from evidence from the private sector that they basically wanted to get rid of the staff and it would have been a matter of time. So there were major issues to do with that transfer. I do believe there is a need for this type of legislation. Now, we have also seen what can happen in bodies that were formally public-sector bodies who move over to the private sector. Jersey Post is an example. Just look at the headline the other day about the pay-off to certain chief executives and yet there has been an awful lot of postal workers who were let off with considerably less into a very, very uncertain jobs market and a number of them are still unemployed. You may think: "Well, that is the past. We are not planning any more incorporations." Well, the Council of Ministers are planning other incorporations. The Minister for Economic Development, for example, will be bringing forward proposals to incorporate the airport and the harbour. We know the work has been going underway. They have got the shadow board in place. It is all sourced. Maybe he will tell us when he is planning on doing it. The point is many of those workers are also concerned about what their position will be when this takes place, which I am sure it probably will. Also, I happen to agree with Deputy Southern about the amount of paperwork that is sitting on shelves and actions that have not been taken by the States. This body is so far behind the times it is unbelievable. If we look at some other legislation that has been sitting on shelves... well, for example, let me just give you another one. The Depositors Compensation Scheme was originally agreed in 2004. It was sat upon by politicians. It finally came in in 2009, when the world financial system was collapsing. It was only then, when things are falling around us, that we seem to take action and sometimes it is too late. We are still waiting for the Financial Services Ombudsman Scheme. We heard yesterday from the Minister for Economic Development: "Oh, we are going to have one in 2014." The original one was drafted in 2004 and sat on. The Minister himself promised us that it would be in place because this House passed a motion from Senator Alan Breckon that we should have a Financial Services Ombudsman Scheme in place by the end of 2011. As I say, the Minister is still talking about 2014. Where is the protection? We have had examples recently of where there is no protection for ordinary individuals. So let us not delay this one. Let us put the protection in place. I would also say that I was disappointed with the Minister for Social Security's speech. Unfortunately, it is almost like a scaremongering argument. The same arguments have been used every time, not only in this House but also in the United Kingdom and in other Assemblies, when this type of legislation comes forward. Basically, what it is, we know that the business community look at it and say: "It is the cost. It is more red tape. We do not want it." They lobby for it and so on. As I say, I was disappointed with the Minister because I thought he was a man with a social conscience and I am beginning to wonder, not only with this particular Minister and others, but when they become a Minister they seem to lose their conscience because they seem to forget about the ordinary man and woman in the street. I was also disappointed with the maiden speech, I think, of the Deputy ... I think it was his maiden speech. [Aside] Second, okay. However, am I right in saying he is a member of the States Employment Board? So basically whatever he says is tainted by that body anyway and we know exactly what they say. So he may not believe it, but he is trotting out what he has to do as a matter of that board.

Anyway, what I would say is let us, for a change, do what is right and help give protection to people that is long, long overdue. I urge Members to support Deputy Southern's proposition.

Connétable J. Gallichan of St. Mary:

Sir, may I raise the défaut on the Constable of St. Ouen, please?

The Deputy Bailiff:

It is proposed the défaut be raised on the Connétable of St. Ouen. Do Members agree? The défaut is raised.

1.1.5 Senator A. Breckon:

Employment protection areas and consumer protection, for some reason - mainly because nobody has pushed them - are many years behind other areas (many, many years behind) and that is still the case. This raises the question: "Well, who is responsible for doing anything and who is doing it?" Years ago, when I was a young lad, I was privileged to see Rolls Royce Engineering in action and they had in the system what they called "progress chasers". What they did is they said: "Well, where is this? Who is doing it? When will it be finished? When can we have it? What are the quality standards", and all sorts of things and it worked. Rolls Royce, as we know, has a world-wide reputation for standards and quality and other things and that is what they had in place. If we had something like that, if somebody was asking: "Well, where is this and who is doing anything about it and when will it be ready and when can we see it" and that sort of thing, but we do not. If Social Security needs resourcing then there are lots of funds that they can resource from. It should not be left to a few people to do this because it is about long-term things and long-term benefits. Things can be organised, like getting money out of the health fund for health. That can be done, but things like this, as demonstrated here... I mean, when you read through this, it is disappointing when you see work that was done 5, 6 or 7 years ago and really nothing has happened, but things have happened, as Deputy Southern mentioned, to people in the employment part. I remember a situation that arose at the airport - I think it was a security situation - where an English company was coming in to do things and then it was: "What happens to the workers?" We got round it then by putting a condition in, a Regulation of Undertakings Licence, that said they had to do something. They had to take existing employees on existing terms, but it is existing employees. What happened was, as new people started, they did not get the same terms and conditions and some of the existing employees were under some considerable pressure, and it was under the radar, to do certain things: "You need to work Sunday" or: "You need to work at short notice." So the pressure was there and the system we have - or the system we do not have - allowed the company taking over to do that. Members will be in receipt of an email yesterday about the bus contract. It is going to somebody else. What is going to happen to the workers? People who have worked early mornings, late nights, split shifts, all weathers, bad conditions, done all sorts of things; what happens to them? Where is their protection? There is none. Now, that is a real situation. We are hoping that it will be okay. We are hoping. Fingers in the air, we are hoping it will be okay. But is it? I do not know. Does anybody know? Is there an agreement in the changeover that protects any of those people that might have been there 20 or 30 years? That is what we are talking about. These are real-life situations. This is not something that has been made up and I do not know. So that is the sort of thing that this would affect. We do not have a safeguard and what we are talking about is a safeguard. It is not an all-singing, all-dancing thing. It is a basic safeguard. The Minister mentioned a couple of things, but I think he would only get one cheer for that. I do not think he has really made the case at all. It is a case of: "Well, we will do it when we are ready to do it." It talks about, in Deputy Southern's report on page 4: "Business transfer consultation. The Employment Forum conducted further wide consultation on redundancy and business transfers during 2006." So it is not something that has been sprung on everybody. The question is why has

anybody not done anything before? Further on it says - this is the Employment Forum: "Protection rights in business transfers. The Forum recommends that employees' rights should be protected following the transfer of ownership of a business." Underneath it says: "The Minister accepts this recommendation." It goes on to say: "Public and private sector transfers." So it is not just about the public sector. The buses are in the private sector: "The Forum recommends that the legislation should protect employees in both the public and private sector." It says underneath: "The Minister recognises that business transfers could be an issue in both sectors and accepts the recommendation." So that is where people are disconnecting with politics. We were consulted. That is what we said. Who has done anything? The answer is nobody has done anything. That is apparent by this. Well, they have and they are not very happy because information has been revealed about work that has been done. Oh dear. Somebody has done something but they do not want anybody else to know. Is that not sad? Objections first thing: "Oh, you should not be looking at this. Oh dear." Should we not? Well, I believe we should. This is the sort of information we need to know because it is all our responsibility and we need to share in what is a failing here and we will not cure the failing by glib comments from the States Employment Board or the Minister. If people work for the bus company want to know: "What happens to me?" "Well, we are going to do something." When are you going to do something? 2006-2007, the Minister said: "I accept the recommendation. Not this Minister, not the previous one, but the one before. So it is becoming a generation thing. Deputy Southern's report also talks about terms and conditions of transfer on page 5. There are 3 recommendations there on the bottom of page 5, 3 bullet points at the bottom, and it is saying the Minister accepts the recommendations. Well, the Minister also recommends accepting minimum hourly rates of pay and they are generally accepted and it is done within weeks or a month or whatever else it is. So the question is if that is done why has this not been done by the previous Minister or the one before that? Deputy Southern has quoted: "Something is going to be done. Things were said. People have a level of expectation." The question I want to ask Members to ask themselves; why is there reluctance to this? It is not about every small employer, every firm. It would not apply to many, but then it would be a high-profile thing like Shepherd Hill at Queens Valley. Something must be done to protect people. We have only just done that a couple of years ago and that is probably 20 years ago when that happened. I cannot remember when. The Parishes had to move in to bail people out because we did not have a system that protected them. It has been the same here. What we do not want to do is wait until something happens and then say: "Oh, we need to have legislation" and then it goes cold again. I think Deputy Martin has made some excellent points. I mean, the Minister might have produced a paper that says: "Well, these are the things we are working on. This is when ideally they would have been produced, but they have fallen behind a little bit." This is the next target for a series of measures which appear to have fallen behind. I do not see where anybody is proactive on the issues and that is why I think Deputy Southern has done this, to get this back into the public domain. Yes, it is an issue. What happens towards the end of the year if there was this issue - hopefully there is not, touch wood - with the people who work for the buses? What would happen? This is exactly the legislation that would give basic protection for those people. Not for new people who might work for the bus company, but for the existing people who might have long and dedicated service and made the business what it is. Finally, I would just like to finish on this. How does the outside world view us? Deputy Higgins mentioned depositor protection. This came after a significant degree of pressure, when people said: "Well, do you have depositor protection in Jersey?"

[10:30]

It was not about protecting the little old lady is Albert Street. It was about demonstrating to the outside world: "Well, yes we do." I remember the debate we had in this House. £100 million was sat as a guarantor from public funds and it was debated within 10 minutes on a Friday night about 7.00 p.m. with virtually no comment. But the Ministers at the time, a number of them, had to be

brought to this kicking and screaming because they did not want this. They said: "Oh, it is a cost of doing business in Jersey if you have this." Other governments, the U.K. Government, changed their guarantees, the Irish Government did the same because they realised that there was going to be a run if people did not do it and that is the reason it was done. Now we do not want to be having knee-jerk or crisis legislation. We can do this and I wish, as Deputy Martin said, people had got together to decide how they might do that and what the way forward is. We know everything cannot be done tomorrow but that is not the case here. This is 6 years old and older, and it goes back further than that to 2000 when other things were said about employment legislation, the gradual introduction and how things will be done. I do not know if there is a way that anybody could give an assurance of a way forward: if the Chief Minister could; the Minister for Social Security has spoken; he obviously cannot, and if Deputy Southern would consider any of that. There needs to be a way forward in what looks to me in Deputy Southern's proposition as a reasonable timescale for things to be done. It is not as if things are starting from scratch, and for that reason I am minded to support this. If somebody could give some assurances that something will be done, something will happen, then perhaps we could curtail this debate; it could be done that way. Thank you.

1.1.6 Senator S.C. Ferguson:

If we are talking about States business, then the most valuable part of a States employees' employment is the pension scheme. Now as one of the duo negotiating the agreement for the Financial Services Department, the States ensured also that we had proper legal representations but we were able to ensure that the pension rights to P.E.C.R.S. (Public Employees Contributory Retirement Scheme) were retained. This was the most important part of the package when we transferred from a Financial Services Department to a commission. I cannot see any mention of the pension rights under T.U.P.E.; perhaps Deputy Southern in his summing-up will explain the rights under T.U.P.E. On the other hand, as the past owner of a small business, I would agree with the Deputy of St. Mary, we need to be particularly careful with regard to small businesses because I understand that 75 per cent of our businesses are small businesses and we do not want to tie them up in red tape so that they cannot function. I think Deputy Martin, and as this Assembly is aware - I am sorry she is not in the Chamber at the moment - she is a lady with whom I frequently disagree but I do agree with her that the Ministers do need to get together with Deputy Southern and probably the union representatives to discuss this; we cannot leave it hanging around. As Senator Breckon has said, it seems that most of the groundwork has been done. We do perhaps need to review some of it in view of the current economic conditions and possible exemptions but most of the work has been done. I will wait to hear what the Chief Minister and other Ministers say before I decide.

1.1.7 Senator I.J. Gorst:

I think that all Members are concerned to ensure that there is appropriate protection for employees' rights and I hope that that is the starting point where we all find ourselves at. When we move beyond that I think there probably is an element of disagreement about how we are able to deliver those protections, particularly today we are talking about when employees might move between employer, or service might be offered by a different provider. The States Employment Board - I think I can hopefully speak on their behalf - is absolutely committed to protecting the employment rights of States employees. This proposition says that the best way of doing that is through T.U.P.E. legislation. The States Employment Board, as we stand here today, is not necessarily convinced that that is the appropriate way to protect States employees. But we cannot stand and say exactly whether the framework approach is the better approach or a stand-alone piece of legislation dealing with States employees, as happened in Guernsey, is the best approach; more work needs to be done. Senator Ferguson quite rightly pointed out that T.U.P.E. does not protect

pension rights. Historically the States Employment Board has felt that the protection of pension rights on transfer was one of the most important things. That is why we have something like 20-odd admitted bodies to the Public Employees Contributory Retirement Scheme because that was recognised as one of the greatest benefits of being employed by the States, and the States Employment Board have accepted that and are committed to maintaining that benefit. I am not sure that we would want to move away from that and, that being the case, the protections that we would wish to provide would include that and T.U.P.E. does not do that. I think also this morning there have been some Members who have spoken who have been confused about quite what T.U.P.E. does protect and what it does provide for. Of course it does not protect new employees in the transfer to the transferred organisation. I think one of the examples that Senator Breckon gave would not have protected that either. When we talk about this contractor – I am not directly involved in that process - the best way to deal with that is through the contract, that is going to take place between Government and the contract provider because it can deal with exactly the issues that Members wish it to be dealt with, which legislation, if modelled on elsewhere, would not deal with. We also come to the issue of course with the T.U.P.E. legislation: what exactly or how would it be drafted. The indication has been given that it is simple and straightforward. I have spoken to a number of T.U.P.E. practitioners, if we want to call them that, who have experienced it, being involved in advising upon it, and I am afraid to say that to a man - although they were not all men - they said they would not enact legislation. How has the U.K. arrived at the position that it is in? Well of course it has been driven there by European Directive. What they have found in the United Kingdom is that they have enacted legislation that they have felt was in the spirit of the E.U. Directive. That has been on the Statute Book; there have been a number of transfers. They have been contested right through to the European Court and, as you will know, sometimes the way that that court reaches its decisions is not as consistent as we would hope the court that you preside over is, Sir. Therefore, the U.K. Government has found itself having to amend its legislation to what has been called by some a “gold-plated approach”. So they have included in their T.U.P.E. legislation transfers for services. That of course would create great problems, I believe, for the type of industries that we have here in our community if every service change had to comply with people moving from one firm to another because that firm had won a contract for a particular (maybe) administration, custodian or trustee service, and that would create, in my mind, great difficulties. So, it is far from simple, it is far from straightforward, in my mind. Deputy Southern, while I do have some concerns that he should not be circulating a piece of legislation which he received under a confidentiality agreement when he was Chairman of a Scrutiny Panel, I do not agree with Senator Breckon that there is any problem with Members knowing where that piece of legislation is. That is absolutely right. There is no, and never has been, an intention to hide the work that has been done on this piece of legislation. What Members now have before them is the bit of legislation that remains when the previous Minister for Social Security asked officers to remove the redundancy legislation from the T.U.P.E. legislation and that is what Members see before them today. Members could be forgiven for thinking and drawing a conclusion from Deputy Southern’s comments that: “There we are, a drafted legislation, so all we need to do is enact it” but there are a number of areas which would and need to be reviewed and considered with regard to that specific piece of legislation, not least of which, and probably the most important one, are the jurisdictional issues. You do not have necessarily jurisdictional issues in a large country but certainly in a small community like we are you do. Is a transfer to a U.K. operator covered? Well, not under normal T.U.P.E. rules. Do you encourage somebody who is going to take on a transfer to have a U.K.-based company rather than a Jersey one? So there are consequences and issues which are not addressed in this piece of legislation which very clearly would need to be addressed. I have talked about what would constitute a relevant transfer, particularly with regard to services, and I think that is very important. Of course, Deputy Southern could make the point that we could start with a very limited definition and then consult on that further down the line. But it is absolutely fair to say, as

the Minister has said, a lot more work would need to go into making either this piece of legislation, or a re-drafted piece of legislation, fit for purpose. Deputy Martin was quite right when I think she was indicating that what we would want is something that was suitable for Jersey and not something suitable for one of the members of the European Union, which is what T.U.P.E. legislation is based upon. So if I can just come back to the States Employment Board. The States Employment Board, as I said right at the start, is absolutely committed at providing employee protection for States employees. The Deputy shakes his head; they absolutely are. We have had some initial discussions, as I said, about how we might best do that and we have asked for further work to be done upon a framework approach which would give protections above what statutory protections would be provided in T.U.P.E.

[10:45]

We have also, if I remember correctly, asked officers to consider whether an alternative approach would be to have a stand-alone piece of legislation dealing with public sector employees. I think we need to do further work on that to be able to decide which does give the best protections. The Economic Development Department in the guise of Harbours and Airport is of course working to a framework approach when it comes to the incorporation of those 2 bodies and that is absolutely right and proper. I am not sure that Deputy Southern is going to find that satisfactory; I accept that. But what I am very happy to do - and I hope that he might take up this offer - is for him to be involved in the conversation with the States Employment Board about what the best way is for us to afford those protections to employees, together with the Minister for Social Security, should he so wish. I think we all want the same end, it is just how best to provide that. I hope, as I stand here today, that Members are not able to reach a conclusion on what we have in front of us about how that can be best provided. I am not sure I can say any more than that. I believe we all want the same end; it is just how we get there. I am absolutely more than happy for Deputy Southern to be involved in those deliberations about how we get there as a States Employment Board. In light of that, I hope that Members will, as the Minister for Social Security said, not only reject part (a) but also part (b) as well because at this stage I think it is too early to tie our hands in saying which is the best solution to provide those protections. Thank you.

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

I wonder if I could ask the Chief Minister for a point of clarification. Would he be prepared to create an *ad hoc* board as has been used for projects like the Police Authority and would he put a time limit on its work to report back to this Assembly?

Senator I.J. Gorst:

With regard to reviewing the issues about how these protections could be granted or maintained by States employees, is that what the Deputy is asking? I am caught rather on the hoof with regard to a timeframe. I would of course be happy to, if it is possible under the law ... and I see the Solicitor General or learned Attorney General is not with us. If it is possible under the law to create a sub-group of the States Employment Board to look at it and come up with some firmer recommendations around the issues that I have just outlined around the process that would best deliver these protections, then I am more than happy to do that. I hesitate slightly about the timescale because this is just one area - as in I cannot give the timescale today, I do not think - where we are looking at changing the way we operate right across the States Employment Board. I see there are 2 other members of the Board here today. Can I just be given a moment to think about a suitable timescale? In principle, yes, then setting up a sub-group to look at it is absolutely right.

The Deputy Bailiff:

In fact you are not being asked to clarify anything you had said previously. Despite the fact it was raised as a point of clarification it was a fresh question and so you can take as long as you like. Deputy Tadier.

1.1.8 Deputy M. Tadier of St. Brelade:

Perhaps I can provide some aural candy while the Chief Minister thinks about his position. In some ways it is a shame that legislation like this gets drafted. There are things which are definitely essential I think in any functioning, modern democracy: protections of workers, maternity rights - without talking about paternity rights - in Jersey and it is necessary to force a debate in the States Assembly with a piece of draft legislation from 4 years ago. Then there are all sorts of recriminations in saying: "Oh, you should not be having this piece of legislation, it was confidential. Blah, blah, blah" to potentially get an undertaking from a Minister to do something which everyone seems to agree needs to be done. If only we could find out how other legislation seems to get fast-tracked and maybe use and learn from that we would be in a much better position. But I do take the positive, nonetheless, that says I think the majority of, not all, Members in this Assembly are supportive of T.U.P.E. legislation. There clearly are some minority Members in here who do not agree with this legislation at all, who probably do not agree with the minimum wage even, and who are reluctant to have any kind of employee protection and let the free market resolve everything. I think most Members are not in that category and they realise that at least some element of employee protection, and also employer protection, is necessary to let everybody know where they stand. So for me what I think this debate is about essentially is purely timescale. I think there is a little bit of tweaking that may need to be done but the argument boils down to timescale and I will just explain why. I think, first of all, let us look at what T.U.P.E. legislation does. It would give protection to length of service, to your salary, to your hours of work, to the terms and conditions detailed in your contract, holidays, *et cetera*, and any collective agreements that have been made. Quite correctly, pensions are not protected, but it is interesting to note that in the U.K. if you are employed by local government, at least you can transfer your pension to another employer and there is separate legislation which will protect your pension. So there is no reason that we could not set up a similar kind of scheme to work in Jersey. We have heard an assertion that this will devastate small businesses but we have not been given any evidence for that. It has been asserted quite vociferously. That may be true and that may be something the Minister for Social Security would need to look at in drafting to see if there are any elements of protection, any carve-outs that might be relevant. But it also provides protection for small businesses and for what I would call the technically-skilled individuals. Because I know the people I speak to in Les Quennevais, for example, there is a big issue with, let us say, painters, electricians, plumbers and carpenters. Now I admit some of them will be sole traders, but a lot of them will be employed with companies, and they are very concerned that their standard of living is being eroded by what I will call "cheap labour". Some people call it "cheap immigrant labour", it does not necessarily have to be, but it is very difficult for certain individuals. In the company context if there are transfers going on, this is not simply something which affects the public sector; this is something which the private sector are very concerned about. If you are a carpenter employed for a building company, if you are an electrician and you know that you are going to be taken over only to have an influx of immigrant labour or otherwise cutting your standard of living that is also something that T.U.P.E. would be protecting. So it is not correct to posit public sector versus private sector and say: "This is going to over-burden the private sector." It provides protection for employees in the private sector as well as those in the public sector and why not? We should have a level playing field for both so I do not think that argument in itself stacks up. I think it is right that we have minimum standards, that we have parity with the U.K. We know we have a lot of transfers back and forth with civil servants, for example, and bank employees who work in the U.K. and it is only right that when they come to Jersey they should expect that similar practices are in place in terms of

protection for their employee rights. So this is why I come back to deadline. I think it is important to have a deadline. Even in this case, we would see the draft legislation coming back from the States in early 2013, so that is 8 months' time, and then to be enacted for the end of 2013, so the importance of having a deadline is that it focuses the Minister's mind. The Minister, and previous Ministers, have not had a deadline because there was nobody asking them to make this decision and the result has been that for 4 years going on, this legislation has not appeared. It would not have appeared if Deputy Southern had not been asking for this to happen today. It would have simply gone on another 4 years and it would have carried on like that, so it is important to have a deadline. Realistically, can the Minister do it within 8 months? Well, it is a big piece of legislation and the Chief Minister said: "There is more work that would need to go into it." Absolutely, we agree with that, and that is what we are asking the Minister for Social Security, in consultation with any other relevant parties, to go away and do this and bring it back in 8 months' time. Now what happens if the Minister for Social Security finds that that is unrealistic and he needs an extra 4 months? Is he going to face a vote of no confidence? Is Deputy Southern going to say: "Well, you know, you have not done this by 31st March, I am afraid a vote of no confidence is going to be brought." No, of course, that is not the way it works. When instructing the Minister for Social Security to go away and do something, of course we have to put a deadline on it because that is how deadlines work. If the Minister realises in order to do a good job he needs an extra 3 months, an extra 6 months, that is fine. The processes have already been started and then we are all reasonable and no one is going to hold that against him, but it is important to have that deadline in place so I think really we should be getting behind this. The last point I would make is that the detail is still to be left to the Minister in consultation. So if there are things which are not appropriate for the Jersey context, if there are things which are appropriate for the U.K. and for the E.U. but not for Jersey, then that is fine. The Minister can talk about that, he can bring it back to the Assembly at some point next year, and then that can be subject to amendment. This really is not rocket science. The Chief Minister has already said that we are all behind this and I think the vast majority of us do support this legislation; but of course the devil of it is in the detail. So let us get behind this and not worry about whether this is achievable in a year, in 2 years but let us get something concrete. Let us get the ball started rolling today so we can all get behind this legislation.

1.1.9 Deputy S.G. Luce of St. Martin

In the last few years recently-added employment legislation has added protection, if that is the right word, for the employee. Unfortunately, under the current economic climate that protection is making things so difficult for the employer that businesses are not taking on new employees. Let me repeat that. Recent rule changes made to protect jobs is reducing job creation. This proposition, I fear, will have a similar effect and that effect is a negative one on both employees and employers. I think Members should look outside at the real world. Let us remember that established businesses are failing; people are losing their jobs. It is a lose-lose situation. In order to maintain jobs at the moment, establishments need to find ways of producing goods more cheaply, providing services more inexpensively, whether you are in the public or the private sector. If we do not do that then more jobs will have to be cut and more people will lose employment. Does Deputy Southern really want to reduce job availability? I am sure he does not. The compulsory transfer of terms and conditions in the current economic climate will be the difference between some businesses failing when the alternative could be for that business to restructure, survive, maintain jobs, move on and look forward to better times in the future. Surely employees would prefer to have a job than the right to transfer terms and conditions but no job to transfer to. I started my working life picking potatoes by hand in the heat of the summer, cutting cauliflowers in the depths of winter and I moved through management to run my own, at the beginning, small business and ended up with a medium-sized business. But regardless of which state of employment

I was in, I had a motto and that was: “A fair day’s pay for a fair day’s work.” I will not be able to support the proposition.

1.1.10 Senator L.J. Farnham:

I rise briefly to align myself with the comments of the Chief Minister and some of the comments of Deputy Tadier. I would like to briefly just highlight some of the anomalies of T.U.P.E. legislation and at the same time, though, acknowledge recognition of Deputy Southern who has worked tirelessly and relentlessly for employee protection rights over the years and has been very successful on some occasions, and I think all Members recognise that fact.

[11:00]

A couple of issues I would like to raise, though, are simply some of the practical difficulties that have to be very carefully considered, and the Minister for Social Security has already mentioned an example of, for example, cultural differences that may arise in the transfer of different types of restaurants. This simply would be too much for some aspects of the private sector to handle for small businesses. Deputy Tadier said he did not think there would be any issues for the private sector and indeed some of the medium to larger size private sector companies would handle it very well, but it would simply be a bridge too far for some of the smaller businesses. Moving on from that but in a similar vein, there are some anomalies that can be created in the transfer of terms and conditions, for example, a small business was taking over another small business and the business that was being taken over, the employees had far better or more advantageous terms than the business wanting to take them over. It could then either stop the transfer taking place, causing unemployment, because if the business being taken over could not survive for financial reasons or other reasons, the owner simply wanted to close it down and retire, then that could spoil the deal. Because simply it would not be possible, for example, if ...

Deputy G.P. Southern:

Would the Senator give way? If I may, we have had a lot of attention paid, and we are just getting attention paid, to what is happening in the private sector. Can I just draw Members’ attention to page 17 of my document where it says: “In Jersey most business transfers will already be protected because share transfers are far more common than ‘whole’ business transfers and are protected by common law; if the shares of an employer are bought, the existing contracts of employment will remain in force.” So this particular piece of legislation does not apply to the most common form of business transfer, i.e. taking over a company, so the Italian restaurant taken over by the Indian restaurant, it does not apply.

The Deputy Bailiff:

I am sure that is a helpful interruption but you do have a right of reply.

Senator L.J. Farnham:

Yes, I do realise that T.U.P.E. legislation does not apply in general to share transfer. I do realise that but not all small businesses are limited companies. A lot of them are sole traders or partnerships or something similar. So if a small company’s employees enjoyed 6 weeks’ holiday a year but the purchaser’s employees enjoyed 4 weeks’ holiday a year, it would create an imbalance that would be impossible to reconcile. Something that Deputy Higgins said earlier in relation to previous employment about a member of the staff having no option but to transfer and move on. Well there is, I believe - and the Chief Minister touched on it briefly - no redundancy rights in T.U.P.E. legislation. So, for example, an employee would either have to accept the transfer and move on, albeit with protected terms, but there would be no choice or no right of redundancy, so quite simply they would have to move on or resign. **[Interruption]** Yes, there is no choice in redundancy. If so, the choice is you move on or you resign. Ironically this law is now being

challenged in the U.K. T.U.P.E. legislation is being challenged ironically by employees whose employers have found schemes to attempt to circumnavigate their obligations. I will not give examples, I have done some brief internet research, but there are some pretty landmark cases going to the U.K. courts, for example, with advertising firms who have lost a major client and who have isolated part of their staff and are trying to transfer them to the agency that the big client has gone to to say they were an integral part of that, so there are complications. Then I would say that not all employees are bad and there have been some very good, admirable examples of company transfers in Jersey where novation has been used to ensure protection of employees' rights when transferring. I believe there is, in the current employment legislation - but I might need the Minister for Social Security or the Chief Minister to confirm this - that does protect to a certain extent employees' contracts when transferred in the current employment legislation. Perhaps I could hear comment on that now. Thank you.

The Deputy Bailiff:

I think you must continue with your speech, Senator.

Senator L.J. Farnham:

Well I was going to end on that note and I would hope that one of the more learned Members could confirm that there is a form of protection in the current employment legislation under transfer of employment contract.

The Deputy Bailiff:

Minister, do you wish to help the Assembly on that? You have obviously no obligation to.

Senator F. du H. Le Gresley:

The position is that the interpretation of the Employment Law is down to the Employment Tribunal and that is where it progressed based on Employment Tribunal decisions.

1.1.11 Deputy P.J.D. Ryan of St. John:

I was quite surprised in some ways, although perhaps that is being disrespectful to Deputy Tadier who is not here at the moment, at his speech because it was reasonably well-balanced, I thought, and I would like to say that first before I just refer to some of the other comments that have been made by some other Deputies and Senators. I would like to start with Deputy Southern because virtually right at the start of his speech, and I am quoting, he referred to his wish to try to protect workers from being subject to "the vagaries of market forces." I think that sets the tone for some of the, shall we say, more extreme comments and speeches that have been made. I think he was referring to the public sector, particularly, and he was referring to transfers possibly through outsourcing to the private sector. I think, though, it should be pointed out that the bills for any outsourcing will be paid by Government and if Government are paying the bills, then I think it is pretty reasonable to expect that the Government could control any standards of employment through outsourcing. So I think that that concern may be misplaced. But I would like to return to this "vagaries of market forces" from Deputy Southern. You see, I do not think that in the end you can legislate successfully to protect people from the "vagaries of market forces". I think that if you try to and you put that kind of legislation in place, you end up risk having the opposite effect because you are trying to create an unsustainable and a false labour market intervention and you just simply cannot do it. Potentially when you protect, shall we say, globally uncompetitive employment terms with legislation, who pays? I would like to just refer before I answer that to something that Senator Breckon said. He said: "This legislation is all about long-term benefit." Then he said: "How does the outside world view us?" I think, of all people, Senator Breckon, with his history in consumer affairs, should know that the outside world view us as a very expensive place and I think the Senator is nodding and will agree with me. The danger is do we end up

through legislation making this Island more and more uncompetitive, less and less competitive in the longer term? I think it is time that we started to understand exactly what is happening in our Island. Now I come back to Deputy Tadier and it was quite a balanced speech because he recognised that not everybody is on one end of the scale or the other end of the scale. Now I come from the private sector and I suppose many people could be forgiven for thinking that I would be at one particular end of the scale, and it might be the opposite end of the scale to Deputy Southern. It is not: I think I am in the middle as well, and I do recognise that there is a place for employment protection and there is a place for softening some of the blows that some workers can be subject to. But I think we have to recognise that over the last 10 years or so we have put more and more barriers in the way of employing people. I think we have to recognise through employment legislation of one kind or another, and some of them I would have voted for - and in fact did vote for and agree with - but we must, in the end, recognise that we live in a small Island economy and to be successful we need to be fast and nimble. Employment flexibility and an absence of barriers to new employment are key to us remaining nimble and a successful small Island economy. I just put that as a warning - as a marker - for us to consider carefully. Yes, some employment legislation is right. Now I do not answer the question; I just ask the question which is: do we already have enough employment legislation in place? I leave it there.

1.1.12 The Connétable of St. John:

On the radio this morning the lead story was a downturn yet again in the building industry and all that goes with it. In my many years in business, I employed at one time up to just under 40 staff. We had highs and lows within the building industry; highs and lows. Every 5 years you would have a high and then tail-off and then more sites and whatever else would be opened up and a different planning President of the day would release more land and then you would have a high again 5 years later. So we had, as it happens today, quite a movement of people within that industry, but I can honestly say that some of my staff were with me virtually since the day I started to the day I retired 20-plus years later. I always made sure they were well looked after and they always had a fair day's wages for a fair day's work and everything else that went with it. But what really worries me, at that time we had only social security to worry about when that was introduced in more or less its last form, the paperwork, but today you have your I.T.I.S. (Income Tax Instalment Scheme), you have your G.S.T. (Goods and Services Tax) and all these other things to take into account. We are talking about in falling markets here, the things that the Deputy wishes to put forward. I am not opposed to it but at the moment it is not the right time. It is definitely not the right time.

[11:15]

As much as I want to support it because I am a middle-of-the-road guy and I want to do what is right for everybody, at the moment we have to do what is right by the employer who is trying to keep afloat, trying to keep abreast of all the additional burden having been put on him by Government because of all the legislation this House has brought about in recent years. To put any more on employers I think at this time it is totally wrong. It is totally wrong. If it is the difference between having a small firm of 2, 3, 4, 5 people being kept employed or that firm going to the wall, I know where I would choose. Because, at the end of the day, if that firm goes to the wall, those people will not find a job very easily, if at all. They will be going to Social Security to sign on and then that will only last for so long before they get on the scrap heap, I suppose for the want of a better word, because I see this recession going to go on yet for a number of years unfortunately. That is the way I am seeing. I totally hope I am wrong but I see 2015, 2018 in my headlights. Really, to try and put any other burdens on businesses within this Island which are generally small businesses is the wrong time to be doing this and, really, I cannot support this at this time. Come back in several years' time when the economy improves and let us have a look at where we are.

But I think it is some considerable period of time away before we see the light at the end of this particular tunnel. I understand yesterday we see another country in Europe calling in for additional help and we could see all sorts of things happening over the next 18 months within the European Union and that will have an impact on what happens here. No matter what we may say or think, Jersey is not isolated from what is going on in the rest of the world, in particular in Europe at the moment. I do not want to put any more burden on the employers who are trying to keep their head above water at this time. Thank you.

1.1.13 Deputy R.G. Le Hérissier:

I was just trying to think of that famous Kenneth Williams' saying and I have sought advice: "We're all doomed; we're all doomed." I find myself struggling like the Minister for Education, Sport and Culture in the middle of this. In a way you could argue, it is not only Jersey; it is the whole world. Every time we buy cheap electronics from China we are benefiting from cheap labour. We do not see it but we are benefiting from it. Of course, in Jersey we have a more visible face of cheap labour because, as Deputy Tadier said, that is how we deal with our people-intensive industries. We cannot deal with it by employing local people, although we now have heroic efforts by the Minister to switch direction there, we deal with it by importing people who, because they are lower on the economic ladder in their country than ours (or were lower), they are prepared to climb up the ladder from a lower point than our own people. So it is a major world problem. Do we lead to a situation where what happens often with these systems is the perverse consequence? You have seen it in places like France and Spain where you have incredibly gold-plated public sectors and you have an enormous number of unemployed or marginalised people on the outside of the privileged sector. Do we want to create that kind of society? The only way in a broader sense out of it for Western society, because it is almost inexorable what is happening, the march of cheap labour throughout the world, is basically that we keep our intellectual capital fully stoked-up, that we plough masses of money into research and so forth. But this is a process that started at the time of the industrial revolution when, as trade unions became more powerful - necessarily so, I should add... but of course it had the effect of making labour much more expensive, of making employers wary of using too much labour and inevitably led to all sorts of problems. We see it in Jersey and the cheap labour phenomena, and a first and second class labour force, basically, because that is essentially what we tolerate, and that is what worries me. But I do not want to be involved in a race to the bottom because if we do allow it to happen - and it is happening and quite how we are going to deal with it is the big challenge, as the Constable of St. John said, for the whole Western society, let alone Jersey - all low-cost manufacturing is undoubtedly going to go to the Far East. It is almost there already, of course, and what do we do with our populations in terms of providing work? It is a real, real issue. Do we go, like the logic inherent in the Deputy of St. Martin's presentation - and I can see where he is coming from - in a race to the bottom? I think there has to be a middle ground somewhere. I do not want to preserve in aspic contracts that do not work and Senator Breckon made a big play about Connex. There were real issues in the transfer at the last minute of that contract which hopefully will not be repeated in the current one. I have been on the oversight group with some other Members that have looked at some of the issues of transition. That was a classic case of freezing things in aspic and ending up with what you would not wish for basically. That is no detrimental comment to the staff; they are loyal and so forth. But you have to be very careful about what you are entrenching when you do this. We did not necessarily get the best part of the deal, to put it mildly. But I think the issue has to be looked at. I am, like the Minister for Education, Sport and Culture, hoping the Chief Minister will say... because I do not think we are getting anywhere with this debate. We are going round in circles. There is goodwill to look at the issue. Hopefully, we can help the Minister for Social Security with the many projects he has on his desk. There is goodwill to look at the issue and see if there is a way forward. I really hope - I know he has been looking into it - that the Chief Minister can say: "We are prepared to have an *ad*

hoc group to work with the States Employment Board and come Heaven or high water [I have had to make that a family-friendly phrase] we will report back in - I do not know - 3 or 4 months. It may not have all the detail you want but we will give you some clear indicators of how this can be taken forward” because we are just going round in circles.

1.1.14 Deputy R.G. Bryans of St. Helier:

I just want to speak briefly. It is quite enlightening sitting next to my animated colleague on my left. Deputy Southern has his concerns firmly in his sights: to protect vulnerable employees. He marshals his evidence well and makes his case. In my mind he misses his mark but not by much. That said, we should use this opportunity, as Deputy Martin says, to draw this Assembly closer together. Let us get talking and resolve the issue as quickly as possible. Several speeches, including the last one by Deputy Le Hérisier, and including the Chief Minister, have given direction to this Assembly as to how we should move forward: set a date - I think the Chief Minister has possibly done that by now - get relevant parties together, including Deputy Southern, open the dialogue and solve the problem. The public expect us to get on with the job; let us do that. Thank you.

The Deputy Bailiff:

Does any other Member wish to speak? Chief Minister, are you responding to Deputy Le Hérisier?

Senator I.J. Gorst:

It is a point of clarification. I have consulted with my colleagues and the next States Employment Board meeting is on the 23rd and I am proposing to invite Deputy Southern to that to consider a timetable so that I can report back to Members with a timetable on the piece of work that needs to be done. The idea of a sub-group looking at that, working to a timetable, is one that I support.

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

Sorry, I thought Deputy Southern was going to accept that offer and we were going to all work together. The Assembly will excuse me if I look at my notes because I am not going to repeat things other people have said to a degree. I think all these things revolve around what is meant to be a partnership and it seems to be that the partnership should be between employer and employee and that balance seems to me to get lost. Sorry, I will just wait for the talking to finish. It seems to me that balance between an employee’s rights and benefits and the employer gets lost in this House. Maybe that goes back to what Mr. Clothier said when he observed that generally Jersey Parliament is mainly small-businessmen, and that is probably a fair comment. I have worked in both private and public and I do not want to see anyone suffer to the detriment of others. I think we need, as Deputy Bryans just said, to find the way that benefits everyone. I think it is good to hear the Chief Minister moving slightly towards working together. He probably could have done more, in fairness, and we probably would not be where we are now. When I listen to this debate I really recall more than anything else something that the first Chief Minister, former Senator Walker, said towards the end of his term. My memory is not good enough to quote him exactly but the gist of what he was saying was that over the recent years Jersey has focused far too much on the purely economic and not enough on the social. This is a good example of where that balance needs to be struck. I do not like in the Assembly to hear comments that just seem to be thrown up to scare people and put people off. I know it was his first speech but I have to strongly disagree with words used like “devastate small business” because unless I am missing something dramatic - and I do not think I am - that is far too harsh a term to be used. I am pleased to say, speaking out in the coffee room to a small businessman who sits in the Chamber, and as he said: “No, it will not devastate. Of course there will be consequences but I am still supporting it” and I think that is the attitude we need. We probably need this more than ever in these economic times because as Deputy Southern

has highlighted, and you have to give him credit, this has been sitting there for years and without Deputy Southern it would still be sitting there for years. How many times have we heard the great promise of coming up with a Jersey-special brand that is going to right all wrongs? How many times have we heard that, and then we have sat around, probably a few people have lost their seats, nothing has happened and the promise gets forgotten about? The devil, as they say, is in the detail, and again I am missing something important. Even if we support Deputy Southern the detail is still going to be down to the Minister, so what is the real danger of us supporting this now? Deputy Southern has highlighted, rightfully or wrongfully (and I think he is quite right to turn this around) this is a framework; it is pretty much complete. Yes, there are some things that will have to be tweaked but it does make one think: "What are these objections about? Are they real objections? We cannot do this." How many times have we heard that as well? "We cannot do it in the timescale." I think the Deputy of St. John was a bit harsh on Deputy Tadier; he often makes balanced speeches. He is a very balanced man. Someone was meant to question that but they did not. What is the problem with supporting this now? I do not think there is a great problem at all because as Deputy Tadier pointed out to us, if the Minister is instructed to do this and he cannot do it within 8 months and he needs another 6, are we going to hold that against him? I do not think so. I do not think so at all. It is really disappointing as well when we hear this drift towards playing private against public. If we are going to go forward through the economic times we are in, then we have to get away from that. We have to start being seen as a cohesive community. I do not like to use things like "we are all in this together" because that is something David Cameron would say and I would not want to be associated with anything that Mr. Cameron would say, I am afraid. So I am going to be supporting this and I would just ask those Members who might be wavering to listen to Deputy Southern's summing-up because I really hope he will portray for us in nice, clear terms the reality of this, what I say is, scaremongering about devastation because the impact of this is going to be quite limiting I think in Jersey. I think it was Senator Ferguson who brought up about red tape and I think the Minister for Education, Sport and Culture also brought that up. I would agree with them. You do not want to stifle business any more with red tape. We have done enough of that in the past. We have done lots of stifling but that does not mean you then prevent or duck out of doing something that has some benefit.

[11:30]

Let us get rid of the unnecessary. I certainly do not want to be a part of a Government which just lets the market dominate everything. We have seen the disaster that leads us to and if anyone is not aware of it by now then they probably should not be in politics. We are a Government and we have obligations. We have obligations to business but we have obligations to employees, we have obligations to people and let us not lose people and let us not lose sight that what is at the bottom of what Deputy Southern is talking about here are flesh and blood people. Let us support him. Let us hope that that... not olive branch but that hand offered by the Chief Minister will be grasped and we can work together on this. I think it is a positive thing. It is long overdue. As Deputy Higgins made the point, how many other bits of legislation have we seen that just sits there for years and years? The Ombudsman - a word I cannot say - *et cetera*, is a good example; Depositor Compensation. Let us not be put off or fobbed off with promises of more apple pie in the future because in my experience of this House that apple pie never gets eaten. It never gets eaten. I think I will leave it at that and I just would repeat my request to the proposer if he can please make quite clear for those Members who probably generally are sitting there, perhaps on the fence, wondering which way to go; please can he stress the limited effect that this is likely to have. We have heard what he mentioned about J.A.C.S. Let us paint the real picture and not be put off and frightened by things that might not be entirely accurate. I will leave it there.

1.1.16 Deputy S. Pinel of St. Clement:

While I, like many others, do not like to see reports being shelved for years, it has been mentioned by several Members, including the Chief Minister, that a considerable amount of work is required in order to tailor any legislation to Jersey. With the ongoing family-friendly law - Discrimination Law and Long-Term Care - the Social Security Department would have considerable difficulty in achieving the deadline in Deputy Southern's proposition. With the input of a working group as agreed by the Chief Minister, progress can certainly be made, but the proposition is about the timeframe, which is unrealistic.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on Deputy Southern to reply.

1.1.17 Deputy G.P. Southern:

What an interesting, I hope, and worthwhile debate this has been because it has certainly clarified some factors. The Constable of St. John said one highly relevant thing in his brief contribution. He said this is not the time for the introduction of this sort of legislation and I wholeheartedly agree with him for different reasons. The time for this legislation was 2008, 2009, 2006, when this research was done and the widely respected body that is very rare to have one of its recommendations overturned - in fact, I cannot remember one, there may have been one - on minimum wage, on terms and conditions, on redundancy pay, on youth rate most recently. We are talking about people being made redundant or people not being employed because of the youth rate yet again. Although that is perhaps a populist approach, we should abandon the youth rate and get young people into work, that was not the recommendation of the Employment Tribunal and it was respected by the Minister for Social Security. So why, after years of research and months of consultation on the seventh draft, does this recommendation get to be parked on the shelf? One has to wonder because every other recommendation from the Employment Forum is always respected. They do their business. We are very proud of the Employment Forum and the way it conducts its research and its consultation and it is very, very rare to ever overturn one of its recommendations. That is the base on which we are starting. I will go back again to page 17 because it is necessary to address this thing about: "This will be the end of employment in Jersey" and the "we're all doomed" approach: "This will kill-off business in Jersey." It will not. This is not about making people redundant. That is a separate piece of legislation. It is not about takeovers. That is a different piece of legislation. The reality is for the private sector I will just read the words of the Employment Forum at the end of their consultation and research when, remember, the acceptance by employer and employee of these recommendations was about the same level as for redundancy payment, time-off to look for new employment. Similar levels of acceptance by employers was found in business transfers and T.U.P.E. type legislation. Yes, on page 17: "Business transfers. In Jersey most business transfers will already be protected because share transfers are more common than whole business transfers and are protected by common law. If the shares of an employer are bought, the existing contracts of employment will remain in force. Transfers of whole business are unusual in Jersey, particularly in the finance sector. It is thought that service providers would be the most affected; for example, when tendering for a new provider." Some protection in there, I believe, is perfectly legitimate. "It is considered that locally the protection of employees' contracts when businesses are transferred is likely to be more relevant to the public than the private sector." That is the statement. This is not the wholesale decimation ... not decimation, that is the wrong word; an annihilation of small business, of business in Jersey, far from it. It is one small step to increase what is perfectly legitimate protection from the vagaries of market forces, and I repeat it ... from the Deputy of St. John. At which point, yes, it will go on to this idea of balance which was raised by a number of people, the Deputy of St. John, Deputy Martin and others. We have to be, the Deputy of St. John says, fast and nimble and we should not be protecting globally uncompetitive services. Globally uncompetitive services. What are we to do then? Are we, as I

think Deputy Le Hérissier said, engaged in the race to the bottom? Are we to bring down wage rates in order to survive? Are we to outsource to India or China our I.T. (information technology) services or our inquiry service? Sometimes I wonder if we have not already done so. But are we to join the race to the bottom or can we have some civilised protection for employees in place, of which this is one? When I said that comments from Ministers seem to be created in a certain way, I was careful to say it seems like the Minister says: “How can I reject this? Give me the arguments on one side completely.” Seems like, but that is often the way. So where is the balance? Where is the compromise in this? It is interesting when I particularly - as I do - bring a proposition, one could argue this is just to raise the issue. Indeed, on some occasions when things are so outside the prevalent political view in this Chamber, sometimes I do that. We need a debate on this because we need the issues thrashed out. However, I always bring things in order to win them if I possibly can. So a compromise, a last minute offer, in this particular case for some talk, some consultation, with the States Employment Board is very welcome. What it does not have is terms of reference, timescale for doing something, not talking about doing something. What it does not have is the difference between a guideline and a contractual obligation. Now, if the Minister or Ministers for once had come back with something laid-out containing some draft terms of reference, some few bullet points about what it would be essential to do and a timescale for doing it in, then I would have been perfectly happy to withdraw this proposition. I do not have that. I do not have that yet and I know from previous experience that half promises made in this Chamber do not always amount to very much. Something concrete, an amendment to a proposition I bring, a different approach, a timescale: “We will bring something to this House in 3 months’ time, in 6 months’ time, and please come along and work on it with us”, that would have done. That is not here. I am invited to go along and form part of a group whose makeup I do not know to do some work on what terms of reference, to produce something concrete in what timescale I do not know either. So I will maintain this proposition because I do believe that this is the way forward. Whatever we come up with in this working party subgroup of the Employment Board will have to do effectively what T.U.P.E. does. I will maintain this proposition because it says: “To request the Minister for Social Security to bring forward for approval by the Assembly no later than the first quarter of 2013”, and this could apply to whatever we bring if we are successful as part of this sub-group of States Employment Board: “legislation for the protection of employees involved in business mergers and acquisitions.” Then I name that as Transfer of Undertakings (Protection of Employment) T.U.P.E. legislation. It could, as the Chief Minister said, be limited protection for certain groups. That would be relatively straightforward to do. It could not look like the U.K. T.U.P.E. It could look, as long as it covers the bases, like a Jersey version of T.U.P.E. This is our equivalent. It has to be more than a guideline because, as Deputy Martin pointed out, we have had guidelines galore for years in the employment area and they are less respected than they ought to be in many cases. It has to be, I would say, a contractual obligation. It has to be something firm enough to be able to be enforced. But I am not totally and absolutely committed to something that looks like U.K. legislation. As long as it hits the bases, as long as it covers the conditions, then it could look very different to what we tend to call T.U.P.E. and I do not think that that proposition eliminates a Jersey version of protection of employment transfers. The timescale I believe works and could be made to work relatively straightforwardly. So I am glad that the Chief Minister has said in response to Deputy Le Hérissier that he will form a working party. However, I believe that this proposition defines what it should come up with and gives a timescale to it, which is very healthy.

[11:45]

What we are talking about now, if it is guidelines or if it is contractual terms, it could be regulations. So the end of 2013 becomes a viable proposition. Because it is not a fundamental law change it might not even have to go to Privy Council. So that 9-month space is plenty of time to work on, tweak and develop the appropriate legislation for Jersey. I think it is very important also

that we do not go ahead with any of the privatising or outsource activities until we have this framework in place, have a framework in place, one that has some substance to it which goes a long way to meeting what I believe is an essential protection and has been recommended for a number of years by the Employment Forum, which we rarely, rarely reject. I maintain the proposition and call for the appel.

The Deputy Bailiff:

The appel is called for. I invite Members to return to their seats. This is (a) and (b) together, Deputy, is it not? The vote is on paragraphs (a) and (b) of the proposition and I invite the Greffier to open the voting.

POUR: 10	CONTRE: 36	ABSTAIN: 0
Senator A. Breckon	Senator P.F. Routier	
Senator S.C. Ferguson	Senator P.F.C. Ozouf	
Connétable of St. Helier	Senator A.J.H. Maclean	
Connétable of St. Brelade	Senator B.I. Le Marquand	
Deputy R.G. Le Hérissier (S)	Senator F. du H. Le Gresley	
Deputy G.P. Southern (H)	Senator I.J. Gorst	
Deputy M. Tadier (B)	Senator L.J. Farnham	
Deputy T.M. Pitman (H)	Connétable of Trinity	
Deputy T.A. Vallois (S)	Connétable of Grouville	
Deputy M.R. Higgins (H)	Connétable of St. Peter	
	Connétable of St. Lawrence	
	Connétable of St. Mary	
	Connétable of St. John	
	Connétable of St. Ouen	
	Connétable of St. Martin	
	Deputy R.C. Duhamel (S)	
	Deputy J.A. Martin (H)	
	Deputy of St. Ouen	
	Deputy of Grouville	
	Deputy J.A. Hilton (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy K.C. Lewis (S)	
	Deputy E.J. Noel (L)	
	Deputy A.K.F. Green (H)	
	Deputy J.M. Maçon (S)	
	Deputy G.C.L. Baudains (C)	
	Deputy of St. John	
	Deputy J.P.G. Baker (H)	
	Deputy J.H. Young (B)	
	Deputy S.J. Pinel (C)	
	Deputy of St. Mary	
	Deputy of St. Martin	
	Deputy R.G. Bryans (H)	
	Deputy of St. Peter	
	Deputy R.J. Rondel (H)	

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Deputy Bailiff:

Very well, we now come to M on the agenda, the arrangement of future business.

2. Connétable A.S. Crowcroft of St. Helier (Chairman, Privileges and Procedures Committee):

Business is as set out on M in the Consolidated Order Paper. I am not aware of any additions or changes. There is a fairly light agenda for 11th September and we obviously hope that will continue in the autumn. **[Laughter]**

The Deputy Bailiff:

No other matters?

Senator F. du H. Le Gresley:

I wondered if I could ask Deputy Southern, so that my officers and I have more time to spend on T.U.P.E. would he be minded to withdraw Income Support: Mileage Allowance?

Deputy G.P. Southern:

No, I believe there are some points to make in debate on that. I understand that the Minister is co-operating with the intention of that proposition, but I wish to maintain it.

The Connétable of St. Helier:

Could I further remind the Assembly that if we do need a continuation day next week it will not be on 18th July because we have, of course, the visit by His Royal Highness, the Prince of Wales, and the Duchess of Cornwall, so it would be on 19th July in the unlikely circumstance that we will want to reconvene.

2.1 Senator P.F.C. Ozouf:

I need to inform the Assembly that Draft Income Tax (Amendment No. 41) (Jersey) Law, which is down as first item of business, as Members will know... it has been moved back on a number of occasions so I would indicate to the Assembly that this proposition is going to be withdrawn and, therefore, not taken. I might just say that I will send a note to Members to explain what the next steps are. Members will know that the aim was to introduce a Q.R.O.P.S. (Qualifying Recognised Overseas Pension Scheme) regime in Jersey to facilitate the transfer of pensions from the United Kingdom primarily but not exclusively. Since we designed this excellent piece of legislation, unfortunately H.M.R.C. (Her Majesty's Revenue and Customs) has to some extent changed their view and certain Q.R.O.P.S. which have not been in Jersey have been affected; specifically Guernsey's schemes have been ruled and blacklisted. We continue to engage in dialogue with the U.K. authorities. We believe our legislation is a good piece of legislation, but the recent guidance for H.M.R.C. does not indicate that the legislation will need to be changed. So for good order's sake, I propose to withdraw it and relodge a proposition when we have clarified. We do remain optimistic that this is an opportunity for diversification. Unfortunately, the guidance has changed. So I apologise to Members that came along to the briefing. We continue to work on it and I will send a detailed note to Members later today. **[Approbation]**

Deputy J.A. Martin:

Sorry, can I just ask about these confidential ... Would you like them back or do I put them in an ordinary bin or is there a ruling? Because I know it did not really materialise last time we had confidential papers, but if we try maybe it may go to somewhere confidential.

The Deputy Bailiff:

It ultimately will be a matter for Privileges and Procedures to consider what, if any, steps need to be taken in relation to the disclosure of confidential documents. As for their production before this Assembly, it does seem to be right that they should be collected and returned to the Minister. So perhaps that could be done. Thank you. Very well, that is an administrative matter which relies upon the integrity of Members. The States now stand adjourned until 9.30 a.m. on 17th July.

ADJOURNMENT

[11:51]