

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 16th JANUARY 2013

PUBLIC BUSINESS - resumption	4
1. Greville Bathe Fund: appointment of Jurat	4
1.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):.....	4
1.1.1 Deputy R.G. Le Hérisssier of St. Saviour:	4
1.1.2 Senator P.F.C. Ozouf:	4
2. Draft Community Provisions (Goods Infringing Intellectual Property Rights) (Jersey) Regulations 201- (P.125/2012)	5
2.1 Senator B.I. Le Marquand (The Minister for Home Affairs):	6
2.1.1 Deputy J.H. Young of St. Brelade:	6
2.1.2 Deputy G.C.L. Baudains of St. Clement:.....	7
2.1.3 Deputy M.R. Higgins of St. Helier:	7
2.1.4 Senator P.M. Bailhache:	7
2.1.5 Connétable P.J. Rondel of St. John:.....	8
2.1.6 Deputy M. Tadier of St. Brelade:.....	8
2.1.7 Senator B.I. Le Marquand:.....	8
2.2 Senator B.I. Le Marquand:.....	11
2.2.1 Deputy M.R. Higgins:.....	12
2.2.2 Deputy G.C.L. Baudains:.....	12
2.2.3 Deputy J.H. Young:	13
2.2.4 The Connétable of St. John:.....	13
2.2.5 Senator F. du H. Le Gresley:	13
2.2.6 Deputy M. Tadier:.....	14
2.2.7 Senator L.J. Farnham:	14
2.2.8 Deputy R.G. Le Hérisssier:	14
2.2.9 Senator B.I. Le Marquand:.....	15
3. Draft Public Employees (Contributory Retirement Scheme) (States of Jersey Prison Service – Amendments) (Jersey) Regulations 201- (P.126/2012)	17
3.1 Senator I.J. Gorst (The Chief Minister):	17
3.1.1 Deputy R.G. Le Hérisssier:	18
3.1.2 Senator A. Breckon:.....	18
3.1.3 Senator B.I. Le Marquand:.....	19
3.1.4 Senator I.J. Gorst:	20
Deputy J.G. Reed of St. Ouen (Corporate Services Scrutiny Panel):	21
3.2 Senator I.J. Gorst:	21
4. States Members’ remuneration: proposed increase for 2013 (P.127/2012)	22

4.1 States Members' remuneration: proposed increase for 2013 (P.127/2012) - proposal to lift Standing Order 106	22
4.1.1 Senator B.I. Le Marquand:.....	23
4.1.2 Connétable A.S. Crowcroft of St. Helier:	23
4.1.3 Deputy G.P. Southern of St. Helier:	23
4.1.4 Senator P.F.C. Ozouf:	24
4.1.5 Deputy M. Tadier:.....	24
4.1.6 Deputy J.P.G. Baker of St. Helier:.....	25
4.1.7 Deputy R.G. Le Hérissier:	25
4.1.8 Senator L.J. Farnham:	25
4.1.9 Connétable J.M. Refault of St. Peter:	25
4.1.10 Deputy P.J.D. Ryan of St. John:.....	26
4.1.11 Deputy T.M. Pitman of St. Helier:	26
4.1.12 The Connétable of St. Saviour:	26
5. Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201- (P.132/2012):.....	28
5.1 Senator A.J.H. Maclean (The Minister for Economic Development):	28
5.1.1 Deputy G.C.L. Baudains:.....	29
5.1.2 Deputy J.H. Young:	29
5.1.3 Senator P.M. Bailhache:	29
5.1.4 Deputy M. Tadier:.....	29
5.1.5 The Connétable of St. John:.....	30
5.1.6 Deputy G.P. Southern:	30
5.1.7 Senator P.F.C. Ozouf:	30
5.2 Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201- (P.132/2012) - proposition of Deputy Tadier to refer the matter to Scrutiny under Standing Order 79	31
5.2.1 Deputy M. Tadier:.....	31
5.2.2 Senator A.J.H. Maclean:	32
5.2.3 Deputy S.G. Luce of St. Martin (Chairman of the Economic Affairs Scrutiny Panel): ..	33
5.2.4 Deputy G.P. Southern:	34
5.2.5 Senator P.F.C. Ozouf:	34
5.2.6 Deputy G.C.L. Baudains:.....	35
5.2.7 Deputy M. Tadier:.....	35
5.3 Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201- (P.132/2012) - resumption	37
5.3.1 Senator A.J.H. Maclean:	37
5.4 Senator A.J.H. Maclean:	39
5.4.1 Senator F. du H. Le Gresley:	40
5.4.2 Deputy M.R. Higgins:.....	40
5.4.3 Deputy J.H. Young:	40
5.4.4 Senator A.J.H. Maclean:	40
6. Draft Income Tax (Amendment No. 42) (Jersey) Law 201- (P.133/2012)	42
6.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):.....	42
6.1.1 Deputy R.G. Le Hérissier:	43
6.1.2 Deputy M. Tadier:.....	43

6.1.3 Senator L.J. Farnham:	43
6.1.4 Deputy J.H. Young:	43
6.1.5 Deputy G.P. Southern:	43
6.1.6 Deputy M.R. Higgins:.....	44
6.1.7 Senator P.F.C. Ozouf:	44
The Deputy of St. Ouen (Corporate Services Scrutiny Panel):.....	47
6.2 Senator P.F.C. Ozouf:	47
6.3 Draft Income Tax (Amendment No. 41) (Jersey) Law 201- (P.133/2012) - Acte Operatoire	49
6.3.1 Senator P.F.C. Ozouf:	49
6.3.2 Deputy M. Tadier:.....	49
6.3.3 Deputy J.H. Young:	49
6.3.4 Senator P.F.C. Ozouf:.....	50
7. Jersey Appointments Commission: appointment of Commissioner	50
7.1 Senator I.J. Gorst (The Chief Minister):	50
7.1.1 Deputy M.R. Higgins:.....	50
7.1.2 Deputy R.G. Le Hérisier:	51
7.1.3 Deputy J.M. Maçon, Deputy of St. Saviour:.....	51
7.1.4 Deputy T.A. Vallois of St. Saviour:.....	51
7.1.5 Senator I.J. Gorst:	52
ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS.....	53
8. The Connétable of St. Helier (Chairman, Privileges and Procedures Committee):.....	53
ADJOURNMENT.....	54

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

[9:29]

PUBLIC BUSINESS - resumption

1. Greville Bathe Fund: appointment of Jurat

The Deputy Bailiff:

We will now resume on the Order Paper and the first matter on the agenda this morning is P.123/2012 - Greville Bathe Fund: appointment of Jurat, and I ask the Greffier to read this.

The Greffier of the States:

The States are asked to decide whether they are of opinion to approve the appointment of Jurat Paul Nicolle for the purpose of administering the income of the Greville Bathe Fund.

1.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

The Treasury is seeking approval of the Assembly for the appointment of Jurat Paul Nicolle to oversee the Greville Bathe Fund. The Greville Bathe Fund was established under the will of the late Greville Inverness Bathe, who I believe was one of the founders or the founder of then Le Riches Stores, who most generously left a very significant part of that company to both the States of Jersey and Guernsey. Members may be interested to know that the most recent valuation I have of that fund is some £13.2 million which is invested in the Common Investment Fund and receives an income in the region of £340,000 a year. Of this £135,000 is annually spent compliant with the will of the late Greville Bathe to be distributed to persons in need who have given services in honorary or remunerated administration or clerical capacity and to provide assistance to the relief of sick and aged persons and local charities. I am seeking the appointment of Jurat Nicolle with immediate effect. I can confirm that the appointment is supported by the fellow Jurats. It is Jurats who oversee the Greville Bathe Fund, and that appointment of Jurat Nicolle was appointed by the Royal Court on 29th October last year. I am sure that Members will agree that Jurat Nicolle possesses all of the skills necessary to discharge these important responsibilities: integrity, common sense and patience and I am sure that he will make a valuable contribution in the important decision making on the Board. I hope Members will support it and I also take this opportunity of thanking Jurat Le Breton, the retiring Jurat, who served for a number of years in the capacity of one of the Jurats serving on the Greville Bathe Fund and who has given his time freely. Therefore, I make the proposition.

The Deputy Bailiff:

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

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

A tangential issue but has any thought been given to the rationalisation of these various funds? They absorb an awful lot of time of people like the Jurats. Some of them have quite narrow and particular focuses. Has any thought been given to rationalising the system?

The Deputy Bailiff:

Does any other Member wish to speak? I ask the Minister for Treasury and Resources to reply.

1.1.2 Senator P.F.C. Ozouf:

I said in the Assembly in the latter months of last year that the Treasury clearly needed to communicate more and perhaps we need to communicate what we have been doing. I thought we

had communicated the fact that we have made very substantial changes in the administration of funds and the Deputy is right. There are a large number of funds that are administered by the Treasury: all sorts of individuals over decades and generations have given amounts of money, small and large, to the States and it is entrusted mainly in the Treasury Department but there are other departments too, such as Health, that have responsibility for funds. Therefore, I can say to the Deputy, I will circulate some information for him because we have now consolidated all of the investment arrangements for these funds. The Common Investment Fund, which is almost the States Unit Trust now is run under one single authority within the Treasury and different funds take shares according to their own objectives whether they are maximising for growth or income. They are now managed under the Common Investment Fund. There has literally been tens if not hundreds of thousands of pounds worth of administration which has been taken out and in addition all of these funds are now getting the expert management that we now have for the overall management of the Strategic Reserve and other funds within the Island. Individual decision making is prescribed in different ways for different funds. I believe I am correct in saying that the Greville Bathe Fund was specifically not to be politically overseen. While politicians in this Assembly make the appointment of the Greville Bathe Fund *de facto* trustees, it is the Jurats that make decisions and the former Finance and Economics Committee delegated to Jurats a number of responsibilities for different funds. As far as the administration of arrangements is concerned, these have now been modernised. We have made it much better for all concerned, as I have explained and we are looking at a whole raft of other funds to see that they are efficiently run and decisions made properly. I will try and communicate better in 2013 about what we are doing and I will circulate to the Deputy what we are doing but I maintain the proposition, and I thank Jurat Nicolle for putting his name forward and for the other Jurats to serve in this capacity.

Deputy R.G. Le Hérisier:

Just a point of clarification. I thank the Senator for that; it is very heartening but it is the issue of recipients. How do people know that these funds exist? I know that Constables work tirelessly. For example, particularly with the demise of welfare, there is an issue of searching out for these funds. Can he produce a list of what funds are available and who is eligible to apply?

Senator P.F.C. Ozouf:

The funds I have published and again maybe we need to circulate or communicate better. We have circulated very substantial amounts of information on the different funds. Indeed, the Comptroller and Auditor General also produced a review last year and I will take on board what the Deputy says and see whether we can extend. However, I do know that in terms of the Greville Bathe Fund, which is, as I have explained, a very substantial fund with very substantial investments with a very welcome amount of money which is distributed, that they are well applied for in terms of people applying for funds and that is well communicated. If there are other areas that we need to do then we will look at that given our other priorities.

The Deputy Bailiff:

[Aside] Members in favour of adopting the proposition of the Minister for Treasury and Resources kindly show. Those against the proposition is adopted.

2. Draft Community Provisions (Goods Infringing Intellectual Property Rights) (Jersey) Regulations 201- (P.125/2012)

The Deputy Bailiff:

We now come to P/125/2012 - Draft Community Provisions (Goods Infringing Intellectual Property Rights) (Jersey) Regulations, lodged by the Minister for Home Affairs. I ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Community Provisions (Goods Infringing Intellectual Property Rights) (Jersey) Regulations. The States, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996, have made the following Regulations.

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

The States passed the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 and the Act bringing this into force was also approved on 11th December last year. Although Article 141 of that law provides certain enforcement rights, it does not apply to goods referred to in the Council Regulation (EC) No. 1383/2003. So it is necessary to have Regulations to seek to bring into force appropriate enforcement provisions for Customs and Immigration for matters which fall under that. The area we are talking about is the area of trademarks, copyright, patents, plant varietal rights and designation of origin or geographical indications and geographical designations. What I am seeking to do today by virtue of these Regulations is effectively to bring into force the E.C. Regulation 1383/2003. Normally one would need to do this by law but because it is a European piece of legislation I am able to use the European Communities Legislation (Implementation) (Jersey) Law and so we can do this by Regulations without having to go to a full law. The flip side of that is of course that we then have to enact something which is substantially the same as the European piece of legislation. The first key to understanding how the system will work in the future is in Article 6(2) under which the implementation of 1383/2003 becomes an assigned matter under the Customs and Excise (Jersey) Law 1999. That then ties it in to all the powers which the Customs and Immigration Department have under that law, but in addition to that there are other specific powers which go beyond that which are provided for, in particular under Article 5 where there is a simplified procedure. This means that the whole process of dealing with disputed matters or dealing with matters which are faulty in some way can be speeded up. I am not going into very much more detail at this point. This is a very complex and technical piece of legislation tying into a European piece of legislation and I think it is best if I simply invite questions at the appropriate time rather than trying to explain it all in incredible detail. I move at this stage the principles of the Regulations.

The Deputy Bailiff:

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

[9:45]

2.1.1 Deputy J.H. Young of St. Brelade:

When I read this... and obviously I am conscious that we now have in Jersey very wide intellectual property protection, much more than before. I would ask the Minister if in his reply he could reassure me that we are not effectively saddling Government with the job of sorting out civil disputes between parties whereas, for example, if it is argued that goods are being imported which are in breach of copyright, *et cetera*, we have to effectively resolve that dispute between the 2 parties and pick up the costs. That troubles me and I hope that is not the intention. I hope that we are not being required to be an unpaid enforcer of intellectual property provisions because it seems to me those matters are properly the issue of the civil courts where there are disputes between parties about breach of copyrights, *et cetera*. Therefore, really, it is the impact on the public and the costs. Of course, clearly this is an E.U. (European Union) Regulation, as the Minister has told us, but clearly it is intended... and on page 5 it talks about Customs authorities and competent

Customs Department. Therefore, clearly it is intended to work in a kind of a broad context where you have a Customs Department dealing with goods and that is dealt with in the Regulations - Regulation 3- that tells us that the Customs Department in Jersey is the competent department. Of course, I cannot see anywhere in here who is the Customs authority. Is that the Minister? I think clearly that troubles me again that here we are adopting a piece of legislation which in the Minister's own words is very complex. It is clearly designed for operation in a broader European and international framework and my worry is little old Jersey getting stuck with all the complications and costs. I see on the paper that it says it is not anticipated that there are any financial implications and there are no manpower implications. I would like to be reassured because if disputes arise about goods being imported, copied CDs or pirated CDs or electronic books, *et cetera*, that we not going to be saddled with having to sort those problems out under these Regulations.

2.1.2 Deputy G.C.L. Baudains of St. Clement:

It does worry me in a similar vein to the previous speaker that this might be a piece of bureaucracy that is more trouble than it is worth. Would the Minister in summing-up perhaps help me by giving some examples of the sort of materials that this might affect? While it might affect things like fake Rolex watches, I think we might cause some difficulty if the imported material is in digital format which could, in some cases, in my view, be practically impossible to enforce.

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

Again, following the previous 2 speakers, I have concerns with this partly because it says on the explanatory note, third paragraph: "If a Customs authority then finds goods that are suspected of infringing...", who is going to make the judgment? Is it the fact that: "It does not look right to me." It could be. These goods are then going to be detained hopefully for a short period of time, but it also says they: "... will then notify the right-holder." In other words, it is almost as if they are going to police the thing and say: "We suspect, therefore we are going to hold this. We will let you know." Surely, it should be on the basis of evidence that the goods are perhaps counterfeit or whatever before they take action. I do have concerns about this and also the implementation of European law. I know in my own dealings with the Customs Department, for example, many of the goods that are coming into the Island they are judging. We do not have rules covering the things ourselves so they are using U.K. (United Kingdom) V.A.T. (Value Added Tax) rules which they do not understand and they have been misapplying. Therefore, I am concerned in this case again the rules could be misapplied. I think before we start adopting legislation that wholeheartedly follows European Union legislation - which is not the clearest by far - we should be very cautious.

2.1.4 Senator P.M. Bailhache:

Intellectual property is becoming more important as a source of wealth in the world and theft of intellectual property is correspondingly becoming an increasing problem. Therefore, I am sure that the Minister is right to bring forward these Regulations because to the extent that Jersey can be seen to be a soft touch in the sense that goods which are in breach of some intellectual property right are coming into the Island or going out of the Island without inhibition. That affects the international reputation of the Island and I am sure that the Minister is right that this kind of protection should be brought in. The Minister has asked for questions and following up indeed the comments of Deputy Young and Deputy Higgins, I would be interested if the Minister could explain how in practice this is going to work. When drugs come into the Island or even alcohol or tobacco upon which duty has not been paid, it is relatively easy for a Customs officer to say: "This is contraband and I must stop it and take the appropriate steps." When something is being imported which is in breach of an intellectual property right, some clothing, for example, which might infringe some manufacturer's intellectual property rights, presumably the only way in which the Customs officer will know about

it will be following a complaint from some interested party who will have a claim against the person either producing the goods or importing the goods or otherwise dealing with them. Under the Customs and Excise Law, what the Customs officer generally does at present is to seize the contraband, whether it is money suspected of being the proceeds of drug trafficking, for example, or drugs or whatever the prohibited item might be. He then leaves it to the person who has carried out the importation to show that the seizure was wrong or ought to be set aside and the goods ought to be released. It would be useful to know how the practice is going to work in the context of goods which are suspected of breaching some kind of intellectual property right because, as Deputy Higgins and Deputy Young have rightly said, these issues involve disputes between private parties and I would be interested to know the practicalities of it.

2.1.5 Connétable P.J. Rondel of St. John:

In a broader sense, would the Minister tell us whether or not we have laws at the moment for goods which are fake and also for the import of ivory, *et cetera*? This is a similar type of law I presume, but will this impact on the free movement of people or slow down the movement of people going through our ports, or is it solely for goods coming in in bulk into the Island? Further to that, with having lost fulfilment to the U.K. are we just following this or rubber-stamping this on behalf of our free movement of people and goods via the U.K. or into the Continent? There are 2 or 3 small areas there which are of concern to me, Minister.

2.1.6 Deputy M. Tadier of St. Brelade:

Just some questions, obviously this proposition today is fairly abstract, to say the least. As has already been mentioned, it is not like tangible property which is brought into the Island which may be counterfeit t-shirts for example from the Far East which are then sold in Jersey perhaps at car boot sales, *et cetera*. My understanding in that scenario was the body that would regulate those kinds of actions would be the Trading Standards Department which is, I think, based in the Market and, if I am not incorrect, which falls under Economic Development. I was wondering if the Minister could give some concrete examples about ways in which intellectual property... some examples of how they would be first of all informed that there was a breach going on of intellectual property rights: what that would mean in reality. Would people travelling to the Island, for example with an iPod be expected to hand that over to a Customs officer if he had reasonable grounds to think that half of the tunes on there were downloaded illegally and not paid for? Of course, would there be any way to do that? Would it be in the public interest to do that? Essentially, how would these things be and what is the link to Customs and Immigration because it seems to me intellectual property is more likely to be breached not via any physical frontiers that we have in the Island but perhaps over the internet where somebody is copying, downloading films, documents. They may have a cracked subscription to the *Guardian* or to the *Telegraph*. I do not know if those things even exist but it is entirely possible and that they access the newspaper on their iPad for free. Is this what we are talking about or is it simply a much higher level when we think that international intellectual property to do with patents are being infringed on that level? If the Minister could perhaps give us some clarification about what we are talking about and what the realistic application of that law would be.

The Deputy Bailiff:

Does any other Member wish to speak? Therefore, I call on the Minister's reply.

2.1.7 Senator B.I. Le Marquand:

I congratulate all the questioners on asking excellent questions on this occasion. These are very pertinent questions and I thank them all. I thank Senator Bailhache for his input as well. The position is this, that what we are talking about here is a wide range of things which may well include tangible goods because it certainly includes counterfeit goods, pirated goods and goods

infringing other rights. We are not just talking about intellectual things in terms of tunes or pieces of music or art forms, *et cetera*. It includes tangible things; it is a very wide range of things indeed. The position in relation to civil disputes does not change the normal arrangements in relation to matters which are seized by Customs and Immigration officers. That is why I mentioned the Article which tied this into all the powers and provisions of the 1999 Law. What it does do, however, is it creates a fast-tracked procedure to seek to reach a fast resolution in relation to certain types of matters and I will go into that in greater detail. Therefore, what I think is most likely to happen in the vast majority of cases is there will indeed be some form of complaint made in relation to goods which are pirated or counterfeit or whatever probably by the right-holder, the right-holder being the person who has the right to the intellectual property rights or in the case of counterfeited goods, if it was Nike, to the particular rights associated with the name Nike in terms of unique items of shoes or clothing, *et cetera*. I think in the vast majority of cases that will happen but of course Customs and Immigration might become aware via other sources that items were being brought in or potentially being brought in. I cannot envisage a situation which the Customs and Immigration Service would ever have the resources or the lack of common sense to be stopping individuals to check their pieces of music on their iPods. That is not feasible. We are really talking here about commercial items which we brought in although the application is not reduced in that way, but common sense indicates that is what is going to happen. In practice, they seize the items and then there is a process under the 1999 Law by which disputes are resolved in relation to that. That is not changing, but in addition to that the simplified procedure effectively creates a situation that once a notice is served upon the importer, the owner or other interested parties, they can consent to the destruction of the goods.

[10:00]

They can hold their hands up and say: "Yes, we should not have been importing this. This is out of order. You can proceed on to destruction of it." Alternatively, there is a tight timescale which is set if they do not respond at all after which the Customs and Immigration Department can proceed to treat these things as being phony and therefore as being destroyable. I sought human rights advice on that, notwithstanding this was a Regulation, to check that and was assured that those tight timescales are quite acceptable under human rights. However, they do provide potentially a simple way of dealing with issues where it is not being disputed but where it is being disputed it would be exactly the same process as would happen in relation to other matters. The issue about Customs authorities and Customs departments, of course, this E.U. piece of legislation is designed for large countries which would have different customs organisations in different parts of the country. In Jersey, being a small place, we only have the Minister and we have the Customs and Immigration Department. Essentially, they are virtually one and the same for practical purposes. Deputy Baudains asked questions in relation to bureaucracy. The fact is that if we are going to take the responsible view in relation to such matters we must have the necessary legislation to police such matters. There were powers, as I said at the start, created in the law for that but the law specifically left out matters covered under this item. It was always envisaged that this piece of legislation would be brought forward to plug that gap and indeed if we do not plug that gap in that way we will have a hole in our legislation as a result of that. In relation to issues of volumes, *et cetera*, I have to say that notwithstanding what it says in relation to manpower that is entirely dependent, as any other such matter, upon the volumes of items which were coming into the Island and where they might be coming from. If, for instance, we had a large influx of items coming into the Island from foreign sources and then being sent back out again and I hesitate to use the dreaded words L.V.C.R. (Low Value Consignment Relief) but those are the words I am thinking. If we had that in relation to any particular thing this could create a situation in which there were large volumes coming in, which the Customs and Immigration Department would have duties in relation to. Frankly, we must have someone with those duties in relation to that because if we are importing things to export

them again and do not have appropriate checks and methodologies for that, then the reputational damage is potentially very great indeed. That is why we must have the appropriate powers. The issue was raised by Deputy Tadier in relation to the role of Trading Standards. In relation to this, when matters are being dealt with internally, Deputy Tadier is absolutely right. It is the responsibility of Trading Standards, but at the port of importation it is the responsibility of Customs and Immigration albeit, of course, that in relation to building up knowledge and understanding of particular items, there is no doubt the 2 would work together quite closely in relation to that. Senator Bailhache was asking questions as to how in practice we would find out. I think in the vast majority of cases there would be a complaint from a complainant who was the right-holder saying: "I believe items are being sent into Jersey which contravene my rights. Would you please inquire and look into it?" As I say, if it became common knowledge that particular types of items were coming into Europe generally, then the Customs might also have sources of information in that kind of way. I think I have dealt with the issue of the Connétable of St. John because I really do not think this is going to be applied in that sort of way to slow down the people coming in. We are really looking at substantial quantities of goods but I cannot promise there might not be an individual case in an individual matter but I think it is unlikely.

The Connétable of St. John:

Would the Minister give way? What you said about that I understand but you mentioned the word "common sense". The law is black and white. Once it is in black and white, if the law is broken it is broken. I can understand from my policing days when I was a Centenier we used to use black and white and shades of grey but the States police of the day had to deal in black and white. That is where if you put something in law, it is law.

Senator B.I. Le Marquand:

Yes, law is law but law only gives the power to Customs and Immigration to seize items. How they will deal with the process of checking matters is an operational matter as entirely up to them and there are many other areas of law where that is the same. If one considers, for instance, the enforcement of the speeding laws as a good example, we all know the number of people who will be caught and prosecuted is probably almost directly proportional to the amount of police hours which are spent on it. You never have absolute enforcement in that kind of way. I think the other question from Deputy Tadier I have dealt with. Yes, it does include tangible items. If this Assembly is not minded to pass this piece of legislation today because it is concerned about increased workloads or volumes, we will simply have an unanticipated hole left in our legislation because of Article 141 of the primary legislation which we will not have filled. Therefore, it is not just a question of toeing any European line or doing what is correct. It is something that we need and this is the neatest way of filling it. Therefore, I move the principle.

The Deputy Bailiff:

All Members in support of the principles, kindly show. The appel is called for. I invite Members to return to their seats for voting on the principles of the Draft Community Provisions (Intellectual Property Rights) Regulations and I ask the Greffier to open the voting.

POUR: 43		CONTRE: 2		ABSTAIN: 0
Senator P.F. Routier		Deputy M.R. Higgins (H)		
Senator A. Breckon		Deputy G.C.L. Baudains (C)		
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				

Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
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)				

The Deputy Bailiff:

Deputy Maçon does your panel wish to scrutinise?

Deputy J.M. Maçon of St. Saviour (Chairman, Education and Home Affairs Scrutiny Panel):

No, thank you.

2.2 Senator B.I. Le Marquand:

A very wise decision, if I may say so. **[Laughter]**. I spent a lot of time on this trying to understand interrelated bits and it is very complex. I could go into masses of detail which would cause Members to drop off to sleep in droves but I am not going to do that. I think what I must do is particularly draw attention of Members to the simplified procedure which I have already given some mention.

The Deputy Bailiff:

Are you proposing all the Regulations together?

Senator B.I. Le Marquand:

I am going to propose them all together, yes. I must particularly draw attention to the simplified procedure which I referred to previously and I am going to give a quick explanation in relation to that. This deals with a situation where Customs can treat items as abandoned if certain things happen, and the condition is either that the right-holder, that is the person who has rights to the intellectual property right, provides the agreement of an interested party. That is either the person making the Customs declaration, the holder or the owner of the goods or where 10 days have expired from notice being given to the right holder to the declarant and to the holder for 3 days where there are perishable goods and none of the interested parties have opposed. Those are tight timescales and I was concerned about them. That is why I sought human rights compliance in relation to that particular Article, but that is really reflecting what is in the E.C. (European Commission) Regulations. Even if those timescales are exceeded, the Customs and Immigration Department can extend the period. In other words, it is said they have the right to do it but it does not mean they are going to do it. If you have a situation where the right-holder and one of the interested parties has consented effectively to the destruction but another party does not, then the destruction provision does not kick-in. If they are destroyed and this may reassure some of the Members, it is not the Customs and Immigration Department that bears the cost of destruction; it is the right-holder. Therefore, if there is a cost entailed with destruction of items because there is bulk of items, then it is going to have to be paid for by the person who has the right to the intellectual property rights but Customs must retain a sample in relation to any disputes that might follow. That is a very brief summary of the simplified procedure. Hopefully, that will make life much easier than if we did not have a simplified procedure in which case items would just be seized and then we would have to await other proceedings between parties. As to the rest, I do not think I propose saying anything further at this stage but will answer any further questions if they arise.

The Deputy Bailiff:

Regulations 1 to 9 have been proposed. Are they seconded? [**Seconded**] Does any Member wish to speak?

2.2.1 Deputy M.R. Higgins:

I just rise again to complain basically about the way that we are passing laws in the Assembly. Article 2 says, in terms of application: "Subject to paragraph 2 of these Regulations, apply to goods which fall to be treated by virtue of Article 2 of the Council Regulation as being goods infringing an intellectual property right." The second part: "These Regulations do not apply to goods in relation to which the Council Regulation does not apply by virtue of Article 3 of that Regulation." That does not tell us anything about what the goods are. What it is doing is telling us to refer to the European Union or the European Council Regulation which, if you do not have an iPad and you cannot look it up, you have no idea what we are referring to. Surely, if we are going to be implementing foreign laws like this, they should at least take the appropriate extract and tell us what the goods are. This is a totally unacceptable way of passing legislation.

2.2.2 Deputy G.C.L. Baudains:

In a similar vein, the proposition referred me to Article 2 where the goods would be affected would be explained and as Deputy Higgins just said, there is nothing new. I understand fully what the Minister was saying that if we have, for example, a container load of fake goods come into the Island and then go back out again, yes we do have a duty to stop Jersey being used as a back door for that sort of operation. What does concern me though, and these are words used by the Minister on the principle, is that this is an operational matter entirely up to them. It is the Customs officer. I am sure it will not happen very often and I hope it does not happen at all but it does seem to me that

there is a possibility that a Customs officer might stop one coming off the ferry and say: “I notice you are wearing a Dior suit but I do not believe it was made by Dior. I am afraid you will have to take it off and leave it here.” Then, the person must somehow prove that this suit he has had for the last 4 years, can he find the receipt? What really concerns me is the possibility that this will end up as bureaucracy and some poor person will become caught up in something that was never intended to happen. In the process of catching bigger fish, if you like, there are people who are going to suffer from this and it really does concern me. I hope the Minister can give me some comfort on that because otherwise I will have no option other than to vote against the Articles as well.

2.2.3 Deputy J.H. Young:

I have struggled with trying to make some sense of what Article 7 is about and I have looked at the explanatory note. It seems to be the purpose of this Article is said to be consequences of misuse of information by the right-holder and it seems to be about names and addresses supplied about the people involved, but is also includes the origin and provenance of goods. Firstly, Article 7(1) says they can suspend the decision and then because paragraph 2 says that there is some statement there about powers being done within 3 years of the misuse of information. The explanation of what misuse of information is, is frankly to me almost unbelievable.

[10:15]

I think it is worth reading: “‘misuse of information’ means the use of information supplied to a right-holder pursuant to the first sub-paragraph of Article 9(3) of the Council Regulation, other than for the purposes specified in Articles 10, 11, and 13(1) of the Council Regulation or pursuant to an enactment or order of the court.” What are we supposed to make of this? What is the effect of this Article 7 here? Here we are saying, I think, that the agent has got powers and duties to make decisions on these things under such framework. Frankly, I hope the Minister can try and explain that a little bit for me, please.

2.2.4 The Connétable of St. John:

Quite interesting with the loss of L.V.C.R. - the fulfilment business - last week there was a programme on the local radio where somebody was being interviewed and he was suggesting that possibly because of paperwork involved in importing into Europe that Jersey Ports could be used as a transitional port where Customs would clear these ships onward to other parts of Europe. That being the case, I think it is quite important that the law in fact is enacted in this way because if people are going to try and use Jersey as a back door, we have to make sure that we do not fall back into the trap that we have had in the last 10 years because of fulfilment. If people are going to introduce new business to this Island, it is important that we have the right laws in place. If this is going to help our Customs officers, after hearing that interview last week, I am going to support this because anything that stops an illegal thing happening in the Island, it can only be right.

2.2.5 Senator F. du H. Le Gresley:

I would like to thank Senator Farnham for his wonderful piece of equipment in my left hand but the difficulty that people had with sourcing Article 2 and Article 3 of the Council Regulations was achieved by myself in less than 2 minutes. I do not see the difficulty in the fact that the whole of the Article 2 and Article 3 are not set out in the law, because on page 13 there is the link, if you like, to access the law. So all I am trying to say is we have to move with the times, we cannot have everything printed out for us and Members have to use their knowledge of the internet to source these bits of information.

Senator L.J. Farnham:

As I said, my iPad is for hire if any other Member would like to use it. **[Laughter]**

2.2.6 Deputy M. Tadier:

I have to challenge that point to a certain extent. I know that we pass very complex pieces of legislation and Regulations in this Assembly but to simply say: “Let us have a quick look at that iPad my colleague sitting next to me happens to have.” I have tried to find this Article on my laptop and I brought up a page, which is complete gobbledygook, of Articles from the European Union which I cannot find. The point is, clearly we do hope that this kind of research would be done before but it is not imperative. This is why I think we come to the broader issue about legislative scrutiny, is that we do need to make sure that we at least have an explanation from the Minister as to what, in this case, for example, in Article 7 the misuse of information means because we need to have at least some confidence that what we are passing does have some kind of common sense to it. I think that is what we are saying and it could be presented in such a way that it is a lot more easy to understand. I think these are the points that are being made and we probably have a lesson to be learnt here. That is not to say of course that all the boxes have not been ticked elsewhere but this is the Legislative Assembly of the Island so probably a bit more decorum, I suggest.

2.2.7 Senator L.J. Farnham:

Senator Le Gresley is absolutely right, I took a little bit longer than him to get to the Council Regulation on the iPad but I have it in front of me at the moment. It is quite interesting and perhaps might be worth reading out for the benefit of Deputy Young. It says: “With a view to establishing whether an intellectual property right has been infringed under national law, and in accordance with national provisions on the protection of personal data, commercial and industrial secrecy and professional and administrative confidentiality, the Customs office or department which processed the application shall inform the right-holder, at his request and if known, of the names and addresses of the consignee, the consignor, the declarant or the holder of the goods and the origin and provenance of goods suspected of infringing an intellectual property right.” So what this Regulation appears to do in fact is to answer the question that I put to the Minister earlier on during the debate on the principles because the Customs officer will have a duty to ensure that the complainant and the consignee are aware of each other’s existence and can presumably enter the lists as to whether or not there has been a breach of the intellectual property right in question. So, whereas I am sympathetic very often to the complaint of Deputy Higgins that laws, Bills and draft Regulations ought to contain sufficient information for Members to address the questions they have to address, I think in this particular instance where there are so many interlinking provisions but which can be accessed very simply, the Minister has probably done all that he can.

2.2.8 Deputy R.G. Le Hérisier:

I just want to support Deputy Tadier. I have been accused of being too picky and pedantic with laws when they come up and have pulled back a little as a result but I think it is quite ridiculous that 51 people try and cope. It has to be remembered that people like Senator Bailhache have got special insights, and Senator Le Marquand, because clearly they have worked in the area and they are able to grasp the issues and come to various conclusions in quicker and different ways to the rest of us, so they might underestimate the difficulties with which people are struggling. But I think it would be much better if there was legislative scrutiny and I look forward to people like Deputy Higgins leading the charge, volunteering to be on a Legislative Scrutiny Committee which will be committed to the complete plain English approach in its reports as presented to this Assembly. But I never supported legislative scrutiny at the start. I used to hiccough when people like the former Deputy Dorey used to do the classic pedantic job on legislation but I have now come to realise in fact they did some very good work. The big issue is translating it into understandable English and reports so that you do not have 51 people on the hop trying to take stabs at what appear to be

complex pieces of legislation but with the kind of guidance we have just received could well lead to the rest of us seeing the light. Thank you.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on the Minister to reply.

2.2.9 Senator B.I. Le Marquand:

Notwithstanding the kind words of Senator Bailhache, I do accept that I have made a mistake today. I did very seriously think as to whether I should circulate to Members copies of the relevant European document. I did not do so because I thought it would make Members very confused indeed and that was a wrong decision which I now accept. It is quite difficult to understand that document in the interplay of matters but I accept the criticism in relation to that from Deputy Higgins. I did think about it and I think I made the wrong decision. In relation to the specific question that he asked in relation to Article 2, the answer to that is that it applies to goods infringing an intellectual property right. I read out at the start what those intellectual property rights were and indeed they are set out in full in the notes and in particular to counterfeit goods, pirated goods and goods infringing other rights but it does not apply to Article 3 of the E.E.C. (European Economic Community) listed items. This is a situation where someone has had the consent of the owner to do something but they have not done it quite in the way in which they should have done it, so that is the explanation of that. In relation to Article 7 (this is Deputy Young's point) what will happen as part of the process of notifying importers or owners, the group of people who have to be given notification of the fact that an item has been seized, is they will be given certain information which might be commercially sensitive in some way. Article 7 is there, and this is one of the provisions we have to have, as I said at the start, because they have chosen the route, instead of having a separate law of our own of adopting the European law, we have to stay in with the principles of it. Effectively this provides some means of penalising an individual who does not use the information they have been provided with in the right way or uses it in the wrong way. That can lead effectively to Customs saying: "Well we are now going to release these items because you have abused the information which we provided you." In a case for second case of misuse, then the Customs can in addition to that say: "Well for a year we are going to refuse to enforce your rights effectively or to accept a new application for enforcement of rights." So it provides a methodology for ensuring that if people who receive confidential information properly under this misuse it, there can be appropriate penalties and a downside to that. That is what that is all about. I thank the Connétable of St. John for his affirmation of the general principles and I do not think any of the other matters require a detailed answer so I maintain Articles 1 to 9.

Deputy M. Tadier:

I have a question of clarification and I think the Minister was referring to Article 4 at the time. He said: "When they have not done it in the way that they should have done it" and I think he was referring to when they have the right to intellectual property or information. What does that mean? Can he give an example of somebody who is a right-holder but has not done something in the way that they should have done it? It needs further clarification.

Senator B.I. Le Marquand:

Yes, I can. I simplified my own notes in relation to that because there seems to me to be 2 situations. In all cases it is covered by consent of the owner. I struggled to understand this myself, I have to say, but the conclusion I came to was this: that they have sent goods somewhere where they did not have the right to send them. They had the right, as it were, to manufacture goods, but they have sent them somewhere they should not have sent them or alternatively where there were different conditions being applied to those agreed by the right-holder. So it is not a simple case of a person having no right to manufacture these goods at all, it is where they had a right to do it but

what they are doing is either sending them somewhere they should not have sent them or selling them under conditions they should not have sold them under; in a way, where it is a subsidiary breach of the terms of their licence to do this. An effect of this is simply that these are not then covered, this takes those out of the ambit of the provision whereby they can be seized. If that answers the question.

Deputy M. Tadier:

Just to clarify, it is the responsibility of the Customs officer at the point of entry to make sure that all those conditions are met and to make sure that the papers are held to see that the person is a right-holder but not a right-holder in the context for the importation of goods in this particular case.

Senator B.I. Le Marquand:

It is the other way round, if I have answered the question correctly. What this is saying is that in a case where a person was licensed to manufacture certain goods and they breached in some term the conditions of that, then Customs could not then seize the goods. It takes them out of the ambit of the law. I hope that has clarified that point.

The Deputy Bailiff:

All Members in favour of adopting Regulations 1 to 9 kindly show. The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt Regulations 1 to 9 and I ask the Greffier to open the voting.

POUR: 42		CONTRE: 2		ABSTAIN: 0
Senator P.F. Routier		Deputy S. Pitman (H)		
Senator A. Breckon		Deputy G.C.L. Baudains (C)		
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisser (S)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				

Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
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)				

The Deputy Bailiff:

Minister, do you wish to propose the Regulations in Third Reading?

[10:30]

Senator B.I. Le Marquand:

Indeed, yes.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak? All Members in favour of adopting the Regulations in Third Reading, kindly show. Those against. The Regulations are adopted.

3. Draft Public Employees (Contributory Retirement Scheme) (States of Jersey Prison Service – Amendments) (Jersey) Regulations 201- (P.126/2012)

The Deputy Bailiff:

We now come to the Draft Public Employees (Contributory Retirement Scheme) (States of Jersey Prison Service - Amendments) (Jersey) Regulations 201-, lodged by the States Employment Board, and I call on the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Public Employees (Contributory Retirement Scheme) (States of Jersey Prison Service - Amendments) (Jersey) Regulations 201-. The States, in pursuance of Article 2 of the Public Employees (Retirement) (Jersey) Law 1967, have made the following Regulations.

3.1 Senator I.J. Gorst (The Chief Minister):

Back in March 2011, the Prison Governor working with the Prison Service Association produced a paper entitled *Fit for the Future* which was about modernisation of the Prison Service. One of the recommendations and agreements there was with regard to changes to prison officers’ pensions, and that is the genesis of the proposition before Members today. Despite it being somewhat lengthy, it is a very small change. In actual fact there are 3 changes as such and then small tidying-up. The small tidying-up is the removal of the term “Chief Officer of Prisons” because it no longer exists; it is now the Prison Governor. But the pension changes themselves are (1) these provisions allow for current staff to work up until they are 60, so they have the option to work longer, retaining all their pension benefits; (2) the creation of a new category ‘C’ which will mean that all

new prison officers now have a new retirement age of 60; and (3) arising from that new entrant category a new accrual rate is introduced for those entrants, taking it from one-sixtieth to one-seventieth. In effect, there are a lot of changes required because there are 4 pieces of legislation that require changing because of the way that pensions are structured under various Regulations: the 1967, the 1989 general and existing, and the 1989 new members, and all of those have to be changed. So it appears a lot but in actual fact it just gives rise to those 3 changes. The proposal to change the retirement age was to bring the Jersey Prison Service into alignment with the U.K. Prison Service where the retirement age of prison officers was extended to 60 several years ago and, of course, in recognition of the increasing lifespan and that people are generally fitter and more able to work longer. There is a need, therefore, to manage the increasing demand on the pension fund and, as I said, these changes are supported, not only by the Prison Governor, but by the Prison Service Association and I hope that Members will support them. Thank you.

The Deputy Bailiff:

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles?

3.1.1 Deputy R.G. Le Hérissier:

This is an issue that will undoubtedly arise more and more with the uniformed services. But there was a development a few years ago where the prison started to set up categories of people who dealt with prisoners and those who did not and who would do non-physical contact jobs, so to speak. Are we to assume that all officers - and I have spoken to the Assistant Minister who was able to elaborate on some of this - will now do the full job if they are physically able to until the age of 60? Are we to assume, secondly - and I know this is a very difficult issue- that there is an assumption that they all have the physical capacity to do that until the age of 60? I know the Assistant Minister who looks after Tourism and involuntary tourists at La Moye has taken an interest in this matter, so I would like elaboration on that.

3.1.2 Senator A. Breckon:

This was a matter that I contacted the former States Employment Board about a number of years ago because I was concerned about the affordability of some of the deals that were available to some employees, mainly in police, ambulance and the prison service. I say that because this was against the background of increasing the Social Security pension age from either 60 or 65, depending on circumstances, to 67. So it seemed like we were saying one thing to the general public and then we were doing something else as an employer. I said that because I wondered whether it was either fair or affordable. I say that because members of the scheme are all in this together and pay for people who have got an option to retire at 50 or 55. In my view that was not fair because some do not have this option and it would take, for example, manual workers, who might be out in the elements, in the snow, clearing trees and working in storms and things like that, who do not have that option, it is physically demanding, and had to work up until the age of 65. So the question is, is it fair and equitable that we are still offering that? I must say, the former States Employment Board, to my knowledge, did not address this at all. So what we are talking about here is something that seems to have come from the people involved to consider this, but what needs to be taken into consideration, I think, is what it costs. If you think of somebody retiring, say, at 55 with a pension of £30,000, over 30 years that costs about £1.4 million. If people live longer than that, and the Chief Minister did mention there, there is a cost to the fund, and we have to bear that in mind because somebody has to pay for it and that is the rest of us and the people who are members of the fund. So I think this is welcome but I think the States Employment Board might consider getting a bit more robust in other negotiations, who are people who are getting this benefit, and ask the question: is it still appropriate for people to be able to retire at 55 given changes to working conditions which are considerably different to they were 20-odd years ago, 30 years

ago, when these schemes were put in place. A former president of the Establishment Committee... I remember him proposing some changes to this scheme a number of years ago, and I told him at the time that he was fairly stupid to be doing this because at some time in the future it would need to be revisited because it was not affordable and it was not fair. He took absolutely no notice of that. The other thing, having said that, as an employer, I believe that the States of Jersey are sympathetic if somebody has health conditions or circumstances that warrant compassionate treatment or early retirement. I believe we do do that, so there are circumstances where we can address that. But I think this is a chip of an iceberg here that needs to be looked at in more detail and with some, as I say, vigour because there is a cost and it is not going away. When members do some of the figures they are frightened. They are frightened and the question is, is it still nice to have or is it affordable? The answer is probably the second one, that it is not affordable and we should do something about it. So it is welcome there but I noticed in here there is still an option for people to retire at 55. Now if people have benefits, then we should honour that. But then if we have got new recruits, perhaps we should be treating things differently because we are going to have to face this because it is the elephant in the room, as they say. I know that the pension scheme is an issue; people have paid in, they do have a level of expectation. We need to honour that where possible but we need to look to the future and make changes. I think this is a step in the right direction but I would ask the Chief Minister as chair of the States Employment Board if he would do that and also that he would let this House know that they are in discussions with those involved because I think it needs to be done. Thank you.

3.1.3 Senator B.I. Le Marquand:

I want to give a bit more depth in terms of background to this so that Members of this Assembly can see that this is part of a wider reorganisation process which indeed Deputy Le Hérissier alluded to. The Governor came up with an excellent scheme for restructuring the prison. So excellent was it that it won a local prize for one of the best change schemes of the period. I think he deserves great personal credit for that. What he was doing there were 3 things. He was seeking to create a new pay spine for prison officers. One of the bugbears of the Home Affairs Department, which I have often referred to in this Assembly, has been the incremental system by which officers would go on getting increments just by carrying on breathing, as it were, just by having been in office for longer whether or not they had gained extra skills. The spine had the effect of increasing pay levels in the earlier years but meaning the pay system did not carry on going up as long. In the short term it has cost slightly more; in the long run it represents a substantial saving. At the same time, he restructured the grades; previously we had 2 grades. We had full-blown, as it were, prison officers who did all functions but we had a second group who performed very limited functions and had very little direct contact with prisoners. What he effectively did was to do away with that second group and replace it with a group which lay, in terms of duties and responsibilities, between the 2. In other words, there was still a second group but they had greater areas of responsibility and indeed that has been very useful. A third issue was the changing of retirement age for officers, which previously they could retire at 50 but have to go to 55 now. That has been pushed back by 5 years in each case. So these pension provisions are part of a greater reorganisation scheme and we need to have these provisions in order to bring that into force. There was consultation with the Association, and indeed the Association voted on this, looked at the overall package, and were happy with it. So I provide that by way of the background information to the Assembly, although really the 2 issues that have been looked at here are the extension of retirement age. Now for those who are already within the system, the retirement age has been extended but they are remaining on the current system by which they get one-sixtieth per year of performance. But for those who came in after a particular date, after 1st February 2013, their pension right scheme, although they can stay for longer, they will now only have one-seventieth, so there is a reduction, to answer Senator

Breckon's question, in terms of their entitlement in terms of amount per year. It is purely background but I hope it assists Members to see the big picture in relation to this.

Deputy J.H. Young:

I am embarrassed to realise that we are changing Regulations which affect me personally as a member of the existing members' P.E.C.R.S (Public Employees Contributory Retirement Scheme) Regulations because I receive a pension. Should I declare that and withdraw, Sir?

The Deputy Bailiff:

Well they are of general application although they might affect you personally and they might ...

Deputy J.H. Young:

As well as through family members, so I would feel perhaps more comfortable.

Senator I.J. Gorst:

Could I help at this point ...? Yes, of course the Regulations which I referred to in my opening comments - the 4 sets of Regulations - are universal in their application but the amendments that we are discussing today, unless the Deputy has a former life as a prison officer, will not be affecting him and therefore I think he has no need to make a declaration nor remove himself from the Chamber.

The Deputy Bailiff:

If I may say so, the declaration is made and my judgment is rightly made because the legislation theoretically does mention the Deputy but he is in the class that pension alters which the legislation covers. There may be no changes to the legislation, so he may not be directly financially affected but he is affected in my judgment. But equally there is absolutely no reason why he should withdraw.

Senator B.I. Le Marquand:

In that case I need to make a declaration. I had not thought I needed to.

Deputy A.K.F. Green of St. Helier:

I need to do the same.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on the Chief Minister to reply.

3.1.4 Senator I.J. Gorst:

In that case I ought to make a declaration that my wife is a deferred member of the scheme. However, I should make it clear, as I hope your ruling has done, that these amendments simply relate to prison officers and she has never worked in that institution as far as I am aware. **[Laughter]** With response to Deputy Le Hérissier, I think that the Minister for Home Affairs has more or less answered his question.

[10:45]

It is the new members that the normal retirement age will now be 60 but they will still have an option to retire 5 years and up to the 60 early but they will be taking a reduced pension payment and the Regulations talk about how that will be actuarially dealt with. Existing members obviously, as we have said, will now have the option to retire at 60. Their pensions and benefits will not be changed. Senator Breckon raised a number of very good points and I am sure he is probably aware that there is an ongoing pensions' review addressing all those issues that he raised and he is

absolutely right to raise them. Dealing with that issue is one of my priorities as Chief Minister, together with the Minister for Treasury and Resources, for the coming year. So we will, during the course of the year, be holding briefings around making the States Employees' pension affordable and sustainable into the future. I know that our colleagues in Guernsey are doing the same and I think that that is something we can work together on so that we have got a very similar system when we put forward any changes. Of course, those officers who find themselves unwell, the pension does allow for medical retirement if officers are unwell, or find themselves unable to continue in service due to ill health. On that note, I maintain the principles.

The Deputy Bailiff:

All Members in favour of adopting the principles, kindly show. Those against. The principles are adopted. In the absence of the Chairman of the Corporate Services Scrutiny Panel, the Deputy of St. Ouen, you appear to be the only member present, do you wish to scrutinise these Regulations?

Deputy J.G. Reed of St. Ouen (Corporate Services Scrutiny Panel):

No, Sir.

The Deputy Bailiff:

Chief Minister, how do you wish to proceed?

3.2 Senator I.J. Gorst:

I would like to propose them *en bloc*. As I have tried to make clear, there has been a necessity to change all of the 4 Regulations dealing with different sections of the pension but in effect all of those changes give effect to the 2 changes that I have outlined: changes providing for the option of current pensioners to retire at 60, setting up a new category which is referred to in the Regulations as category (c) so that all new starters' normal retirement age will be 60. If they retire early there will be changes to their pension entitlement and those new starters will have a new accrual rate of one-seventieth rather than one-sixtieth. There are some minor amendments, as I said, removing the term "Chief Officer of Prisons" because it is no longer appropriate. I will try, if I can, to answer any questions.

The Deputy Bailiff:

Are the Regulations seconded? **[Seconded]** Does any Member wish to speak on the Regulations? The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the Regulations *en bloc* and I ask the Greffier to open the voting.

POUR: 38		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				

Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
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)				

The Deputy Bailiff:

Do you propose the Regulations in Third Reading, Chief Minister?

Senator I.J. Gorst:

If I may, yes.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak? All Members in favour of adopting the Regulations in Third Reading, kindly show. Those against. The Regulations are adopted.

4. States Members’ remuneration: proposed increase for 2013 (P.127/2012)

The Deputy Bailiff:

We now come to “States Members’ remuneration: proposed increase for 2013” - P.127/2012 - lodged by the Connétable of St. Saviour 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 to agree that the recommendation of the States Members’ Remuneration Review Body that there should be an increase for the year 2013 of £818 in the remuneration (excluding expenses) for States Members should not be implemented and that the remuneration for 2013 (excluding expenses) should remain at the current level of £41,182.

4.1 States Members’ remuneration: proposed increase for 2013 (P.127/2012) - proposal to lift Standing Order 106

The Deputy Bailiff:

Before we come to this, we will need to consider whether or not to lift Standing Order 106 for debating a matter in which Members have a financial interest. May I say from the Chair that I am assuming that Members will not want to spend time debating whether to debate the proposition? It seems in theory obvious - and I emphasise the words "in theory obvious" - that there will be some cases where Members would want to debate a substantive issue where the recommendation of the panel was obviously unreasonable. There would be another class of cases where Members might feel it would be right to debate the recommendation of the panel as a matter of leadership but those sorts of comments are likely to take us into a debate on the substance of the proposition. Now I suspect Members will know whether they think this is a matter which the Assembly should be seen to debate or should debate. So I hope that debate on whether or not to lift Standing Order 106 may be contained. Now, is there a proposition to lift Standing Order 106? Connétable, do you make that proposition? Thank you.

Connétable S.W. Rennard of St. Saviour:

I would like to propose that we do not accept this. There has ...

The Deputy Bailiff:

Yes, at the moment this is just a question of whether to lift Standing Order 106.

The Connétable of St. Saviour:

Yes, please, I would like it to be lifted.

The Deputy Bailiff:

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

4.1.1 Senator B.I. Le Marquand:

Notwithstanding your words, so very briefly, I would strongly urge Members to lift this. On a previous occasion, people used the device of opposing this being lifted to stifle a debate altogether. In my view that was an incredible political mistake. It gives the impression we have got something to hide. There are arguments on both sides here and, frankly, we will be shooting ourselves both in the foot and through the head politically and another part of the anatomy, possibly [**Laughter**] which I cannot name. If we do this, it would just be an incredible mistake and I do strongly urge Members not to fall into this trap again.

4.1.2 Connétable A.S. Crowcroft of St. Helier:

As Chairman of Privileges and Procedures I must strongly urge Members in the opposite direction and very briefly, we have set up an independent commission to set levels of States Members' remuneration and unless Members want to have an annual debate about their pay levels, they need not have this debate today. They do not have to accept the increase and that is a much better way, if they feel strongly about it, to make a public statement that they do not believe that increase is appropriate. I urge Members not to raise Standing Orders.

4.1.3 Deputy G.P. Southern of St. Helier:

We have deliberately and consciously set up this particular Standing Order so that we do not be seen to debate our own pay. It is an absolutely central issue, I think, that we do not go back on that commitment for the very least reason that if I were a member of the Commission making recommendations, unless I had done something very bold and very outrageous, I would not expect my findings to be turned down by this body on any occasion where I had made a reasonable recommendation. At the very least we would be likely to see, if we do debate this issue, resignations from that particular Commission. I would not waste my time involving myself with

that body if my findings were going to be turned over willy-nilly, left, right and centre by this Chamber. I would feel I was wasting my time.

4.1.4 Senator P.F.C. Ozouf:

This Assembly sets up numerous expert bodies and boards to make certain decisions where we delegate to them. We have a board independently in order to set our remuneration. If we do not like, and if this Assembly does not like, the determinations of the board, then frankly the way of dealing with that is to put a vote of no confidence and to replace that board but not to seek to try and micromanage their decision-making. That is the right way of dealing with that. I have to stand in this position and encourage Members not to interfere. You cannot have a dog and bark, or whatever the most inappropriate selection of suggestions is. I note with interest that the U.K. Westminster Parliament is making moves to move the setting of parliamentary pay outside of Westminster. That is absolutely the right thing. I think there are some very useful statistics which have been presented by P.P.C. (Privileges and Procedures Committee) whether or not you are on either side of this issue, then if we do not like the board, if we do not like what they are doing, then sack them and get another board but do not micromanage them. I do not think that we should get sucked into a vortex of a short-term, if I may say, very populist, very emotionally-charged debate on our pay. **[Approbation]** I urge Members not to lift Standing Orders. Members can, of course, say that they do not wish to take the pay, they can say that publicly, and that is what should be done and I will be voting, and strongly, if I can push the button more strongly than other matters **[Laughter]**, to say that we should not be debating our own pay.

4.1.5 Deputy M. Tadier:

Other Members may have had the same experience. When I left the Chamber yesterday, I cannot remember if it was lunchtime or in the evening, certainly someone did say this in the evening as well: "So, have you given yourself a pay rise yet?" I laughed, of course; chuckled, laughed it off and we went on to talk about something else. But the answer is no. Hopefully at the end of the day I would have said no. We have not voted to give ourselves a pay rise and, no, we have not also voted to give ourselves a pay cut because we do not decide that any more. We are essentially self-employed but we are servants of the Island. A decision has been taken by an esteemed body. I presume they are esteemed; I do not hear anyone calling for their resignation. Maybe after today we will ask for their resignation or ask for that body to be disbanded if we are not happy with their decision. The very point is, I want to be able to look the public in the eye and say: "No, I have not given myself a pay rise and I have not given myself a pay cut" in order to bow to populous pressure from the media which says, last time I think they called it, we use "an obscure procedural device" to try not even talk about this. No, it is not an obscure procedural device; it is called Standing Orders. They are written out, they are quite clear and every parliament in every nation has some form or other of Standing Orders. It is done to stop us getting into this navel-gazing where we do talk about our own pay. Now are there contradictions out there? Absolutely. States workers have had a very unsatisfactory round of pay negotiations. There have not been negotiations; they have had an essential pay freeze of course and then 1 per cent, that is what they have been asked. They will go out there hopefully and they will continue to negotiate and I am quite certain that, certainly in many of those sectors, more than 1 per cent will be achieved. That is the way they do their negotiations and that process is flawed. I certainly think States employees should at least get the cost of living. These are arguments though which I appreciate are tangential so I will not dwell on them but simply to add, we have our own procedure for setting our own States pay so we do not talk about that. It has already been said we can give our money to charities or to N.G.O.s (Non-Governmental Organisations). I am considering giving some or all of mine to Reform Jersey for the campaign that is coming up. **[Laughter]** I think that would be a good use for money and I would encourage other States Members to contribute to Reform Jersey's campaign and I will leave

it there. But the point I want to make is that we will not have a gun put to our heads. It is up to States Members to decide what is going on. Of course, it is easier. We have to look the public in the eye and say to them: “No, we take this or we do whatever we want with our own money.” But let us be consistent, more importantly, in our politics. Let us not fight for pay cuts for States workers and then pocket the money ourselves. But those of us who perhaps do think it is important for all members of the public to have a cost of living adjustment, let us also be consistent.

4.1.6 Deputy J.P.G. Baker of St. Helier:

I will be brief. Following on from those previous comments and the comments of the Minister for Treasury and Resources, I think what is important is that the right message goes out from here today because I am sure if we do refuse to debate this by not raising Standing Orders, the media will say: “Well it is States Members, of course, in favour of giving themselves a pay rise.” I would like to point out that when I press the “contre” button, it is not because I am looking for a pay rise. I do not really care whether the board proposes a rise, a freeze, or a decrease. Whatever they propose I will go with because it has been done independently and that is the whole point of the matter.

4.1.7 Deputy R.G. Le Hérissier:

Just a minor point, and I find myself on perhaps the other side of the argument. It should be made clear that as an ultimate fail-safe mechanism there is that ability, if a Member does not agree, when the matter has been laid before the House within the period of one month for the Member to object. If a person feels that strongly, and that is going to be the issue, and that the issues are that vital, then they do have the right to ensure that the matter is reviewed by the House. While I will have perhaps different views once the proposer starts on her journey, I think that must be remembered.

[11:00]

A Member does have the right. I am sure that that Member feels very, very strongly about it and it is the old issue, as expressed by Voltaire: “I may not like your view but I do accept your right to express it.” We have put that into the law.

4.1.8 Senator L.J. Farnham:

With the greatest respect to the Constable of St. Saviour who brings the proposition with the very best intentions, I do think that the Assembly has far more pressing issues than to spend the rest of the day debating our own pay for the very good reasons mentioned by Deputy Southern, Senator Ozouf and one or 2 other Members. I will not be supporting the proposition to lift Standing Orders. For the avoidance of doubt, I will not be accepting any pay increase either. I hope Members will not risk the opportunity of bringing the Assembly into disrepute, like I say, by debating our own remuneration.

4.1.9 Connétable J.M. Refault of St. Peter:

Some of the older Members will probably recall as a new Member to this Chamber in 2000, I brought a very similar proposition to the House about States Members’ pay. I listened to the arguments in the leading upcoming towards the debate and gave way to the very sound arguments which I believed were right then and do so equally today that we do have a separate board, we have asked them to make these decisions, and it is up to them to do that. They have made their decision known, and I do not mean any disrespect to the proposer today, but I do feel this proposition that is being brought today on States Members’ pay is a little bit of a cop-out because it imposes a pay rise on everybody, whereas I would rather see Members make their own declaration publicly about what they are going to be doing. Now, for example, going back to my days when I was involved in union negotiations, there was always the view that the employers have the ability to pay and that was the basis of the demand. In this case, the employer does not have the ability to pay. It is the

people that pay taxes that we are asking to pay and I think we need to think about that in this role; it is up to Members. I believe, I am told this morning, there are approximately 31 Members who have already made their decision about their pay rise or in fact not to take a pay rise. I think that is entirely appropriate and I do not think we should be debating this matter any further and I certainly will not be supporting a move to the Standing Orders today. It is a matter for individual Members. The words I think the Dean spoke yesterday, their *conseils de prudence*; it is up to them to use their judgment and their own integrity about how they intend to deal with this.

The Deputy Bailiff:

I will remind Members the debate is on whether or not to lift the Standing Orders. Does any other Member wish to speak?

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

The decision not to remove Standing Orders was taken once. If we take the same decision again, I feel that we are getting close to setting a precedent and that might be against the interests of States Members in the future. So I will support this but, rather like Deputy Le Hérisier, I will not be voting in favour during the main debate. Thank you.

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

There are reasons that we should lift this Standing Order, if only it is to give the proposition a good kicking but I would say that this is probably not the place to do it. I think we should not condemn the proposer for bringing it because there are issues around pay that need to be discussed. For instance, we all stand on a manifesto, yet, once we are all elected, there are probably only about 6 or 7 people who try and bring propositions forward to deliver those manifestos. Now people are often condemned for that but what else can they do, especially when they are excluded from our inclusive Government. So there are issues to be discussed such as those who have the biggest constituent portfolios. There are a lot of issues and hopefully one day we will have party politics and maybe there is an argument then for Ministers to have more money. Certainly not at the moment when jobs are awarded on cronyism. So I would commend the proposer for bringing this but I do not think she should bring it in this particular ... I am sorry, someone is going on, so I will just stop a minute. I do not think this is really the right occasion to discuss it because at the end of the day I am not taking the pay rise, however, I have absolutely no right to say that another person should not. There are people in this Assembly who I have a huge respect for. They do not all have the same politics as me but I know they work hard. I have no right to say whether they should not have a pay rise. I do not think anyone else has a right to say if I should have a pay rise. Do I think I am worth the money? Yes, I do, but I am not taking it because it is insensitive for all the issues Deputy Tadier has said. So I would probably have to come down on the side of that we should not lift Standing Orders and leave it at that.

The Deputy Bailiff:

If no other Member wishes to speak, then I call on the Connétable of St. Saviour to reply on whether or not we should be lifting Standing Orders.

4.1.12 The Connétable of St. Saviour:

Basically, if I cannot lift the Standing Order, I should not have brought this proposition in the first place and yet the law says I can bring this proposition. So where is this argument? If you do not want to discuss anything, then you change that law to please yourselves again. The law says that I can bring this proposition. I have been asked by a lot of people to bring this proposition. It is up to you whether you take the pay rise at the end or you do not, but I think that the public need to be seeing that you are either taking it or if you are voting against it or with it. If I am not allowed to bring this proposition then that is a law you have to change. I propose that we just keep going like I

wanted to go. Sorry, I do not know the technical jargon that has to be said in these particular circumstances. I was allowed to bring an opposition to this proposition because it says and there was a deadline to when it could be delivered. I came in within that deadline, I have done everything that was asked of me. Whether you agree with it or not, it does not really matter. I have gone by the law and there is nothing else I can do. If you do not want this proposition debated next time, then you withdraw that law and you say: “When we are given a pay rise there is not anything to discuss.” Thank you.

The Deputy Bailiff:

Thank you very much.

Deputy M. Tadier:

Could I seek clarification from the speaker because I did not really understand? The Constable said that even if we have the proposition, it is still up to a person to take it or not. Well if we vote against then somebody who wants to take it cannot. I am sure that is not what she meant to say but that is the implication.

The Connétable of St. Saviour:

No, but you are not going to vote against it. I have a principle involved here. I was asked to stand as Constable by people and I was voted in by people. I know people do not think the Constables are voted in but I was. I have been asked by these people and the workforce that I have: “Why are you giving yourself a pay rise and we cannot have one?” Theoretically we are because the P.P.C. chose the people to go on the board. Sorry, they are shaking heads. So you did not? I apologise then.

The Deputy Bailiff:

Connétable, we are going to get into the debate on the substantive proposition and the only question is whether or not to lift Standing Order 106; that is what we are considering. So, does any Member wish to call for the appel on that? The appel is called for on whether to lift Standing Order 106. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 16	CONTRE: 31	ABSTAIN: 0
Senator P.F. Routier	Senator P.F.C. Ozouf	
Senator A.J.H. Maclean	Senator A. Breckon	
Senator B.I. Le Marquand	Senator L.J. Farnham	
Senator F. du H. Le Gresley	Senator P.M. Bailhache	
Senator I.J. Gorst	Connétable of St. Helier	
Connétable of St. John	Connétable of Trinity	
Connétable of St. Martin	Connétable of Grouville	
Connétable of St. Saviour	Connétable of St. Clement	
Deputy R.G. Le Hérissier (S)	Connétable of St. Peter	
Deputy of St. Ouen	Connétable of St. Lawrence	
Deputy of Grouville	Connétable of St. Mary	
Deputy J.A. Hilton (H)	Connétable of St. Ouen	
Deputy J.A.N. Le Fondré (L)	Connétable of St. Brelade	
Deputy T.A. Vallois (S)	Deputy R.C. Duhamel (S)	
Deputy of St. John	Deputy G.P. Southern (H)	
Deputy R.J. Rondel (H)	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy S. Pitman (H)	

	Deputy M. Tadier (B)		
	Deputy T.M. Pitman (H)		
	Deputy E.J. Noel (L)		
	Deputy M.R. Higgins (H)		
	Deputy A.K.F. Green (H)		
	Deputy J.M. Maçon (S)		
	Deputy G.C.L. Baudains (C)		
	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		

The Deputy Bailiff:

As Members have resolved not to lift Standing Order 106 it is impossible to debate that particular proposition P.127 because to do so all Members would have to declare their interest and we would be inquorate.

5. Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201-(P.132/2012):

The Deputy Bailiff:

Accordingly, we move on to P.132/2012 - Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201-, lodged by the Minister for Economic Development and I ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201-. The States, in pursuance of Articles 44 and 45 of the Limited Liability Partnerships (Jersey) Law 1997, have made the following Regulations.

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

The Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201- made changes which are necessary to encourage businesses across Jersey to enter into limited liability partnership structures. The Limited Liability Partnerships (Jersey) Law 1997 has now been in force for some 15 years. Limited liability partnerships were designed to be a convenient structure for use by both Jersey-based businesses and international investors of all forms. At the time that the L.L.P. (Limited Liability Partnerships) Law was introduced it was market-leading. In fact, it was the first in the world and at the time the view was taken the very restrictive requirements should be placed in the Limited Liability Partnerships (Jersey) Law. However, these requirements were not followed in any other L.L.P. laws across the world that followed. Consequently, no limited liability partnership structures have been established in Jersey in the period. Currently, there is a principal requirement for a £5 million bond which must be maintained by the limited liability partnership and which cannot be used as security for lending. Other jurisdictions such as the United Kingdom, where incidentally there are now over 30,000 L.L.P.s, the U.S.A. (United States of America), Singapore, Japan, Dubai, Qatar and others all have L.L.P.s but none have the requirement for a £5 million bond or, for that matter, any other bond. Accordingly, these draft Regulations are necessary to accommodate the removal of the requirement for the bond. This is replaced by the

requirement for a solvency statement to be filed annually by the partners of the L.L.P. which confirms the solvency of the L.L.P. and that it can continue to pay its debts of the coming year. This will bring Jersey broadly into line with other jurisdictions and ensure that this product is competitive, yet can be safely and effectively used. The draft Regulations are also based on the policy adopted in the Companies (Jersey) Law 1991 and is deemed appropriate and equally legitimate for this jurisdiction. I propose the principles of the draft Regulations.

The Deputy Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles?

5.1.1 Deputy G.C.L. Baudains:

I recall the upheaval that ensued, the bad feeling that surrounded the introduction of this in the first place. One of the questions I was going to ask but the Minister has already answered, is how many have made use of this law to date; we are told none in 15 years. When he sums up, would the Minister give us an indication of whether these changes will in fact make a great difference? Obviously he would not be bringing it forward unless there was an expectation of that happening. What real benefit to the Island and how many people are likely to take up this law once the changes that are being proposed are presumably adopted?

5.1.2 Deputy J.H. Young:

The proposal before us I think relies strongly on the requirement, the new requirement, for solvency statements to be filed annually by the partners of the new L.L.P. which confirms that they are solvent and can meet their debts for the forthcoming 12 months. Obviously, that is a crucial requirement and the Minister said that this Regulation brings us into line with other jurisdictions that operate L.L.P.s. Obviously, clearly, I could not see a requirement for that solvency statement to carry any external or independent verification, for example, what one might seek from an external auditor. I would like the Minister to tell us whether that is the normal practice elsewhere and are those solvency statements in other jurisdictions not subject to such variation? I think it might be relevant as well because I would guess that a lot of L.L.P.s probably are working under regulated undertakings.

[11:15]

Therefore, I think being clearly aware of the solvency requirements for this statement would be helpful, so if I could ask the Minister to explain that a bit more.

5.1.3 Senator P.M. Bailhache:

The Minister has explained that the provision for a bond is being withdrawn and being replaced by the requirement for a solvency statement. My question for the Minister is a simple one really and it is whether any consideration was given to simply abolishing the requirement for a bond without substituting the requirement for a solvency statement. If people trade as a limited liability company, they do not, unless the law has changed since I last read it, have to provide an annual solvency statement. What is the difference between trading as a limited liability partnership and trading as a limited liability company? The Minister may say: "Well that is the practice elsewhere" and of course that is a perfectly adequate response but I wonder whether any consideration has been given by those advising him as to the necessity for a solvency statement at all.

5.1.4 Deputy M. Tadier:

I have vague memories of the L.L.P. 15 years or so now and the whole fallout that arose from that. Of course, we all probably have different interpretations and recollections of what and why that happened. But I suppose my question is, and to put it in context, there is a reason that this L.L.P. law was not used for 15 years. It is not by coincidence or chance that we set up this Regulation and

then it is not being used and the mechanism has not been used in Jersey. I would like to ask perhaps the Minister why it is that there was a provision in that for a £5 million bond which seems to me was deliberate to make sure that it would not be used or to put people off using it and it has not been used for 15 years, so it is clearly being very effective in that end. Why is that we are now removing that £5 million bond requirement? Is it so that these can now be used in Jersey? If so, what has led to that change in approach? Why have we had a mechanism for 15 years which was not designed to be used in Jersey? It was perhaps designed to be used or to give leverage for it to be set up elsewhere, for example, in London. Why is it now that we would like this mechanism to be available and to be used in practice in the Island?

5.1.5 The Connétable of St. John:

Having been in the House at the time of this being debated and there were a lot of reasons why we had to push it through in such a short period of time, we were told that we wanted to be ahead of the pack. Sure enough we were because other people, like the city of London or the U.K. and other jurisdictions, virtually cribbed what we did and just amended it to make sure it would work. I remember it well and how many million pounds it cost and the law firm that did it. There were mumblings around the Chamber even at that time that we were rushing things and this Chamber were not prepared to delay and make sure we ticked all the right boxes. But sure enough, and I believe I am correct, it has never, ever been used. All that money that was spent not to be used because we did not get it quite right. I sincerely hope, after hearing Senator Bailhache's comment this morning, we have it right this time because he has raised a good point there. Not being a legal beagle or anything - my background is, as we all know, in drains - but that said, let us hope that tweaking it this amount is the right bit of tweaking so that we do get some business out of it. Thank you.

5.1.6 Deputy G.P. Southern:

Two questions I wish to raise: one is to reinforce the question from Deputy Tadier which was about the £5 million bond and we have not heard an explanation about why that should now be removed, apart from the fact that other people are doing it and the question is, do we want a slice of some pie that is pretty global? If we do, in that case what sort of partnerships do we envisage being set up? The central question there, I think, and one that keeps on cropping up, is are they going to be purely locally resident-based, these partnerships, or are they going to be foreign partnerships set up here, in which case, are we going to be able to extract any tax from them? Because, as we have seen with companies, we cannot extract any tax from companies that are foreign-owned; are we encouraging more business but getting less return or no return from it in a similar manner? So what sort of partnerships do we envisage flocking here to set themselves up, and if they are foreign-owned, will we be able to tax them? It is the fundamental question that keeps on repeating about how we are running our economy when we cannot get tax out of zero-rated companies and, presumably, out of these limited partnerships.

5.1.7 Senator P.F.C. Ozouf:

If I may perhaps respond to the tax question because there is a following proposition which I will address the tax issues but it might be helpful to the Minister if I just answer the direct questions in relation to tax. Deputy Southern will never be, I do not think, convinced that the tax arrangements under Zero/Ten are the right thing to do. He will not accept that. Unfortunately, it is simply not possible to collect tax in compliance with our obligations under the E.U. Code of Conduct, that the unintended consequence of that was that we just simply cannot find a way of raising tax and we continue to find and seek to strive to find a way of raising tax from some of the businesses that no longer pay tax. The amendment that follows this proposition puts the limited liability partnership that the Minister is proposing on to a tax-transparent basis so it is going to be entirely transparent

for local partnerships. So for the example of a local trading partnership trading in the endeavours of accounting or other professional arrangements, then this entity, subject to the Assembly approving my amendment, will be entirely tax-transparent. So indeed tax-transparency means that they will be paying 20 per cent because effectively the partnership will have a tax assessment and that will then fall through on to the personal tax assessment. That is different from the stand-alone arrangements that you will only get if it was to be trading and some professions cannot trade within anything but a partnership. That would obviously mean that they pay zero tax unless they are a financial services bank, they are regulated by the Financial Services Commission, and they will only pay tax when there is a resident shareholder when they take money and they take a dividend from their entity. So this is a tax-transparent vehicle and not only is Treasury strongly supportive of the Minister's desire to see this as a use, and it is going to be of a domestic demand for partnerships that will trade within a limited liability structure, but also there is an important interplay with the use of limited liability partnerships for the funds industry and other vehicles. That will be, we will not be taxing the underlying investment; we tax the services on which are provided to these vehicles. The fundamental principle that we have been working on a financial services industry since 1974 is that we do not seek to tax the underlying investments; we tax the services that are provided on it and of course that has been extremely remunerative and extremely lucrative to the Island in the last 40 years. Deputy Southern would wish, I think, to propose and suggest that we can somehow take some tax out of those arrangements. I am afraid that that is not possible and I have stood in this Assembly for many hours and examined over a long period of time the fact that that is unfortunate, it is simply not possible but, responding to the Deputy of Grouville's very helpful amendment that she put forward, we continue to try and find ways of raising tax from those activities. Indeed, I have signalled to the Assembly the fact that there are opportunities within property taxation areas for use of resources in the Island as possibly a way forward to that. I thought we had had some pretty comprehensive debates about that and some very good consultation following the good Deputy's proposal last year and we are making progress on that. We continue to work hard on that and now in ever closer co-operation with my colleagues in Guernsey and the Isle of Man.

Deputy G.P. Southern:

May I seek clarification from the Minister? The Minister has addressed the issue of the local partners; he has not addressed the question I was asking of E.D. (Economic Development) about the possibility of foreign partners within these structures and whether they were taxable in the same way. I suspect not.

Senator P.F.C. Ozouf:

So it is a tax-transparent vehicle, it is a partnership. But we seek to, where we can, bring to the Island funds and other general partners and other funds activities of which we are a world leader, then of course we will not be taxing the underlying investments. But where lawyers, accountants and other professionals are providing services to that and we are creating jobs, and high-value jobs, then that is where we will get the tax benefit to the Island. The Deputy cannot have, I am afraid, his cake and eat it, where effectively he is getting tax on the services provided and the underlying investment. That is not possible; we will not have a finance industry if he pursues those objectives.

The Deputy Bailiff:

Does any other Member wish to speak? Deputy Tadier, you have spoken already.

5.2 Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201-(P.132/2012) - proposition of Deputy Tadier to refer the matter to Scrutiny under Standing Order 79

5.2.1 Deputy M. Tadier:

Indeed, and so I stand on a Standing Order matter. I am wondering if there is any appetite in the Assembly for this to be referred to Scrutiny on the basis, and there are signs there, that this is a very significant step that we are taking today. We have, first of all, the whole hinterland of this controversial mechanism which was never used in Jersey. It has never been used. It was set up over 15 years ago and I do not think we know what the implications are for having this mechanism. What will it mean for Jersey? It is a completely new mechanism which has a very controversial past. What are the kind of companies it will attract? Why is it that after 15 years of this law existing that all of a sudden we want to have this kind of business coming to Jersey? I would like to know what, perhaps, the relevant Scrutiny chairman thinks about this. I do not know if he or she is in the Assembly. He is in the Assembly. Is he happy with this mechanism which is going to come into force in the Island? Have he and his panel been briefed on it by the Minister? Again, when I make these kinds of propositions, I have to offer my assistance, so I would obviously join the Scrutiny Panel to look at this issue and offer any assistance that I can.

The Deputy Bailiff:

Deputy, if I may say so, I think you are jumping the gun. We will ask the chairman of the Economic Affairs Scrutiny Panel whether he wishes to scrutinise the legislation once the principles have been adopted, if they are adopted. That is in accordance with Standing Order 72 and we have not come to that stage yet.

Deputy M. Tadier:

I completely understand that; that is not what I am seeking, though. I am seeking, before that happens, from the Assembly an assurance that we can all have the peace of mind. Because I am sure if I were the chairman, I would say I do not want to scrutinise this piece of legislation because that is the default position. An under-resourced Scrutiny body never asks for work on an area that is vastly complex when it is something which looks to be driven through by the Council of Ministers on a matter of urgency. My question is, is it that urgent that we do this? Is it that urgent? If so, has any briefing been made to the Scrutiny Panel and do we know what we are passing today? Because hopefully if this is all straightforward, and if it is something that is desirable for Jersey, then all well and good, but I do not want to be coming back in 10, 15 years' time saying: "Why did we not scrutinise this? Why did we not know what we were doing? What are the implications?"

The Deputy Bailiff:

Deputy, can I just speak clearly? Are you making a proposition for the purposes of Standing Order 79 that the debate on the proposition be suspended and the States request the relevant Scrutiny Panel to consider having the proposition referred to?

Deputy M. Tadier:

Indeed, that is the Standing Order.

The Deputy Bailiff:

I am so sorry, have you finished proposing it?

Deputy M. Tadier:

I have.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak on that? Minister?

[11:30]

5.2.2 Senator A.J.H. Maclean:

In a sense, it is disappointing we have come to this stage because I am almost going to have to do my sum up now in order to persuade Members not to go with the proposition that the Deputy has suggested. I can understand the concern in some respects. This was controversial back in 1997 when it was introduced. In many respects, yesterday we had a debate in regard to tourism and many Members in the Assembly were talking about being bold. Well back in 1997 this Assembly was bold. It was a new piece of legislation, the L.L.P.; it was the world leader. It was the first one out there but at the same time as being bold, the Assembly was also risk-averse because it put in place this bond, the £5 million, to ensure creditor protection. Very understandable, very worthy, and the problem that has ensued in the past 15 years is that we have ended up, as I have mentioned earlier, with none of these structures being put in place. It has not worked. The barrier to this L.L.P. being used is the £5 million bond. Every other jurisdiction that has come since has not had a bond of any shape or form, let alone £5 million. The United Kingdom has now 30,000 L.L.P.s. The most recent introductions have been Singapore and India. Again, there are no requirements for any bonds there at all. There is a requirement for a solvency statement and we are following that particular model. You have got ...

The Deputy Bailiff:

Minister, if I may say so, this is on the merits of the proposition. The question is whether the debate should be suspended in order that the Scrutiny Panel may be requested to look at it. If I could ask you to contain your comments to that otherwise we will be debating the main proposition again.

Senator A.J.H. Maclean:

I understand, but I feel it important to make some comments to inform Members. I can also add, and I hope that perhaps the Scrutiny chairman might stand up to confirm this, clearly this proposal was forwarded to Scrutiny; they are aware of it. My understanding is they have no objection to the proposal and indeed no intention to scrutinise it. This is relatively straightforward. It is about a competitive product for the Island; it is about bringing us into line with the jurisdictions around the world. I would urge Members not to support this proposition, allow the debate to continue, allow me the opportunity to sum up at the end of it and indeed make their decisions at that point. If they are not satisfied with the answers that I give, then fair enough, vote it down. But this particular proposition from Deputy Tadier is inappropriate and I would ask Members to reject it. Thank you.

The Deputy Bailiff:

Deputy of St. Martin, does your panel wish to scrutinise this? Do you wish to propose the States to request you to scrutinise it?

5.2.3 Deputy S.G. Luce of St. Martin (Chairman of the Economic Affairs Scrutiny Panel):

If I may first apologise to the Assembly for not speaking earlier in this debate because I think if I had, we might have avoided some time that we may waste. My panel have had a chance to look at this amendment. We have taken an informal briefing and I was very grateful to the Minister for this explanation that he has brought to the House this morning. If I might just add that hindsight is a wonderful thing and I think everybody would agree now that if we could go back and do things differently, we certainly would do. The debate that was had many years ago has resulted in absolutely zero work for the finance industry on this Island and what the Minister is trying to do is to bring an amendment which may not definitely bring more work to the finance industry, but will at least allow it the opportunity to compete on a level playing field with the U.K. and other places. We understand as a Scrutiny Panel there is further work to do on this and this is one amendment which will lead to others in the future when E.D. have had more time to bring that. But as regards scrutiny, my panel have looked at it, we have had a briefing and we are satisfied. We are pleased the Minister is bringing this forward. We would urge him to do more work which could increase

the ability of the finance industry to compete with others around the globe and we will not need to scrutinise it. Thank you.

5.2.4 Deputy G.P. Southern:

I turn first to the words of the Minister for Economic Development who says: “This Chamber 15 years ago was risk-averse.” I have heard nothing from him about risk now in justification for removing the £5 million bond. That previous House was risk-averse and therefore said the £5 million bond must be put up. The fact, as we have already heard, that a solvency statement needs to be made but not necessarily audited, already rings alarm bells for me. We have heard nothing, again, from the chairman of this particular Scrutiny Panel. We have seen nothing in writing and no mention of any risk analysis in terms of analysing what is proposed. I remind Members that all I am seconding here is that the debate is suspended, the Scrutiny Panel takes it away and in 2 weeks’ time comes back with some response to say - and this is where I would like to see specifically - what the risks involved are. Because we have heard from the Minister for Economic Development we were risk-averse and we are apparently quite happy to go forward now with the statement about what risks and what details are involved in this particular ... he has already said: “We are going to need to do some more work on this in future as this develops.” He should, and this House would be wise, I believe, to suspend debate now and hear in a fortnight’s time what the questions are around the necessity for a £5 million bond which is no longer now necessary and whether there are any risks involved in the type of business we are trying to attract in this particular aspect. That is what we are asking today, is a fortnight’s suspension for the Scrutiny Panel to reconsider this decision that there is nothing to worry about here, because we have seen nothing. This gives them the opportunity to come back in a fortnight’s time and say: “We have checked it out. It is absolutely clear. The benefits are X, X, X, X. The risks are negligible or otherwise” but let us hear before we pass this forward and let us make sure that the system we have, which is a set of Scrutiny Panels, has had mature time to come to its decision. That is what we are asking today.

5.2.5 Senator P.F.C. Ozouf:

Very briefly, the previous speaker spoke of worry. The worry I have is that we are not nimble and fast enough. The world has changed; we are going to have to run faster to stand still. We are going to lose business. We have seen and heard of a Guernsey bank pulling out of Guernsey. We are going to have to step-up our actions and our initiatives in order to drive economic growth. This is a non-controversial proposal which, already, it is as though the Deputy and the proposer of this proposal imagines that these things are just done on the side of the desk because the Minister for Economic Development and Minister for Treasury and Resources just want to get on with this. This goes through substantial consultation, it goes through substantial review and it is the right thing to do. Indeed, Senator Bailhache, when he asked the question as to whether or not a solvency statement was required for limited companies... of course, if the Minister was proposing to simply abolish the bond which has not worked, zero economic growth, zero growth, business going outside the Island, other places benefiting from business that could have been employing people here, then the £5 million bond is not working. The Minister has come forward with something that does not simply abolish it, it puts in something that is forward-looking. You could say that audited accounts are backward looking. A solvency statement ...

The Deputy Bailiff:

Senator, the question is whether it should be referred to ...

Senator P.F.C. Ozouf:

Well for those reasons, the job has been done, the work has been done, the legislation is before the Assembly, we need to put in place structures and it does not need a further review. The work has been done.

5.2.6 Deputy G.C.L. Baudains:

The Minister for Treasury and Resources... I noticed when he started speaking just now, raised the issue of the need to be nimble and fast. Well we have had 15 years to amend this law, so I do not know why another couple of weeks will not make much difference. The Minister is stating that the Minister for Economic Development is probably correct that this amendment is fairly straightforward but my problem is that after all this time, I really do think we need a reassessment of the underlying structure so that we are sure that we are not wasting our time amending something that is not going to work anyway. That is why I would appreciate the Scrutiny Panel to have a brief look at this. This is no criticism of the Scrutiny Panel but I think it would have been helpful if even the small amount of work they have done so far had come to us in a comment, that would have helped us. But I think that probably slightly more work needs to be done, not a complete review, but I would like to be satisfied that the underlying structure is still appropriate. This is why I would prefer to go back to Scrutiny.

The Deputy Bailiff:

If no other Member wishes to speak, I ask Deputy Tadier to respond.

5.2.7 Deputy M. Tadier:

I know these kinds of points of order to refer something to Scrutiny or for reference back, they are not always appreciated but let us just put this in context. First of all, what is the purpose of Scrutiny? It is to look at areas where there are concerns either for the panel or for the Assembly. We have already been told by no less than the Electoral Commission, but also it is a theme that we hear time and time again, that there is not enough legislative scrutiny. Then when there are questions that are raised, invariably at the last moment, in the Assembly, we have to take assurances from Ministers that: "Do not worry, all the work has been done; we do not do these things on the back of a fag packet" and I am sure we do not. But they are done by civil servants, experts, of course, but they are not done by politicians. When things go wrong like the 15 years of having an L.L.P. law which is very expensive and which a company over here benefited from greatly and it served no purpose in the Island, but nonetheless was very cumbersome and onerous to produce, it is the politicians who get the blame for that. So what I am saying, and if I quote the Minister for Treasury and Resources who said: "This is non-controversial." It is not non-controversial otherwise there would not be questions from the likes of Deputy Young about auditing, there would not be continuing questions about what is the purpose of a solvency agreement, there would not be questions from Deputy Southern. There was even a question from Senator Bailhache, who I presume knows a lot more than I do about legal matters and these kind of mechanisms, who asked a question about why were we simply not abolishing the £5 million bond and is there a need for solvency? I am not suggesting and putting words in his mouth in saying that he has necessarily problems, but the questions were asked about these issues. I am saying that I am willing to give my time up, perhaps along with other Members, to look at this, and if it is all tickety-boo, that is fine, let us proceed with it. But I think we do need to know more information. We were told there is a need to be nimble. Well, I think these things need to be checked. There is time for being nimble, of course, as long as we are sure of what we are doing and Deputy Baudains already stole that thing I had written: we have waited 15 years, what does another couple of weeks matter? We do need to be nimble, absolutely, when it comes to a Committee of Inquiry into Historic Child Abuse, 2 years still waiting. The Discrimination Law we have just seen on our desks today and some Members will say: "Well at least we have done it." It covers one aspect so if we are going to be nimble, let us be nimble across all areas of government. No doubt, when those 2 pieces come, they will be scrutinised in very great detail. I appreciate we are not necessarily comparing like for like. So I am saying if we do value scrutiny, if we do value the need for legislative scrutiny, let us refer this to Scrutiny. If, on the other hand, we are all entirely happy with

what we are passing today with this mechanism which is a fundamental change which is supposed to bring new business into the Island which may not be taxed we have been told, because we cannot necessarily tax them, we need to know what the actual tangible benefit will be to the Island. Is it worth passing this? Could it be that if we make some amendments to it, it will be an even better proposition that we will ultimately be passing? I leave that with Members. I have done this to try and be helpful. I appreciate that work has gone in already to that and I ask for Members to support the reference to Scrutiny.

The Deputy Bailiff:

The vote is on whether or not to suspend the debate for a reference to the Scrutiny Panel and all Members in favour of the proposition kindly show. The appel is called for. I ask Members to return to their seats, and I ask the Greffier to open the voting.

POUR: 5		CONTRE: 37		ABSTAIN: 0
Senator A. Breckon		Senator P.F. Routier		
Deputy R.C. Duhamel (S)		Senator P.F.C. Ozouf		
Deputy G.P. Southern (H)		Senator A.J.H. Maclean		
Deputy M. Tadier (B)		Senator B.I. Le Marquand		
Deputy G.C.L. Baudains (C)		Senator F. du H. Le Gresley		
		Senator I.J. Gorst		
		Senator L.J. Farnham		
		Senator P.M. Bailhache		
		Connétable of Trinity		
		Connétable of Grouville		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Connétable of St. John		
		Connétable of St. Ouen		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Deputy R.G. Le Hérisssier (S)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy M.R. Higgins (H)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy of St. John		
		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)		

5.3 Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201-(P.132/2012) - resumption

The Deputy Bailiff:

Does any Member wish to speak now on the principles who has not spoken already? Then I ask the Minister to reply.

5.3.1 Senator A.J.H. Maclean:

I think a lot of the points have been covered but I will just try and sum up some of the concerns of Members such as Deputy Baudains. Quite simply the industry wants this product. It is another product in the armoury. It is a difficult economic climate. We need to provide all the products we possibly can that are going to assist the finance industry, our primary industry in the Island, and it is, as it has been said before, largely non-controversial.

[11:45]

Now, I say that because this product exists around the world. We may have been the market leader back in 1997 with a product that was uncompetitive with the £5 million bond but today, as I have already said, the United Kingdom has already 30,000 L.L.P.s. Countries like Singapore, India, Dubai, Japan, Qatar, Canada: they all have L.L.P.s. They are all products being deployed by their various finance industries and, frankly, we are missing out and we need to be in a position where we capture some business that the industry believes exists. Deputy Young asks a valuable point about external verification and, in fact, he is right to raise this concern and, in fact, it is highlighted when you look at other jurisdictions as to the differing ways in which jurisdictions deal with this particular matter. First of all, the solvency statement, which is the route that has been chosen, because it is a forward-looking statement, it is not possible to audit it and indeed, no other jurisdiction quite understands that it requires that to happen. There is, however, a variety of different ways in which this is deployed across the different jurisdictions, for example, Singapore and India who, as I have already said, have L.L.P.s, they have solvency statements as well. We follow that model but there is no requirement for accounts. The U.K. requires public accounts. Dubai, Japan and Qatar also require public accounts. Canada, as an example - certainly British Columbia - requires no solvency statement and no public accounts. By mentioning these different jurisdictions and the different ways in which they structure their L.L.P.s gives Members an idea of the competitive nature. What we have sought to do is get a fair and reasonable balance that protects creditors and yet ensures that the product that we are deploying is competitive in the international marketplace. That feeds into Senator Bailhache's question. He said did we consider other options. Yes, of course we did. We looked at quite a number of other options. I have just explained internationally how the product differs from jurisdiction to jurisdiction and all those have been considered. This has been also out to consultation and has been approved by the J.F.S.C. (Jersey Financial Services Commission) as part of that process. I should also point out, I think Senator Bailhache asked the question, why not a company as opposed to an L.L.P.? Well it is another product and there are certain groups within Jersey who cannot use company structures, for example, lawyers and accountants, and on that basis, this is a product for the local market as much as for the international marketplace. I should give some examples and I will move on to Deputy Southern. Unfortunately, he has stepped out of the Chamber but he asked the question about why remove the bond. Well, it was simply uncompetitive, as I have already said, but his 2 other keen points were about what partnerships: what were the L.L.P.s set up for and who is going to use them? I think he and Deputy Tadier had the view that it was going to be just for external use. Well, that is far from the truth. L.L.P.s can be used both locally and by potentially international investors. The local use I describe: it covers the alphabet from A to Z. It could be A, an accountant, all the way through to Z, a zoologist. Anybody. I will give an example to narrow that

down, for example, you might have 2 builders. An L.L.P. is a transparent and low cost structure where you would have 2 builders who would decide that they wanted this particular structure as it fairly reflects both the effort and the skill that they are putting into the partnership that they have and in that respect, it is an easy and effective way to operate. So I believe local businesses could indeed as well find this; and as I have said, there are already groups like accountants and lawyers who cannot use company structures and consequently will find it also applicable and useful. I should also say that in the U.K. we have seen L.L.P.s used, for example, in areas like private equity, principally as carry vehicles whose principals use the structure to carry some of the return that they have from certain investments. There are many, many different uses for these products which demonstrate why the industry here in Jersey is keen to see it. I am going to finish by noting again the Constable of St. John. This is the second day in a row that I have had supportive muttering and I really do feel it is beginning **[Laughter]** to set somewhat of a trend and I really hope we can keep going. We are up and running and we are rolling and I welcome his comments, I agree with him, he is right with what he says and I thank him yet again for the second day for his support. So I hope other Members will join the Constable of St. John and myself in supporting this wholeheartedly, getting behind the finance industry and I maintain the proposition.

The Deputy Bailiff:

The appel is called for. The vote is on whether to adopt the principles of the Draft Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 43		CONTRE: 3		ABSTAIN: 0
Senator P.F. Routier		Senator A. Breckon		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		
Senator A.J.H. Maclean		Deputy M. Tadier (B)		
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				

Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
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)				

The Deputy Bailiff:

Minister, how do you wish to proceed? Sorry, before we get to that point, Chairman, do you wish to scrutinise the detail of these?

The Deputy of St. Martin, (Chairman, Economic Affairs Scrutiny Panel):

No thank you, Sir. [Laughter]

The Deputy Bailiff:

Very good. Minister, how do you wish to proceed?

5.4 Senator A.J.H. Maclean:

I would like to proceed by taking *en bloc* the Regulations and I am going to make some comments, simply because of the concerns that some Members have. I would like to make those comments first and then, as I have said, take it all *en bloc* if that is acceptable.

The Deputy Bailiff:

Yes.

Senator A.J.H. Maclean:

Part 1: the preliminary Regulation 1 is the interpretation. Regulations 2 and 3 amend Articles 1 and 5 of the law to include reference to a new Article 6. Regulation 4 replaces Article 6 of the Limited Liability Partnership 1997 Law and introduces the concept of a specific specified solvency statement to provide creditor protection in Article 6(1). Now, this is a statement made by the limited liability partnership in which it states, broadly speaking, that it is solvent now and will be solvent for the next 12-month period following the date of the specified solvency statement. It was adopted from the equivalent provisions in the company law. Article 6(3) means that if a solvency statement has not been made or is no longer applicable because more than 12 months has passed, no partner can withdraw property. Where a partner wrongly withdraws property, the partner must pay back the value of that property. Article 6(10) also provides for a specified solvency statement to be: “A statement for the purposes of Article 8(4)” of the Limited Liability Partnerships Law 1997 and as: “An accounting record for the purposes of Article 9” of the Limited Liability Partnerships Law 1997. The effect of this provision is twofold. Firstly: “A copy of any specified solvency statement sent to the registrar must be kept at the registered office of the limited liability partnership ... for 10 years.” Secondly: “The limited liability partnership must take reasonable precautions to prevent its loss, destruction or falsification and facilitate detection and correction of

any inaccuracies in it.” This mechanism protects creditors by preventing the withdrawal of property unless a statement has been made demonstrating the solvency of the L.L.P. These statements are public documents and can be inspected at the registrar. All persons can review the solvency statements in deciding whether to enter into business transactions with the L.L.P.. This process has been recommended by the foremost U.K. expert on L.L.P.s, a barrister called Roderick Banks, as an appropriate mechanism. Regulations 5, 6, 7, 8 and 9 all amend the law as there are certain provisions in the Limited Liability Partnerships Law that are no longer necessary because of the insertion of the new Article 6 pursuant to Regulation 4. Regulations 10 and 11 amend the law so as to remove cross-references and provisions that were only relevant to the financial provisions contained in the old Article 6. Regulation 12 sets out the short title of the Regulations and provides for them to come into force the day after they are made. I propose the draft Regulations.

The Deputy Bailiff:

Seconded. [Seconded] Does any Member wish to speak on the Regulations?

5.4.1 Senator F. du H. Le Gresley:

It is only a very minor point but I would be grateful if the Minister could just explain to me the actual procedure that will take place at the Registrar, which I assume is the Registrar of Companies which operates in the Commission, because I do have a very small concern that the solvency statement will not receive any scrutiny if it is merely a process of lodging rather than any investigation or anybody looking at it with a view to drawing any conclusions. Perhaps the Minister could assure me that when we make reference to correction of any inaccuracies in it, that the inaccuracies are only discovered by perhaps somebody who wished to view the statement and not by the staff at the Registrar of Companies discovering any inaccuracies.

5.4.2 Deputy M.R. Higgins:

Again, I can follow up on Senator Le Gresley. Very often in the Companies Registry, some of these particular applications are fast-tracked. Basically, companies can be incorporated in an hour and I am not sure about these limited liability partnerships, but I would not be surprised if they are. So unless something was glaringly obvious, chances are it could go through very quickly. So again, it would be interesting to know what scrutiny is applied to the L.L.P.s.

5.4.3 Deputy J.H. Young:

Could the Minister advise us whether the solvency statements will be a matter of public record and available on the J.F.S.C. website?

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on the Minister to reply.

5.4.4 Senator A.J.H. Maclean:

The solvency statements will be lodged at the Registry and as I have already pointed out, these solvency statements are forward looking so anybody, to answer the last question first, has the ability to review the solvency statements that have been lodged. But in terms of assessing them, no they are not assessed in advance but the liability still exists for the partners for any falsifications, inaccuracies and so on. It is as simple as that and that provides the mechanism that is a tried and tested mechanism that is accepted in other jurisdictions and therefore is believed to be appropriate for Jersey as well. It provides the necessary creditor protection that is deployed elsewhere and we believe it is appropriate here, as I have said. I maintain the Regulations.

Deputy M.R. Higgins:

Just a point of clarification, can the Minister explain, he did not answer the question about whether it was going to be on the website. I think the solvency statement may well be in the Commission's part of the computer but not necessarily in the public one. Could the Minister just clarify?

Senator A.J.H. Maclean:

The solvency statements are lodged within the Registry. I am not certain that they are available on the website. I do not believe that is the case but they are available in the Registry.

The Deputy Bailiff:

The appel is called for. The vote is on whether to adopt the Regulations *en bloc*. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 44	CONTRE: 3	ABSTAIN: 0
Senator P.F. Routier	Senator A. Breckon	
Senator P.F.C. Ozouf	Deputy G.P. Southern (H)	
Senator A.J.H. Maclean	Deputy M. Tadier (B)	
Senator B.I. Le Marquand		
Senator F. du H. Le Gresley		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Connétable of St. Helier		
Connétable of Trinity		
Connétable of Grouville		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. John		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Deputy R.C. Duhamel (S)		
Deputy R.G. Le Hérisier (S)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy K.C. Lewis (S)		
Deputy T.M. Pitman (H)		
Deputy E.J. Noel (L)		
Deputy T.A. Vallois (S)		
Deputy M.R. Higgins (H)		
Deputy A.K.F. Green (H)		
Deputy J.M. Maçon (S)		
Deputy G.C.L. Baudains (C)		
Deputy of St. John		
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)				

The Deputy Bailiff:

Do you wish to propose the Regulations in the Third Reading, Minister?

Senator A.J.H. Maclean:

Yes, Sir.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? All those in favour of adopting the Regulations in the Third Reading, kindly show? Those against? The Regulations are adopted.

6. Draft Income Tax (Amendment No. 42) (Jersey) Law 201- (P.133/2012)

The Deputy Bailiff:

We now come to the Draft Income Tax (Amendment No. 42) (Jersey) Law, lodged by the Minister for Treasury and Resources. I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

The Draft Income Tax (Amendment No. 42) (Jersey) Law. A law to amend further the Income Tax (Jersey) Law 1961. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

6.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

I will not repeat all of the arguments that have already been rehearsed in the previous proposition. The purpose of these income tax changes is to make Jersey L.L.P.s transparent for tax purposes. This means that income tax assessments will be raised on individual partners themselves instead of on the partnership as at present. This is the same treatment that also applies to Jersey limited partnerships, separate limited partnerships and incorporated limited partnerships currently. If this change is approved by the Assembly, which I hope it will be, the Jersey L.L.P. will be taxed in the same way that U.K. L.L.P.s are which is in a way which is familiar to international investors. From a revenue perspective, there is no L.L.P. that has been established to date so no existing L.L.P.s will be affected, of course, by any of the changes. We believe that the L.L.P. structure will be an attractive and alternative investment for Jersey traders who want to seek the protection of trading with limited liability but do not want the complexity of, or in fact, cannot set up as a company.

[12:00]

From a tax perspective, there is no difference between the tax treatment of a sole trader and the treatment of a tax partner as in an L.L.P. and the new company distributions would not apply. The tax regime would therefore be familiar and indeed, I think is going to be a useful opportunity, a simple way of effectively getting tax transparency for local traders. I should also say that the Treasury had intended to bring this change for some time but it did not make good sense to put this forward before Economic Development had made their own changes. I move the preamble to the Bill.

The Deputy Bailiff:

Are the principles seconded? [**Seconded**] Does any Member wish to speak?

6.1.1 Deputy R.G. Le Hérisier:

Very quickly, the Minister has argued in terms of transparency but his report argues in terms of simplifying the structure and making the proposition more attractive. Could he tell the House whether it is likely we will lose tax revenue as a result of this proposal?

6.1.2 Deputy M. Tadier:

The first point, I noted that while I nipped out to get my water I was still listening and sole trader was mentioned as if to say: “It is no different to the way we would treat a sole trader.” The difference between a sole trader is that a sole trader would necessarily be resident in Jersey and so it does not matter whether the sole trader pays on his personal income tax or whether he pays on the sole trader entity itself because he is paying the local tax to Jersey. Now, the effect of this amendment, and I appreciate it is to keep it in consistency with other limited partnerships which have been listed, but what we are doing here is saying, “We are not going to tax the partnership. We are going to tax the partners because people pay taxes, do they not, not businesses”. The issue with that is, as it currently stands and I appreciate we do not have any L.L.P.s at the moment but this will be a mechanism, we have been told, that will be used both by Jersey businessmen and women and by foreign-owned, foreign partners which would use Jersey for L.L.P.s potentially. So by changing this, we are making sure that any foreign-owned businesses do not pay their taxes in Jersey because it is the partners that pay tax, not the partnerships. We have to be aware of that. There is a great public clamour out there. We heard it at the last elections. We have to find a resolution to this problem. So this amendment, we are endorsing that Zero/Ten policy which says we are going to penalise local partnerships who cannot get away from paying their taxes locally but by transferring it from the partnership to the partners, we are allowing and perpetuating that facility for the evasion of taxes. I use that word loosely, of course. Sorry, the avoidance of taxes being paid locally whereas they otherwise would be paid locally if we did not have this amendment. So I cannot support this because it does perpetuate the problem of Zero/Ten that we know about which the alchemist Minister for Treasury and Resources is still trying to resolve and good luck to him.

6.1.3 Senator L.J. Farnham:

Just briefly following on from the previous 2 questions, I would like to ask the Minister for Treasury and Resources if he thinks it is likely that local firms will look to this as an alternative to incorporation or even switch from being an incorporated body to a limited liability partnership and if so, how will this manifest itself and what are the potential advantages or disadvantages?

6.1.4 Deputy J.H. Young:

I would just like the Minister please to clarify the situation tax-wise where you have an L.L.P. which comprises local partners who I would assume have a liability to tax and non-local, non-resident partners who may be entitled to a share of the income of the partnership which arises locally. Could the Minister give us an account of how that works, please, under this amendment?

6.1.5 Deputy G.P. Southern:

What I am looking for is a statement of solvency from the Minister for Treasury and Resources because here we are, coasting along on Zero/Ten, the zero part of which, in terms of company tax, the Minister for Treasury and Resources has failed to deal with for the past 2 years. He is still examining ways and is unlikely to be able to deal with, to produce any income, revenue, tax revenue for this Chamber from those particular foreign-owned companies. Here we are, expanding the zero to another group of foreign partners producing no income, no revenue for this Island. We are going along on empty and I would like the Minister to give us the statement that says we are

solvent, we are going to remain solvent, even though we are not collecting tax from an increasing number of foreign-owned companies or partnerships.

6.1.6 Deputy M.R. Higgins:

Just following on from Deputy Young because I think he has made a good point. If there are partners in the Island who are paying tax and foreign partners that will not be not be paying tax, and we are looking at a form of business, does this fall under the same discriminatory rules that we fell foul of on Zero/Ten. In other words, when we had the deemed distribution, the fact that we were treating foreign people different to local people, it was held to be not compliant for those guys. Can the Minister tell us whether under limited liability partnership, it would be compliant also, or not?

The Deputy Bailiff:

Does any other Member wish to speak? I call on the Minister to reply.

6.1.7 Senator P.F.C. Ozouf:

Excellent questions. I will do my best to respond to them but taking them in somewhat of a reverse order. I need to respond to Deputy Southern. The Minister for Treasury and Resources has not failed to deal with the issue of Zero/Ten. I thought that we had moved on from trying to reinvent history. The Minister for Treasury and Resources and Treasury have been working extremely hard on trying to find an issue in order to deal with raising more revenue but I am not going to promise to the Assembly something that is going to throw the baby out with the bathwater. I am not going to propose anything which is going to push at this very difficult economic situation just because there are calls for populist... I understand them, they are well intentioned in some respects - calls for tax in businesses which is going to drive business outside of the Island. I thought that we had raised the level of debate. Perhaps it is just that Deputy Southern is never going to be convinced. But I thought we had raised the debate with the substantial documentation and research that we published prior to the budget last year which responded to the Deputy of Grouville's understandable questions to us about what we should be doing to tax local companies. If the Deputy would like me to recirculate the research and the reports that I published last year, which I also note had received a positive endorsement from even the sceptical editorial line of the *J.E.P.* (*Jersey Evening Post*) but for once we had explained what the real risks are and there is no point in the Minister for Treasury and Resources or any Member of this Assembly to stand there and scold another Member and say that they have not done their job when simply they are looking at the narrow issue. I am afraid we cannot raise revenue from some companies because of the problems that we have in complying with the E.U. code of conduct. This is personal tax because it is going to be on a personal assessment to answer Deputy Higgins, and Deputy Southern asked me whether or not we are solvent. Well, if there is any jurisdiction in the world that is solvent I would imagine it does not need me at this stage to say that we are. With 100 per cent of assets to G.D.P. (Gross Domestic Product) ratio as opposed to other countries with 100 per cent of debt to G.D.P., I think we are more solvent. This Assembly has been wise and prudent in approving a Medium-Term Financial Plan which does not have a deficit and we are investing in the economy, putting millions of pounds in the Economic Development Department, in Social Security and jobs, and investing in front line services and we are using our balance sheet and if anybody is solvent, then Jersey jolly well is and I do not think I need to say anything else about that. Deputy Le Hérissier asked whether or not any revenue was going to be lost. No, because we do not have any limited partnerships but what I would say is, and to respond to the good question that Senator Farnham raised, this is going to be a good option for local traders and we want to encourage people to be trading through a partnership because then we do not have to wait for the dividend to be paid. It is, because a partnership is tax-transparent through to an individual tax return, it means that we get the tax on the

profit. So we would like to encourage this and it is a simple way. I know that we had to put some difficult avoidance mechanisms in place in the budget last year. We put a level of complexity in our tax system that none of us wanted to do. But we put some amendments through which hopefully dealt with that. If traders want to trade and get limited liability, then they now have a number of vehicles in which they can do that which are simple. They are going to be simple to administer without corporate company fees and other things like that and the complexities of having to get separate statements of account. This is a partnership. If you want to trade, it is a good vehicle in order to do so and have some advantages in that we have now had a suite of different partnership models in order to do so. So, from a Treasury perspective, it means that we get the tax earlier than we otherwise might do by effectively the profits being held in those companies and us only getting the tax when the dividend distribution is made. In respect of whether or not there is a resident and a non-resident partner, of course that is going to be a tax assessment where that resident is going to be taxed. Where they are resident in Guernsey, perhaps, or another place they are going to be tax-transparent through to those jurisdictions. As usual, the Jersey authorities will require people to make sure that they are complying with their tax arrangements and tax affairs outside. I think it was Deputy Tadier that I think - I apologise if it was not him - moved very quickly from the word, "evasion" to "avoidance". They are not the same things. They cannot be simply put in the same sentence. Evasion is illegal. We are a world leader in terms of dealing with evasion which has been on our ... I am not giving way with dealing with evasion. We certainly need to show and we need to continue to show that we have one of the highest levels of suspicious transaction reports which are reported in. We prosecute crime. Significant resources are put on that. We do not and we are not a jurisdiction which welcomes or has tax evasion and certainly, we need to be stepping up our communication because we are too often unfortunately in U.K. media reporting, we are too often being associated with tax evasion of which Jersey is not a jurisdiction which accepts or turns a blind eye to that. Of course there is an issue of avoidance and what is acceptable avoidance and what is effectively tax planning which happens around the world and that is a debate for another day. In summary, and this is almost rehearsing some of the arguments that the Minister has already made, this is a vehicle that will be used for domestic purposes for trading companies and trading entities and trading partnerships and professionals and it also has an important issue of effectively improving the competitive offering for external funds and all sorts of other vehicles. We are an international finance centre but this is the kind of product we use and this product is going to be used and these tax changes are important to ensure that they are transparent in the way that I have described. I move the principles of law.

Deputy G.P. Southern:

A point of clarification if I may. The Minister referred to if companies were to transfer to being a limited partnership, then they would not be subject to company registration fees. Would this mean a reduction in company registration fees, if that was to occur on a large scale?

Senator P.F.C. Ozouf:

That is probably a better question for my good colleague, the Minister for Economic Development. There are probably some fees associated with running a limited partnership that I am not aware of but effectively running a partnership can be more efficient than setting a stand-alone governance structure because of course you have a company, it needs a board of directors and there are all sorts of other attendant costs in running a limited company. The Treasury would like more partnerships because they are tax-transparent and we get the profits early and it means that we benefit from that cash advantage but also it means that it is simple, for simple traders and I know that business, the local business community is welcoming this move and will be using this now, L.L.P. that is competitive. I move again the principles of the Bill.

The Deputy Bailiff:

All Members in favour of adopting the principles, kindly show. The appel is called for on the principles of the Income Tax (Amendment No. 42) (Jersey) Law. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 43		CONTRE: 4		ABSTAIN: 0
Senator P.F. Routier		Senator A. Breckon		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		
Senator A.J.H. Maclean		Deputy M. Tadier (B)		
Senator B.I. Le Marquand		Deputy T.M. Pitman (H)		
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
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)				

The Deputy Bailiff:

Deputy of St. Ouen, are you aware if your panel wishes to scrutinise this legislation?

The Deputy of St. Ouen (Corporate Services Scrutiny Panel):

Sir, we do not want to scrutinise this particular piece of legislation.

The Deputy Bailiff:

Minister, how do you wish to take this?

6.2 Senator P.F.C. Ozouf:

En bloc but I will run through the Articles if I may. Article 1 creates the new Article in the very complex, now perhaps more complicated Income Tax Law Article 76D and the principal effect is to provide that the partners in a limited liability partnership are taxed on its profits and gains in the same way as the partners of limited partnerships, incorporated limited partnerships and separate limited partnerships. The replacement Articles 76D(4) provides the profits and gains arising from international activities of a non-resident partner are not subject to income tax answering the previous questions. This is in line with the treatment of non-residents generally, as I tried to explain before, international activities broadly means activities carried outside the Island which is a statement, I guess, of the obvious.

[12:15]

Article 76D (5) disapplies Article 74 and 76 generally for the precedent partner in a partnership to make a statement of the partnership’s profits and gains. In the case of a limited liability partnership that obligation will fall upon the designated partner instead if any of the partners is liable to income tax on their share of the profits and the gains with partnerships, Article 76 provides for a partnership to be controlled and managed abroad to be deemed as resident outside Jersey and carried on by persons resident outside Jersey even if some of - again this is answering Deputy Higgins’ and Deputy Young’s previous questions - the partnership business is carried out in Jersey or some of the partners are resident in Jersey. The rule does not extend to the profits or gains arising of partnership from a trading operation. Article 76D disapplies those Articles where an annuity, an interest payment or similar payment is paid by the limited liability partnership. Articles 86 and 87 require the person making the payment to deduct tax before doing so and if the payment is not made out of profits and gains have been taxed already, to account to the Comptroller for the tax. The effect of disapplying these Articles will be that any Jersey resident receiving interest payments from an L.L.P. will receive the full amount of the interest due and then will of course be responsible for declaring the amount of their income on their income tax return. Article 2 provides for the citation of the law and those deal with the Articles. I am happy to answer any questions that Members may have.

The Deputy Bailiff:

Is the Article seconded? **[Seconded]** Does any Member wish to speak on the Articles? Deputy Tadier? No?

Deputy M. Tadier:

I am just getting ready to ask for the appel.

The Deputy Bailiff:

I see. Then if the appel is called for, I invite Members to return to their seats. The vote is on whether to adopt Articles 1 and 2 of the Draft Income Tax Amendment Law. I ask the Greffier to open the voting.

POUR: 43	CONTRE: 4	ABSTAIN: 0
Senator P.F. Routier	Senator A. Breckon	
Senator P.F.C. Ozouf	Deputy G.P. Southern (H)	

Senator A.J.H. Maclean	Deputy M. Tadier (B)		
Senator B.I. Le Marquand	Deputy T.M. Pitman (H)		
Senator F. du H. Le Gresley			
Senator I.J. Gorst			
Senator L.J. Farnham			
Senator P.M. Bailhache			
Connétable of St. Helier			
Connétable of Trinity			
Connétable of Grouville			
Connétable of St. Clement			
Connétable of St. Peter			
Connétable of St. Lawrence			
Connétable of St. Mary			
Connétable of St. John			
Connétable of St. Ouen			
Connétable of St. Brelade			
Connétable of St. Martin			
Connétable of St. Saviour			
Deputy R.C. Duhamel (S)			
Deputy R.G. Le Hérisier (S)			
Deputy of St. Ouen			
Deputy of Grouville			
Deputy J.A. Hilton (H)			
Deputy J.A.N. Le Fondré (L)			
Deputy of Trinity			
Deputy S.S.P.A. Power (B)			
Deputy K.C. Lewis (S)			
Deputy E.J. Noel (L)			
Deputy T.A. Vallois (S)			
Deputy M.R. Higgins (H)			
Deputy A.K.F. Green (H)			
Deputy J.M. Maçon (S)			
Deputy G.C.L. Baudains (C)			
Deputy of St. John			
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)			

The Deputy Bailiff:

Do you propose the Articles of the law in Third Reading?

Senator P.F.C. Ozouf:

Yes, please.

The Deputy Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak? All Members in favour of adopting the law in Third Reading kindly show? Against? The law is adopted. We now come to ...

Senator P.F.C. Ozouf:

If I may circulate as is the practise, an *Acte Operatoire* bringing the Bill into immediate effect in order that this can be used as we normally do with income tax amendments?

Senator I.J. Gorst:

Perhaps while that is being circulated I could inform Members that I will not be asking for a shortening of the lodging period for P.138, the Comptroller and Auditor General, because it now transpires that in fact the individual will not be able to start prior to the next sitting and therefore it is more in order to keep it at the next sitting. But I would ask that we could perhaps take it as the first item. Thank you.

6.3 Draft Income Tax (Amendment No. 41) (Jersey) Law 201- (P.133/2012) - Acte Operatoire

The Deputy Bailiff:

Do all Members have a copy of the proposed *Acte Operatoire*? Then I will ask the Greffier to read the proposed Act.

The Greffier of the States:

Act declaring that the Income Tax (Amendment No. 42) (Jersey) Law shall have immediate effect. The States, in pursuance of Article 15 of the Public Finances (Jersey) Law 2005, have made the following Act.

6.3.1 Senator P.F.C. Ozouf:

I do not need, I think, to inform Members because we have had a number of these in the budget last year. Fortunately, I think, it was the Code of 1771 which allowed us to be nimble and fast moving and bringing into effect the fact that we have income tax legislation. The Minister for Economic Development's were Regulations so they can be brought into effect and, in compliance with our normal practise, Income Tax Law, notwithstanding Privy Council approval, we will receive later, receives the ability by this Act to come into immediate effect and I ask Members to approve the Act.

The Deputy Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak? Deputy Tadier?

6.3.2 Deputy M. Tadier:

I do have a question. I mean, one has to take their hat off to the Minister for Treasury and Resources about quite how nimble he is. He can get something in and circulate this because this clearly cannot wait 20 minutes until we have debated the other 2 things, it has to be done now. And so, I think there is an omission on the paper because it says the date has to be inserted when it comes into force and when it is made. I think we also need a section for the time there because I think it was made at 12.20 p.m. and it would be remiss of us if this law started to be used perhaps by firms which have already got it set up at 10.00 in the morning when they could not possibly have known that this law was going to come into force today. So I think that is a problem that we need to have the time on there, just so that Senator Ozouf can be credited with his expediency and perhaps also when we do debate the Discrimination Law we can have similar expediency in that, although I will not hold my breath with those.

6.3.3 Deputy J.H. Young:

Could I ask why do we pass this income tax amendment with immediate effect when the amendment sets out the tax rules to the Regulations for limited liability partnerships, which I assume are not being brought into immediate effect? Could that be clarified, please? It just seems to be really strange, if I am right, that we have income tax implementation before we introduce the Regulations.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on the Minister to reply.

6.3.4 Senator P.F.C. Ozouf:

Again, this is for my colleague, the Minister for Economic Development, but I thought these were Regulations so they come into immediate effect. They do not need Privy Council approval, they are under Regulations, so if we did not, if we required Privy Council approval then effectively we would have had the good Minister's proposals to be passed and then we could not deal with the tax consequences. So just as Deputy Tadier is keen obviously for businesses to be seizing this opportunity immediately at 9.00 a.m. tomorrow morning, to be bringing business into Jersey which otherwise might be going to other places, we would have to wait and I do not think he would want us to do that or anybody would want to do that. So we always do this in relation to income tax laws and I urge Members to enthusiastically support the immediate bringing into effect of this law to get business into Jersey.

The Deputy Bailiff:

All Members in favour of adopting the *Acte Operatoire* kindly show? Against? The Act is adopted.

7. Jersey Appointments Commission: appointment of Commissioner

The Deputy Bailiff

We now come to P.136: the appointment of a Commissioner for the Jersey Appointments Commission, lodged by the Chief Minister. I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion, in accordance with Article 18(1) of the Employment of States of Jersey Employees (Jersey) Law 2005 which is concerned with the appointment of Commissioners to the Jersey Appointments Commission, to appoint Professor Edward Sallis O.B.E. as a Commissioner of the Jersey Appointments Commission until 23rd February 2014.

7.1 Senator I.J. Gorst (The Chief Minister):

As the Deputy Greffier has just read out, this is to appoint Professor Sallis as a member of the Appointments Commission. The process is detailed in the report as is Professor Sallis' C.V. (curriculum vitae). Perhaps also I would like to take this opportunity to thank the Commissioners for the work that they do on behalf of us in this Assembly and I propose the appointment. Thank you.

The Deputy Bailiff:

Is the proposition seconded? **[Seconded]** Does any Member wish to speak? All Members in favour of adopting ...

7.1.1 Deputy M.R. Higgins:

I would just like to make a comment. I must say that I have no problem with this appointment, but I would like to make a general comment and that is that Jersey seems to be falling into the trap of the circulation of elites. Basically, we have certain people who appear on so many panels and seem to go from one to another, surely there is new talent out there and we should be looking for it? That is no reflection on Professor Sallis who I hold in great respect.

7.1.2 Deputy R.G. Le Hérissier:

I entirely support what Deputy Higgins said, I think Professor Sallis will obviously be an excellent person. But I was going to make the point, had the debate gone ahead on the pay rise, while again we are very lucky to have some very eminent people there, you really have to look at the breadth of the social composition of the panel, because it was quite strange that we had one body in the States saying that the economic situation was so dire that we could not give increases to staff yet we had another body saying, appointed by the States, that we have looked at the economic situation, which of course is part of their remit, and we think a modest increase is in order. I mean that, to me, suggests that we really need to broaden. Now, unfortunately to be fair to the Appointments Commission, who are themselves in the business obviously of appointments, they go to the community and they see who will apply. They do not engage in positive discrimination, they do not say: “We want more women, we want more people from the minority groups” and so forth and perhaps, without getting too heavy-handed about that, we have to revisit that issue. Quite frankly, we have to really ensure that these bodies that are now having an increasing amount of power, as we have discovered, really do represent Jersey society in the broadest sense of the term and that does pose an issue. And the second point I would like to make is the one I made yesterday; who guards the guards? I have heard some comments about recent appointments, about the rigour that is applied to the appointments, for example, of senior civil servants and while, again, I believe the Commission is operating with great integrity and so forth, we really need to be assured that we are appointing people in a way that is fully compatible with the criteria. We just cannot afford to have rumours saying that very senior positions in the civil service have not been subject to the full procedures, for example. I think it would be very useful if somebody like the P.A.C. (Public Accounts Committee) did, as in “Who guards the guards?” kind of move, if they were to do the occasional audit to ensure that this was happening. I think it would be a reassurance to Members. I am sorry, this has nothing to do with the virtues of Professor Sallis which I totally uphold.

7.1.3 Deputy J.M. Maçon, Deputy of St. Saviour:

Very quickly, I totally endorse this appointment, I think it is an excellent candidate that has come forward though I do take issue with the final statement about the manpower and financial implications of this particular proposition in that surely in order for this individual to carry out their position, there is a training implication and therefore there is a cost implication and I would very much like the Chief Minister to explain what process is there in order to make sure that these types of issues are properly addressed, because there is a training element there and I would be very keen for the Chief Minister to explain what that process is.

7.1.4 Deputy T.A. Vallois of St. Saviour:

I think it is appropriate for me to respond to Deputy Le Hérissier’s comments. There were questions made in terms of the Jersey Appointments Commission, appointment of a senior management post in the States and there was concern surrounding politicising the Jersey Appointments Commission, which I believe many Members in here would believe that was right. I took it upon myself as chairman of P.A.C. to further investigate those and I recently received a final response from the Chief Minister, which I am analysing and will be responding back to him. So just to make Deputy Le Hérissier aware that I do not need his suggestions, I have taken it proactively and gone and looked into it.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call upon the Chief Minister to reply.

7.1.5 Senator I.J. Gorst:

Yes, as a number of Members have said this is quite simply the appointment of Professor Sallis but a number of other issues have been raised so perhaps you will grant me leniency to address those very briefly. Perhaps with regard to Deputy Maçon, I think, and on reflection perhaps the financial and manpower implications could have read differently, but there are no increased financial and manpower implications because it is already within the budget to make the payment for the Commissioner, so that is why they read as they do. I do not have the details of the induction and training programme with me, but I will certainly endeavour to get that for the Deputy. We rely on these bodies as an Assembly increasingly, and that is right and proper, and Deputy Le Hérissier makes some very good points about ensuring that they are representative of the community at large, and I think it is fair to say that the way that one recruits generally has changed over the years and in the past it has been quite simply for a number of jobs, particularly sitting on panels such as this and senior jobs, there has been an approach which was along the lines of advertising and seeing who would come forward.

[12:30]

But we recognise the general trend in human resources and recruitment to be much more proactive and I hate to use slang, but something called “headhunting” has become very popular so that you can get people who are going to do the job well. I think that this is something that we as a States Employment Board certainly need to consider when we are being asked to bring forward appointments to bodies such as this. That is not to criticise the work being undertaken currently but it is to recognise that there has been a change and bodies such as this do need to be representative of the community and representative and understand some of the posts that they are going to be asked to appoint to. Because it is important that these bodies have not only public confidence but confidence of this Assembly, and I believe that you can deliver that confidence in these bodies by reviewing the processes undertaken and ensuring appropriate engagement with stakeholders and perhaps maybe that is something that we have not been particularly strong on in the past. It is certainly on the States Employment Board’s agenda and we look forward to taking that forward. I hope that Members will approve this appointment of Professor Sallis, as I said his C.V. is attached to the report.

The Deputy Bailiff:

All Members in favour of adopting the proposition? The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the proposition of the Chief Minister that Professor Sallis be appointed to the Appointments Commission. I ask the Greffier to open the voting.

POUR: 44		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				

Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
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:

In the light of the withdrawal of the proposed proposition in relation to the Comptroller and Auditor General we now come to Paragraph M, Arrangement of Public Business and ...

8. The Connétable of St. Helier (Chairman, Privileges and Procedures Committee):

Business for the next meeting is as set out on the Consolidated Order Paper with the addition of P.138/2012 - Comptroller and Auditor General: appointment, at the top of the paper as requested by the Chief Minister. We have also received the Draft Discrimination (Jersey) Law, - P.6/2013 - to be debated on 14th May.

The Deputy Bailiff:

Thank you very much. There being nothing further for the Assembly it stands adjourned until 9.30 a.m.

The Deputy of St. John:

Before we rise, I wonder if I might just remind Members that P.134 will be debated in 2 weeks' time as part of forthcoming business and just to remind Members that the department is holding a lunchtime meeting to follow the Assembly when we rise. There will be time for a short break before that meeting starts, and it will be a lunchtime meeting, where we will be obviously providing some lunchtime refreshments and I hope that as many Members as possible will feel able to attend on this very important subject.

The Deputy Bailiff:

The States now stand adjourned until 9.30 a.m. on the 29th January.

ADJOURNMENT

[12:33]