

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 14th JULY 2009

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

PUBLIC BUSINESS – resumption

1. Draft Residential Tenancy (Jersey) Law 200- (P.74/2009)

The Greffier of the States (in the Chair):

Very well. The debate continues on the Draft Residential Tenancy Law. The Assembly had adopted up to Article 7. Rapporteur, you propose, therefore, Articles 8 to 13, Part 4 of the Law?

1.1 Deputy S. Power of St. Brelade (rapporteur):

Part 4 deals with remedies. If I run through it very briefly and perhaps then I will be at the behest of Members as to whether they want to go through it in more detail. Article 8 deals with the termination of service elements. If a service element fails and agreement is not in writing, it deals with a number of matters including situations where the residential tenancy agreement includes a service agreement and the service element can no longer be provided. For example, if a tenant is removed from his job it may not be fair to expect the landlord to allow him to stay in his accommodation or if a tenant was to be unable to carry out his or her employment which related to this accommodation it may not be reasonable for the landlord to serve the tenant with notice immediately. Article 8(2) allows the court upon the application of either party to consider the matter and vary the agreement or terminate it in certain circumstances. Article 8(c) deals with the letting of movables. The landlord lets a unit of accommodation to a tenant. It deals with separate agreements such as antique furniture, furniture, anything specified within what can be called movables. Article 8(d), the letting of any immovable property for business purposes. An example of this would be a landlord lets a residential unit with a workshop at the back; the lease can specify that the tenant may be recognised as a craftsman and needs to use the workshop. Article 8(e) deals with the letting or use of a garden or a swimming pool and the works that might need be carried out in a filtration system. Article 8(3) gives the court, upon application by a tenant, powers to make an order or vary or terminate an agreement. 8(5) recognises the importance of good practice in Article 8(4) regarding a 24-hour grace period before signing an agreement. That essentially is Article 8 and I just say that landlords who comply with these provisions would have absolutely nothing to fear. If I may move on to Article 9, Article 9 deals with premises which are uninhabitable. Again some comments from the 1990 working party suggested that minimum conditions of habitation should be laid down. The Residential Tenancy Law does not do this as minimum conditions of habitation, it is felt, is dealt with in a better way by both the Planning Department and public health legislation. Health is reviewing public health legislation at this time and Planning have brought in new regulations regarding room sizes. However, the Residential Tenancy Law does grant protections to any tenant where his or her residential unit becomes uninhabitable through an event rather than his or her malicious act. In these circumstances Article 9(a) and 9(b) allow the court to vary or terminate an agreement. Article 10 deals with breaches by a landlord. 10(1) deals with a landlord having a requirement to give a tenant quiet enjoyment of a residential unit. Article 10 outlines for tenants the right to what quiet enjoyment comprises. Quiet enjoyment includes not doing anything that would prevent a tenant from occupying all or part of any residential unit. Article 10(2) to (4) states that any breach of this requirement by the landlord is considered as a breach of the agreement and the tenant can apply to the court for assistance to again vary or terminate the agreement. Article 11 deals with eviction where notice ... failure to give possession. Articles 11 through to 15 deal with those issues raised by the working group on security of tenure. Article 11 makes provision for a landlord to go to court and seek an eviction order in circumstances where the residential tenancy agreement has ended because of the termination date. Article 12 states that a breach of tenancy agreement does not by itself give grounds to terminate the agreement. Article 12(2) introduces a new power for a landlord to serve notice on a tenant who has breached a residential tenancy agreement asking him or her to cease the conduct that has caused the breach. Article 12(3) makes it clear that the process

does not depend on a notice to quit being served. There is no need for a landlord to give notice on a periodic tenant as is currently the case if he has breached the agreement beforehand. Article 12 covers all these breaches. Article 13 deals with the execution of an order for eviction. Articles 13, 14 and 15 clarify the process that will be followed and the issues the court will consider when dealing with eviction orders. For instance, Article 13(1) provides that the eviction orders made by the court will be served by the Viscount's Department as is currently the case and that Viscount's officers will put the landlord in possession of the property. Article 13(2) deals with the provisions of the residential tenancy agreement, clearly outlines the Viscount's powers in such circumstances. Article 13(3) states that the Viscount can sell or otherwise dispose of the property. Article 13(5) allows for the proceeds of any sale made by the Viscount go to the States Consolidated Fund. I move Part 4.

The Greffier of the States (in the Chair):

Yes, Articles 8 to 13, Part 4, are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of the Articles?

1.2 Deputy R.G. Le Hérisier of St. Saviour:

Under 8(3), I note that there is not a power of the court to give the ability to come up with a written agreement. In other words, it is all negatives that seem to be contained there rather than continuing the situation but with a written agreement. I wonder if the rapporteur could speak to that. Under 9, premises uninhabitable, how does number 9 deal with issues where there is a suspicion that they have been rendered uninhabitable by malicious action but it cannot be proved? What right does it give the tenant in terms of resuming residency? Under 10, breaches by the landlord, again there is no provision, it strikes me, there for a written agreement to be either imposed, reinstated or whatever. Rather it goes immediately into what you might call the punitive or the negative mode. So is there that possibility there?

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

Yes. Again I come back to Article 9 as did Deputy Le Hérisier but on a far simpler question. What body is to rule on whether a premise is inhabitable or uninhabitable? There are all sorts of levels of damp and spores that render a household unhealthy but not necessarily uninhabitable. Who is to decide and why are the arrangements not organised in this Law to indicate who is the arbiter?

1.4 Deputy D.J.A. Wimberley of St. Mary:

Gosh, I did not know I had even flashed my light. Very perceptive. But I do wish to just ask the rapporteur about Article 8 and just make absolutely clear what this is about because it looks to me as if it is about tied accommodation and, if it is, then what exactly are the remedies? If somebody loses their job and then the next minute loses their accommodation that is quite drastic. I just wanted you to clarify exactly what is going on in that Article because obviously you went through it quite quickly and I am not clear as to what the situation is.

1.5 Senator A. Breckon:

I think that it will be a problem with changes to migration. If we are granting status to employers to employ people by post rather than by person then I think there needs to be some clarity there. The other thing regarding "uninhabitable" where I have had some concerns, people in some instances - and the Minister for Housing will be well aware of this - will re-house because of the state of a property and within a couple of weeks somebody else had moved in. The Environmental Health Department did not have the authority to say: "No, it is not fit for occupation." This became a bit of a merry-go-round and a bit of a nonsense. So although the Assistant Minister has touched on that, I wonder if he could give the House some clarity as to how the health system will be able to beef-up the powers they have got so that in fact they can stop a property from being occupied. If it is unfit for one person then it should be unfit for another until it is appropriately renovated.

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

I wonder if the Assistant Minister could explain exactly to the House the difference now and the difference that will be introduced under Article 11, except for the court not being the Petty Debts Court but being the court with tenancy division, because I would like him to expand on this. It may be a difference in one month to 3 months. I would like him to explain that this is exactly how it is now and for the tenants that do not know that and for States Members who have even approached me from me talking yesterday. It is only a court of this Island that can evict. Is this any different under this new Article except for the name?

1.7 Deputy F.J. Hill, B.E.M., of St. Martin:

I would like to follow on a little bit from my question yesterday of the Minister for Home Affairs and put Article 13 to the Assistant Minister. This is the execution of an order for eviction. If, indeed, the people executing the warrant find the owner out of the premises and they wish to get in and they then damage the door to gain entry, who will be responsible for repairing that door? Or if, indeed, the owner is in and refuses to allow the execution of that warrant, who will be responsible for the damage?

The Greffier of the States (in the Chair):

Does any other Member wish to speak?

1.8 Senator B.I. Le Marquand:

Members may be aware that I am trying to act as a first line of response in relation to this. I had a great deal of input into the Law. There is a danger, of course, that my response might be different to that of the Assistant Minister and, if so, of course he is the authority and not myself in relation to such matters. I will just try to deal with some of the questions which have arisen in order to try and help my colleague in this. Firstly, the Deputy of St. Mary's issue about tied accommodation. The Deputy is absolutely right. This is dealing partly with service tenancies and, of course, this is giving new and additional rights because as the law stands at the moment if you have a tenancy with a service element, when the service element ends the tenancy ends as well. What happens here is the court effectively in this and in other situations has a right to make an order to decide how to deal with the matter fairly. That is an improvement in relation to rights. There was an issue raised in relation to Article 8(3). This is dealing with a situation in which there is not an agreement in writing or it has not been signed, and again this allows the court to intervene to decide what would be the fair and right terms to be imposed in the situation. Of course there are implied terms in the schedules already but that is the purpose of that. In relation to comments on Article 9, this is a specific provision in relation to premises becoming uninhabitable. It is normally good practice in any eventuality in a lease for there to be what is called a rent abatement clause. That is a clause which says that if the premises are damaged in whole or in part then the rent is reduced proportionately. But if that is not in a lease - and I acted in the Royal court in a case in this very area - then there is no rent abatement provision. What this has tried to do is write in a provision for the most serious case, which is where the premises become uninhabitable. They might be completely burned down and without this sort of provision the tenant might still have to carry on paying rent for a period, which would be grossly unfair. The court again has discretion as to how to deal fairly in relation to matters under Article 9(b). In relation to a question that was raised under Article 10(1) - I think by Deputy Martin possibly or it may have been by somebody else - in relation to the enforceability of the provision in Article 10(1). Clearly there is a criminal offence being created for the first time where a landlord blatantly interferes with the terms of the tenancy. This could happen by turning the electricity off or cutting off the water or something of that nature as a device to get people out. Clearly there needs to be a criminal penalty to prevent that sort of serious action. But in addition to that, the fact that Article 10(1) creates a duty in my view would give rise to a right in the tenant to bring an action before a court for enforcement of that duty and that alongside any criminal issue. In relation to the point that was raised - I think this time by

Deputy Martin - in Article 11, I think she is absolutely right. This does not change the Law as it is at all. It merely restates it clearly that once the period of a tenancy has ended or notice has expired, the person cannot just be thrown out. They can only be removed from the premises by virtue of a court order; in this case an order made by the Petty Debts Court. That is the law of Jersey. I am slightly surprised that the general public do not know that but it is a matter that ought to be publicised. It may explain why my workload in this area was less than it would have been otherwise. But there it is. Finally, a comment on Article 13 which is a very interesting comment made by the Deputy of St. Martin in relation to who would be responsible for damage done during the course of an eviction. Of course if the court has made an order and an individual has failed to comply with that order and the Viscount is carrying out that order, in my view that would be the responsibility of the tenant who was in breach. But that would be a matter for courts to decide. But in practice it is well known that the Viscount exercises a discretion and acts very gently in dealing with matters and tries to cajole people; sometimes gives them a little extra time to organise themselves. It is only in the final resort where people are really being very stubborn, failing to comply with a court order, where those sorts of powers would be required. I hope that assists Members in understanding these points.

The Greffier of the States (in the Chair):

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

1.9 Deputy S. Power:

Again, I thank the Minister for Home Affairs for his expertise. Can I run briefly through my queries, not wishing to dampen the expertise of the Minister for Home Affairs? Article 8(3) gives the court, upon application by the tenant, powers to make an order varying an agreement. This change was felt very important because it was generally felt by both landlords and the Citizens Advice Bureau that one of the main reasons for misunderstandings over tenancy agreements is the fact that Jersey has a high proportion of individuals for whom English is not their mother tongue. Even for English speakers, signing a rental agreement is a big step that incurs responsibility and the clauses should always be understood. The clause will allow time for individuals to seek advice during the time when the advice agencies are open. If I can reinforce some comments about premises that are uninhabitable, a landlord has a duty to keep their premises habitable. As a matter of policy it has been decided to leave the issue of whether premises are uninhabitable or not as one for the court to decide. It is a discretionary thing. It is up to a court under Article 9 to decide as a matter of fact if the premises are uninhabitable. However, protection is given to the tenant here so that he is not responsible for rent if the premises are uninhabitable. The Residential Tenancy Law leaves the tenant responsible for rent if the damage was caused by his malicious act and I think I have already referred to that. Reference has not been made to damage arising as a result of a tenant's negligence. Negligence is a very tough issue to prove. Such matters should be dealt with under the landlord's insurance. For example, for falling asleep while in an alcohol-induced slumber and a fire starting as a result, taps left running and a flood occurring. As the Home Affairs Minister said, rent abatement can be provided for and a suspension of rent payments. Article 10, there was a question on breaches by the landlord and an example of where the court can vary an agreement. If a landlord interferes with a tenant's enjoyment of the property, because of the behaviour the tenant can go to court to seek a variation. This time the application can be made by the tenant; the act of breaking the peaceful enjoyment of a property by the landlord. An example of this would be the landlord consistently popping in to check that the property has been kept in good order. That is a breach of the tenant's enjoyment. He or she must ask for the tenant's permission. The landlord may play loud music, for example, in an adjoining wing but not to the discomfort of the tenant. There were a number of questions on Article 11, which is eviction. I think the Minister for Home Affairs has covered that. I do not wish to repeat that. Then there was a final question on Article 13 which I think the Minister for Home Affairs also covered, which was the execution order and the costs of the forced entry. If I have missed something I move ...

1.10 The Deputy of St. Martin:

With respect, I know the Minister for Home Affairs was trying to give an answer on behalf of Housing, but in respect to the Minister for Home Affairs it is a Housing proposition. I did ask quite an easy question and I would like the answer. If indeed premises are damaged as the result of trying to get an entry when the owner is out, is the owner responsible for paying for it? If the owner is in and refuses entry, who then is responsible for it? I do not think that answer was given by the Minister for Home Affairs.

Deputy S. Power:

Under Article 13(3) it states that the Viscount can sell or otherwise dispose of property if the tenant does not remove property before the court order is made and the landlord is put in possession. I think also under Article 13(3) the Viscount can if necessary force entry and that will have to be paid for by the tenant. That is under Article 13(3).

The Deputy of St. Martin:

Could I just press the Assistant Minister? It does not say that in the Law. Are we making a policy on the hoof or is that just a decision that the Assistant Minister wishes to make today?

Deputy S. Power:

I come back to Article 13(3) and Article 13(2) and that relates to the provisions in the Residential Tenancy Law clearly outline the Viscount's powers in such circumstances, including the manner in which any movable property left by the tenant can be dealt with. This provision adds clarity to the position in the 1946 legislation which means that the Viscount can enter premises by force.

The Greffier of the States (in the Chair):

An unanswered question, Deputy Le Hérisier?

1.11 Deputy R.G. Le Hérisier:

In a way this is a case for legislative scrutiny, I should add, but we all have to eat humble pie on that.

The Greffier of the States (in the Chair):

The issue is you cannot raise new points. Is it a question you raised?

Deputy R.G. Le Hérisier:

No, I wanted clarification. I asked in reference to 9 and 10 could the court reinstate or impose a written agreement. Those provisions do not appear to be there in 9 or 10 because it may be proven, for example, as I think the Minister for Home Affairs - who is becoming the Minister for Housing *de facto* - I think he said people could maliciously ... or might switch off electricity, for example, and that may be the cause or there may be an apparent breakdown in water supply, blah, blah, blah. I wonder could the court simply say: "Look, there is a problem here but really from the evidence we have heard to date, the written agreement will be imposed and the tenant at a suitable time will move back into the property and here is the agreement to that effect."

The Greffier of the States (in the Chair):

Are you able to answer that point, Assistant Minister?

Deputy S. Power:

I am not quite sure where the Deputy is coming from. Article 9, I think I have outlined quite specifically where premises are uninhabitable. It is quite clear where the Law is, that the Residential Tenancy Law does grant protection to any tenant under the courts where a unit becomes uninhabitable. It is at the discretion of the courts as to how you define that. A landlord has a duty to keep premises habitable. If the tenant has decided that the premises are uninhabitable, he has the

protection of the courts both in the termination of rent and the agreement where applicable. A landlord's insurance can cover for the loss of rent and building repair if this situation occurs. I hope that answers the Deputy's question. Article 10, he again brought me back to breaches by the landlord. I think I covered that where a landlord frequently pops in without asking a tenant's permission. That is wrong. Article 10(1) deals with a landlord has a requirement to give a tenant quiet enjoyment. Articles 10(2) to (4) state that any breach of this by the landlord is considered as a breach and the tenant again has the protection of the courts. Other than that I cannot add anything more to my response. I move Part 4.

1.12 Mr. W.J. Bailhache Q.C., H.M. Attorney General:

I wonder would it be helpful if I just addressed this matter from a legal perspective. There is an established line of authority which says a landlord is required to provide an essential water supply to a premise. I am not aware of a similar case in relation to electricity but it would not surprise me if the court were to find that the same implied obligation existed on the landlord. What Article 9 is doing is simply dealing with the position where the premises cannot be inhabited and ensuring the tenant then does not pay rent. Article 10, which is picking up Deputy Le Hérisssier's point, does 2 things. First of all, it creates a right on the part of the tenant to peaceful and quiet enjoyment of the premises. That is often a right which is included as one of the rights in the lease anyway but this creates it statutorily if the lease does not include the right. So if the landlord were to breach it by cutting off the water supply or cutting off the electricity or anything like that, the tenant can go to court and get an order to enforce his right. The second thing Article 10 does is because going to court to get an order to enforce the right sometimes takes some time and could be expensive, it creates a criminal offence if the landlord does it. So if the landlord does something which interferes with that right to quiet and peaceful enjoyment then the tenant could make a complaint to the police who could go along and investigate and probably that would create a much quicker dynamic for the landlord putting things right.

The Greffier of the States (in the Chair):

Very well. The appel is called for. The vote is for or against Articles 8 to 13 of the law. If Members are in their seats, the Greffier will open the voting. If all Members who wish to do so have cast their votes, the Greffier will close the voting. The Articles have been adopted; 28 votes were cast in favour, 1 vote against.

POUR: 28	CONTRE: 1	ABSTAIN: 0
Senator T.A. Le Sueur	Deputy of St. Martin	
Senator P.F.C. Ozouf		
Senator T.J. Le Main		
Senator B.E. Shenton		
Senator J.L. Perchard		
Senator A. Breckon		
Senator S.C. Ferguson		
Senator B.I. Le Marquand		
Connétable of St. Ouen		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Deputy R.C. Duhamel (S)		
Deputy R.G. Le Hérisssier (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy P.V.F. Le Claire (H)		

Deputy S.S.P.A. Power (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				

The Greffier of the States (in the Chair):

Do you propose now Part 5, Assistant Minister, Articles 14 to 18?

1.13 Deputy S. Power:

Yes, if I may. The section deals with jurisdiction and proceedings. The first item that it deals with is under Article 14(1). Article 14(1) enables the court to stay or postpone the implementation of an eviction order of its own accord or upon application by either the landlord or the tenant. Article 14(2) states that if a stay is ordered by the court, the court has the power to vary the rent payable or other conditions of the tenancy agreement as it considers just or fit in these circumstances. Then Articles (3) and (4) of the Residential Tenancy Law state that the court can impose such conditions at the time it makes the order for the stay once an order is made upon the application by either the tenant or landlord. Article 14(5) states that the court cannot impose any condition that would be void or in breach of the Residential Tenancy Law. Moving on to Article 15, matters to be considered in deciding on a stay, Article 15(1), the court shall consider whether any rent is outstanding, whether either party has breached any provisions of the residential tenancy agreement, whether there has been continued or repeated breaches and that reasonable steps have been taken to remedy the breach; and (d) is if a stay were to be ordered, where the balance of hardship would fall as between the landlord and the tenant. Running down to this Article there are many other matters that the court may decide. For example, if it is a fixed term tenancy, whether it has expired or not, whether other accommodation is available if it is (b) and (c) and whether the tenant has looked for it; (d) is whether a deposit has been paid; (e) is whether there is a contract concerning movables in force. This may have an impact on the practicality of the tenant leaving the property and the impact may be on the landlord. He may be left with property on the premises that belongs to someone else if the tenant cannot dispose of it. (f) and (g) deal with use of the premises by the tenant for illegal or immoral purposes - I cannot imagine what that is but I think it is fairly explanatory - and anything that causes a nuisance in the unit or interfered with peace of a neighbour. (h) is whether the premises have deteriorated or have been maintained properly or improved. (i) deals with whether the tenant has given notice and the landlord has relied on that and would be disadvantaged. (j) deals with whether a vacant possession would benefit or disadvantage the landlord; and (k) deals with the pattern of evictions by a landlord in various properties. For example, was this a unique or rare eviction or does the landlord evict people all the time and why. The court can take that into consideration. (l) deals with is the property dangerous or bad for occupants? Public Health may become an issue here. Does the landlord have a responsibility to improve the property? (m) would deal with would it be easier to rectify an issue if the property was vacant? In other words, can the landlord justify removing the tenant in order to carry out works? (n) deals with hardship. Is hardship to be caused to people other than just the landlord and tenant if a stay is not ordered? For example, the tenant goes in to look after an elderly neighbour every day and needs to change for replacement care or services. (o) deals with any other matters that the court may consider relevant. Article 16 deals with jurisdiction. Article 16(1) gives the court exclusive jurisdiction in all matters relating to a residential tenancy or a Residential Tenancy Agreement. Articles 16(2) and 16(4) state that the court can make an order relating to any matter that has come before it on an application, for example, relating to a residential tenancy.

Article 16(3) means that the court can make such an order even if an order was not mentioned in the application and the effect of such an order was not contemplated. This provision in Article 16 will simplify current processes whereby the cancellation of a tenancy agreement with an annual rental of more than £15,000 has to be dealt with by the Royal Court which then refers the case back to the petty debts court. I move the Articles.

The Greffier of the States (in the Chair):

Very well. Articles 14 and 18 are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of these Articles?

1.14 Deputy R.G. Le Hérissier:

I wonder if under 14(2) one of the issues that underlies this, which I cannot find, is what is the limit? Is there a limit on a stay of eviction? You hear these stories, particularly from the U.K. (United Kingdom) ... not as much now because there is a fast-track system, as I understand it, in place but where people basically are able to manipulate the legal system and to stay for long, long periods of time. How is that situation dealt with where it is thought that there is that kind of manipulation going on? Secondly, under 15(j), vacant possession, has there been a problem, for example, if a landlord were to say: "I wish to move in relations who have suddenly arrived" or: "I am expanding the number of employees in my business and I need to find accommodation for them"? What kind of contribution would that make to the decision? I think we did get 17, Appeals. We know - and the Deputy knows because he did some excellent work on the Third Party Appeals Committee - the whole issue of costs. We have an appeal against a decision and obviously it is quite possible the appeal will be by the landlord against the court's upholding of a tenant's position, for example. Where there is such a situation quite clearly if a tenant feels that costs are going to be awarded against them, how are they going to be able to cope with appeal where they feel that there is perhaps an injustice? We know the major problem that that has posed for the third party planning appeal system.

1.15 Deputy G.P. Southern:

Before I start, my £10 is on its way to your coffers. But before I was interrupted by a constituent so rudely I was about to make a point or 2. The first one: neither a gambler nor a borrower be. Yes, exactly. The Deputy can speak for himself rather than for me. Under Article 15, yes, I just thought I would again raise the point that Deputy Martin has raised several times in this debate. The Article that allows the court for a stay of eviction, most commonly used on the tenant's behalf, is time to seek other accommodation. In an Island where accommodation is not exactly plentiful and higher priced, that is the vital element. What I wanted to do was to ask the Assistant Minister today whether he would more widely advise tenants facing an eviction or threat of eviction from a landlord they have this right because what often happens is that people receive this letter from the landlord or their agent in most cases and they immediately think that they have got to get out within a number of weeks, whereas the fact is that if they go through the process through the courts they in all likelihood will get a stay of execution in order that they can find suitable alternative accommodation. That is the case. But as the Minister for Home Affairs was surprised that not everybody knew this, I think it probably falls on the Housing Department to more widely advertise that this is the case and that people should not be panicked into leaving their accommodation under the mere threat from a landlord who might just decide that he wants you out and that is it. That is not the case and there is some protection in the law and it should be more widely advertised. Secondly, I come on to part 18 and it comes down to a question I have been asking several times through this debate and I have yet to receive a satisfactory answer as to why we can introduce this law - the Residential Tenancy Law - which takes care of residential tenancies but does not and apparently cannot bring in at the same time a protection scheme for rental deposits. I am doing this at 18 because it says here: "Nothing in this law shall affect the operation of the Housing (Jersey) Law 1949." It seems to me we have been told so far that we cannot bring in a rental deposit

protection scheme because in that case it has to apply to all lettings including lodging houses and we cannot do that until the migration law is in place which will not happen ... it is going to be lodged in probably the summer of next year, debated towards the end of that year, in place some time in 2011. We cannot have a rental deposit protection scheme because we have got to have migration law in there. Why does this not say then under 18: "Nothing in this law shall affect the operation of the Lodging Houses Law" or whatever is required in order to make the exemption? Why can we have a law here which applies to only residential leases and not to lodgers, which contains the outline and the regulation - the powers to start a rental deposit protection scheme - but we are told that that cannot be brought in applying only to leaseholders because it has to apply to lodgers. How can we have one law which does not apply to lodgers and that is okay but another part of that same law must apply to lodgers and that is not okay? It cannot be a Human Rights issue. We have consulted with the Attorney General on human rights issues and our Housing (Jersey) Law 1949 is okay by human rights standards so it is not a human rights issue. Why is it that we cannot have this and why do we have to wait until 2011 to see a tenants rental deposit protection scheme in place? That question has not been answered. At this stage will the Assistant Minister have another go explaining to Members why we have to wait so long to see a rental deposit protection scheme when we can have this law in place with its exceptions but not a rental deposit scheme with an exception? Why not? That has not been answered. Until he does, I do not see why this should be passed because I did not particularly withdraw my proposition that we should have a rental deposit scheme set up along the lines I suggested, and we appear to be a long way down that in terms of discussions and debates about how we can set it up but yet we are told we have got to wait on migration law and that is going to take for ever. Do not forget the migration law is coming hand in hand with a names and addresses register which contains all sorts of complications and little devils in the detail that we may have serious problems with. So it may not even be a straightforward nobby that we will just let through on the nod. It has got some serious implications and yet we are told we have to wait for that - for this particular aspect of the law - and I, for one, do not see why we should be and I do not see why these regulations are not here to produce a rental deposit protection scheme as well in the very near future. Why is it not happening? That has not been answered. Will the Assistant Minister please answer that question?

1.16 Deputy P.V.F. Le Claire of St Helier:

These 2 areas that have been highlighted by Deputy Southern probably are the most important 2 areas for tenants; certainly from tenants that I have spoken to in the 10 years that I have been in the States. I have on a number of occasions been contacted by people who have been distraught on the telephone asking me for help because of the fact that they are about to be evicted by their landlord. Normally it is my practice to pass these straight over to Senator Breckon because do not be a damn fool about it, at the end of the day give the work to somebody who knows what they are doing. In this particular area I have found over the years that Senator Breckon has always come forward and helped people in these areas that I have not had the expertise to give advice to. It certainly has saved a number of people some distressful situations. I would like to thank him personally and publicly for those incidents, many of which funnily enough happen at around about Christmas time. For some bizarre reason people get evicted at around about Christmas time. I have said this before in the States. Thanks to the Minister for Housing giving me some support, I found myself one Christmas Eve walking down the street in the rain with a sofa on my head to re-house a Portuguese man who had been evicted because he had suddenly become diabetic and had been told that he needed new housing. So he contacted his landlord - it was a Jersey landlord - and said: "Look, we have been living here for 11 years [or whatever it was] in this room with no water and we have been carrying our bucket of water up the stairs every day to wash our dishes, to live in our room. But unfortunately because of our medical hygiene requirements now we need to look for something else and we have to give you a month's notice." The landlord said: "Fine, right, out tomorrow." Years of paying rent by the week: "Right, out tomorrow" was the answer for them. The gentleman has now passed away, but if it had not have been for the Housing Department they would not have

had anywhere to go. They moved into a place just down the road, which I helped them to do over Christmas time, with no carpets. It was shameful. I have recounted this story before. The Housing Department and the States need to make better aware the protection for tenants. I do welcome the law that is being brought by the Assistant Minister today. But in this area, in particular letting people know their rights in terms of eviction, we have not gone anywhere near as far as we need to go in that regard. The second part which was brought up by Deputy Southern - and I realise I am standing not to repeat but to reinforce these 2 points; they are important points - is the rental deposit protection scheme. It is something that I have been speaking about in my experience to the Minister for Housing and the Assistant Minister in the past about the fact that in other jurisdictions if you rent a property, for example a flat, and you give the landlord a month's deposit, that deposit has to go into a bank account and every year as part of your tax return that landlord has to show you what interest has been earned on that money pegged at the level that the bank would give you. So if you have been in a property for 10, 12, 13 years - and let us not forget that we have those sorts of onerous requirements on people to qualify - then you can certainly count on a £1,200 deposit a decent amount of interest on that money over that period. If we are 2 or 3 years down the road before even beginning this scheme then there is another 2 or 3 years of that interest in the landlord's pocket.

The Greffier of the States (in the Chair):

Does any Member wish to speak?

1.17 Senator B.I. Le Marquand:

I wanted to comment on some of the questions raised by Deputy Le Hérissier. Firstly, he raised a question under Article 14(2) as to whether there was any limit on the length of delay that could be ordered by the court. The answer to that is no. But of course any order made by the court would be subject to appeal if it were unreasonable. The sorts of lengths of delay granted by courts have varied greatly during the period when I have been in the legal profession. It was not uncommon when I was a young lawyer for there to be delays of up to 3 years because of people needing to be re-housed by the Housing Department. Once the rent rebate system came in, it made life a great deal easier. There were also extreme cases such as the Troy Court case which was mentioned where the courts took a very strong view when somebody had bought a block of flats and was evicting everybody in order to sell them off and gave very long delays. In my experience, in the period when I was Magistrate, which was from 1999 until last year, 2008, it was unusual to get delays of much more than 12 months. There might be occasionally but the availability of accommodation was so much better. The really key issue when you are talking about lengths of delay is Article 15(1)(d) which is the balance of hardship test. This law has slightly changed that because the previous law had a system which was certainly construed by myself as a judge whereby if someone was in serious breach of the terms of their tenancy the court really could not give them any length of delay other than an exercise of mercy. This is different because breaches of tenancy are rare in the earlier sections of 15(1) but the balance of hardship test still remains. Of course in the case referred to by Deputy Le Hérissier where someone might have a family member who would need to move in or whatever, that would be a key issue in terms of the balance of hardship test being applied in relation to that. At the end of the day that is the key area. That is the key decision the courts will still have to make, in my view, under this law. What has happened is all the different possible criteria and matters to take into account have been set out in a way which I am sure that the judges will find very helpful when they are exercising their discretion. A point was also raised in relation to costs on appeal. The position there is there is no special provision made in Article 17 and, therefore, the normal situation will apply in relation to costs; namely that they will be in the discretion of the court - in this case the Royal Court - dealing with such matters. This is a very different situation to the situation that used to apply under the law whereby whenever an eviction order was made against a person the landlord was entitled to his costs. That was very unfair because the tenant might have been a very good tenant and behaved perfectly properly. The

States eventually changed the law to give a discretion to the court in that; a discretion which I often dealt with. My personal policy was if there was no fault on the part of the tenant, I saw no reason to make an order against him. But when you are dealing with appeals it is a different matter because a court has already made a decision - has made an order - and a person might be unreasonably appealing against that either way. It seems to me quite proper that the court should retain the power to decide whether costs should be ordered against the appellant or not in that kind of way. Again, I hope that helps Members in understanding these provisions.

The Greffier of the States (in the Chair):

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

1.18 Deputy S. Power:

I do not intend to repeat what has just been said. I think it has been said eloquently. I hope Deputy Le Hérisier is happy with the explanation on the huge variations that can take place in the stay of execution. I would just add one other comment to what the Minister for Home Affairs has said. As he said, under Article 15(1)(d), hardship is a key issue but I would also say that Articles 15(1)(b) and (c), whether other accommodation is available and whether tenants have looked for it, is also a key issue because the court has the discretion to decide whether he or she has seriously looked for other accommodation and can take that into account. I want to come back to Deputy Southern's repeat requests for clarification on why we are not bringing a deposit protection scheme here. I will try and repeat clearly what I said yesterday. **[Interruption]** No, I am not going to rejig my words. I am going to add to my words. Sorry, Sir, through the Chair. The first thing I would like to point out is that the Residential Tenancy Law applies to qualified people as we understand qualified people at the moment. At the moment an unqualified person or a person living in the unqualified sector cannot and will not be entitled to a lease. I hope the Deputy understands that. That is inequitable. It is absolutely inequitable. When Senator Routier's migration law comes in next year with his name and address register - and I apologise for my mistake yesterday; I was considering the consultation period - there will be a tenant deposit scheme ready. That tenant deposit scheme will apply to licensed, entitled and registered. I am not giving way, Deputy. It will apply to licensed, entitled and registered. I am not finished. The Minister for Housing advised the Assembly last October, on 10th October when the consultation findings report was released, that he thought it likely that there would be a tenant deposit scheme brought in once the Residential Tenancy Law was adopted. That was pointed out to this Assembly last October. The issue of a tenants deposit scheme has attracted considerable comment right throughout the consultation process and, indeed, there are some landlords that felt it was overly bureaucratic, but the consultation process had advice from such organisations as the Citizens Advice Bureau, the Jersey Consumer Council, the Jersey Rights Association and many other organisations who were trying to obtain the return of deposit monies for tenants. Additional research the Deputy will be aware of was carried out last year in the *2008 Jersey Annual Social Survey*. The results did not support the view that the issue was a big concern with 5 per cent of people reporting the issue with the return of the deposit as being an issue in the previous 5 years. That was the result of the *2008 Jersey Annual Social Survey*. The result of that is that on balance it was deemed appropriate that the proposal for a scheme be brought to the States for a debate to establish a deposit scheme by means of a Regulation.

The Greffier of the States (in the Chair):

Deputy Southern, we do not need a commentary, please.

Deputy S. Power:

That is what will happen. I am trying to answer the Deputy's question and I do not need a running commentary **[Approbation]**. Can I remind the Deputy that I came to Jersey when the qualification period was 20 years. I have lived in rooms where there were old bedspreads as curtains, where

people charged £1,500 - £2,000 for worn-out carpets, all that kind of stuff. I have been there, Deputy, I know what I am talking about. I will be the first person to say that the system is inequitable at the moment and it will be changed. It will be changed through this Residential Tenancy Law and it will be changed through the new migration policy and it will be changed through the deposit protection scheme. I am not finished. There are preparations going on now with a view to bringing a proposition for a regulation to establish a tenants deposit scheme. In order to do this we have to bring in this Residential Tenancy Law first and then we have to bring in a migration policy. There is one other reason why we should not bring in a tenants deposit scheme right now, in that it would discriminate even further against those in the unqualified sector. We have to close the gap, Deputy. The intention is that the scheme will be compulsory, managed by a third party and funded through interest received on deposits retained in the scheme. As I have said yesterday, the Housing Department and the Population Office estimate that a deposit scheme which will be compulsory could hold up to £4 million to £5 million in it so we have to pay some due diligence to how that money is managed. I do not think I need to say anything else about the deposit protection scheme except to say that it is going to come in. It has taken some time to bring a Residential Tenancy Law. To date I have been in the Housing Department 7 months. I had an interest in housing even before that. It is going to happen. I do not want to duplicate what the Minister for Home Affairs has said. There was one other question I think on ... I will just gather my thoughts as I am getting slightly excited here. I think the queries on Article 17 were covered by the Minister for Home Affairs and I think the queries on Article 18 were covered by the Minister for Home Affairs. I do not intend to repeat those. I move Part 5.

The Greffier of the States (in the Chair):

I put Articles 14 to 18. Those Members in favour of adopting them, kindly show? Those against? The Articles are adopted. You come finally, Assistant Minister, to Part 6, Articles 19 to 26, and you can propose Schedule 3 as well.

Deputy S. Power:

Yes, if I may move to Part 6, Articles 19 through to 26. I will be as brief as I can. Article 19(1) requires a landlord to provide a tenant with a signed copy of a residential agreement and a signed copy of any varied or renewed agreement. The provision meets the recommendation of the working party. Article 19 of the Residential Tenancy Law has been revised to take account of comments made during the consultation period. There are many examples within this. I am quite willing to go through those if Members have specific queries. The original proposal is for a landlord to come under an obligation to provide a tenant with a statement at least once every 6 months and, as was clarified yesterday, that is now not necessary. Some people felt that this was unnecessarily bureaucratic. It relates to the comments of the Deputy of St. Mary in the way in which a landlord records receipt of monies. It was felt that with modern banking and electronic banking facilities it was stated that the majority of tenants pay their rent by standing order and payments can be readily identified from the parties' bank statements, both landlord and tenant, and this was considered to be a change of practice from the mid 1990s when the working party considered these issues. Article 20 deals with a termination by agreement. Article 20 confirms that the parties are at liberty to agree to terminate a residential tenancy agreement by agreement of their own at any time. This is an exception to the general contracting out prohibition contained in Article 21. Article 21 makes it an offence for anyone to try and enter into an agreement to avoid the provisions of the Residential Tenancy Law. That includes any agreement whether it is oral, partly oral or partly written and includes one entered into before the tenancy agreement. Article 22 relates to general provisions. 22(1) makes those active in certain capacities for limited liability partnerships or body corporates liable under the terms of the Residential Tenancy Law for acts that they commit. Article 22(2) applies paragraph 1 to members who manage the affairs of a body corporate. Article 22(3) applies to anyone who aids or abets such an offence shall also be guilty. Article 23 deals with orders. Article 23 gives the Minister an order-making power to introduce

certain extra provisions into this Residential Tenancy Law. The version of the Residential Tenancy Law that was consulted upon had no provision for the Minister to make orders. The issues now listed in Article 23(2) are matters suitable for addressing the making of an order and were previously subject to the need for a regulation. The issues covered in Article 23 include provisions relating to: (a) the completion of reports about the condition of a property; (b) the content of those reports; (c) the provision of information or documentation to the tenant prior to the commencement of a tenancy; (d) the content of that information; (e) the maximum charge for the preparation of a tenancy agreement; (f) the service, contents and form of any notices to be served other than court documents; (g) is the provision of a standard form of tenancy agreement; (h) are the forms to be used under the law; (i) and (j) together the status of and rights relating to the disposal of fixtures and fittings; and (b) the tenants movables left in a residential unit once the tenant has departed; (k) to (l) deal with the supply of services or imposing limits on charges for the supply of these services. An example of that would be a review being undertaken though not necessarily practical for suppliers to be split up at the source if it has been suggested in the case of a landlord that a query ... the landlord should provide the tenant with an itemised account showing his element of the bill. For example, if a block of apartments were sharing electricity that would come under that one. Article 23(3) specifies that the Order-making powers under (k) and (l) can deal with the re-supply of services under the control of the landlord. Article 23(4) is a standard clause allowing for Orders to be made for matters to be determined. Article 23(4) allows for offences to be created, punishable by fines at level 3 which is currently £2,000 maximum. Article 23(5) is a standard one relating to transitional arrangements. Article (f) deals with a standard form of tenancy agreement. (h) deals with there are no current plans to introduce further standard tenancy agreement under the Residential Tenancy Law in order to adopt standard form agreements. Article (i) deals with the tenancy agreement currently used by the Housing Department for States tenants. Occupying States rental accommodation managed by the department is already compliant with the terms of the Residential Tenancy Law. Moving on to Article 24: Regulations. Article 24(1) allows for the setting up of a tenants deposit scheme. Deputy Southern will be pleased to hear that. Article 21 allows for a Regulation to come into effect on the day the Residential Tenancy Law comes into effect. I have already covered most of that, Article 24. Article 25 and 26 finally, these Articles include provisions dealing with the amendments to enactments and citation and commencement of the Residential Tenancy Law. Schedule 3 refers to the amendments that will be necessary to the 1919 and 1946 legislation that I have already said will be kept so that it is clear that those laws will now remain in force only so far as they relate to premises or tenancies not affected by the Residential Tenancy Agreement. I move Part 6.

The Greffier of the States (in the Chair):

Are the Articles and the Schedule seconded? [**Seconded**]

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

I wonder if the Assistant Minister could just confirm with regard to Article 19 where it says documents to be provided to the tenant whether there is a requirement for the landlord to make reference to this law within any contractual agreement or any lease to the tenant.

1.20 Deputy G.P. Southern:

The first point I want to make is that we have got a whole raft of Orders here and the only reference to these Orders is made on page 22 where under item 4, Article 23, Order-making powers are introduced to deal with most of the issues previously listed as to be dealt with by Regulation. So they were previously under Regulations, which I remind Members come before this House and are vetted fully and properly as is appropriate, but for some reason - but we are not given the reason - half of those Regulations are now Orders. Orders, I remind people, are laid before the House but cannot be amended by this House and can only be changed retrospectively. Once they are in place you can have a go at changing them. They are wide-ranging indeed. There are occasions which are

so minor that I believe this House would not want to be dealing with them and they should be appropriately left with a Minister or an Assistant Minister or the department to deal with. That is entirely appropriate. There are issues where an Order is an advantage where speed of response is required because a Regulation requires 6 weeks lodging, needs to be looked at, have proper examination, might be called in by Scrutiny to see if it is appropriate. An Order can get on with something and might be appropriate but we are given no reason. If we examine some of the things which are contained in an Order, there seems no rhyme or reason to putting them in an Order apart from the fact that it is convenient for the department or Minister to have those in an Order and he can do things as he wishes without reference to this body; without reference, in fact, to issues such as data protection. You can just say I have done this under an Order under the law; therefore, it is legal. Therefore, once it is in place, data protection cannot investigate it and put up any objections to it. That spectacularly happened with the 26-pager that we got for Income Support. There were serious data protection issues raised but it was brought in on an Order and nobody discussed it and the Data Protection Commissioner did not have the opportunity to prime this Chamber and say: "Are you aware that there are, for example, issues around one person in a household declaring another person's income to a third body, i.e. an elderly parent living in your home and you are asked to declare as the applicant their income when it is their private information?" That issue was never resolved. It was just put into the Law by Order. So we have got on page 41 on 2(a), 2(b), 2(c), the completion by a landlord and tenant of reports about the condition of the residential unit before occupancy starts. If that is not a condition around deposit protection I do not know what is, and lo and behold deposit protection, the deposit required, and this says the state of the flat or house before the tenancy commences, the state of the place is under an Order. Why when the deposit required and the conditions around that deposit are under Regulations? For example, why not (a), (b) and (c), that information, why is that under Regulations? That Regulations can come to this House. It is not urgent. Things can be done in response to anything. There is no need for an Order apart from it is a convenience for the Minister. Time and time again under Ministerial government we have seen Ministers appropriating powers to themselves, not bringing them to this House, doing things effectively in secret on the Q.T. because it is convenient. We can do it because we have made an Order. Again the control comes away from this House. The legitimate review ... we are reviewing this today and as it is amended by Orders that come along, do we get to review that and see if it is still the effective and appropriate way forward? No, we do not because it will be done by Order, we are told, and we will get to see the Regulations when they arrive over deposit protection. But we will not get to see all these bits on page 41 because they will be done by Order and the only time we will get to see them and view them is in retrospect once they have been lodged; once they have been laid before us. This tendency of Ministers to take everything in on an Order which gives them total control and they do not have to tell us about what is happening is a position which I believe is a noxious one that we should resist. We have had no justification for any of the ... I do not know how many items that is on page 41 being put into an Order with no reason at all apart from convenience of a Minister. He can do some of these things as he wishes and he does not have to wait and he does not have to tell us about it until he has already done it. That is not good enough, I believe, and I shall certainly be voting against this particular grabbing transfer from Regulation to Order just for its own sake with no reason given. That is to be objected to. Then finally I make my final question on the rental deposit protection scheme. We are told now that it will be brought in after we accept this Law. My understanding was it will not be brought in until we have got migration law in place which may not happen until the middle of 2011. I believe that is renegeing on a promise made to me that if I withdrew my proposition for a rental deposit protection scheme, which was virtually identical to the one which is being proposed in any case, that they would bring it in post haste. What we have got is probably end of 2010 but more likely middle of 2011 we will get some rental deposit protection scheme, not because they have to but because the Minister and his Assistant have chosen to. They have chosen to put this on the backburner at this moment on the convenience that it is further discriminating against those in lodging houses. They decided of their own volition not to bring this and to renege on promises

made to this House that they will be bringing it. Unless of course the Assistant Minister stands up and says during the course of next year it will be in place and we will fix it to make lodging houses included in it later. There is no reason why they should not be doing that, yet that is not the approach they have adopted. They have adopted to put it on the shelf and just leave it until 2011 when we have sorted out all of the kafuffle around migration policy and the names and address register and the new categories - the whole new system - when that is place then we will finally get round to it. I think that is not good enough and unless I get a commitment from the Assistant Minister now to bring in a rental deposit protection scheme in the coming year, 2010, I shall be voting against this because I think it is just a means to delay, defer and to fudge.

1.21 Deputy R.G. Le Hérisier:

Maybe I am more naive. I have a somewhat more sanguine view than Deputy Southern because I do not think this House can consider every detail of administration. I know sometimes the devil is in the detail and I know sometimes things are passed through which are perhaps a travesty of the policy we agreed on. But, that said, there must be other mechanisms. One might be simply for the Orders to be circulated so people could comment before they are brought into play, for example, as we do with property transactions. But on the question of the Order, I wonder if I could ask on 23(2)(g) - the standard form - could the rapporteur say whether indeed these suggested standard forms will be issued? In other words it talks about, under (2), "may be made". But it strikes me in order to avoid legalese, legal gobbledeyook and so forth we need a promise from the rapporteur that standard forms will be put forward, they will be subject to verification by the Plain English Campaign and they will not be in legal gobbledeyook. I would be obliged if he could give us a promise that that will indeed be coming forward. Although as I said I do not think we can, much as we as a House often try to drive every detail in order to meet the concerns raised by people like Deputy Southern, could these forms be circulated beforehand in case there have been errors made and so forth?

1.22 The Deputy of St. Mary:

I want to return to the issue of non-existence of any form of rent book, but before I do I would just like to congratulate the department on this page 22 summary of changes made to the draft law in response to comments received during consultation and further discussion. That highlights the very latest set of changes which were arrived at as a result of consultation. That is exactly the sort of transparency which is a good thing. I am so glad that the Housing Department have managed it in this case and that is a marker for other departments to tell this House quite clearly what is going on. I thank the department very much for that. But to get to the point of what I wanted to say, I am still very concerned about the fact that there is no provision formally for any form of receipt. While I go back to my days not so long ago issuing bicycles - I mean a bicycle; not even a tenancy - and the idea that I would say: "Yes, Basil, can I have the money and off you go. How many days was that? Oh, 2, was it? Okay, see you later." It is ridiculous. There was a hire form and that was for £20. I just find this astonishing. We are told that most payments are made by standing order and you can go to the bank and find out how much you paid and so can the landlord or their agent. But by the same token, with modern technology it is not very difficult to take number 133 and print out a little slip saying how much you have paid and when you paid it. I can remember doing that for my employees in a few seconds. I do not think it is good enough. Just as an aside, when we were paying rent to a farmer in St. John for a small workshop I can remember the little rent book and filling it in and paying the money face to face. I do not know if that still exists or whether this is just the long distant past where you pay a real person for your accommodation. Maybe I am harping back to days that no longer exist but maybe cash is used by some people. Maybe people do pay face to face. Maybe the agent is a real person. Maybe the landlord is a real person. Anyway, I really do think that this should be covered by Regulations later on if not now. Obviously it cannot be done now, but I just find the idea that you pay for your accommodation and then you have to go and find out by some process, trawling through your own bank account, to find out whether you ...

sorry, it will not do. As I say, not everybody is electronically with it. Please can you comment on that and can we have some kind of guarantee that this will be part of the necessary documentation?

1.23 Deputy P.V.F. Le Claire:

I think the department has done a very good job in getting us a long way down the road for much, much further than we were. I still do have some reservations about some parts of what is being proposed but they are going to get my support today because the general thrust is good for Jersey. It is good for tenants. It is a good piece of work by the department and it has been presented well by the Assistant Minister. I think if Deputy Southern's point needs to be visited again then perhaps he needs to maybe put the issue on the front burner, bring back his proposition. Some issues about rental depositor protection schemes, as I have said before, the devil is in the detail and you do not know until you see that detail. I have made this point and I hope it is getting through that other schemes that I have been involved in, rental deposit schemes, were managed under the Law by the individual landlords, who had to produce a statement every year. When you moved out if you had not broken any furniture or anything or damaged the walls then there was a lump sum paid by the landlord to the tenant, not only the deposit but the interest that had accrued on that money over the period that the tenancy had occurred. That came to quite a substantial amount of money over a period of time. There was an indication a few moments ago by the Assistant Minister that there would be a scheme set up by a third party - more than likely the Citizens Advice Bureau or somebody - who would manage this scheme under the monies accrued from the interest of the deposits from the scheme. I do not know what we are doing. It just seems that that is a signal to me, a flag of concern. Maybe it is more of a flag of concern than it needs to be but certainly a flag of concern that there is a bureaucracy appearing and being paid for from the deposits and the interest from the deposits that rightfully belong to the tenants. The interest from the deposits in some tenancies, if you take a housing trust and the amounts of deposits they have over the period of 10 - 20 years, and you accumulate that, that is the old bank trick. Your cheque is not going to be cashed for 3 days while they make their money on it. It is established it is wrong. We need to move that forwards and we need to bring it sooner because it is not so much that it is a huge amount of money to the tenant necessarily but over a large period of time it can be. The principle of landlords with several properties accruing interest year on year on monies in the bank that do not belong to them if there is a good tenant, that needs to be stopped. I hope Deputy Southern if he is not satisfied ... he has been scrutinising this. There have been no amendments today to sort this out. He withdrew his proposition in good faith. If he is not satisfied with what is going on, I will certainly be speaking to the Minister for Housing afterwards and to Deputy Southern and the Assistant Minister. If it looks like it is not coming forwards, I would support him bringing it back.

1.24 Senator T.J. Le Main:

I will need to follow Deputy Le Claire and particularly Deputy Southern and need to explain. If Deputy Southern was to bring forward a proposition for rental deposits I would probably support him. No question. But I have to warn this Assembly that if you vote for that, it still will not bring this proposal for rental deposits back to this Assembly as a law until the whole system has been gone through as explained by Deputy Power. So it will be an absolute waste of everybody's time for Deputy Southern to come back with this proposition because we are legally advised that we cannot implement it until the procedures have been followed as explained by Deputy Southern. If Deputy Southern brings it forward I will support it but it still will not come in until after the migration policy has been agreed and all the other issues gone through. I just thought I would clarify that. Even if the House instructed, we cannot.

1.25 Deputy G.P. Southern:

Could I ask for a point of clarification on exactly what the legal obstacle is to bringing this before ... not to include lodging houses?

Senator T.J. Le Main:

It has been well explained by the Assistant Minister.

Deputy G.P. Southern:

Could I necessarily ask the Attorney General for his opinion on it?

The Greffier of the States (in the Chair):

Are you able to assist, Mr. Attorney?

1.26 The Attorney General:

I am afraid that I cannot assist. I cannot myself see immediately what the legal obstacle is but I have not been advising the Minister for Housing personally on it and, therefore, I am not aware what advice my department has given. I cannot know every piece of advice that goes out from my department. I can certainly make some inquiries but I doubt whether the response would come back in time for the Assembly this morning.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on these Articles?

1.27 Deputy J.A. Martin:

It is just the last few comments that have been made and assurances given that we will have a tenants deposit scheme once the migration law has been changed. I think that is very presumptuous. There were only 5 people at the meeting the other day. Many, many people have no understanding of the new law; entitled, registered and licensed. I would like to know if this does not go through will that mean for ever and a day that lodgers will not have a deposit scheme, because I think it is very presumptuous to say this will happen. It is a very major, major change to how we do things.

1.28 Senator P.F. Routier:

I am pleased the Deputy just mentioned that there were only 5 Members at the presentation the other day bringing forward what we are proposing for the migration legislation. There is further consultation going to be going on during the next few months which I hope Members will take the opportunity to become involved in because it is, as we are aware, a major change for Jersey and the way we deal with people's access to housing and to work. I hope people will engage in the scrutiny of that. We have the scrutiny panel. We have worked together a timetable with them so they are very aware of the way we are going to progress this and they are satisfied with the progress we are making. I think what I would suggest to Members is that there is a will to have the depositor protection scheme in place and I hope that the House will support it; will come forward.

The Greffier of the States (in the Chair):

I call on the Assistant Minister to reply.

1.29 Deputy S. Power:

I am grateful for the interest in this Residential Tenancy Law. Can I deal with Deputy Martin first because it is the easiest one to deal with? When and if the migration policy comes to this Assembly, if this Assembly does not support the inequity that is out there at the moment by regularising our Housing Law then I would be very, very disappointed. We have a system that is unfair, inequitable and discriminative. I will say that all the Members of this Assembly will have a chance to judge how we improve the way people live on this Island. That is part of the migration policy coming forward. Can I deal next with the Deputy of St. Mary? He asked me some precise questions as to how one would record the payment - cash, cheque or otherwise - of the financial relationship between a tenant and the landlord. If he turns to page 44, Schedule 1, and reads points 6, 7, 8 and 9, he will see that the rent payable under the agreement and its frequency of payment is provided for. This is what an agreement must specify. Point 7, the name of the person to whom the

rent is to be paid. Point 8, how the rent is paid and, point 9, the amount of any deposit or guarantee in respect of the residential tenancy and how and when any deposit is to be repaid. I hope that answers the Deputy's question.

The Deputy of St. Mary:

A point of clarification if I may. I am sure the Minister is trying to answer my question. What he has done is describe the leaflet which my erstwhile company produced specifying the prices of the service and what the service contained but we still have not got to the hire form. We still have not got to the actual piece of paper, an old thing called the rent book where you see how much you have paid and when you have paid it. It just seems to me ... I do not know. I am just speechless. I do not know what the problem is.

Deputy S. Power:

My understanding of Schedule 1 and what the agreement must specify under point 8 is how the rent is to be paid. I think that is quite specific. There were a number of questions to do with plain English. I think Deputy Le Hérisier asked a question about plain English. We have moved from a 1919 law and a 1946 law which is in French. All lease agreements, any standard form of written contract, will be in English. The lease agreements are straightforward. They are easy to read and I think it makes it easy for people to understand what they are signing for. I previously referred to people whose native language is not English and that is covered as well. I hope that answers the Deputy's query. Deputy Southern again questioned the tenants deposit scheme. I have tried to be as clear as I can be with regard to why it is not part of the Residential Tenancy Law. If I have not explained it clearly then I have failed in my use of English. The tenant deposit scheme in its present form is in an advanced state of completion. It will be ready to come in - and I am not presuming or assuming anything - when the migration policy does come in. There are some minor issues to do with law drafting time but I say they are minor. There is a queue for law drafting time and the tenant deposit scheme is part of that system. Deputy Southern also referred to the Orders that the Minister for Housing may exercise under Article 23, was it not? Article 23. In my view the vast majority of the Orders that this will give the Minister entitlement on are very, very minor indeed. In actual fact in my view it makes it easier for the landlord and tenant because it makes it far more transparent and it clarifies the relationship with the landlord and tenant. It means that the Minister can make an Order to introduce certain extra provisions as he thinks fit. I think that is quite straightforward. I think it makes it easier for the system to work more efficiently. I think the Deputy doth protest too much. Other than that there was one question from Deputy Vallois which I have forgotten.

Deputy T.A. Vallois:

It was with reference to Article 19 as to whether the landlord is required to make reference to this law on any agreement or contractual lease or anything with the tenant.

Deputy S. Power:

Can I ask the Attorney ... oh, he is not here. If I am allowed, Sir, can I defer to the Minister for Home Affairs who has a certain expertise in these matters?

The Greffier of the States (in the Chair):

I am not sure you can, Deputy. I am sorry. The Minister is not the legal adviser on this.

Deputy S. Power:

Can I come back to the House and to Deputy Vallois and clarify that in about half an hour?

The Greffier of the States (in the Chair):

Very well. Articles 19 to 26 and Schedule 3 are proposed. The appel is called for.

The Deputy of St. Mary:

On a point of order, we have had an issue of clarification raised and it is an important one. It is very important that a reference to the law is in the rent agreement so that everybody knows, the tenant knows, that is the bible, that is where they go. We have not had an answer and yet, bang, let us vote it through. I am sorry.

Senator P.F. Routier:

If it may help under the section of Orders, it would be possible for the Minister to make an Order which would require the form to be written in a way that expressly referred to this Law. I would recommend to the Minister that when he is bringing forward that Order that he does make a comment about referring to this Law.

Deputy S. Power:

Deputy Vallois' question was will the documentation refer to the Residential Tenancy Law. The answer is, no, it will not because the law will apply anyway.

The Deputy of St. Mary:

That is not good enough.

Deputy T.A. Vallois:

That was not my point. I was trying to make the point that if you make reference to it in a tenancy which both the landlord and the tenant have signed, it proves when in a court of law that they were both made aware of it at the time of signing. So it gives more clout to either side of the party. I was just asking whether there would be a requirement when they have to provide it to the tenant.

Deputy S. Power:

My understanding is if and when a Residential Tenancy Law is approved it will apply. It will apply to all documentation and agreements between landlord and tenant.

The Deputy of St. Mary:

Can we have an undertaking from the Assistant Minister that this provision will be brought in either by Order or by Regulation within a year?

The Greffier of the States (in the Chair):

Are you able to give that undertaking, Assistant Minister, or not?

Deputy S. Power:

Yes, Sir, I can do that.

The Greffier of the States (in the Chair):

Very well. The Appel has been called for so I ask Members to be in their designated seats. The vote is for or against Articles 19 to 26 and Schedule 3. The Greffier will open the voting.

POUR: 39		CONTRE: 2		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy G.P. Southern (H)		
Senator P.F. Routier		Deputy T.M. Pitman (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				

Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. John				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

The Greffier of the States (in the Chair):

The Articles and Schedules have been adopted in Second Reading. Do you propose them in Third Reading, Assistant Minister?

Deputy S. Power:

Yes.

The Greffier of the States (in the Chair):

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

1.30 Deputy J.A. Martin:

I do have to just to reply to the Assistant Minister for Housing who said that if we do not support the migration law which is intended to make the inequitable system of housing more equitable, it is absolutely misleading the House. It is the same exactly; entitled is (a) to (h), licensed is (j) and registered is non-qualified. You are just renaming the same housing and the people who can live in them. It is up to you. I just wanted to make that quite clear. I have complete understanding. I have sat on Scrutiny and I have been on Scrutiny for it and I know exactly what it means. It is not more equitable so why are we waiting?

1.31 Deputy R.G. Le Hérisssier:

I wonder if I could reinforce the point - and it relates to what Deputy Vallois said - that the documents be subjected to the Plain English Campaign criteria, that there be a proper publicity

campaign prior to the institution of the law so that landlords and tenants know it and that the massive gap, for example, that we have heard in terms of who has the final power in regard to eviction is dealt with in a very clear way. Lastly, to congratulate the rapporteur who has done a magnificent job with a highly complex piece of legislation. [Approbation]

1.32 Deputy G.P. Southern:

Yes, 2 points briefly. I do not believe I got an answer to my request that the Assistant Minister of the department publicise what the routine is if you are threatened with eviction. Notice to quit, question mark, what to do and what your rights are. I do not think I got an answer and I seek an answer that they will advertise what people's rights are under eviction threat so that people know where they stand. Secondly, to reinforce the points made by Deputy Martin, she does know what she is talking about and there is no improvement in the condition of the categories. They are simply changing the names on the cap badge. That is all they are doing. This guff about moving towards a more equal society, therefore, we cannot make a movement on rental deposits is absolutely nonsense. It is absolute nonsense.

1.33 Deputy P.V.F. Le Claire:

The issue of legislative scrutiny has appeared on a number of debates where there has been difficult legislation or new legislation or unfamiliar legislation in front of Members. I certainly think that we need to have a good think about this in relation to how we conduct this sort of business because it really is not good enough to get to the end of a debate and to be scrambling for assurances and looking in the direction of the Attorney General who may or may not have the answer depending on how he has been briefed. I think we need to do some work on this. I think either we need to reinstitute some form of legislative scrutiny or we need to have some form of First Reading or Provisional Reading on maybe a Monday or something of something that draws out these issues ahead of debate. Certainly in areas where we are months or years ahead of implementing the final stages of legislation, it calls into question whether or not we should be passing certain aspects of this legislation or parking it for some more considered opinion. That is what I wanted to say. The other thing I wanted to say was I think really just to echo the words of Deputy Le Hérisier in congratulating Deputy Power on doing an extremely good job on an extremely important area on some difficult territory.

1.34 Deputy J.B. Fox of St. Helier:

Just taking up the point of the previous speaker, it has already been stated only 5 people attended the pre-meetings. This is quite common that some people attend all the time and others do not attend ever or very little. It is a point that a lot of the questions that people like I have are answered at these pre-meetings and you are able to go into it in depth. Therefore, I think that this is where one of the problems arise is that we have the opportunity but some are not taking it up.

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

I would just point out if we have Scrutiny meetings organised at the same time it is rather impossible to be in 2 places so perhaps a little more foresight.

1.36 Senator T.J. Le Main:

I would like to comment as well that many of these issues that come to us at Chamber, Members stand up and criticise and bring points forward when they have been invited by Ministers, particularly myself. When we have got something coming along, I often invite Members to contact the department outside the area of a presentation with any comments and to meet with officers or ourselves, yet they never turn up but they are very critical in the Assembly. It would make life a lot easier for us to be able to discuss these issues and their concerns prior to the debates in the Chamber.

1.37 The Deputy of St. Mary:

In response to that last comment, I am not sure there was a pre-meeting arranged for Members to go through this Residential Tenancy Law but maybe it was felt that it was a no-brainer because what we are really talking about is details. Most people agree with the general thrust. In the Third Reading stage I just want to re-emphasise the point that Members are quite clear that if we do end up with problems arising from the fact that people are arguing about how much was paid and how much was not paid then we have brought it on our own heads. It will be unfortunate when such cases come to court, if they do.

1.38 The Very Reverend R.F. Key, B.A., The Dean of Jersey:

Just a word about community and a word about consensus, if I may. When I was first appointed, I was invited with my other colleagues, the leader of the Roman Catholic community and leader of the Methodist community, to meet with the then Chief Minister and other senior Ministers. They asked us what we thought they should be working at if we were trying to build one community in Jersey. The absolute instant response was all the areas of housing, particularly tenant protection. It is not that any law goes the whole way or that any law is absolutely perfect but we should be under no doubt, it seems to me, that what we are being asked to consider today is an immense step forward and I think it does behove community leaders to congratulate Ministers and particularly Deputy Power who has, indeed, as people have said, done a superb job today on this work and on this piece of legislation. On behalf of the community leaders I would like to do that. The second thing is we do not want to miss the moment. The Deputy of St. Mary has put it extremely well that we have been looking in this House for occasions of consensus across usual lines of debate that extend further than the Farmers Field Committee pitch, though that was a wonderful illustration. I think the way in which the Deputy of St. Mary has reminded us that what was said by people not in the Minister's Department had been taken seriously, there was that page that helped us to see how those comments had moved things forward. Again it is not perfect but it does seem to me that this is a good day for building more consensus and, as it were, to end our term on a community and a consensus note is not a bad way.

The Greffier of the States (in the Chair):

I call on the Assistant Minister to reply if you wish.

1.39 Deputy S. Power:

Briefly, I thank everyone for their final comments on Third Reading. Can I re-emphasise that the standard tenancy agreement that is being used by the Housing Department and will be used by landlords throughout the Island will be in simple, plain English. Again, can I come back to what Deputy Martin has said about the unqualified sector remaining unchanged with licensed, entitled and registered? The huge difference if this Assembly chooses to approve the new migration policy when it comes in will be that people that will be licensed, entitled and registered will be for the first time ever entitled to a lease. I think that makes a huge difference. That has not been the case up to now. I think it is an important point that we will improve the lives of those who have not been born here and who have been here for less than 10 years. I would like to make that point. I would like to again emphasise Deputy Southern has again suggested that I have not been clear in my dealings and my descriptions of the eviction process. I dealt yesterday afternoon with termination of periodic tenancies, with the requirement by the landlord to quit, the notice by the tenant to terminate. We dealt this morning with Part 4 in remedies. I thought I had made myself fairly clear as to what the provisions of Part 4 were there for. We have covered all sorts of things: breaches by landlord, premises uninhabitable, termination of an agreement, execution of an order for eviction. Then we dealt with Part 5 which was stay of eviction. If I have not expressed myself clearly to the Deputy I apologise, but I do not propose to go over that ground again. Finally, before we vote on this part of it can I thank all the officers of the Population Office and the Housing Department for the work they have put in, and the Law Drafting Department.

Deputy G.P. Southern:

The Assistant Minister for all he has done a good job has avoided answering my question which was will the department publish a leaflet explaining to people what their rights are when they are faced with eviction?

The Greffier of the States (in the Chair):

Very well. I put the Bill in Third Reading. The appel is called for. If Members are in their designated seats, the vote is for or against the Draft Tenancy Law in Third Reading. The Greffier will open the voting.

POUR: 41		CONTRE: 1		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy G.P. Southern (H)		
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. John				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

2. Draft Amendment (No. 11) of the Standing Orders of the States of Jersey (P.75/2009)

The Greffier of the States (in the Chair):

Very well. We come now to the Draft Amendment (No. 11) of the Standing Orders in the name of the Privileges and Procedures Committee. I ask the Greffier to read the citation.

Deputy Greffier of the States:

Draft Amendment (No. 11) of the Standing Orders of the States of Jersey. The States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following amendments to Standing Orders.

The Greffier of the States (in the Chair):

Chairman, with Standing Orders there is no debate on the principles. We move directly to the Standing Orders themselves. Do you wish to propose Standing Order 1 to 4 together as they are related?

2.1 Connétable J. Gallichan of St. Mary (Chairman, Privileges and Procedures Committee):

Yes, please. These amendments to Standing Orders simply put into effect the decision of this Assembly to increase the time allowed for the answering of oral questions with notice from 90 minutes to 120 minutes. I think they are completely self-explanatory. I move the amendment.

The Greffier of the States (in the Chair):

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

2.2 Deputy K.C. Lewis of St. Saviour:

I will be supporting P.75. I know many Members are frustrated having researched questions only to have them time-out after 90 minutes. This is not only wasting States Members' time but also many hours of officer time in compiling answers. It is long overdue and it will have my full support.

2.3 The Deputy of St. Martin:

Yes, as Members know, this is my proposition that was supported. The only query I have ... and I compliment P.P.C. (Privileges and Procedures Committee) on bringing it forward as speedily as they could and also, most importantly, the Law Draftsman. However, it was 4 very short Articles. The system we have where something must be lodged for 6 weeks on something which has been agreed, we are just coming here today really to put a rubber stamp to something. I was wondering whether P.P.C. could look at maybe we can amend Standing Orders where the States have already agreed to a piece of law drafting so it does not necessarily have to stay waiting the 6-week lodging time. We had possibly 3 sessions where we could have had extra questions asked but it could not because we were constrained by our own Standing Orders. Again maybe P.P.C. could look at where we have these occasions where it could be speeded up. But again compliments to both P.P.C. and the Law Draftsman for getting this piece through as speedily as they have.

2.4 Deputy I.J. Gorst of St. Clement:

It may not come as a surprise to the Chairman to hear that I am not supporting this. I did not support it in the first instance. I would like to quote a fellow Member who has frequently or on several occasions told me that in the States in his experience the work expands to fill the time allotted to it, particularly in meetings. I think we can certainly expect that to be the case in questions. Therefore, I think we are just creating more work and I cannot support it.

2.5 The Deputy of St. Mary:

I was not going to say anything but Deputy Gorst has forced me to. I think there is a problem with questions, both oral and written, and that problem is the States website. I really would urge the Chief Minister to urge his consultants or whatever it is to get on and improve that website because many questions, the answers would be there if the website was useable, user friendly and had the

information which Members require in an easy way for us to find it. Because at the moment many, many times I just do not bother because it is so difficult to find what you want. Departmental statistics are not on there. If you do a search on a word or on a set of words you get thousands of irrelevant citations so please, please, move forward the website and then you will find that you do have maybe fewer oral questions, certainly fewer written ones.

The Greffier of the States (in the Chair):

Does any other Member wish to speak?

2.6 Deputy T.M. Pitman:

Just really to reiterate what I think Deputy Lewis said. I certainly am just an ordinary Member but I have got enough to do with Scrutiny Panels and sub-panels. We have not increased the number of questions we can ask so I really cannot imagine people are just going to sit there trying to invent more work for themselves. I think Deputy Gorst’s argument, with due respect, is nonsense. This is a good thing.

2.7 Deputy J.M. Maçon of St. Saviour:

Just briefly, I wish to remind Members that answering questions is an important function of government within democracy and being able to raise points of public interest towards Ministers and challenging their decisions is very important. I will be supporting the proposition.

The Greffier of the States (in the Chair):

I call on the Chairman to reply.

2.8 The Connétable of St. Mary:

I thank Deputy Lewis and other Members who have spoken for their support, except of course Deputy Gorst, but I understand his position. He, of course, is entitled to maintain it. The Deputy of St. Martin made a useful point about lodging periods. Of course, no matter how effective a decision of the States may be and how decisive it may be, there are always points of interpretation in the way laws and regulations come forward. Perhaps it would not be so easy to have a blanket decision of what would be simple and what would not. Obviously in this case there was nothing contentious but I take his comments. To the Deputy of St. Mary, I think most of his comments were directed to the Chief Minister, but a comment I would make is that quite often if you cannot find the information on the website, a phone call to the officer concerned can usually point you to where it is. But I understand the Deputy’s frustration. I thank Deputy Maçon for his valid comments. I maintain the amendment.

Deputy I.J. Gorst:

Could we have the appel, Sir?

The Greffier of the States (in the Chair):

The appel, Deputy Gorst, yes. The vote is, therefore, for or against the amendment to Standing Orders to increase the time from 90 minutes to 2 hours. If Members are in their designated seats, the Greffier will open the voting.

POUR: 28		CONTRE: 10		ABSTAIN: 0
Senator T.A. Le Sueur		Senator P.F. Routier		
Senator P.F.C. Ozouf		Connétable of Trinity		
Senator B.E. Shenton		Connétable of Grouville		
Senator A. Breckon		Connétable of St. John		
Senator S.C. Ferguson		Connétable of St. Clement		
Senator A.J.D. Maclean		Connétable of St. Peter		

Connétable of St. Helier		Deputy I.J. Gorst (C)		
Connétable of St. Brelade		Deputy A.E. Jeune (B)		
Connétable of St. Martin		Deputy A.T. Dupré (C)		
Connétable of St. Saviour		Deputy E.J. Noel (L)		
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of St. Peter				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

3. Esplanade Quarter and Waterfront Development: deferral (P.77/2009)

The Greffier of the States (in the Chair):

Very well. We come next to the proposition of the Deputy of St. John relating to the Esplanade Quarter. Senator Ozouf, you have a preliminary point.

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

A preliminary point. Members will be aware that I have given an undertaking to give a statement to the Assembly following the meeting of W.E.B. (Waterfront Enterprise Board). I am entirely in the hands of Members. The Deputy of St. John has been spoken to in the precincts of the Assembly and is aware that the statement is currently being drafted. It is needing legal advice. It does contain commercially sensitive information and I cannot make it until I have been advised to make it. However, I am entirely in the hands of Members. The Deputy of St. John is not looking at me in a manner which is indicating that he will yield. I would have thought that it would be sensible for the Assembly to be informed of my statement, but if the Deputy of St. John has his majority view then I think we should go ahead with the debate. But I think it is unusual and perhaps somewhat uncomfortable that I am not able to make a statement that I am planning to do so which is shortly to be available when the States are going to be sitting. I mean nothing discourteous to the Deputy of St. John. I am just trying to act appropriately and for the information of Members.

The Greffier of the States (in the Chair):

Can I just clarify, Minister, what are you proposing? That this matter be deferred to later in the sitting or deferred for another day?

Senator P.F.C. Ozouf:

I am not going to propose anything. It must be for another Member to propose to do so. I am just informing Members of the status of the statement that I wish to make. I am in the hands of Members. Members will act, as they always do, reasonably.

The Greffier of the States (in the Chair):

We are about to start the debate so in the absence of a proposition I will ask the Greffier to read it. Senator Routier?

3.2 Senator P.F. Routier:

I would like to hear what the Minister has to say in his statement before we debate it. Certainly I understand from what the Minister is saying he has no intention of wanting to defer the debate to another sitting or anything like that. I think for good order it would be very good to hear what the Minister has to say and then we could have a very clear debate.

The Greffier of the States (in the Chair):

What are you proposing, Senator? That the matter be deferred until later in the sitting?

Senator P.F. Routier:

I think what the Minister was saying, later on today or ...

Senator P.F.C. Ozouf:

I very much hope to be able to make a statement at the latest by midday tomorrow.

Senator P.F. Routier:

Well, I would propose that perhaps we put it on the end of the Order Paper then.

The Greffier of the States (in the Chair):

Very well. The proposition ...

Deputy P.J. Rondel of St. John:

Sir ...

The Greffier of the States (in the Chair):

You will get a chance, Deputy. The proposition is that the ...

The Deputy of St. John:

Sir, surely I am allowed to speak. It is my proposition.

The Greffier of the States (in the Chair):

You are allowed to. I am about to call you, Deputy, please. I am just clarifying for Members what the matter is before the Assembly. Of course you will be allowed to speak. The proposition of Senator Routier is that the matter be put to the end of the Order Paper. Is that proposition seconded? [**Seconded**] Very well, the Deputy of St. John.

3.3 The Deputy of St. John:

I am appalled. This is the third time I have been prevented from putting my report and proposition at the time it was called. It is not acceptable. We had a fortnight from the previous meeting when it was delayed for a statement by the Minister which came at the end of that particular sitting and the whole thing was pushed forward to today. We were told at that time that it had been delayed because the Waterfront Enterprise Board had given an additional period of time for Harcourt to come forward with their proposals. This has passed and I am given to understand that they have not come forward with their necessary proposals and yet we are still being asked for an additional time. I am prepared. You see I even have the lectern in front of me to get on with the business of this House, and the Minister cannot even give us a time when we can get his statement for today, and he is talking about tomorrow. We do not even know if we will get it then. If we get to the end of business today, for whatever reason, then it falls, so therefore as far as I am concerned I am not giving way. I have had most of the Ministers and Assistant Ministers and the directors of W.E.B. approach me in the Members Room, and given the Minister's approach over the previous couple of

times when he has asked me to stand back; he tells me one thing in the Members Room, we get into the Chamber and he tells the Chamber something completely different. So, as far as I am concerned I am not giving way and I am pretty sure that the membership are going to go with the Minister, but I am totally appalled if they do.

3.4 Deputy A.E. Jeune of St. Brelade:

I can understand the frustrations of the Deputy of St. John. However, I do believe that we need to make informed decisions and if that means that we wait until the Minister for Treasury and Resources gives us his statement tomorrow, then I believe that is what we should do and I will be supporting the proposition.

3.5 Connétable D.J. Murphy of Grouville:

I must declare an interest as one of the States directors of W.E.B. and I did approach the Deputy of St. John and ask him to hold back until the Minister's statement was ready. I believe that it is very important that we do hold back. There are very, very intensive and delicate negotiations going on and I think it would be much better for the whole House to make a concerted decision on actual fact and not rumour which is prevalent at the moment.

3.6 The Deputy of St. John:

On a point of clarification of what has just been said by the previous speaker, the previous speaker said that there are delicate negotiations going on. That cannot be the case, so given that there are 3 W.E.B. members in the Chamber this morning, the negotiations happened this morning at 7.30 a.m. and the meeting closed from there on. They were waiting for the Minister to prepare a statement for this House. The previous speaker is totally wrong. The negotiations must have taken place.

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

I was going to congratulate the Deputy of St. John, but now that he has made a second speech I do not think I will. I wanted to congratulate him because there is no doubt that his proposition has forced the pace of negotiations and I think we owe him a debt of gratitude for that. However, I think he is incorrect in saying that his proposition will fall away should we wade through the rest of the business by close of play. The proposition is merely to put his proposition to the end of the Order Paper; therefore, it will not fall away but it will be debated later on today, if that is indeed necessary.

3.8 The Deputy of St. Mary:

I want to make 2 points now. The first was my understanding at the last sitting was that the Minister said that the meeting of W.E.B. was on Monday, the relevant meeting, so I am surprised that maybe a statement could not be done by the end of today. The second point was that I think we obviously do need more information, but whether the debate should be put to the end of the Order Paper rather than to immediately after the statement; so the statement, then the questions and then ... I just think that it was not at the end of the Order Paper. It has been around for a long time, this proposal, and the end of the Order Paper, frankly it is going to be 2-3 days from now and people are not going to be as up for it as they would be if it were nearer the top of the Order Paper. So, I just wanted to make those comments and I just hope that the Minister will respond to the point about the timing.

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

I also have to stand and say that I am also conflicted in that I am a member of the W.E.B. board. It gives me no pleasure at all to stand here and talk against my very good friend, the Deputy of St. John; however, I do feel in this circumstance that ... if I could just clarify one point the Deputy of St. Mary said. The meeting with W.E.B. was at 7.30 a.m. and concluded at 9.00 a.m. so we could get into the Chamber. That has then produced work which has to be verified by the lawyers before the Minister for Treasury and Resources can make his statement, and I would like to urge the

Deputy of St. John once again not to put his proposition at the end of this debate, but could it be immediately after the statement of the Minister for Treasury and Resources?

The Greffier of the States (in the Chair):

Sorry, we have a proposition. You cannot amend it on the hoof, Constable. One thing or the other.

The Connétable of St. Peter:

Okay, if I could have an opportunity later I would like to amend that proposition. Thank you.

The Greffier of the States (in the Chair):

Well, perhaps 2 of the issues are reasonably clear, but I will call a few more Members who have indicated they wish to speak. Deputy Martin, you wish to add something?

3.10 Deputy J.A. Martin:

I am not really bothered either way, as long as it does get debated. My issue with the comment from the Minister for Treasury and Resources was if and when he gets okay from the Law Officers because it is very sensitive commercial information, I am wondering if that information even in his statement will be needing to be held *in camera* and, if that is the case, could we not go *in camera* at the beginning, now, carry on this debate and hear the gist of what the Minister has got to say, because it cannot be absolutely earth-shattering. If it is that commercial, *in camera* we should sit. I am not convinced and the only reason I would probably go with the proposition from Deputy Routier is I do not want to go through a long debate when the Minister is going to stand up and tell us there is no deal on the table anyway. I really do not know what is in it and I want some confirmation that we are going to get a statement, whether it is *in camera*, and when because it was: "if the Law Officers". Thank you.

3.11 Deputy K.C. Lewis:

I have a great deal of sympathy with the Deputy of St. John over this; however, if this comes off this will be the biggest building project this Island has ever seen and Members must have the full facts in front of them before making a decision.

3.12 The Deputy of St. Martin:

I have every sympathy with the Deputy of St. John because I think I have been with him in the past and I know where he is and how he feels, but again I would ask maybe if he would consider giving way and have an undertaking that we will have this tomorrow lunchtime. I think one of the difficulties for Back-Benchers is you have a debate when the House is tired and what we do not want is this at the end. I think, in fairness to the Deputy, that I would ask that he does agree, but again with the assurance of the Ministers over there that we are going to start tomorrow at 2.00 p.m. That way, the House will be halfway through, rather than a tired House at the end of the third or fourth day.

3.13 Deputy C.H. Egré of St. Peter:

It is possibly a point of order. Is it possible for the proposer to amend his own proposition by saying that he could have it immediately after the statement?

The Greffier of the States (in the Chair):

The House is ultimately master of its own destiny. We do not want the debate to get too confusing but I think that on this occasion that you would ... Do you wish to speak, Chief Minister?

Senator T.A. Le Sueur:

I want to make a separate point. I think you may resolve this one and then I can speak up.

3.14 Senator P.F. Routier:

If the House would allow, I would be prepared to change my proposition so that we can debate this as soon as the Minister has made his statement.

The Greffier of the States (in the Chair):

All right.

Senator P.F. Routier:

As soon as he has made his statement.

The Greffier of the States (in the Chair):

Well, yes, there is a proviso. Do you wish to make a point, Chief Minister, before we move forward?

3.15 Senator T.A. Le Sueur:

I want to make a separate point that it is only this morning, re-reading the proposition, that I think there may be a procedural issue that I would like to discuss with the Deputy of St. John, but I can do that between now and tomorrow, I hope, to resolve that matter, but I thought I would give him fair notice of that rather than spring it at time of the debate.

The Greffier of the States (in the Chair):

Well, then we must move to the vote. Members have spoken, the Deputy of St. Mary has already spoken and the Minister has already spoken. Is your issue just a brief point of clarification or ...?

3.16 Senator P.F.C. Ozouf:

Just to clarify that I am doing my best endeavours in order to make the statement, which is designed to protect the interests of Jersey. That is what I am trying to do and I hope that Members will understand that.

3.17 Deputy A.K.F. Green, M.B.E. of St. Helier:

Could I ask for a point of clarification?

The Greffier of the States (in the Chair):

Yes, Deputy Green.

Deputy A.K.F. Green:

With the amendment, does that mean if there is no statement there will not be a debate?

3.18 Senator P.F.C. Ozouf:

I undertake to make a statement at the very earliest opportunity that I am able to and I hope that that is going to be ... I am being cautious by saying it will be by midday tomorrow. Hopefully it will be the first item of business tomorrow, if the Chair permits.

3.19 Deputy M.R. Higgins of St Helier:

Point of clarification; again we are being told and I would like to accept the assurances of the Minister for Treasury and Resources, but when you say you hope to make it tomorrow ...

The Greffier of the States (in the Chair):

“When the Minister says,” through the Chair.

Deputy M.R. Higgins:

Sorry, through the Chair. I would very much like to accept his word when he says tomorrow or when he is able to. What if he is not able to before the end of this week?

The Greffier of the States (in the Chair):

Well, he has said he will make a statement, Deputy, and we must take him at his word.

Senator P.F.C. Ozouf:

I will make a statement to the best of my knowledge, upon advice, as soon as I possibly can, and I undertake to make a statement by the very latest tomorrow by midday. Thank you.

The Greffier of the States (in the Chair):

Very well. Do you wish to reply, Senator ...?

Senator P.F.C. Ozouf:

No, I think everybody understands the ...

The Greffier of the States (in the Chair):

The matter before the Assembly, therefore, is that this matter not be taken immediately, but be taken immediately after the statement which the Minister for Treasury and Resources has undertaken to make no later than lunchtime tomorrow. The appel is called for. The Greffier will open the voting. If all Members who wish to do so have cast their votes, the Greffier will close the voting. The proposition is adopted: 36 votes were cast in favour, 3 votes against and one Member abstained from voting. Yes, the contre and the abstention, please, Greffier.

Deputy Greffier of the States:

Those Members voting against: the Connétable of St. John, the Deputy of St. John and Deputy Maçon, and the Connétable of St. Peter abstained.

4. Annual Business Plan 2009: variation in respect of pay freeze (P.78/2009)

The Greffier of the States (in the Chair):

Very well, so the Assembly moves to the proposition in the name of the Minister for Treasury and Resources, Annual Business Plan 2009: variation in respect of pay freeze (P.78/2009). The proposition does contain a long list of figures. I wonder if Members would be content for the Greffier to read the proposition but to omit the table of figures, perhaps. Greffier?

Deputy Greffier of the States:

The States are asked to decide whether they are of the opinion to refer to their Act dated 22nd September 2008 in which they approved paragraph (b) of the Annual Business Plan 2009, and agree with the estimates of revenue expenditure for States-funded bodies, based on a provision for pay awards of 3.2 per cent for June 2008 and 2 per cent for June 2009; and to agree to vary that decision as it relates to the provision for the 2 per cent provision for the 2009 pay award, and remove the £3,501,600 allocation in 2009 Annual Business Plan set aside for this purpose, with the amount to be removed from the agreed heads of expenditure of each States-funded body mentioned below, totalling £3,501,593; and to further agree that the total proposed net revenue expenditure for States-funded bodies for 2010 onwards, agreed in principle by the States on 22nd September 2008, be reduced by £6,274,800.

Senator A. Breckon:

Can I ask for a clarification from the Chair what is the thing regarding declaration of interest, because when it was about giving increases to States employees certain people had to do that, and I am in that position now. Would you give a ruling on that, please?

The Greffier of the States (in the Chair):

Yes, I think it does apply, Senator, because any Member who has a spouse or co-habitee who does work for the States I think are affected by this proposition, so you are declaring that interest.

Deputy I.J. Gorst:

Could I do the same? Thank you.

The Greffier of the States (in the Chair):

Yes, Senator Breckon and Deputy Gorst. There were some other Members who perhaps are not present in this Chamber and may need to do that in due course.

Senator S.C. Ferguson:

Will this not apply to States Members as well, as a whole?

The Greffier of the States (in the Chair):

No, it does not apply to States Members, just the ...

Senator S.C. Ferguson:

States Assembly and its services?

The Greffier of the States (in the Chair):

That is simply in relation to the employees for the States Greffe, to whom it does apply. Very well, Minister.

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

At the last sitting the Assembly overwhelmingly rejected P.68/2009 and the amendment which sought to make across the board increases for the salaries of all States employees. I think the majority of Members believed that the public sector needed to be setting an example when employees not in the public sector were facing the prospect of pay freezes, cuts and, indeed, for some even the threat of the loss of their jobs. So I recognise that this is a difficult situation but faced with the unprecedented economic uncertainty the Council of Ministers made a statement in April that they would be recommending a pay freeze for the June 2009 to June 2010 settlements. Members will be aware that at present budgets account for a 2 per cent budget in terms of salary increases. In terms of spending this is £3.5 million in 2009 and, if taken forward to the subsequent year, £6 million in a full year, so this proposition is somewhat unusual and I do not think such a proposition has ever been considered before. It seeks, effectively, to amend the expenditure approval agreed by Members in the 2009 Business Plan and in turn adjust the amounts, correspondingly approved in principle, in 2010 and 2011. Before the propositions were lodged by the Members that I referred to earlier, P. 68/2009, the Council of Ministers, with the Chief Minister, had made a decision that the best way of getting and attempting to agree a consensus or majority view on salaries for the public sector would be to bring this proposition. The alignment of the proposition was not able to be dealt with consecutively because of the lodging periods of Ministerial propositions as opposed to the Back Benches. I realise that the debate on the pay freeze has probably already happened. I realise that this, in terms of reducing budgets, is a difficult matter for the Members to take, but against the backdrop of the economic uncertainties that I have referred to, but also the outlook for inflation, the Council of Ministers retain the view that such a proposition is not unfair to our public sector workers. I want to say that I think that all Members would share with me in stating that we value each and every one of our public employees and the contribution they make to our Island life. However, the whole world is facing economic uncertainty. Our objective has to be to ensure the long-term economic stability and prosperity and competitiveness of Jersey. I think the arguments have already been rehearsed and I make the proposition.

The Greffier of the States (in the Chair):

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

4.2 Deputy J.A. Martin:

No, it is not on the proposition. It is on a procedural matter about declaration of interest. I did not mention it last time but as it was brought up at the Parish Assembly in St. Helier, it was noted that all the Parish employees are on the same pay scale and terms of employment, in the Parish of St. Helier that is, as the States manual workers, and they had to put in a contingency fund. My question is, as direct employees, all the Constables of their Parish workers, do they have an actual interest? Have they made a contingency? Have they made a decision or is it different in each Parish? I really do not know the answer to that so I just wondered would it affect their outcome if they are saving a bit on their rates? I mean how, you know, interest in that?

The Greffier of the States (in the Chair):

I think from a purely procedural point of view it may affect the Parish finances, but it does not affect the Connétables' personal finances so there would be no need for them to declare that as a personal interest, it would appear. The Constable of St. Ouen.

4.3 Connétable K.P. Vibert of St. Ouen:

If I could just maybe clarify the matter, it is for each Parish Assembly to make their own decision, so we are not all bound by the same rule.

The Greffier of the States (in the Chair):

Okay, the Deputy of St. Martin.

4.4 The Deputy of St. Martin:

It gave me no pleasure voting against the Deputy of St. John's amendment and, indeed, we have another one about having no rises at all, and I did not enjoy voting against that because there are a tremendous number of people who are feeling hardship. Not to have a pay rise until next year is not an easy thing to do and I certainly did not enjoy voting against those propositions, but what I will ask is that if we are going to vote and support this - which again if we are going to have a freeze let us have a freeze - can we have an assurance from the Minister that there will be a pay freeze on all charges as well going around the Island? It seems unfair to ask people to tighten their belt and not receive any pay rise, and yet expect to pay extra for charges that will be levied by the State, so if I could have an assurance for that maybe then I may support his proposition.

4.5 Deputy T.A. Vallois:

It is interesting when we come to the pay freeze area and we have got the proposition, and the Minister knows very well that I am very interested where he is spending the money. I would like him to advise us exactly where this £3,501,000 is going and how it is being divvied out, if it is being divvied out. Also, if he can comment with regards to the savings on the 2010 and 2011 as well, with regards to the forecast, because as I am aware the pay freeze at the moment is only with regard to 2009, so if he could just comment further on that, please?

The Greffier of the States (in the Chair):

Does anyone wish to speak? The Constable of St. Brelade.

4.6 The Connétable of St. Brelade:

Speaking with the States Employment Board hat on, I think this is a subject which no one is terribly keen to support; however, we are being driven to do so by the economic climate in the world. The private sector is having a hard time at the moment. I would like to see in future years States salaries increase if the economic situation in the world will dictate this, and I think we are morally responsible to look after our employees and try and ensure full employment rather than risk losing jobs by pushing wages up, so I would urge Members to support this proposition in this difficult time.

4.7 The Deputy of St. Martin:

Could I ask the Minister whether he will be freezing all Transport and Technical Services charges?

The Greffier of the States (in the Chair):

I do not think you can ask that question, Deputy, it is not question time. The Constable of St. Peter.

4.8 The Connétable of St. Peter:

I am really just standing to say I am sure all the Members know where my heart lies in this, that I am very keen to see that the States Members equally as much as the States workers share the burden which is being borne by many people out in the public sector. I know of a considerable number of people who have not had a pay rise in the last 2 years, who have had a reduction in their terms and conditions, just in order to keep their job. I also know of many other people who have lost their jobs and been made redundant. Those people will be coming back to the States hopefully looking for extra support on income support. With less people employed within the economy we are going to see a downturn in the income coming into the Exchequer to be able to pay these wages and people on income support. I believe it is incumbent on all of us, Members and States workers, to support this proposition to enable us to be able to fund the needs of the needy, rather than give to those that continue to remain in, hopefully, long-term employment.

4.9 Deputy A.K.F. Green:

I am just a little confused. I thought we had the debate on whether we were going to have a pay freeze or not some time back, and all we are doing now is debating whether or not we are going to adjust the Business Plan, so could I just ask Members to keep to whether we are going to adjust the Business Plan or not, but I will be supporting this.

4.10 Deputy G.P. Southern:

I will refer to the Business Plan because the Business Plan contains either some money for wages and the cost of living increase for those wages, or it does not, and what the Minister is asking for us to do today is to help him subvert the normal process of pay negotiations on this Island. The normal route is that we engage in some wage bargaining. We negotiate what is an acceptable level of pay rise, whether it is in terms of the cost of living increase, or otherwise. We negotiate. We enter into negotiations with representatives of workers, and what has been decided so far is that the States Employment Board, which largely consists of Ministers, have decided that they are going to abandon this practice and arbitrarily and unilaterally declare that there will be a pay freeze this year. This completely subverts the normal practice and disrespects, and insults I would say, all our long-serving public sector workers who are desperately trying to hold the public sector together. Now, it is much easier for the Minister for Treasury and Resources to maintain his position of freeze if he manages to get rid of £3.5 million from his coffers, which those negotiating might consider to be still in the pot. Then he can say: "Well, you can argue all you like," to negotiators, "but I have not got any money because I have just got rid of it. I have put it elsewhere for different purposes, so I cannot pay you a cost of living rise. Full stop. I cannot pay you a fraction of a cost of living rise because I simply have not got the money. Go away." End of negotiation, full stop. Now, I for one am not prepared to assist the Minister for Treasury and Resources, or the States Employment Board, in that attempt to make life easy for them, because the reality is no responsible government enters into this unilateral declaration: "We are tearing up our agreements we negotiate by. Forget it for this year. Forget it, maybe, for next year. We are not dealing." Let us face reality. It is not completely one-sided. We have to give some respect to the negotiators. We have to, I believe, enter into some form of negotiation to get acceptance. We have not had acceptance of the pay freeze. If we allow the Minister for Treasury and Resources to divest himself of this money, then we make his job easier and we make a solution much more difficult. There are claims out there. There are claims yet to be formulated, and I remind Members particularly from our nursing staff who have only just settled for 2008 and are really at the sharp end of public service and stretched and strained and stressed to their limit. They have yet to come in to negotiate and

suggest what should be happening in that particular case. The public sector in general have made a claim. It has not been settled. We have got 2 very opposing, very widely-spaced opinions. Pay freeze. Pay claim. It is not settled. The money should stay in a pot until it is, otherwise we are simply not negotiating and that is a dishonourable position to be taken by this or any government and I will not support it.

4.11 The Deputy of St. Mary:

This is an innocuous looking proposition. There is just one page of report and one page of proposition but, of course, it is a lot more important than it looks. It is obviously important. We are talking about taking back £7 million that we had voted to be used for pay settlements and shove it back into the Consolidated Fund. I think it is important to unpack the assumptions that lie at the heart of this proposition, and indeed the heart of so many of our problems in this House. We just keep coming back to the same assumptions. Why have we got this proposal to impose a pay freeze, or rather a pay cut? It is the job of this House to ... and from all parts of the political spectrum, and I think the Dean commented earlier how united we were on the cricket pitch. Well, we are trying to do our best for all Islanders. I just want to look at some of the underlying assumptions, but the first point to make really is we have to remember that we are reversing R.28. We are reversing a previous decision, which is the States Employment Board Annual Report 2008, paragraph 2.5 on page 3. The Board determined a pay policy for all States pay groups for the year 2008 to 2009. The policy, as agreed in the States Business Plan, was that awards should not exceed the R.P.I. (Retail Price Index) as of March 2008 and it goes on, so we are going back on a commitment and so we need to be pretty careful. My belief is that the States of Jersey workforce is being used as the fall guy for past failings of this House. I would ask Members to think about the moral implications of that. We could make all sorts of different cuts but here we are making a pay cut for our own workforce because of our past failings, and I think we need to look at that quite carefully. What do I mean by past failings and why do I say it is a pay cut? There are 2 aspects to the past failings. We were told at the last sitting, in fact I think we were told in this proposition as well, that it is a choice between service cuts and tax rises. Services cuts or tax rises. But the States' past record on intelligent spending is very, very poor. I am a supporter of quality public services so it really upsets me when I think of the record of this House in spending money badly, and there are just a few quite up to date instances of this. There are the non-transparent accounts, which we have been informed about by the latest report of the Comptroller and Auditor General. We have accounts that cannot be read, we have accounts where things slip from one heading to another and you cannot see it, so that is one aspect, and how long have we had accounts like that? Yet, as I said, the public workforce is going to take the hit for that failing. The report of the Comptroller and Auditor General points out that the Treasury function merely counts and does not challenge policies and programmes on rational grounds. I give a couple of examples of that because we are on important ground. I have here the Early Years Scrutiny Report of the Education and Home Affairs Scrutiny Panel last year, and we read on page 7, paragraph 3.1.9 in their executive summary: "We were surprised to discover that the fundamental step of carrying out a definitive cross-department economic assessment of the case for investing in childcare had not been considered." Now childcare and the importance of early years was highlighted in the consultations that took place in the Jersey into the Millennium process back in 2000, 1999 and 1998, yet we still do not have an assessment of the fairly obvious benefits of intervening in early years provision and education. The utilities digging up the road at T.T.S. (Transport and Technical Services). I was there in 1993, the problem was there then, it is still with us now, and it is costing the Island millions. Over the years that has cost the Island millions. One utility followed by the next, followed by the next, and each time they do it they damage the integrity of the road surface and we, the taxpayer, pay for the lack of co-ordination, and the utilities do not pay. So there is another few million down the Swanee. There has been no challenge within the department, there has been no challenge from outside the department ...

The Connétable of St. Brelade:

If the Deputy would kindly give way, he will be aware there is a new Street Works Law on the cards at the present which I am hoping to get through this Chamber as soon as possible, which will address the issues the Deputy mentioned.

The Deputy of St. Mary:

I am absolutely delighted to hear it. I know that law is on the stocks and it will be a great improvement, rather like the Residential Tenancy Law. The point I am making is that we have been throwing millions of pounds away for years, since 1993 for certain, and probably before that. That is the point, is it not, that I am making? That past failings have led us to where we are because that is the very nature of past failings, and then there is the small issue of the incinerator where this House was not told about the £3.6 million more that it was going to cost. Even on the day of the debate we were not told. I will find the report of the C.A.G. (Comptroller and Auditor General) into the whole matter of the euro and the funding, and this is important because it shows how this House, and it is a theme that the public warm to as we know, how this House spends money that it should not. Page 29 of the C.A.G.'s report into the euro saga. I remind Members that P.72 and P.73 last year concerning the incinerator were lodged on 20th May. They were lodged on 20th May and the cost given was £106.31 million. Now on 18th May the Strategic Investments Manager wrote to the Minister for Treasury and Resources with a cautionary memo, and the memo had lots of figures in it. There is nothing particular, is there, about the date 18th May, but it was a Sunday. He took the trouble; that is the pressure they were under. This memo went from him to the Minister for Treasury and Resources who is none other than our present Chief Minister, and it went 2 days before the proposition was lodged. In that I would just quote one sentence, but there is a lot of argumentation, but the key sentence is: "The cost of the risk is £1.97 million now" and that is the cost of buying the euros in advance. There are qualifications to that, but that was the sum that the States could have spent to ensure that risk. In a worse case scenario being £6-7 million. That risk was not reported to the House. So, we have the situation where the House voted on the biggest capital project in its history without the adequate financial information although that information was passed to the Minister for Treasury and Resources in advance of the proposition being lodged. So those are the past failings. We have an absence of financial control. There is no financial challenge either by the Treasury or within departments, or by the politicians themselves, so it is a fairly dismal story. On quite a separate issue, there is that question of efficiency but there is also the question of why is the Island always so poor. I will just point out some results of the historic underspending before looking at why we have no money and why we are skint. We have the historic underfunding of the Jersey Heritage Trust; this is very topical, they are short of money permanently which is why they go from crisis to crisis and we have these awful stories we are about to close 2 museums. That situation is the result of historic underfunding. We have the ridiculous situation of one of the top archives in the country, we are told, in the top 5 per cent being closed to the public most of the time for lack of funding, while 900 people are unemployed when they could be perpetually manning the archive. I want to refer Members to the case of the prison. Now when I was not a Member outside this House I would read the *J.E.P. (Jersey Evening Post)* appalled to know what was going on at the prison and the results of chronic underfunding. This is the report from the Prison Visitors Board - R.69 - this year: "We consider that this position should be reviewed as a matter of urgency as there remain parts of the prison in need of modernisation. In our view it would be preferable to build staff facilities for the longer term rather than for temporary use." The Visitor Centre is also desperately in need of attention. In their conclusion, there needs to be recognition: "that there has been considerable under investment over a long period in the past, the effects of which remain readily evident in certain areas." Oh well, that is just the Visitors Centre that needs sprucing-up and we need to separate the women from the men, and so on. But it is worse than that because the Visitors Board points out that: "Prisoners suffering from mental health issues should not be held at La Moye but in a secure unit where appropriate treatment facilities can be provided. We are told that no such facilities exist. If this is the case we recommend the funds be made available. This is not a problem which will go away without

positive action being taken.” So again a failing of this House to spend the money where it is needed. There has also been massive underspending, as we know from the Strategic Plan appendix, in areas, as I pointed out before, such as sewage, roads, the residential care fund and property maintenance. Hundreds and hundreds of millions of pounds of shortfall; what a way to run an Island. But was it not just 15-20 years ago that we had money coming out of our ears? Why was some of it not taken out of people’s pockets and put into a rather bigger rainy day fund and then we would not be where we are now? It would have had also an effect on inflation. I work in the tourism industry; I know the debates inside the tourism industry. One cause of the decline of that industry was the never-ending cost inflation, driving the costs upwards for everybody, and that comes back to the failure to reduce demand in the economy way back. So we are in the position where we have the third richest place in the world that cannot afford to fund its prison properly, cannot afford to fund its heritage, and cannot afford even to fund its income support. If you look at the tables in the written answer which the Minister for Treasury and Resources kindly gave me on 19th May - and I am very grateful for that answer, I refer to it a lot, and it was a good thorough comprehensive answer - there we see that Jersey spends half as much percentage-wise on social protection as the O.E.C.D. (Organisation for Economic Co-operation and Development) average. We are, as I said, one of the richest places on earth.

The Greffier of the States (in the Chair):

I hesitate to interrupt you, Deputy, but you are getting, are you not, to the pay freeze?

The Deputy of St. Mary:

Absolutely.

The Greffier of the States (in the Chair):

It is not a debate on the States finances in general but please ...

The Deputy of St. Mary:

We have the financial failings that I have pointed to and we have the fact that historically we simply have not levied enough revenue to pay for the outgoings. So, in conclusion, I would say that we are asking the public ... this proposition says that the public sector workforce will take the brunt of the hit for our past failings. We are a low tax jurisdiction. I have not referred in detail to the data on that, but we are a low tax jurisdiction. In fact, we are the lowest tax jurisdiction of all the O.E.C.D. countries and this is a pay cut that we are voting on. It is not a pay freeze, it is a pay cut, and I would remind Members that we are, if we do vote for this, Members would be taking back money they have already voted.

The Greffier of the States (in the Chair):

Does any other Member wish to speak?

4.12 Deputy M. Tadier of St. Brelade:

I will speak since I am back in the Chamber and also it is 14th July, have we wished our French cousins a Bonne Fête de la Révolution today? I trust we would have, they are just across the water so let us give a customary foot stamp for Le Fête Nationale in France. Perhaps it is quite appropriate today that it is 14th July because Jersey seems to have lost the revolutionary spirit, which it never actually had. **[Laughter]** **[Aside]** There were bread riots, were there not? Egalité, fraternité and liberté. It would be nice to have a little bit of fraternité today, would it not, which I guess in English would be best chance later the solidarity or brotherhood because, in fact, we are being told that we all must pull our belts in and we must show solidarity because we are in tough economic times, but of course while this may have a superficial allure, in fact, what we are doing by putting a 2 per cent or more pay cut to all States employees, we are, in fact, discriminating more against those in the lesser quintiles because they cannot afford to have a pay cut, as we know. Of course this has already been decided in the States in principle to do this, much to our disgrace, I

believe. Moreover we seem to be here debating about how to allocate that money now, saying we do not need that money in our budgets. I believe a colleague of mine, a previous speaker - I did not catch who it was - already alluded to the fact that we are somewhat jumping the gun here because simply because we have made a decision does not mean that we cannot expect pay negotiations to take place as is the norm, with the unions on behalf of States employees and those who are in the union, something which I am sure many of them are, and I would encourage others to do if they are not already. There is safety in numbers. We have also heard the arguments that States Members on one particular side have been inundated with calls saying: "It would be nice to have a pay increase but I prefer to have my job at the end of the day." I have not been having any of those kind of calls. I have had people more so saying that the cost of living is going up for basic items, that costs are going up in general and: "I have got less money in my pocket at the end of the day, and now I am effectively being told that I am going to have less because I am receiving, as we all know effectively, a relative pay cut." So this is where we stand at the moment but also it has been pointed out that we will be worse off so we have to take a little bit of pain now so that we do not see job losses. I am slightly confused with this because it sends out the message surely that either staff are essential or they are not, whether you live in difficult times or you do not, you either need certain staff or you do not need them, and to say that just because times are getting difficulty you can sack members or threaten them with losing their jobs, does not really seem to add up. Surely even in good times we should not be tolerating inefficiency, so I would suggest that States workers have more negotiating power than they think, so do not be fooled by the old lie, those of you who are listening out there on the radio, that you are dispensable. In fact, it is you, in your masses, who have the power. Let us just think what the consequences might be if we go down this road and insist on giving our very hard working States Members a pay cut. [Aside] States workers, sorry, that is right. The Members, I think we received a £1,000 pay increase for this year so we are okay. But other States workers, sorry, the workers, I do not need to say "other", I should say the workers are the ones who are being discriminated against here. What could they do? We know that now they have to ballot before they can take any industrial action and because, again, that is one of the oppressive draconian measures that the former House has passed. But of course once they ballot, and they will if they do not receive their pay increase, the cost of living, what could they do? They could block the roads so they could stick a juggernaut across the underpass, for example. I am sure that would be a lot worse than us just putting our belts in and giving them 2 per cent that they deserve, or whatever they demand because we do not know what that is yet. They could also just not turn out to work. I guess if they did not want to take any industrial action they could all just coincidentally have a bout of gastroenteritis on the same day and all phone into the office and say: "I am not coming in to work." Let us see what that would do to the Island's economy and its reputation. They could also work to rule. I am sure that they do not need necessarily to take any industrial action to do that. In fact, we could be pursuing what is a false economy here by saying that we are not going to give the 2 per cent, which has already been budgeted for, and we are going to claw it back because, in fact, we cannot keep our own expenditure under review and under control but rather we are going to make the workers pay. Remember, fellow colleagues, who do really good work for the States, and I believe we should also give another round of foot stamping for the very good work that our States employees do, that we would be lost without them, that there is safety in numbers and I am sure they do not need me to tell them that they will ballot and they will be very hostile if we pursue in this line that we are taking. Be that on Members' heads incidentally.

4.13 Deputy R.G. Le Hérisier:

I am afraid I am going to have to deviate from the view just put forward, which has been very well expounded, but it is a traditional view. I think there is general public dissatisfaction of the kind that Deputy Wimberley enumerated in some considerable detail but the problem is, of course, I do not think the public see the solution as, therefore, allowing the negotiation or the wage process to go ahead. They would say a curse upon all your heads, I am afraid is the way the public would see it.

There is no doubt that the danger with this somewhat indiscriminate approach which the Minister is putting forward, he is no doubt saying that the misery is being shared. To an extent that is right, but the problem is the public also have a view if the misery is to be shared, and I am afraid that is what we are going into, the sharing of misery. If the misery is to be shared they will again tell us that we never come to grips with the way we manage the States and that the imbalance of our management structure, as opposed to our frontline structure, is totally out of kilter and we really have to hear some strong words from the Minister that he is going to take that on. We have failed year after year, study after study, to deal with that issue, and we all, in a sense, made a total fool of ourselves last July, for example, when we pushed through the £10 million of extra money, a lot of which was devoted to very high level and high cost positions in the civil service. We again deluded ourselves and that delusion has gone on for a long time, but I have to tell the Deputy of St. Mary, it has gone on as much in the way we have handled our staffing as in the way we have handled our programmes. Of course, if we were to take seriously that immense list of programme deficiencies or gaps that the Deputy outlined, we would definitely have to move into a much higher tax environment. Of that there is absolutely no doubt because one of the things we have to take note of, as the world economy, and the role of *le fiscal paradis* changes in this world economy is that we are going to have to raise more taxation internally. Of that there is no doubt. The world is changing, the role of finance centres is going to probably quite dramatically change in the next 5 to 10 years or so, and we are going to be faced with enormously difficult decisions, and all the assumptions on which we have operated, I am afraid - the very comfortable assumptions - are going to change. My view is the Minister has to show that he is prepared to get to grips with the broader picture, but I can see no way that I have to support this. I am afraid it is symbolic. If the public feel that the private sector economy is shrinking or it is suffering, as it undoubtedly is, and we in Jersey hopefully will avoid the worst of the cutbacks that are being faced by major economies like Britain and the U.S. (United States) and within the European Union, but it may well come in the end because obviously if economies suffer you could well argue that finance centres will suffer later down the line. Even if we avoid the worst of it there will be possibly a shrinkage in the private sector, there will be a need to generate as the fiscal stimulus is doing, although I do have my questions about that, there will be a need to generate more activity in that sector ...

The Deputy of St. Mary:

Point of clarification. The Deputy spoke about the possible hardship and shrinkage in the private sector, I just wonder how that squares with not every household needs 3 cars, maybe 2 will do, which is Hans Baerlocher's statement to the Scrutiny Panel.

Deputy R.G. Le Hérisier:

In a way the Deputy of St. Mary obviously raises a very good point because Armageddon, in a sense, may be about the fact that the kind of economy we have, the kind of consumerist based economy, basically cannot continue, and we are all going to have to face the question that the kind of model that we followed since World War 2 of continuing economic progress, the baton which has been carried now by China and India who are in fact proving that they can do it in a sense a lot better than we can do it, that that may not continue. You are quite right, and that will really shake up the whole nature of our society because [**Aside**] ... or we may, as the Constable of Grouville says, be doomed. But hopefully we will work out some compromise. What I am saying, in summary, I think we are entering an equality of misery situation. I think we, as the States... to that extent the Deputy of St. Mary is right, we have got to look at ourselves a lot more closely. We are sending out enormously mixed messages, and I think the Minister has to show that he is prepared to wrestle with issues of management and the costs of management, which we have never been able to do, but other than that I do not think, sadly, we have any way forward other than what is proposed here.

4.14 Deputy T.M. Pitman:

Earlier the Minister for Treasury and Resources asked the House to bear with him in order that we might make an informed decision. Well, I would suggest that the points raised by Deputy Southern are very well made. There are still very valid claims that need to be brought to a settlement. How can it be wise or long-sighted to agree to effectively remove this money as the Minister for Treasury and Resources is asking us? I do not believe that it can. This is indeed a flimsy and innocuous looking document but its implications are huge. It is also, I suggest, a document that needs to be viewed within the wider framework described by the Deputy of St. Mary, a framework that frames example after example of waste, of zero accountability from Ministers, further still of talk about efficiencies but very little doing. I do not want to stray further and be told off like the Deputy for going on to a separate debate, so I will return to the key point, and that is this: I stress that the Council of Millionaires, as some call them, and their acolytes may ...

The Greffier of the States (in the Chair):

Deputy, I have picked you up before, Standing Orders say one must not refer to the private affairs of Members. I do not know if you are referring to their personal finances or their politics but the latter would be acceptable, I think, but not the former.

Deputy T.M. Pitman:

I will go with the latter then, Sir, if that is okay. No offence meant. And their acolytes may have decided there will be no pay award, indeed of course that there will effectively be a pay cut, but the people who really matter have not decided any such thing as yet, as Deputy Tadier, I think, pointed out. Deputy Tadier also very adroitly pointed out the 14th July and the French Revolution. Well, if the establishment continues down this route of total contempt for people like nurses I feel... and a lot of people who certainly contact me, and other essential workers, I might suggest that we might soon have to consider the events of 26 July instead. Finally, I would also like to take up Deputy Le Hérisier's point and add that we really do need to finally start to take on board the need for serious look at progressive taxation. I think that is something that this Government and successive Houses have put off time after time and really the day has come when we cannot do that anymore. That is really all I would like to say, thank you.

4.15 The Deputy of St. John:

It shows how much the Minister in bringing this proposition forward thinks of our staff. He thinks very little of them. It was proved in my debate last week on giving them the paltry sum, in fact, of £400-odd. At least I tried to do something. The Minister... he can keep his head bowed and he should do, because I believe to want to do this to the people we employ is awful. It is just not acceptable. I think we owe our people; we have given them a job but we do not want to give them a pay rise. As far as I am concerned I could not support this because I believe later in the year the unions are going to come forward with a pay claim. I believe we should stay within the budget until next year and if the pay claim has not come forward and settled, all well and good, but I believe that is what will happen. That come August/September we will see the unions coming forward and putting a claim in, and quite rightly so they should, and a settlement will be made. Then we will have taken this out only to put it back in at a later time. I would strongly suggest that the Minister takes this away and comes back next year with it if that has not happened. But at this time I think he is trying to pre-empt something and, therefore, I would not support it.

4.16 Senator T.A. Le Sueur:

Picking up on the last speaker and speaking as chairman of the States Employment Board, I do think about our staff very seriously and I appreciate the good work they do and I want to think also about the future of that staff. I think it is all too simple to think about today's problems and not to think about the problems facing the whole Island in the years ahead. I pick up the points made by Deputy Le Hérisier a little bit earlier that the future is looking considerably more uncertain but looking considerably riskier. I think it is our duty as States Members to look after our employees

but also to look after the needs of all the Island residents, be they public sector workers, private sector workers, taxpayers, retired, whoever, our responsibility is to all Island residents and in this situation we are faced with a difficult position. But knowing the situation which lies ahead in terms of the future, which was referred to by Deputy Le Hérissier, the one thing we do not want to do is to make things worse than they currently are, and the difficulty affecting both our employees and the whole Island is that a pay rise now will have detrimental effects in the future and cause repercussions either in terms of future pay cuts or redundancies. My objective on the States Employment Board, just as the Minister for Treasury and Resources in respect of the States finances, is to ensure that we have a long-term sound footing, and in that instance this proposition, which simply reflects earlier decisions of the States and reflects the general view of the economic climate at the current time, this proposition must be the sound, sensible, long term way to proceed.

4.17 Deputy M.R. Higgins:

I just want to make one comment really and that is in the report it states that basically one of the reasons for bringing this forward is it is a choice between pay awards and job security. But I do not believe we can take any assurances from the Minister for Treasury and Resources or the Chief Minister that in the future they will not be seeking job losses anyway, to start cutting people, so even with the pay freeze I do not believe ... in fact I would ask them to give an undertaking they will not give ... they will give an undertaking, I should say, to States workers that there will not be any job cuts over the period of the pay freeze.

4.18 Deputy A.E. Pryke of Trinity:

Having the department with the highest number of staff, all of which play a vital part in the running of Health and Social Services, it will be nice to give them all a pay rise because each member of staff is a valued member of staff, but time is tough and we must live within our means, but we need to look at the wider picture and job security is important right across the board. We must lead by example and that includes our own States Members pay. I, along with my Assistant Ministers, am very much aware of the financial pressures on Health and Social Services and it is a very difficult job but we are very proactive in looking at ways of efficiency savings. I will support this proposition.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? Just before I call on the Minister to reply, Deputy Fox has asked me to inform Members that he has withdrawn from the debate because of a conflict of interest.

4.19 Senator P.F.C. Ozouf:

Can I first of all join Deputy Tadier in echoing his words of wishing our French community every good wish for their celebrations. Perhaps it was mindful of the absence from the Assembly of the Armagnac's personal representative that Deputy Tadier's speech was more a *Vive La Révolution* than it was a *Vive La République*, I am not sure: but the point that he made was well made. I think we have had a good debate. We have, I think, strayed rather wider than the narrow issue of the removal from budget of an amount of £3.5 million. I am going to respond to some of the points raised because I do think they are important to comment and to respond in the general economic situation that we find ourselves in, and certainly the backdrop of this pay freeze. I will just say one thing, and to say to the Deputy of St. John, who I do engage in helpful friendly conversation in the coffee room a lot of the times that we are in the Assembly; I do regret that he says that the Council of Ministers does not care, and that the Minister for Treasury and Resources does not care for our States workers. We do. We are perhaps having a difference of opinion in terms of the short versus long-term debate but I think that he and I and all Members are committed to putting in place the long-term strong economic foundations, which means that we can look after and pay appropriately not only our public sector workers but also to allow the services that they provide to be provided

into the longer term. It is medium and long-term thinking that has been, I think, the hallmark of the success of Jersey. Deputy Le Hérisssier asked me to show; he wanted me to prove; he wanted me to speak to the fact that I was really going to wrestle with the costs issue in the States. I want to say to him that I agree and disagree with 2 things that he said. First of all, I disagree with him about the future of financial services in Jersey. He is right that there has been a whole debate and there will be a continued debate about offshore centres in the run-up to the next G20 and this Government scrabble around to try and find solutions to their black holes, but I and Ministerial colleagues think that there is a positive bright future for our financial services industry. It is a different one, and it means that we are going to have to adapt to our products and services, adapt to new regulations, to new codes, but our information is that the future forecast for our financial services, providing we tip the scales in our balance by passing things like depositor compensation schemes and doing everything we can to support our finance industry, the future is positive. I will say to him that I do agree however that there is a need for a more fundamental look at States spending and I agree that we are going to need, and I am going to need as Minister for Treasury and Resources, to prove that I have wrestled with departments in a way that perhaps has not been necessary in the past. This week I am putting to bed, with the Chief Minister, the 2010 Business Plan which will be lodged next Tuesday. In terms of the 2010 spending limits, they are going to be announced within the envelope of spending that the Assembly made available in last year's Business Plan. There have been discussions with Ministers about what the situation is with 2011 and 2012. There is a debate that is going to have to happen with the Council of Ministers and, in turn, with this Assembly about what we do about long term spending. I pick up the signals from the Deputy and the public and other Members of the Assembly of the need for some sort of comprehensive spending review to recalibrate, to reset and to challenge the issue of the past decisions that have been made on spending. To do so, I think is going to require effort, time, resource and strength in terms of the Treasury and perhaps, just as the Comptroller and Auditor General has said, is going to require a different relationship with departments that the Treasury has had hitherto. This is not going to be easy as effectively financial management and control is largely devolved to departments and there is not, as many Members would, I think expect and perhaps want to have, a very strong Treasury function that is challenging in the way that Members have. I am up for the challenge, and I do accept what Deputy Le Hérisssier has said, and I will deal in a moment with the potential issue that the decision that we have today has, against he backdrop, of a structural deficit. I am just going to very quickly respond to the Deputy of St. Martin because he asked an important question, and I hope that he will support this in relation to States charges. I understand his concern about the States also needing to send a signal about the need to control inflation. The difficulty is that States charges... and I am afraid I am not going to please him. I hope he votes for the proposition. I am not going to give a blanket commitment to free States charges because I think to do so has, in some cases, unintended consequences. When one is providing or when the States provides charges - and we provide charges and services in many ways, whether it be harbours, whether or not it be gambling licences, whether or not it be providing property occupation, all sorts of areas, holding fees, for example - and I will take an emotive one, because I have got in trouble in highlighting harbour charges. When one holds fees, for example on gambling licences, one gives effectively a subsidy to the person receiving the services of the gambling arrangements and the gambling services that regulatory requirements have, so to freeze charges across the board would effectively give betting officers, to use an emotive example, a subsidy. I do not think the Deputy of St. Martin wants me to do that. I think he wants me to appropriately set charges with Ministerial colleagues and departments that recover the right amount of money when providing services. But he is right, and I do also give a commitment in looking at the whole of the States finances, to look at this whole issue of charges, because there are some areas where the States does need to send the right signal that we are determined to keep inflation under control.

The Deputy of St. Martin:

I know it is a difficult issue, but one of the arguments that charges go up is because wages go up, so if wages are not going up, therefore, charges should not go up. Would the Minister not agree?

Senator P.F.C. Ozouf:

Economics is a complicated subject and I do not think that the Assembly before lunch wants a long lecture on the economic realities of this. The point is well understood by me in terms of needing to be sensitive but what I am saying is they are not one simple rule that can apply to charges across the board. I am happy to develop the arguments in the coffee room if the Deputy wishes. Deputy Vallois asked, quite rightly, where the money is going. She asked the question in terms of this year's budget and subsequent years. My answer to her is that if the Assembly agrees this proposition, £3.5 million is taken out of budget, therefore it is not available for departments to spend. It goes back to the Consolidated Fund and it is not available, crucially, for Ministers to have a discussion at the end of the year in relation to carry forwards. It is taken out of budget. It means that, as Deputy Southern has said, that money is not available in order to settle for wages. I am going to carry on. I will deal with questions, I see Deputy Tadier wanting to intervene, I am going to carry on and deal with all of the questions, if I may, and then I will respond to any clarifications that Members may want. Concerning the 2010 Business Plan, if the Assembly agrees the proposition on the pay freeze then the 2010 Business Plan will not reflect that situation of an amount of money being available for January to June of next year. That money will be taken out; an appropriate percentage which will be put in place with regard to what our expectations are in terms of inflation will be inscribed in the Business Plan. I should say that this pay freeze amount has been factored-in to the Council of Minister's discussions on the Business Plan and that £6 million that would effectively need to be inscribed in the Business Plan will break the envelope of spending that I explained earlier, which has been the Council of Ministers working plan and working envelope in terms of dealing with the 2010 Business Plan. So effectively I hope that answers the Deputy's question. The money has been taken out both of budgets this year and of budgets next year. The Constable of St. Brelade says that he wanted, in the longer term, salaries to increase. We all want salaries to increase, and I agree with him, but of course salary increases do in a proper appropriate world also need to be matched by productivity improvements where that can be the case, and I regard, for the avoidance of any doubts, this pay freeze to be somewhat of a holding position. Deputy Le Hérissier is also correct when he says there needs to be a more fundamental review of pay, and I know that the Constable of St. Brelade, who is on the States Employment Board with the Chief Minister and myself, knows the importance of having this more fundamental review of pay across the States and hopefully where there are unfairnesses, they will be identified, and where comparisons do need to be made they will be made. I think that Deputy Southern does defy the laws that I understand of good housekeeping and economics. He seems to want more money for everything and he regularly stands in this Assembly and says that he wants more money for everything, income support, and today we have heard on salary improvements, but I still do not know where he expects the money to be found from. I have explained that the Council of Ministers is working on a 2010 envelope of spending that was set last year. The Business Plan will raise the spectre of the risk of a structural deficit in our public finances in 2012 and beyond. This is not due to overspending; this is due entirely to the downgrading of our economic assessments in terms of economic growth. I heard the comments of the Deputy of St. Mary. I heard a litany of criticism. I want a strong economic Island. I want an Island with strong public finances. I want to work with the Council of Ministers and the Corporate Affairs Scrutiny Panel to strengthen the finance function across the States of Jersey. The Deputy of St. Mary's remarks were quite depressing. They indicated that everything was wrong. I would say that everything is not wrong in our public finances. This Island does not face the spectre of an increase of 20 percent to V.A.T. (value added tax). It does not face the prospect of massive spending cuts in order to deal with our public finances' black holes. We do not have this situation where we are shackled with mountains of debt. There have been opportunities and there always will be opportunities for improvement in the way in which we manage our public finances. As I gave the undertaking to

Deputy Le Hérissier, we are up for this challenge in dealing with the 2011 and 2012 budget limits of the States of Jersey. All is not a picture of doom and gloom in our public finances. We are strong compared to most other places but we must make decisions based upon our long term economic thoughts, and certainly our pay freeze in relation to our assessment of what the inflation outlook for Jersey is. If inflation remains low then our public sector workers are not going to be worse off as a result of this pay freeze. That is something which is an important consideration which has been factored-in to our thoughts and Members will know tomorrow exactly what the inflation number, which is announced in the United Kingdom, and I think here in Jersey too, what that picture is. But certainly the assessment that has been made is one of a very different inflationary picture than the picture that we saw when we agreed the Business Plan figures last year. That is the reason why I would submit to the Assembly that the prospect of a pay freeze in terms of the inflationary outlook, but also the real problems that exist in the private sector of pay freezes across the private sector of the real risk of job losses in many areas, that this is the responsible thing to do. So I think the debate has been had. I think I have responded to all of the questions that Members raised, and I move to the appel.

Deputy M.R. Higgins:

The Minister did not answer the question about could he give a guarantee there will be no job losses of the period of the pay freeze.

Senator P.F.C. Ozouf:

I am not going to give that undertaking, and I think to do so... and I understood Deputy Higgins was a lecturer in economics, and he would understand the importance of prudent long-term financial management and also reckless statements being made by Treasury Ministers, and I will not make that decision and I will not give that undertaking.

Deputy M. Tadier:

The Minister did say he would be kind enough to answer other points of clarification after the speech. All it was was simply to, I guess, repeat the Deputy of St. John's point, we know negotiations will be taking place with the unions, so what happens if and when those pay negotiations are successful, say for example, if they succeed in getting a 2 or 3 per cent increase, does that mean that we have to then get the money back out of the Consolidated Fund?

Senator P.F.C. Ozouf:

In theory that is correct but, of course, our negotiators will understand the envelope of negotiating room that they have, and I think that is a sensible and entirely justifiable position to take. This Assembly must put an envelope of available resources to negotiate and to negotiate on that basis. Of course it is up to Members ultimately if they want to put more money into States salaries, but I could not conceive of a situation where a responsible Assembly would do so with all of the economic information that they have and the real situation of pay freezes across the private sector. I think the negotiators of our public sector pay well understand the situation and I think our workers also understand the situation that the Island finds itself in.

The Greffier of the States (in the Chair):

The vote is for or against the proposition of the Minister. The appel is called for. If Members are in their seats the Greffier will open the voting.

POUR: 31		CONTRE: 10		ABSTAIN: 0
Senator T.A. Le Sueur		Senator S. Syvret		
Senator P.F. Routier		Deputy J.A. Martin (H)		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		
Senator T.J. Le Main		Deputy P.V.F. Le Claire (H)		
Senator F.E. Cohen		Deputy S. Pitman (H)		

Senator S.C. Ferguson		Deputy of St. John		
Senator B.I. Le Marquand		Deputy M. Tadier (B)		
Connétable of St. Ouen		Deputy of St. Mary		
Connétable of Trinity		Deputy T.M. Pitman (H)		
Connétable of Grouville		Deputy M.R. Higgins (H)		
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy of St. Ouen				
Deputy of St. Peter				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

The Greffier of the States (in the Chair):

If I could draw Members' attention to an addendum to the report of the Minister for Social Security on the Draft Income Support (Amendment No. 4) Regulations, which is in pigeon holes. This is a matter down for debate later in the sitting so Members will no doubt wish to pick up their copy of that addendum and read it before the debate.

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

The adjournment is proposed. The Assembly will reconvene at 2.15 p.m.

LUNCHEON ADJOURNMENT

Senator T.J. Le Main:

Before we start may I just say a couple of words on something I may have misled the Deputy and Members this morning when I mentioned about rental deposits that we had had legal advice. I am advised by the Crown Officers that was not the case inasmuch that I can now recollect that it was a discussion round the table with the law drafting officers and Law Officers. So I did not actually get any legal advice but advice was given around discussions that would take place in building up the issues of rental deposits. I would like to make it quite clear that I do apologise if I unintentionally misled Deputy Southern and others.

The Greffier of the States (in the Chair):

Thank you, Minister.

Deputy G.P. Southern:

May I seek clarification? I am still not ... that the Minister got legal advice, the question is whether it was the Law Officers or the Law Draftsman; was the Minister told that he could not institute a rental deposit safeguard scheme without including lodging houses, people defined as lodgers?

Senator T.J. Le Main:

I have nothing else to say. The subject was raised during our discussions and deliberations and, as I say, if I unintentionally misled the Deputy and others I apologise.

The Greffier of the States (in the Chair):

Just before continuing with Public Business, the chairman of the Income Support Sub-Panel has given notice he would like to make a statement. It may be a convenient time for that statement to be made, Deputy Southern.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

5. The Chairman of the Income Support Sub-Panel regarding income support review

5.1 Deputy G.P. Southern (Chairman, Income Support Sub-Panel):

I am making this statement today in an attempt to avoid what appears to be the normal defensive reaction of Ministers to Scrutiny Reports. I note with some sadness that in my absence from the Island last week the current Minister for Social Security was suggesting an element of politicking had already taken place in the preparation of our report on income support, S.R.5 of 2009. In an initial attempt to pre-empt such a reaction I draw the attention of Members to the presence on the panel of our 2 lay advisers, the Reverend Geoff Houghton and Mr. Ed Le Quesne who brought their own independent perspectives and who were fully involved in drafting the report and its recommendations. I believe our report offers a balanced approach and deserves to be heeded. It is a genuine effort to co-operate with the Executive in delivery of an effective and efficient benefit system. It should be viewed as advice from a critical friend. While the report contains many recommendations which could be implemented at relatively low cost and in a fairly short timescale, I wish to draw the Minister's attention to what I believe to be central issues which require his attention and action on a political front. The report notes the dedication of the Social Security staff, and particularly those dealing with income support, and praises their willingness to go the extra mile in their attempts to make the system work. In examining the activities of the department with regard to the introduction of income support, the sub-panel became acutely aware that departmental resources have been increasingly stretched over the past few years. The department has taken on additional responsibilities in areas such as Employment Law, redundancies and the massive overhaul of benefits. It has done so without demanding additional resource in an effort to drive down costs. The sub-panel believes these additional workloads have increased the stresses on staff and reduced efficiency. I believe that the Minister should admit that if he wishes to deliver essential additional services he must now accept that a bid for additional resource, especially staffing, must be made. The sub-panel urges him to do so. The sub-panel does not believe that the issues raised in this report can be put on the back-burner to await a departmental review in 2010. Some of the minor changes could be put in force at little cost today, others may require greater planning and indeed costs, but all require action to start. I urge the Minister for Social Security to demonstrate an open mind and include some of the changes required in the 2010 Business Plan for immediate implementation. Thank you.

5.2 Deputy I.J. Gorst:

Would the Chairman not agree with me that he is the one being political by taking one comment reported in a newspaper which was the result of a 2-minute conversation? Would he not agree that

it would have been better for him, on behalf of his panel, to have awaited my official response before accusing me of being defensive?

Deputy G.P. Southern:

I do not accept that I am being political at all. I came back to the Island to see a front page headline in the *J.E.P.* which included a statement that there was an element of politicking about the issues. I am determined that in this case we can work together because we share the joint aim of producing a benefit system that works to support people in and out of work. I look forward to co-operating with the Minister in such aims and I point out these 2 essential elements that I believe are vital: (1) that we get on now with some reform; and (2) that we accept that if we are to deliver an effective, proper support system it may need additional resource. Despite the fact that we are in a recession we need to be able to support people properly, not just short-term with emergency measures but longer term to get people back into work and support them properly.

Deputy I.J. Gorst:

I am sure that the Chairman is aware, contrary to some popular belief, Ministers and I certainly do not have editorial say over what is printed in the local newspapers. I am surprised he takes that as a basis for making a statement. I hope, however, that he, as he has indicated and I would like to do, can put this behind us and work together for the benefit of Islanders as he has just outlined. I hope that he will be giving me and my proposition, which we may get to either today or tomorrow, his full support to that end. I wonder if he could confirm that.

Deputy G.P. Southern:

Having not had time to study the detail, nonetheless I will be giving him support for his annual review. It looks like in the right direction. We wait to see how the Minister builds on that great initiative now into the coming year. It must be next year that we build on, not some time in the future. Delay is worse than no action at all.

5.3 Senator P.F.C. Ozouf:

Can I ask the Chairman about the issue he has just raised about resources? I confess I have not read the report but he raised the issue of additional resources. How much is he saying that, in his view, income support, based upon his panel's report, needs to be increased by in terms of millions of pounds and where is he suggesting that we find it from?

Deputy G.P. Southern:

It is not the job of Scrutiny to provide alternative policy nor is it their duty to go into the fine detail of how much money is to be spent where. That is a Ministerial responsibility and one of the things that Scrutiny should not do is do the Minister's work for him. There are no sums allocated or indicated in this report and nor would anybody expect them to be in there; actual figures to suggest £X million here and £X million there, X number of staff there. However, one of the essential elements that is contained in there (and is highlighted by my report and, I believe, agreed in principle by the Minister) is incentives to work. We have described income support as an in-work benefit and time and time again and certainly in this report we come back to the issue that incentives to work are probably insufficient. That is a cost. How much that cost is and how much can be done now and how much can be spread into the coming years is not for this report to say. It is for the Minister to decide and to bid for in debate with the Minister for Treasury and Resources. Where we get the resources from, again, is not the job of this report to suggest. It is to suggest that there is a need. It is point out the need which is an extremely critical one now but one which will not go away when the recession goes away. It is an ongoing need and we must build on infrastructure of benefit to make sure that it delivers what we have set out to deliver, which is an in-work benefit.

5.4 Senator P.F. Routier:

The Chairman mentioned that he did not think it was Scrutiny's role to bring forward different policy proposals. From reading the income support report, the Scrutiny Panel's report, it does talk about reducing the 5-year rule down to 3 years and to me that is one of the major policy decisions that founded the income support proposals initially. Does the Chairman accept that that is a major policy change?

Deputy G.P. Southern:

I think the Senator has misread the report. I do not believe it says 5 years to 3 years. I think it says the recommendation is that the Minister reviews the 5-year policy. In particular under the circumstances where in previous years, under the old system, the family allowance was claimable on your first year's income tax return; so claimable by some families on behalf of some children after 2 years and now the blanket 5 years applies. So in going to this new system we have reduced accessibility to benefit for some (few probably but some) families and that needs review. All we are saying in our report is: "Please review it". It does not suggest a way forward and it does not suggest alternative policy.

Senator P.F. Routier:

I am a little bit surprised at the finding of the reviews because there is a benefit which is available to people who have children within Jersey after 6 months. That benefit has been in existence since income support came in. Outside of income support, admittedly, but it was recognised that the change that was being made from the previous family allowance system did require for a support system to be there for ... Does the Chairman recognise that the findings of his report are wrong?

Deputy G.P. Southern:

No. It apologises for having overlooked the fact that this benefit is in existence but it was completely unaware; as were the 49 individuals we got submissions from and as were the 10 groups that we contacted about the workings of the benefit. All were ignorant that there was a benefit available to replace family allowance after a mere 6 months. I apologise that we did not upturn that fact but it points once more to what is a central criticism contained in the report, that communication and publicity about what benefits are available and how they work have been lamentable; not necessarily in the time of the current Minister but certainly in the time of the previous Minister. We told him at the time and we are telling the Minister now that communication is vital to get the message over to applicants what benefits are applicable and how and what their rights are. Now, we have failed to do that and, worldwide, everyone knows, who deals in this area, that the major failing of any benefit system is under-claiming; people not claiming because they are not aware of what is there. This must be put right as part of the process.

5.5 Deputy R.G. Le Hérissier:

It is on the substance of the report. Notwithstanding some excellent ideas like showing how benefits are calculated and incrementally built up and so forth, would the Chairman not acknowledge that there is an underlying assumption that we should have brought together the old Parish system, particularly the home visits system, and the more bureaucratic income support? In that sense he was really asking too much of the department who never really, at any point, had the resources to do that.

Deputy G.P. Southern:

Indeed, that is an issue which is raised in the report and one which is essential, I think, to looking at how we go forward. It is not a plea to go back to the old Parish system but to modernise and replace something that is now missing. Time and time again organisations came to us (like Shelter Trust, like Citizens Advice, like Family Nursing, like Adult Social Workers) saying: "Time and time again we have to take our clients through this horrible form and take them through the whole process". It is hours and hours of fully trained professional social worker time or family nursing time dedicated to getting people to their proper benefit through the system; that system of

advocacy, of helping somebody who may not understand the system very well, who may have learning difficulties or may be frail or vulnerable, to get through the system. That has been missing and it is sorely missed and we need a replacement for that certainly. Admittedly the department never thought it was taking on that role and neither did this House when it set up this new system. It seemed to ignore the fact that there was a lot of additional input going in through the Parishes that is now missing and sadly missing because people are missing out.

The Greffier of the States (in the Chair):

I am afraid that completes the time for questions.

5.6 Deputy I.J. Gorst:

Sorry, I do not know if I could make a brief comment. All sorts of comments are made against Ministers in this House for having long rambling questions or answers which are not relevant to the questions. I wonder if you could just confirm how many questions it was possible to take in that 10 minutes and perhaps we could even do some analysis to see how many questions the average Minister manages to take in the 10 minutes? It seems to me there were a lot more questions which could have been asked but did not have time.

The Greffier of the States (in the Chair):

There were 4 Members who asked questions and I think some Members asked more than one. But only 4 Members were able to ask a question.

PUBLIC BUSINESS - resumption

6. Draft Income Tax (Amendment No. 33) (Jersey) Law 200- (P.82/2009)

The Greffier of the States (in the Chair):

We come now to the Draft Income Tax (Amendment No. 33) (Jersey) Law 200- and I will ask the Greffier to read the citation.

Deputy Greffier of the States:

Draft Income Tax (Amendment No. 33) (Jersey) Law 200-, a law to amend further the Income Tax (Jersey) Law 1961, the Goods and Services Tax (Jersey) Law 2007 and the Bankruptcy (Désastre) (Jersey) Law 1990. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

The reasons for these amendments have been clearly set out in the report. However, I will briefly recap. Part 1 is to bring the interest rate paid to taxpayers on the sums that they have paid on account over and above their tax liability in line with current market conditions, with the base rate currently at 0.5 per cent. At it stands the Treasury are paying more favourable rates than are available in the High Street banks. Part 2 is to bring I.T.I.S. (Income Tax Instalment System), G.S.T. (Goods and Services Tax) and other tax department debtors in line with income tax debtors. This is to enable them to be treated as preferential debtors in the cases of bankruptcy and known disasters. These are 2 very simple amendments to the Income Tax Law and I make the proposition.

The Greffier of the States (in the Chair):

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? I put the principles. Those Members in favour of adopting them kindly show? Against? The principles are adopted. Senator Ferguson, is this a matter which your panel wishes to look at?

Senator S.C. Ferguson:

No.

The Greffier of the States (in the Chair):

Very well. Assistant Minister, do you propose the Articles *en bloc*?

6.2 Deputy E.J. Noel:

Yes, I do.

The Greffier of the States (in the Chair):

Are they seconded? **[Seconded]** Does any Member wish to speak on any of Articles 1 to 5?

6.2.1 Deputy I.J. Gorst:

Just to perhaps pass a social comment that it seems as though we are living in a strange world where people would rather pay money to the income tax and taxation authorities around the world than keep it in their own pocket because of the benefit to the individual. Perhaps some day soon we might get that to some sort of normalcy. Thank you.

Deputy E.J. Noel:

I take Deputy Gorst's comments on board. That certainly is what we are hoping to do, is divert some type of normality here.

The Greffier of the States (in the Chair):

I put Articles 1 to 5. Those Members in favour of adopting them kindly show? Against? The Articles are adopted. Do you propose the draft Law in Third Reading, Assistant Minister? Seconded? **[Seconded]** Does any Member wish to speak? I put the draft Law in Third Reading. Those Members in favour of adopting them kindly show? Against? The draft Law is adopted. I would just point out to Members that it will be adopted as Amendment No. 32 as it has been adopted before the currently draft lodged Amendment No. 32 which comes later on the Order Paper.

7. Public Finances (Jersey) Law 2005: Funding Requests under Article 11(8) (P.83/2009)

The Greffier of the States (in the Chair):

I come now to the Public Finances (Jersey) Law 2005: Funding Requests under Article 11(8). It is a very lengthy proposition. Would Members be content to take the proposition as read? Very well, Minister?

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

Under Article 11(8) of the Public Finances (Jersey) Law 2005 it is only the Minister for Treasury and Resources that can bring a request for additional funding to the States. This proposition makes, exceptionally, 3 requests, each of which have been elaborated in the accompanying report and I think the arguments are well known to Members. The first relates to the Historic Child Abuse Inquiry. £7.5 million for this purpose was approved by the States in September 2008. This proposition seeks to add an additional £4.2 million, taking the estimated costs on the inquiry to a total of £11.6 million by the end of 2009. Costs will still be incurred by Health and Social Services through 2012 and those matters will have to be dealt with at a separate time. I want to make it clear to Members that I have personally challenged all departments and particularly Health perhaps and the other big spenders on this particular request to ensure that every effort is made to ensure that costs are minimised; however, mindful of the appropriate arrangements that have been placed and statements that the abuse inquiry must be properly funded. I can assure Members that funds will only be released to departments when it has been demonstrated that the costs relate solely to the inquiry and are unavoidable. The second request relates to income lost by the Health and Social Services Department as a result of the U.K. ending the Reciprocal Health Agreement. The

estimated loss to Jersey in 2009 is estimated to be £2.9 million or £3.9 million if taken in a full year. This has been taken account of in the draft business plan that will be lodged next week. However, there remains an issue for 2009. I can also assure Members that no funds will be released until the reduction of income is clearly evidenced and the department demonstrates to the Treasury that it has done everything possible to minimise the loss by collecting money and I recognise the difficulty of this by U.K. visitors when they receive treatment in Jersey. Responding to the challenge that Deputy Le Hérissier made to me earlier as to whether or not the Treasury is being challenging, this is exactly an example of it where the money is not being passed to the departments directly. They can only draw down the amount of money when they have proven that they need it and that they have taken all steps to ensure that it is minimised. The final element of this request relates to additional costs incurred by the Social Security Department for income support and supplementation as a specific result of the economic downturn. This is called the “automatic stabilisers” in other reports and propositions that Members will be aware of. Additional income support of £2.4 million is forecast for 2009. In addition, an extra cost of supplementation is also or was at least forecast at the time of the proposition. This is by no means certain and funds, again, should be regarded by Members as the maximum level and will only be released based upon evidence. I do not bring requests for additional expenditure lightly to the Assembly. In an ideal world I would not bring such requests as I believe that they weaken the discipline of the annual business planning process. However, we do not live in an ideal world and I have been convinced that in these 3 cases there is a genuine need for departing from the planned expenditure limits for 2009. If all parts of the proposition are accepted, and I hope they will be, then this will mean an additional £10.25 million which will be taken from the Consolidated Fund in this year. I am convinced that if this proposition is not approved then the departments concerned will not be able to absorb their costs and live, consequently, within their cash limits. To not agree the proposition, the departments concerned that do have to incur this expenditure would be forced, because they would have no option, to cut other services. Members of the public and we certainly would see a deterioration in a number of different parts of the public sector service. I have been convinced. I have asked serious questions and I move the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]**

7.2 Senator A. Breckon:

I would like to draw Members’ attention to paragraph (b) in reference to the Reciprocal Health Agreement and from there it is saying: “Permit the withdrawal of up to an additional £2.9 million from the Consolidated Fund to be allocated to the Health and Social Services Department as the result of a funding shortfall caused by the ending of the Reciprocal Health Agreement with the U.K.” Then it goes on. I must say, with the Consumer Council hat on, about 200 people or more have contacted us on this issue and they are really concerned. That is people coming to the Island and people leaving the Island. What is set up here is a bit chaotic, I must say, and there is some real concern about Jersey residents, especially elderly people, going to the U.K. to visit friends and family or whatever it might be. What do they do? People are taking out small policies but that comes with a warning because now brokers are asking underwriters and brokers are asking: “Why do people suddenly want this cover? What is the risk?” The premiums are going up as we speak. So the question is how have we got into this mess? I can understand the reason for contingency funding but I think the Minister for Health and Social Services and the Minister for Treasury and Resources need to look more closely at this because there is going to be income from people coming from the U.K. Somebody asked me just the other day. They have got elderly relatives coming; what do they do? Do they take out insurance? They are going to stay with them. What are the risks? I think Tourism have started to have policies for people coming in. I do not know what they are. Age Concern are doing something, brokers are doing something and I can say it is fairly chaotic but it needs to be organised. It is not just a matter of it is going to cost some money.

What happens if a visitor comes to the Island, does not have insurance and cannot pay? How do we enforce that? If somebody is seriously ill and we have got accountants around the bed looking for money, I do not think that is where we want to be. But the reason I say that is I do not have a problem with the money granting, I think this is a step, but we need to go further because people are not used to paying for this. Even somebody last night ... for 4 days in the U.K. a couple paid £22, which is not a lot but they were not paying it before and they had to go to the trouble to arrange that. The other thing is some insurers are putting exemptions in policies. So if somebody, for example, has angina the exemption is that if you are affected by that while you are away you are not covered. So there are some very real problems in this here. I know this granting of money is, in health terms, sticking a plaster on. It is not the final answer I do not think. Somebody needs to look in more detail at this and come back with a report of where we are, why we are there and, more importantly, what we are going to do with it. I know it is not the function of the Minister for Treasury and Resources but he has been asked to come up with the money and, like he said, he is doing this because he has no choice really. But I think somebody should have more answers than we have had to date. Thank you.

7.3 Senator B.E. Shenton:

Just picking up from Senator Breckon, the removal of the Reciprocal Health Agreement was very much a political decision by the current U.K. Government. The opposition in the U.K. have indicated that they may well be willing to reinstate the Reciprocal Health Agreement if Jersey can put a case forward for its reintroduction. Is this something that the Council of Ministers and the Minister for Treasury and Resources would be keen to push forward if negotiations could take place in due course? The other part of my question relates to the words that the Senator has used with regard to making sure that the money is spent wisely and spent well. As he is aware, there was a Ministerial Decision passed where one of the accounting officers of one of the departments says that he cannot verify that the money spent last year was spent correctly. What action has he taken in respect of this? Because there are onerous ramifications for accounting officers that do not comply with the Public Finances Law.

7.4 The Deputy of St. Martin:

Yesterday I thought Deputy Tadier was most unfairly accused of not only waffling but also producing figures on the back of a cigarette packet. I would ask Members to have a look at page 5 and they can just about get these figures on the back of a pack of cigarettes. I am looking at the Home Affairs costs. Here we have got: "Staff, et cetera, £1.7million." No indication of where that money is going. "Travel, accommodation, subsistence: £592,000," no indication where that money is going. "Other: £204,000", well, that is nothing, is it? Other: £204,000. So, again, possibly we could ask the Minister to give us a breakdown of where these costs are going to be. Then we see further down on the next line: "The estimates exclude any costs associated with any future public inquiry, any future claims for compensation, et cetera." The third bullet point I think is very relevant because it says: "The outcome of the investigation currently being undertaken by Wiltshire Police concerning the Chief Officer of the States of Jersey Police." Yesterday I asked a question of the Minister for Home Affairs. We were told that £380,000 has been spent already and rising and yet the money we are voting today is not going to come from what we are agreeing today. Yesterday when I asked where the money was coming from we were told it was coming from the Historic Child Abuse Inquiry. So maybe we can have some answers as to why we are now being told that we have got to find more money when only yesterday we were told the money was there already because it was coming from the Historic Child Abuse Inquiry. Thank you.

7.5 Senator B.I. Le Marquand:

This does appear to be a good time to speak. I was in fact just about to explain the situation, as it has been explained to me, in relation to the £2.5 million which is the Home Affairs Department's aspect. My understanding from the figures provided to me by my own staff is that £110,000 of that

is in relation to the first investigation being conducted by the Wiltshire Police Force. That is not going to be sufficient to cover the total cost. Indeed, although there is a gap between the amount being sought by the Minister for Treasury and Resources and the total provisional sums, even if the whole of that gap were to go to that expense it still is not going to be enough. It will in fact arrive at the position approximately at the end of May. So there are going to be additional monies which are going to have to be found from somewhere. In addition to that, of course, I face the problem in relation to the financial provision for the investigation in relation to Operation Blast. Now, I sense from the reaction of Members in this House that there is universal agreement that that investigation should take place, or almost universal agreement that that should take place. But the fact is that I do not have the money. To make my position even worse the agreement which has been brokered, subject of course to States approval in terms of budgetary matters for the Home Affairs Department from next year ... for that to work so that we cannot have to cut real core services relies upon me being able to keep certain under-spends from this year. So I do not want to have to allocate those. So I am putting the House on notice that at some point I am going to have to come back in some manner for additional monies, both in relation to the initial investigation and the Operation Blast investigation. The rest of the money, which I have not done the arithmetic on, is the expected provision for costs in relation to the Historic Child Abuse Inquiry itself.

7.6 Senator B.E. Shenton:

Perhaps while the Minister is on his feet he could comment on the fact that his accounting officer has admitted that funds may have been inappropriately spent and the Finance (Jersey) Law may have been breached?

7.7 Senator B.I. Le Marquand:

I would like to answer if you would permit me to answer that. I am shortly to receive a report which I commissioned back in February in relation to whether or not financial matters were properly dealt with in relation to the Historic Child Abuse Inquiry. I understand I will receive that report shortly. I do not want to speculate on its contents.

7.8 The Deputy of St Martin:

Again before the Minister sits down, could I ask him whether in fact Operation Blast is connected with the Historic Child Abuse Inquiry or is it something separate.

7.9 Senator B.I. Le Marquand:

I was not aware this was question time, Sir. Again, I will very happily answer if you will permit me to. I do not know the answer to that **[Laughter]** because I do not know the motivation behind Operation Blast. It could be there is some subtle linkage but there is no direct linkage, no.

7.10 Deputy K.C. Lewis:

I will be brief. Following on from Senator Breckon's question, it is my information that anyone visiting Jersey has free treatment at Accident and Emergency. Thereafter, if there is any long stay, et cetera, there will be a claim against their insurance company or them personally. I wonder if that could be clarified. Local people visiting the U.K., some insurance schemes do not cover existing ailments, which is something people need to be aware of. I would also welcome the re-implementation of the Reciprocal Health Agreement. I think that would be an excellent idea. Thank you.

7.11 Deputy T.A. Vallois:

I am just pointing at the income support area with the £3.1 million with regards to what the Minister commented on in the last statement, that he had not read the sub-panel's report. I would ask that he makes an undertaking to do that before even considering pushing funds in that direction at present. Also, from being the economic stimulus package review, there is a point here based on employment numbers. Now, it was evident in that review that employment numbers are neither

here, there or anywhere and the data is not 100 per cent analysed. So it could be an increase or a decrease and I would hope that more information and more analysis would go into that before the monies are provided.

7.12 Deputy G.P. Southern:

I want to turn to the third part of this debate and point out, once again, here we are with supplementation going up in this case in times of a recession. I remind people that we have seen supplementation going up and we did not know why over the past few years when we were supposed to be growing the economy through the import of high earners and, lo and behold, supplementation went up anyway because we apparently were importing low earners as well. So it seems to me that whether it is boom times and we suck in more workers, very often (and we cannot control it, we do not manage it very well and we will not be able to manage it very well) those are low earners that we need supplementation for and the bill goes up and now, in times of recession, here we are; supplementation goes up as well. Interestingly, I note that it looks like pigeons coming home to roost here, it points out: "Initial modelling shows that if all those who receive supplementation have a pay freeze in 2009 the costs could amount to an additional £3.7 million." Well, we have done well there, have we not? Because we have certainly got some of our employees - mainly the public sector - on a pay freeze, so one of the consequences of that is supplementation will be going up. Well, well done us. One hand, second hand; they do not appear to communicate with each other. We did not have a debate on supplementation costs of a pay freeze when we were debating the potential of a pay freeze at the time. This seems to me here we are careening from one mistake to another. But the big mistake that has been made and consistently has been made by Ministers for Social Security, by Ministers for Treasury and Resources and indeed, since we have had more than one now, Chief Ministers is that they consistently bury their head in the sand and ignore our social security contributions and, in particular, the supplementation element of that which costs us whatever it is, it is something like £68 million at current going rates, out of our economy to prop up a system, which is a tripartite system; which urgently needs reform before we get on to all the longer term impacts upon social security of the ageing population. We need to get hold of this and we have not. We have not in the 7 years I have been in here and it does not look like anybody is going to get on with a major proper reform of social security contributions and in particular supplementation in the near future. I do not see it anywhere on the horizon. We may do some tinkering with the edges of it but that is about it and it is a vital issue that we have ignored for too long and we ignore it at our peril. Here we are in times of recession, supplementation again increasing the hole in our pocket and producing a loss of revenue.

7.13 The Deputy of Trinity:

Before I comment about the request for funding I just want to mention about the Historic Child Abuse Inquiry funding and the conflict of interest which sits at the heart of my responsibilities. By definition my department is the only department within the States which is able to provide the range of health and social care services which victims and alleged victims of abuse need. However, following advice from the Solicitor General it is determined that it is the Minister for Health and Social Services who is to be held liable for any civil claims arising from the Historic Child Abuse Inquiry. Clearly, as Members would agree, this is a significant conflict of interest and this interest has also been brought up with the Care Leaders Association. So to manage this I made a decision some weeks ago to separate off the 2 conflicting objectives. Namely myself, assisted by my deputy chief officer, has responsibility for defending the States against civil claims. My Assistant Minister for Children, Deputy Martin, and the chief officer of my department have responsibility for providing services for victims and alleged victims. I have made it clear that under no circumstances should there be any crossover from one of these responsibilities to the other and they should be kept separate at all times. My department is responsible for providing appropriate treatment and caring services for victims and alleged victims of abuse. A great deal of early advice

has been given by Dr. Tracy Wade, who is a consultant psychologist within the Social Services Department, and such bodies as the Care Leaders Association. Of fundamental importance to the care of victims of abuse is provision of traumatic stress counselling and this is a service which is needed with some urgency if the lives of victims are to be recovered and improved in order that they become more active and of powerful assistance within our society. To this end the intention is to commission the Tavistock Institute to work with our Psychology Department to provide such a service. The funding request also allows sustained funding for the Jersey Care Leaders Association and other bodies. This organisation, as we know, supports victims of abuse and is led by people who are victims of abuse themselves. These people need to plan such services and create some modest infrastructure which allows them to meet with and communicate with their wider membership. Members might note too that this request also provides funds under the terms "other" which are necessary to meet some of my department's funding pressures as a consequence of the Historic Child Abuse Inquiry. Members will be mindful that Aviemore, our respite services for special needs children, is adjacent or was adjacent to Haut de la Garenne. The States of Jersey police activities and the intense media interest in Haut de la Garenne distressed some of our special needs children at Aviemore and my department had to relocate some of the services, paying rental, so the therapeutic activities were not prejudiced by such proximity. The need for funds to support my department's legal defence against civil claims is self-explanatory. What I can say is that steps have been taken to reduce, wherever possible, the cost of this extremely expensive service to ensure that the taxpayers' interest is protected. The legal advice is directed through my department's legal administration office which undertakes the preliminary paperwork and advice before legal opinion is sought. In that way its costs will be kept to a minimum. Going on to Reciprocal Health Agreements, Members are all aware and have been profoundly dismayed by the U.K. Government's decision to bring about radical changes to reciprocal health between the U.K. Government and the Channel Islands. My predecessor, Senator Perchard, sought to delay the proposed changes for a year in order that officers from the jurisdictions could have in place robust procedures managing this change. Unfortunately, as we all know, this was not achieved and it is a source of regret to us all that this was not taken up. I take very much Senator Breckon's points and I give this undertaking to look into it because if we can improve what we have now, then that is definitely a good thing. However, in the final countdown, the changes to reciprocal health has created a £2.9 million gap in my department's finances and without support my department would have to find such a sum within its existing cash allocation. Given the significant pressures my department is currently subject to, most of which will become clear when the 2010 States Business Plan is known, I can advise Members with great confidence that if I have to accommodate the £2.9 million gap internally then Members will be effectively voting to significant cuts in direct services for patients and clients. It is as simple as that. My department has put in place measures to identify those U.K. citizens who obtain treatment in Jersey when they visit here. My staff will pursue financial claims against these citizens in order that the taxpayers' interests are protected and to ensure that we in Jersey do not find ourselves inadvertently providing free treatment to U.K. citizens. The robust pursuit of such claims will be reciprocated by the U.K. when Islanders travel to the U.K. and then require emergency treatment there. I implore Members please to support this proposition.

7.14 Senator S.C. Ferguson:

I wonder if I could possibly help the department and clarify some of the comments on the supplementation figures. If we go back, this Assembly was extremely keen that some type of P.A.Y.E. (Pay As You Earn) should be brought in and we brought in I.T.I.S. As a consequence of this and based on the first year of figures of I.T.I.S., the tax collected rose by 11 per cent. However, the number of taxpayers rose by 32 per cent. This obviously implies a high level of low-paid immigration and it underlines the importance of the migration policy. I have no doubt that the Minister for Social Security will confirm that he is taking a look at supplementation once the latest actuarial reports on the social security fund have been analysed.

7.15 Deputy R.G. Le Hérisier:

In a way today is an echo of the old supply days when there was no budgetary discipline, as we well know, and everybody had a party where all additional requests were approved. I am not suggesting Senator Ozouf is totally wedded to re-introducing that system but I am sure he struggles with it. I am sorry the Minister for Health and Social Services has spoken but I would have asked her about health tourism: what progress is she making in wrestling this subject to the ground? Has she or her department identified the extent of the problem and, if so, when will - sad to say - new controls be coming into place? Secondly, it is sad, as Senator Beckon has said. The section from health is written in very tentative terms. Unlike in the U.K. apparently where there are 2 pieces of clear I.D. (identity document) called for, there does not appear to be a lot of confidence in the Health Department's section on how they are going to get the money and it all ultimately seems to lead to the fact we are going to have to follow the American private care example of asking people for credit card impresses. It is mentioned in Health's report. That is going to be a very sad day when that is asked for. As we know, that is the way the American healthcare private system operates. Again, I would ask the Minister for Health and Social Services are there any percentage of targets going to be set as to what proportion of the monies expended on non-residents can be captured by the department or is it just going to be a wing and a prayer? Because certainly, reading Health's submission within this report, it does very much look like a wing and a prayer. I would hope that they could be more disciplined, both on the health tourism front and on the reimbursement front, short of having to ask people as they march into the hospital: "Kindly show me your credit card and I will take an impress." It is very sad, as Senator Breckon said, that we have reached there. The third point I would raise is one Member, Senator Syvret, has raised for a long time how people are able to arrange their affairs, particularly those "self-employed"; they've been able to arrange their affairs so that while they are apparently earning large sums of money what they submit to social security is evidence of a very limited sum of money. Although I do not for a moment think that this will compensate for the pressures of more unemployed, it again helps if we show people that we are operating the system in a very clear and even-handed fashion. I wonder if the Minister, if he were to contribute, could address that issue. Are people arranging their affairs so that they pay minimal social security and are, therefore, thrown on to the supplementation system; people who are apparently quite rich? Because this is certainly irking a lot of people and, again, it makes it very difficult to apply these rules, to ask for more taxation from people, et cetera. Thank you.

7.16 Deputy M. Tadier:

The elephant in the room, of course, is perhaps part (a) to do with the funding of Haut de la Garenne and what has been called the ... I am surprised we have not started calling it the H.C.A.I. (Historic Child Abuse Inquiry) just for convenience because it is less of a mouthful and less embarrassing, the Historic Child Abuse Inquiry. We have found ourselves in this situation where, up to date, I believe we are going to have expended £11.6 million on this investigation; something which is very controversial, no doubt, with the public and a very emotive subject and indeed so it should be. The point is we need to take lessons from this as a House. The point is if you make mistakes, which everyone does, the least thing you can do from it is learn. Now, the reason we found ourselves in this situation in the first place is that historically there have been deficiencies in the system with child protection and basically the old regime (which is probably not the old regime but the government of the time) simply preferred to engage in cover-ups which in the long term have proved a lot more costly. You sweep stuff under the carpet and you end up paying for it later. To give a more perhaps accessible example to Members in the room, I had the privilege or pleasure, I should say, of going to a business dinner or a talk - I only caught the end of it - at the Royal Yacht Hotel at which we were taught the importance that during a recession it is important to keep up your advertising budget so that when you come out of the recession you are not at a disadvantage. That is the most important time when you need to invest because many people make the mistake of in fact cutting corners and then when they come of the recession they are at a business

disadvantage. I think this is something that we can learn from, generally speaking. So if you cut corners, in whatever way that may be, either in business ... but obviously when it is related to the care of our children it has a lot more serious implications. We know that in the past we have had individuals who have allegedly been responsible for abusing children in their care homes, only to be told when this has been discovered that they have been moved to a different department where they can also look after other people and be put in an area of responsibility. They are not prosecuted or looked into. They have just been shifted from one place to another. Whilst there is, of course, an immeasurable human consequence to this, be it for those victims who have either survived which we call survivors or those who have not been so fortunate, there is of course a very tangible cost which we are seeing today in the form of £11.6 million. This is the actual tangible cost, if you like; the economic cost. You cannot really compare the 2, of course, but this is the result of cutting corners. So I hope that Members will learn the lesson. I believe that we have moved on from where we were in the past. We realise that things cannot go as they were. Cover-ups cannot go on. But more importantly I believe that it is essential that we get a proper whistleblowing mechanism put in place throughout all departments so that, for both the big and little things, people can feel that they can come forward and say if there is something amiss without any fear of being blacklisted in any way. So let us just learn the lesson. Obviously the other parts of expenditure are things which we could not necessarily have envisaged, like the withdrawal of the Reciprocal Health Agreement; although it seems that there is a little bit of confusion there. There seems to have been a 2-year period where there were negotiations going on which we knew nothing about and one would think that more could have been done in that respect.

7.17 Deputy I.J. Gorst:

I just wanted to make a couple of comments about the request that Social Security have got in under this Article 11(8) of the Public Finances Law and we have requested of the Minister for Treasury and Resources to be able to withdraw up to an additional £3.1 million due to the effects of the economic downturn. I just want to reassure Deputy Vallois that, as the Minister for Treasury and Resources has already said, it is only upon submission of documented evidence that he and his department will make these monies available. As he said, it was envisaged that these monies would be required and they are what the economists would call part of the automatic stabilisers in an economic downturn, we need to help people through the difficult times, and not part of the other proposition that this House debated some weeks ago, which was the stimulus package. It is important that we do not confuse the 2. This is a separate issue which is the normal working of a benefit system. Why is it necessary? Well, it can be necessary for a number of reasons but if I just very briefly say that what we have found (and it is very difficult with any certainty to know whether these trends will continue, that is why the Treasury Department will want evidence at the end of the day) is that we have found that more people are coming on to income support and requiring help from our department. Equally, we have found that those who are receiving income support, their level of income has been reducing as well. Both those factors add to the need to help people. So that is income support. One or 2 Members have mentioned supplementation, and rightly so. I was disappointed to hear Deputy Southern's words that nothing was happening, particularly as he is on the Scrutiny Panel with responsibility for social security and he knows that I have given a commitment and an overhaul of supplementation will be part of the review of Social Security as a whole, which we hope to start to undertake next year. It is important to remind Members that supplementation is the taxpayers' contribution to the future pensions of Islanders and if we are to consider a change to that the question we will have to ask ourselves is are we happy with supplementing taxpayers' money, bearing in mind that income tax is related, as it suggests, to income. I appreciate that G.S.T. is not but, broadly, taxation is. Are we happy to continue that or do we believe that perhaps supplementation or the provision of pensions should solely be based upon one's income and a deduction on contribution of salary. They are matters that the review will look at. Deputy Le Hérissier makes a very fair point and it is a point that Senator Syvret has made many times in this House, that the current law allows the department to look at just one class of

contribution, one or 2, and there is anecdotal evidence that some individuals might take a salary and be classed as self-employed and just declare one of those. So that is an area which needs to be looked at. We will also need to look at raising the cap for the costs of supplementation. But I must remind Members that in some ways, to use the colloquialism, whichever way you skin the cat it is still a cost to individual members of the community, but they are and will all be under review in 2010. I should just say that we are doing a piece of work now ... because I recognise that one of the things that seems to irk Members is that we are not able to predict with any certainty, because of changes in the workforce and the economy, what supplementation is going to be from one year to the next and Members find that frustrating when we have to keep coming back for extra funding for changes. So we are undertaking a piece of work to try and develop a methodology which will perhaps allow us to use a previous year's level of supplementation, put that into the budget so that we can know it with certainty and adjust it on something like a 2-year rolling basis. But that will be subject to the House's approval. But we are doing work on supplementation in the medium term. It will ultimately be for Members to decide whether they wish to carry on dealing with it in this manner. These are my requests on this 11(8) request to the Treasury Department. Thank you.

7.18 Deputy M.R. Higgins:

I am just slightly confused and I am hoping that either the Minister for Treasury and Resources ... I know the Minister for Social Security has already spoken but perhaps someone can explain the situation. When the States debated P.55 which included the £112 million in automatic stabilisers I was under the impression that income support was being funded out of that, because obviously we were going to be paying out more for unemployment and other costs of people being made unemployed. The department is also, I believe, making a bid for money from the £44 million in discretionary funds from the Minister. I do not think that has been agreed yet but, again, I am not exactly sure, from memory, how much that was for. We have this bid for £3.1 million. I would just like to know in total how much is going to go to Social Security, how much of it is to do with the economic downturn and, again, if any of it is for anything else. I am especially concerned because, as I say, we have mentioned it many, many times in this House; we have no real idea about unemployment figures. Social Security keeps certain figures. We know people do not always go to Social Security. It seems like an awful lot of money is being passed around but we do not necessarily know what it is going on and where.

7.19 Deputy P.V.F. Le Claire:

I will be supporting the proposition, first of all, just to let Members know, but I would just like to touch on a couple of points. The issue that was raised by Deputy Tadier in relation to the States not investing in years before and then having to catch up now is something that I have been speaking about for a number of years; this culture in the States to cut corners, to cut the costs of something, to deliver something just a little bit cheaper. We saw those issues at the airport with the fire-fighting foam. We have seen those issues with other major projects that have cost us money. We have seen it at the Waterfront and we have seen it in other areas, including the X children that were brought before the States. It is interesting to look at the cost outlined in part B for Health, being £2.9 million, when the children to be rehabilitated were going to be in that region of £2.9 million. So there are areas where we are not investing properly or adequately and have done historically. We have done that with the incinerator. We have done that with waste strategies. We are doing that with sewerage. We have done it certainly with child protection. We do not get any further forward though in looking backwards constantly. So I think we have to focus now on what lies ahead of us. We have got a new Minister for Health and Social Services. She and the Minister for Treasury and Resources correctly and bravely moved forwards and tackled the areas that I have mentioned and set aside monies that they were not expecting to do. Now they are asking for monies in other areas and asking for our support so it is only right that we give them our support. Generally speaking, and I am not a mathematician although there are some in the Assembly (accountants and maths professors), surely they would not run their businesses in this manner?

Surely they would not set up budgets that could be raided, robbing Peter to pay Paul, and bring proposals to their boards that would ask for and argue for and issue reports for monies in areas and then the second they got the cheque go back and start spending it on something completely different? That is what we do; we have done it before. The Transport and Technical Services Department has done it recently; they have had to. We have seen loads of areas where the States allocate money for things and then when the Ministers under this new system decide that they need to spend it somewhere else because they have pressures, they do so. Okay, that is making the Island tick, but it is only just ticking a box from an accounting perspective and I think we have to do something. I know Senator Ozouf is looking at the accounting principles of the States in the future, but I think we have to have more robustness in the way we hold our accounting across the States bodies. In particular we are basically writing blank cheques for Ministers who can go back to their departments and spend them in ways they wish to when they need to at the current time. I am not saying the ways they are spending is wrong; I am not saying that they are doing the wrong thing. I just think that is no way to run a government. If you look at the figures that have been outlined by the Deputy of St. Martin, and you look at the costs in relation to some of the things that are appearing in the proposition i.e. legal fees £770,000 in defending, defending what? I have no idea. I am supporting the proposition. I am trying to change my focus from looking in the past. I started my career in the past in the States and I have been walking forwards hoping that at some point in the future the States would change tack. I am asking in this speech for the Minister for Treasury and Resources to give us an undertaking that in the future we will have more robust analysis and accountability within the States because otherwise it is very difficult to continue to agree to propositions when there is very little evidence as to how and where it is going. If a Back-Bencher had brought a proposition of this nature, with this sort of money, with these sorts of things identified in the way they are identified, they would not stand a hope in hell. That is what I wanted to say.

7.20 The Deputy of St. Peter:

Just a point of clarification on the last speaker. I would just like to reassure the general public that at no time in my knowledge has the airport ever cut corners financially on fire-fighting foam. There were problems with the fire-fighting foam; it was a science catch-up and they have always been ahead of the game. There has never been any cost-cutting in that direction.

7.21 Deputy P.V.F. Le Claire:

As he has asked for a point of clarification perhaps or he has challenged my speech may I respond? It was clear that the fire-fighting foam issue was caused by the fact that they did not install the equipment to catch the fire-fighting foam after they had laid the fire-fighting foam on the burning material; therefore, the fire-fighting foam entered the watercourse. Had they spent the money, increased the spend and spent the money on what they were recommended to spend it on (to catch the foam), we would not be where we are now.

7.22 Senator P.F. Routier:

I would just like to make a couple of observations. I think it was Deputy Higgins who was asking about the confusion about one set of money that was asked for in a previous debate when we were talking about the economic stimulus package and how more money was being asked for similar things. This proposition today is asking for this year's money (2009). The previous decisions we were asked to decide was for 2010, so there are separate decisions which we are making. I have to say that the pressures that are on Health at the present time are immense and I know from having spoken to the Minister that she highlighted, for instance, the need to have moved the respite service from Haut de le Garenne away from there. That has been an additional expense for them and also there are other areas within the Health Department which do require additional funding, so I am fully supportive of the money going to Health. Some Members have spoken about the issue of supplementation. There is no doubt that we need to review how that payment is made. Deputy

Southern made the statement that we are ignoring it and it is a hole in our pocket. It is not a hole in our pocket because it is money that we are putting aside to support people when they are older, for their pensions, and I am pleased we are doing that. If we were not doing that, getting the contributions through from the Social Security system we would have to get it a different way; we would have to get it from income tax. The only other way to find a way of reducing that contribution to people's pensions is either to make a decision to have lower pensions (I would not be in favour of that) or to get other people to pay for those pension contributions. Supplementation: people seem to think is a nasty word and something we should not be doing, but I personally believe it is a contract we have with the community. It is a shared contribution towards their pensions; the employer pays one-third, the employee pays one-third and the States pay one-third. That third contribution is what supplementation is all about. It is supporting those people who are not able to pay the full contribution. So I do urge the Minister to carry out that review, but I do hope the States will not back off from their duty to support people who are on low incomes to have a full pension when the time comes.

7.23 The Deputy of St. Mary:

Just one observation and one question for the Minister. The observation is about the Reciprocal Health Agreement. I totally agree with Deputy Le Hérisier about where we have been taken with this disaster, about the fact that we are going to be forced to impose payment on U.K. residents apparently who will need treatment here and the modalities of that and the idea of a credit card interest. It just really does not sound right, but it is to do with the fact that we did not renegotiate in time, as I understand it, and so the rug was simply pulled from under our feet and we are playing catch-up. I think it is about the only time this will be put to bed, the Reciprocal Health Agreement, with this additional money of £2.9 million and then we can forget about it and try and sort it out somehow retrospectively. It does need to be remarked that to have had an agreement that was £3.9 million out of kilter year by year, whereby effectively the U.K. Government was subsidising our health service, was not in retrospect a very clever thing to do. It might have looked good at the time, but in fact how does that look to the higher echelons of the U.K. Government when they are thinking of how to deal with Jersey and how to relate to Jersey when they think Jersey has effectively taken them for a ride to the extent of £3.9 million a year? It does not make for good relations and it is just rather sad. I just thought that observation should be made because I do not think we should gloss over it and maybe again, as Deputy Tadier said about spending to save and getting things right in the first place, it goes in that category. You do not have partnerships, particularly with governments who hold the whip hand in many respects over this Assembly, and then do to them what we did do to them. So it is just a note of caution as to how to relate to the U.K. Finally, the question I would like to ask the Minister, and if he would answer in his summing up, on page 5 under Law Officers' Department, under the historic child abuse inquiry I see best estimate of legal fees is £975,000 i.e. £1 million. Presumably that is additional to the normal complement, normal staffing, so I would just like a bit of detail on what that extra £1 million will go on.

7.24 Deputy A.E. Jeune:

I too have a number of concerns on how public monies are spent and/or checked. Many have been identified or explained here this afternoon. I do, however, have confidence in the integrity of the Minister for Treasury and Resources who, I believe, will look very carefully before releasing monies to ensure appropriate measures and efficiencies are in place before those monies are released. I will be supporting the proposition.

7.25 Senator S. Syvret:

Just a few observations. The issue of about how we deal with the Reciprocal Health Agreement is an interesting one and I have listened with interest to Members talking about the possibility of having to take things like credit card imprints from patients and things of that nature. Frankly, that

is not a remotely credible prospect. The one thing we cannot do - that is simply unethical of us to do - is to expect ambulance staff or general practitioners or staff at the hospital to say to people that are ill or injured: "No, we are not going to treat you, you can lay there and bleed, we are not going to treat you because you cannot fund it or you cannot provide us with any financial security." It is our responsibility to address this issue and we cannot remotely ethically place clinical staff in those kinds of situations. Moving on to the issue of supplementation, again I listened with interest to the speech of Senator Routier where he makes claims to the effect that we are putting taxpayers' money into the supplementation scheme in order to ensure that everyone has a reasonably funded state pension upon retirement. Yes, there is an element of truth in what the Senator says. Of course, there are significant numbers of low earning individuals in Jersey who do indeed require supplementation to make up the amount of their pension. What the Senator never admits and never accepts is that there are a variety of individuals in a variety of circumstances who arrange their affairs - engineer their affairs - in such a way that their weekly wage or their monthly salary is set at such a level that it comes in low to attract the maximum amount of supplementation. The various mechanisms and avenues that are open to people to do that are particularly prevalent in the self-employed, the sole-trader areas of activity. The fact that the States of Jersey has persisted for decades in not addressing that, we can see the results of it today with a supplementation bill of in excess of £60 million a year. It is one of those fairly numerous examples of factual and well-evidenced reality which disproves the myth that the States of Jersey over decades has been financially competent. No, the States have not. That is largely a mythology and very well-evidenced examples of folly and inability and unwillingness to plan properly for the long term financially are there to be seen. Moving on to the funding for the Health and Social Services and others, for the cost of the historic abuse inquiry, obviously a great deal of this cost is justified and necessary and important. I have to say, though, I am somewhat surprised and curious about the scale of the legal fees, legal defence claims for example, and things of that nature which are being sought in here. Deputy Le Claire says: "Defence against what?" Why should taxpayers be forking out these huge amounts of money in an effort to defend what is plainly the indefensible? We are spending taxpayers' money in an effort to try and protect States departments from embarrassment and minimise the justice available to survivors. Many of them have been denied criminal justice and now it would appear that we are going to be denying them civil justice too. I can assure Members right now that when it comes to civil liability - civil responsibility - for the decades of abuse that was inflicted upon children when they were in the care of the States of Jersey, or by States of Jersey employees, the States of Jersey does not have a leg to stand on. No respectful court would find against the survivors. It is an open and shut matter. The culpability of the States of Jersey is vast, evidenced, unlimited and the survivors are going to take the States to the cleaners. The question that has to be asked is, is trying to resist that inevitability ethical? Is it moral to still, even today in 2009, be denying our culpability and our civil responsibility? I personally do not think it is and I think it is immoral and unethical for us to be trying to put survivors through the wringer and put them through such things as regress boards, processes and all these issues. We should just take it on the chin. The States of Jersey got it wrong, disastrously and badly for many decades. The other point is that is it not just throwing good money after bad to spend it in these ways given that the States of Jersey is so plainly culpable in these respects? Just to, for example, take one particular abuse episode (I will not mention any names, but it is well documented and a decision was recently made not to prosecute the 2 perpetrators), the evidence of civil liability of the States in that case, the failure of all duty to care, is utterly overwhelming. In fact, certain of the witness statements about concerns in that particular case were made and given by some decent, good, frontline States of Jersey employees. So we really, I do think, need to ask ourselves long and hard the question: "Should we be attempting to fight to minimise, to reduce, somehow disguise the scale of the States of Jersey's culpability and failure in this matter and using very large sums of taxpayers' money in an effort to disguise the incompetence and ethical bankruptcy of a number of States of Jersey departments and senior employees over the decades?" Would we simply be better advised to hold our hands up and say: "Yes, we got it wrong, the States of Jersey is culpable?"

The Greffier of the States (in the Chair):

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

7.26 Senator P.F.C. Ozouf:

A number of Members during this debate have wrung their hands about the issue of spending more money. This is the job of the Assembly. Only the Assembly, only a parliament in normal places, can spend money and this is what the Assembly's job is. I will say, though, that there is a limit and there must be a limit. I think some Members - some even, dare I say it, Ministerial colleagues - think that there is somehow a bottomless pit of money and resources. I have to say (I am sorry the Minister for Home Affairs is leaving **[Laughter]**) there is a limit to the Minister for Treasury and Resources' ability to bring Article 11.8 requests which come from the Consolidated Fund. Next week's business plan is going to set out our best estimates of where public finances are. I am absolutely clear that in the period of the economic downturn we need to inject money into the economy and we need to insulate our services from the reduction in income tax receipts and reduction in income that we are getting from low interest rates in order to keep services going. In the longer term we have to balance our books and that is going to be the problem that this Assembly is going to have to reconcile, to wrestle with - to use Deputy Le Hérissier's parlance - to wrestle to the ground in terms of some real problems. The Treasury will lead, but it is not only the Treasury that can lead. Financial management and good financial responsibility is not only the responsibility of all Members of this Assembly, but our departments too. There will be a lot of discussion about how to balance the books in the longer term. It is with a heavy heart that I have brought these Article 11.8 requests, but only after hard questioning for the departments concerned. Normally a Minister for Treasury and Resources would make these proposals and leave the respective Minister to the mercy of the Assembly and I am grateful for the 3 Ministers who have spoken. I certainly have a couple of comments to make. I am not going to respond to Senator Syvret's remarks. Everybody is wrong and he is right, and I do not think that there is anything that I am going to say that is going to change his mind. I am also not going to give any more oxygen to his views about Social Security and supplementation. He says quite clearly that it is due to the inability of Social Security to connect and the tax scams and other scams that are available, that that is the reason why we have a £60 million supplementation case. It is simply not correct, as I am sure Members will know, but that is an issue for another day. I am also not going to respond ...

[Interruption]

Senator S. Syvret:

On a point of order, it is my understanding that it is not acceptable for Members to misrepresent what other Members have said. I fully accepted that a very substantial portion of the huge supplementation bill is legitimately incurred in order to supplement those on lower incomes, but there is a significant portion of it that is not legitimately incurred.

Senator P.F.C. Ozouf:

I do not accept the remarks that it is not legitimately incurred. I certainly made very careful notes of what the Senator said, but Hansard will record it accurately. Deputy Tadier, I will say to him that of course lessons need to be learned. The difficult news that I have for Deputy Tadier and other Members is that this and the business plan next week does not deal with the public inquiry that I think many Members want to be held in order to understand what lessons can be learned in respect of this issue. I also want to distance myself from - and indeed I think all Members want to distance themselves from - the remarks that Deputy Tadier made, that effectively the States were engaged in a cover-up. This is quite the opposite. We are allocating money to our law enforcement agencies, to Home Affairs, precisely in order to ensure that there is no cover-up, but also that appropriate justice can be done. In terms of Deputy Higgins' question - and it is a good question if I may say - he asked what the linkage is between this allocation under Article 11.8 for additional money in Social Security and the fiscal stimulus package. What the fiscal stimulus package

proposition did was to allocate £44 million from the Stabilisation Fund to the Consolidated Fund so that it could be drawn down on a needs basis. Separately, £120 million or thereabouts was earmarked from the Stabilisation Fund, almost as an intention of the States to earmark for it to be subsequently drawn down. It can only be drawn down by Article 11.8 requests out of the business plan process or indeed by the business plan decisions next week. So there is a linkage to that and it seems sensible to me to bring forward the fiscal stimulus package to give Members a clear understanding of what the available resources are in total dealing with discretionary fiscal stimulus and the issue of what would be needed as a result of the downturn. I hope that answers his question. To the Deputy of St. Mary, the £900,000 on page 5 is, as I understand it upon the representation of the Law Officers' Department, the additional costs that they will incur in terms of dealing with the child abuse investigation and the consequential prosecutions. I have to say that I do not think it is appropriate for me, and I have not engaged in detailed questioning to the Law Officers' Department, I have taken it on trust that that is the resources that they need in terms of dealing with that issue. Such, I think, detailed questioning would cross the line in terms of political independence of our judicial systems. Senator Breckon, and indeed Senator Shenton asked and raised questions about and also regretted the passing of the Reciprocal Health Agreement. I think it is the case that the 3 Senators sitting in the back row (not the Chief Minister) are probably more able to deal with and understand and explain to this Assembly why we got into the position of having to bring forward a proposition of £3.9 million. I have taken a lot of convincing that the ending of effectively free secondary care for Islanders in the U.K. and U.K. residents in Jersey costs £3.9 million. I have been around and about trying to understand that situation. As the Deputy of St. Mary, I think, understands the additional cost, the net effect of the accounts between the Jersey health authorities in very broad terms and in simple terms, and the U.K. National Health Service in terms of the additional costs that Jersey residents incurred versus the costs of U.K. residents in Jersey was £3.9 million. I think that Senator Shenton, who is now no longer Minister for Health and Social Services, needs to be very careful in raising expectations. He may well have sent a letter to Mr. Cameron, but I would counsel him about raising expectations that somehow a new Conservative administration is going to be able to miraculously sort out reciprocal health. I think that he is raising expectations.

Senator B.E. Shenton:

Perhaps I should let the Minister have a copy of the reply I received yesterday.

Senator P.F.C. Ozouf:

The Island of Jersey has a government and perhaps he would be courteous enough to explain to Ministers and ensure that they are party to the negotiations that must happen. Certainly, I am going to be delighted if the U.K. will agree to continue to subsidise our health service. If that is a Conservative manifesto pledge of the U.K. then no doubt all Islanders will rejoice **[Laughter]** in the Conservative administration. I have to say that it is not only an issue of the U.K. reciprocal health with Jersey, it was also a reciprocal health agreement that was with Guernsey and the Isle of Man. I do not think it would be right for British taxpayers to subsidise Jersey taxpayers so I am cautious. I am delighted to hear that he has had a letter back, interested to see what it says, but cautious in relation to finding a solution which is not going to cost a great deal of money. To Deputy Vallois, I will read the report on income support. These estimates are, however, not only just to deal with the unemployment numbers; they are a function of the additional people that will be drawn into the income support net as a result of the downturn. They are the best estimate and they are designed to ensure that Social Security do not break the law in incurring expenditure which they do not have in their budget. All of the drawdown arrangements will be in place and I know that Corporate Affairs, with the Deputy, will be watching Treasury's decision in that regard. The Minister for Home Affairs informed Members that he is going to need more money and he said he would bring a proposal to the Assembly. I know that he is a lawyer and he is bright and he knows the detail. I need to remind him, however, that it is only the Minister for Treasury and Resources

that can bring proposals for more money so I am afraid to tell him that he is going to have to convince the Treasury that he has run out in his department - and not only one department but a few - of his expenditure, of all available resources, before he comes back to this Assembly. He will, of course, get a sympathetic ear and he will get a fair hearing, but he is not going to be treated in any preferential way because he sits next to me **[Laughter]** in getting an agreement for more money. It is clear that we will deal with the issues; if there is an additional request then of course I will inform Members as soon as possible. A number of Members have raised concerns about the credit card culture that could emerge in the hospital. The fact is that we do need to ensure, and we are asking Health to ensure, that they are recovering as much money as they can from U.K. residents who are treated in Jersey. Might I say that this is exactly the same way in which Islanders are going to be dealt with in the N.H.S (National Health Service). Of course, a responsible N.H.S. in the U.K. is not going to not treat somebody with an urgent ailment or problem, but they are going to put in place arrangements to ensure that their money is recovered. It is difficult for me to say this to the Minister for Health and Social Services, but she and her department do need to ensure (and I know that she is because we have held extensive discussions on this) that they do clawback as much money as possible from U.K. residents in the same way that the U.K. is dealing with them. Of course, this will be done on entirely ethical and moral grounds, but they are going to have to work hard on this and I recognise that is going to be an issue. I also know, to respond to the question that was also raised, that the issue of health tourism is being tackled by her department to ensure that our Island is not taken advantage of. I am also clear that Health could not absorb this in their budget. I have to say that I have been surprised since assuming the Treasury position of the scale of problems that Health are having to deal with. I was not aware of the scale of some of the issues that Health have in my position on the Council of Ministers 2 or 3 years ago. The new Minister for Health and Social Services is reconciling and facing issues which maybe needed to be dealt with a number of years ago. The scale of the problems at Health are enormous, but she has the commitment and the support of all the Council of Ministers and the Assembly in discharging those difficult duties. I did not have any option but to bring these Article 11.8 requests. I do not like them, but they are necessary. There is only a certain ability of the Treasury to bring forward these Article 11.8 requests, but I ask Members for their support and call for the appeal.

Deputy K.C. Lewis:

Could I have a point of clarification from the Minister or indeed the Minister for Health and Social Services? Is accident and emergency still reciprocal with United Kingdom and, if so, does that include an ambulance to the hospital should the need arise?

Senator P.F.C. Ozouf:

My understanding is that yes, that is the case, but certain accident and emergency is provided but other health issues (underlying health conditions) must be paid for. I am aware that the Health Department have got clear documentation out and perhaps the Minister for Health and Social Services will circulate for the avoidance of doubt to Members what the arrangements are.

Senator B.E. Shenton:

Could I just point out to the Minister that you could in fact have a reciprocal health agreement that is to the benefit of both parties and subsidises no one?

Senator P.F.C. Ozouf:

I am going to respond because I do not think I can let Senator Shenton get away with that remark. We are dealing here with the total costs of additionally incurred expenditure by Jersey to look after Jersey residents in terms of their health needs. If the Health Department (I have been through their figures and I have asked my officials to go through their figures) figures are correct - and I think they are - then the additional cost year on year is £3.9 million. It can only be reduced by extracting money from people locally in terms of their care. I really think that Senator Shenton needs to be

very careful about raising expectations in terms of costs. The U.K. is not going to subsidise Jersey and that is, I would have thought, a reasonable position. It is not going to come free unless Senator Shenton knows something that I do not. I move for the appel.

Senator B.E. Shenton:

I wish I did.

The Greffier of the States (in the Chair):

The appel has been called for so if Members are in their designated seats the Deputy Greffier will open the voting.

POUR: 45		CONTRE: 1		ABSTAIN: 0
Senator T.A. Le Sueur		Senator S. Syvret		
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				

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

8. Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200- (P.86/2009)

The Greffier of the States (in the Chair):

We come now to the first of the items relating to the Depositors Compensation Scheme, the Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-, P.86/2009, in the name of the Minister for Economic Development. I will ask the Deputy Greffier to read the citation.

Deputy Greffier of the States:

Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-, P.86/2009. The States, in pursuance of Article 37 of the Banking Business (Jersey) Law 1991, have made the following Regulation.

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

These draft Regulations, which I shall refer to as the D.C.S. (Depositors Compensation Scheme) Regulations for convenience, form part of a package of draft legislation for Members' consideration today. If passed these Regulations would introduce a statutory Depositors Compensation Scheme in Jersey with immediate effect. I ask Members to consider the fundamental importance of introducing such a scheme without delay, a scheme for the benefit of Islanders, our finance industry and, importantly, the international reputation of the Island. The early introduction of a statutory scheme is especially important during these increasingly competitive and still uncertain economic times. Members will be aware of the potential need for some States funding of this proposed D.C.S. scheme. These funding arrangements will be covered separately in Regulations lodged by the Minister for Treasury and Resources under P.84 and P.85 which will follow on from this debate. Members should be in no doubt with regard to the critical importance of introducing a standing scheme to protect depositors as quickly as possible. Indeed, a huge amount of work has gone into preparing this legislation so that it can be debated today as a complete package. This D.C.S. package before Members today is aimed at meeting the agreed deadline of July 2009, a deadline that was set by this Assembly when Members voted unanimously for the proposition from Deputy Le Claire (P.150) in December 2008 which called for a statutory Depositors Compensation Scheme. Although a political guarantee remains in place with regard to unlimited deposits held by local residents in locally registered banks, it does not cover any deposits in local banks by private individuals who are resident outside of Jersey. The political guarantee was intended as a short-term measure in response to a period where banks were perceived by some depositors to be at greater risk. Inevitably the temporary political guarantee which exposes the Jersey taxpayer to an open-ended liability for all deposits held by Jersey residents must come to an end. It must be replaced with a standing statutory scheme that moves the majority of the cost and risk away from the taxpayer and on to the banks. The proposed scheme aims to meet international standards in order to protect the reputation of the Island and deliver the vital confidence to our banking sector and wider financial services industry. This is especially important at the current time of uncertainty when banks are making key strategic decisions on the future of their businesses. Until recently the absence of a standing Depositors Compensation Scheme in Jersey had not been a contentious issue. We have a robust and well-regulated banking system in Jersey. There are rigorous protection mechanisms in place to prevent bank failures occurring in the first place. In particular, the Jersey Financial Services Commission, which regulates the Island's banking sector, operates a top 500 policy, as Members will be aware. This ensures that banks that operate here are branches or subsidiaries of the world's top 500 banking groups. They may be viewed by some as to

be too big to fail, but significantly they are also of systemic importance to their home jurisdictions. In other words, their home governments are and have been proven, especially in the last 12 months, to be committed to support them in times of crisis. It is, therefore, not simply good luck that Jersey has managed to avoid a banking failure during the recent banking crisis, a crisis more severe than any we have seen since probably the 1930s. Jersey can rightly remain absolutely confident in the strength of its banking sector, a confidence to be drawn from the policy that has been in place of ensuring only the strongest banks are licensed. At the same time there is no room for complacency. We cannot, indeed we must not, ignore new international standards or the fact that depositors around the world, including local depositors with Jersey banks, are worried about the risk of bank failures. All are calling for the assurance that a standing statutory compensation scheme would provide. Significantly, we are now hearing from our banks that many depositors are unwilling to place new deposits in the Island without a D.C.S. scheme. Other jurisdictions are able to use their D.C.S. schemes as a marketing tool to attract deposits from jurisdictions like Jersey who do not currently have a statutory scheme. We cannot afford to let this position continue. If we delay putting a scheme in place the failure to maintain and attract deposits will result in lower bank profits leading to lower revenues for the States and, at a time of pressure to cut costs, the very real risk of continuing job losses. Although the signs are that the worst of the banking crisis is now behind us the financial services landscape has changed dramatically. Whereas in the past a D.C.S. may have been viewed as being something of a costly optional extra, particularly for strong, well-regulated jurisdictions such as Jersey, there has been a sea change in market expectations around the world. It is now an international standard and essential to the standing of all financial services jurisdictions to have a statutory scheme in place to offer explicit, defined protection to depositors with their banks. This is a new development that would have been impossible to predict prior to the recent banking crisis. It is one to which we must react urgently if we are to avoid falling behind our competitors and losing valuable business to them. This is especially relevant at a time of considerable international scrutiny including the ongoing G20 meetings which will resume in September. Surely this is an important opportunity for Members to unite and give Islanders and the finance industry a clear message of support, a message of certainty during these uncertain times. It is not just members of the public who are calling for a D.C.S. in accordance with international standards; it is the banks themselves who, among other things, realise that their customers now expect it. Critically in the aftermath of the banking crisis, banks are making strategic decisions including possible consolidation of branches and subsidiaries between Jersey, Guernsey, the Isle of Man and elsewhere. This is not only a time of risk for Jersey, it is a time of opportunity where business could easily be encouraged to consolidate into the Island. But at present we are the only jurisdiction not to have a standing D.C.S. scheme, a factor that currently counts against us. The current lack of certainty in Jersey is potentially damaging to the prospects of our banking industry, and consequently to the interest of the Island in terms of jobs and significant tax revenues that it generates. The proposed D.C.S. scheme we are considering today is based on the results of expert analysis by Oxera (Oxford Economic Research Associates), including schemes currently operating in other jurisdictions, and includes consideration of the specific structure of the deposit-taking market in Jersey. In developing this scheme, my department has consulted the industry body Jersey Finance, a financial services regulator, the Jersey Financial Services Commission, the Jersey Bankers Association and their members, and various government departments including the Viscount's Department on insolvency matters; the Office of the Comptroller and Auditor General on the audit requirements; and the Law Officers' Department on matters concerning the law generally. I would like to express my gratitude to each of these bodies and departments for their co-operation and effort, which I know has been considerable. In particular, I would like to thank them for their urgent consideration of the draft legislation and the priority they were able to give to it in such a relatively short timescale. This scheme may not necessarily be perfect, and like others in other jurisdictions may be open for future improvement by amendment. But what I can tell Members is that in its current form all professional bodies and other advisers who have seen it consider it fit for purpose. After all, this largely follows schemes in other jurisdictions. I would

add that meetings have also taken place with the Guernsey authorities, the British Bankers' Association and the Financial Services Compensation Scheme in the U.K. on their respective schemes and any future developments. In summary, as full a consultation as possible has taken place in the time available. However, acknowledging the tight timescale, Economic Development intends to undertake an annual review of the scheme if it is enacted today. In addition, I realise that the Economic Affairs Scrutiny Panel received the first draft legislation of the scheme on 5th May and do not appear to have had an opportunity to complete their review. I am sure that many Members will be reassured, as I am, that the panel chairman has a detailed knowledge of Depositor Compensation Schemes from his former life with the J.F.S.C. (Jersey Financial Services Commission). I am also confident that his panel will offer a valuable contribution that could lead to further improvements in due course. But I sincerely hope, in the best interests of the Island, that the important scrutiny review can, in this instance, follow the implementation of this legislation.

[Approbation] I believe that this is a pragmatic approach, a sensible compromise that will benefit all parties and reduce rather than increase risk to Islanders, and indeed the Island itself. I would now like to briefly outline some of the proposed details of the scheme for Members' closer consideration. The scheme will offer protection in the unlikely event that a Jersey bank should fail by ensuring that depositors have access to funds within a short period of time. It will remove the need for individuals to have to wait for recoveries in the liquidation of a bank. It is designed to protect the neediest members of society in accordance with international criteria and standards. It will, therefore, provide full protection for private individuals up to a maximum of £50,000 per person per Jersey banking group, whether or not the depositor is resident in Jersey. The £50,000 limit gives protection to depositors who are likely to face the greatest hardship in the event of bank failure. Looking at the profile of bank deposits in Jersey, the scheme will entirely cover over 80 per cent of all retail accounts. The £50,000 limit will also meet international standards. It matches the protection offered in the U.K., Guernsey and the Isle of Man, as well as being approximately the same as the increased 50,000 euro limit imposed as the minimum level of protection across all E.U. (European Union) member states under the Deposit Compensation Directive. Up to the first £5,000 of a valid claim will be paid within 7 working days, with the remainder being paid within 3 months of receipt of an application for compensation. In accordance with international standards, the scheme will protect individuals' deposits held by both Jersey residents and international depositors. It also protects a few additional persons, such as charities, people holding money on deposit for their children, and the executors pending the transfer of an estate who fall within the rationale of the scheme. The overall liability of the scheme, including administration costs, will be capped at £100 million over each 5-year period, matching the Guernsey scheme. The analysis of the data by Oxera shows that this should be sufficient to create a scheme that meets international standards. Although the scheme will primarily be funded by levies on the banking industry in Jersey, in order to ensure that the scheme is internationally competitive these levies will be capped for each banking group over a 5-year period. The States should make up any shortfall which must be funded from somewhere if the scheme is to be credible. Once a bank's provisional contribution has been calculated by applying a fixed percentage to the relevant deposits, there are 2 caps that may apply. No bank would have to pay more than £10 million over 5 years, and if the contribution is calculated between £5 million and £10 million, then the levy will be capped at £5 million over the 5-year period. The result is that in the event of a failure, our big banks would pay as much or more than in our nearest competing jurisdiction, which has a blanket cap of £5 million. The Oxera review shows that based on existing figures, the banking industry would pay the first £65 million of any failure of a Jersey registered bank. This is a very significant commitment from our banking industry, and would come into place immediately if the Depositor Compensation Scheme Regulations are passed by Members today. This means that in theory the maximum shortfall the States would be required to fund for a single bank failure is approximately £35 million, plus the lost levy of the failed bank. In practice, however, the States eventual liability is likely to be closer to zero because, in line with other schemes, depositors will be required to transfer their rights to recoveries in the liquidation of the bank to the said scheme, thereby reducing the net amount

required from government. Although I feel obliged to point out that under the proposed D.C.S. the theoretical maximum liability of the States could be the whole £100 million, this would essentially entail an unthinkable doomsday scenario. Such a scenario would involve virtually the whole of the global financial system collapsing, including most Jersey banks. In such an event we would face such difficulties that paying £100 million for the D.C.S. would be the very least of our concerns. So, I repeat, the maximum realistic contribution of the States for a single bank failure is about £35 million. Due to recoveries in liquidation of the failed bank, the States net contribution is eventually likely to be much less than this amount. However, I should point out that no existing scheme is designed to compensate for the loss of deposits if there is a failure of the largest systemic banks, as noted in the Oxera report and in the fifth report of the Treasury Committee of the House of Commons in the U.K. Even when this is not explicit in legislation, it is implicit that such banks would have to be supported by the bank's home government, backed by the taxpayer, as is clear from the support given by the U.K. to its banks over the last year or so. However, the structural nature of Jersey banks means that it is highly unlikely that the Jersey Government would ever be called on to do the same. The D.C.S. Regulations provide for state shortfall funding to come from the Consolidated Fund, as required under the Public Finances Law. But the Minister for Treasury and Resources will be bringing a proposition in a moment to allow the use of the Strategic Reserve to ultimately provide this shortfall funding. For convenience, where the States has provided upfront liquidity to the scheme which is also being dealt with by separate proposition, the States shortfall funding due to the scheme may be set off against this. In the event that the full £100 million liability of the scheme was called upon, banks would contribute about two-thirds of the funding, with the States contributing about one-third, which may eventually be repaid depending on how much is recovered from the failed bank. However, to ensure that the scheme can meet the obligation to pay our depositors in the required timeframe, it is proposed that the States would loan to the D.C.S. sufficient funds to pay the first £5,000 of each claim within 7 days of receiving a valid claim, as well as ensuring that there was liquidity to pay all claims. The provision of upfront liquidity, which in theory could amount to the whole £100 million of the scheme's liability, will ensure that the scheme meets international standards by preventing hardship and ensuring affected depositors have fast access to funds in order to continue relatively normal lifestyles. This liquidity would be provided to the D.C.S. by the States by way of a loan which it is envisaged the scheme would repay to the States in full over 5 years. Interest on the loan will be deemed to be an administrative cost of the scheme, and will be paid from the levies placed by the scheme. The power for the Minister for Treasury and Resources to lend to the D.C.S. will be provided for in a separate proposition to follow this debate. In addition, separate Regulations will provide for an increase in the maximum amount that the States can lend, in order that the full £100 million could be loaned to the D.C.S. if needed for liquidity purposes. Although I appreciate that the numbers are significant and that States Members will rightly want to think carefully about committing States resources, the facts show that such a commitment is absolutely necessary if we are to have a credible and competitive Depositor Compensation Scheme in Jersey that meets international standards. We should also remember that the current political guarantee is an open-ended liability. Any States contribution must also be seen in the context of much larger contribution made to Jersey's public finances by banks each year, which includes direct tax received on banking profits and income tax raised indirectly from employee salaries. The key thing to note is that by approving this proposed D.C.S. today, Members will be providing the public with immediate statutory protection of up to £50,000 per depositor per bank. The added reassurance and certainty that this will bring is needed urgently by the public, and is also in the best long-term interests of the Island and the banks that operate here. I can only stress once again that the introduction of a Depositor Compensation Scheme is a matter of some urgency and fundamental importance, not only to Islanders, to our finance industry and the international reputation of the Island. It was also an undertaking of this Assembly that a scheme would be delivered by July 2009. I urge Members to support these Regulations today, and I propose the principles.

The Greffier of the States (in the Chair):

Are the principles seconded? [Seconded]

8.2 Senator S.C. Ferguson:

In a former life, to quote one of the Members, I was a banking supervisor at the J.F.S.C., and I have naturally taken a great interest in this particular topic. The Minister has mentioned the importance of this to the industry. I would remind Members that this is a topic which has been the subject of great concern- extreme concern - to the general public. I would consider, knowing the industry as I do, that it is essential to support this in order to allay these very real public concerns. The most important parts of this series of propositions are those mortgaging the Strategic Reserve. These propositions call to be scrutinised by the Corporate Services Scrutiny Panel - my panel - since the relevant propositions are being brought by the Minister for Treasury and Resources. We - my panel - are concerned at the size and extent of the liability imposed on the Strategic Reserve. While this is limited in the short term, it is absolutely essential that we consider the long-term implications. We are talking of round about £2,000 per man, woman and child in the Island. However, my panel has decided that in the public interest and to allay public fears, we should not call in what could be called "our" propositions, but we have included scrutiny of these proposals in our work programme. In the event and as we consider it necessary, we would plan to bring any amendments to the legislation. However, I would emphasise that in order to give the public the much-needed confidence they need, we will not oppose the passage of our propositions and will not be calling them in. The Minister thinks ...

8.3 Deputy T.A. Vallois:

Sorry. Point of order. With regards to the workload being brought in - scrutiny of the propositions from Treasury and Resources - the Senator just stated that we were to scrutinise those. But I was of the understanding that one of the members of Corporate Services would be co-opted to the Economic Affairs Scrutiny Panel in order to scrutinise the whole lot together, rather than separately. I did not realise that this was put into the time of my being a member. I think it is only fair that you explain what has happened there.

8.4 Senator S.C. Ferguson:

It seems to be a matter for debate between the panels, but in any case I shall not be calling the second series of propositions. I am not giving way, Senator; I am not debating a different proposition. I am saying that I consider that the Strategic Reserve implications are in fact probably the most difficult part of this to deal with, and that one way or another these will be debated and will be scrutinised after these particular propositions are passed, hopefully, if the House is willing, because I think it is so important that we give the general public the confidence that their banking deposits are safe. The Minister thinks the worst of the crisis is past. I am not quite so sanguine. There are queries over China, Italy, Eastern Europe, and I feel that we have got to give the members of the public assurances, and this is why the Corporate Services Panel will not be delaying our propositions.

8.5 Senator A. Breckon:

I wonder if I could seek information from the chair. The chairman of the panel has said that she will not be calling in, but under Standing Orders, I understand any Member can refer that to her panel. Is that correct?

The Greffier of the States (in the Chair):

Well, the right to determine to call in without a vote is given to the chairman alone, whereas there is a possibility of the States voting for a reference, but the latter requires a vote, and the States may or may not decide to support that.

8.6 Deputy P.V.F. Le Claire:

This is probably one of the most serious debates I think we are likely to have in this term of office, and I think it is likely to be one of the most serious debates because of my past life experience. Now, quite a while ago, once upon a time, I was a bodyguard for a company called Merrill Lynch in Canada. Merrill Lynch in Canada had a chief executive officer whom I used to look after, and his family, and the associations with the chief officers and their fleet of vehicles. When Merrill Lynch Canada was unsuccessful in negotiating the right to hold a banking licence in Canada, it was decided by head office that they would sell-off their brokerage business and pull the vast majority of their business out of Canada. At the time they had 35 Mercedes Benz leased to the company, the largest lessees of Mercedes Benz in Canada at that time. Within 6 weeks they had gone from 35 Mercedes Benz to one. The city of Toronto, where the head office was located, fell into a very serious recession, and members of families, sons and daughters, fathers and mothers experienced severe changes to their way of life. I was around and witness to that at some of the more interesting levels, from a business perspective way down to the street level where it was affecting the ordinary men and women. The vast majority of that occurred due to a lack of confidence in the market, and that is what is possibly facing Jersey, we have been told, if we do not agree this legislation today, because we are told that there are 3 things that could affect banking in Jersey, really boiled down to one thing in Jersey, and that is confidence. We are also told that in reality there is probably very, very little likelihood that Jersey will ever need to call upon such a scheme. But if we do not have a scheme during this recession when, as we have heard earlier from Deputy Tadier, it is the most important time to invest in your marketing, then we will emerge from that recession having not invested in our marketing and be poorer because of it. New money will not come; old money will not necessarily stay; and what else do we have? We have doubts over the Waterfront. We have an agricultural industry that is severely declined in terms of its position, but not in terms of its productivity. It makes money, but it certainly is not the industry any more. Nor is tourism, because they have all given way to banking, and there just is no other game in town. So, Senator Ferguson's speech in relation to whether or not her panel would call it in I feel was probably aimed more towards the other panel, Deputy Higgins' panel, and they have indicated - let us take the veil off it all - that they will probably pull this today to go to Scrutiny. Now, I found myself a little bit uncomfortably sitting on the fence alongside my good friend Deputy Le Hérissier here over this issue for the past month or so. But I have come down quite firmly, and I am coming down quite firmly now after much consideration on this issue, on the side that we should really urge most seriously Deputy Higgins and his Scrutiny Panel to consider this and what they are going to do. I would urgently request that the Chief Minister and the Minister for Treasury and Resources and Deputy Higgins and his panel meet overnight to discuss this, because to despatch it today at the end of the day, given the gravity of the circumstances that could occur if Deputy Higgins' panel gets it wrong - if they get it wrong - what would happen would be credibility on all sides of the House would fall. I supported Deputy Higgins for his position, believe he is the right person for the job, have faith in the panel, but I think if they pull it and stop this going through today then, speaking to people that I know, there are enough indications that it is going to have an effect. Now, I might be wrong, and if I am wrong, nothing happens. But if I am right, we are going to see what happened in Toronto happening in Jersey, and it is not something I would like to live through for a second time, because jobs go, ballet lessons go, holidays go, houses go, cars go, mums go, dads go. Confidence in a jurisdiction with a large number of financial workers can have a domino effect among the industry. Merrill Lynch was not the only game in town for Toronto; it had a number of other businesses; it was in a very large country. But it was a very large player in the financial service sector in that city, and when the domino went for Merrill Lynch Canada, it knocked over a considerable amount of other businesses. Now, I am saying that I think that there is a real risk that if this occurs today and Deputy Higgins pulls it today there is a chance that it is going to stop businesses putting their money and their new business into Jersey. I just am not confident that pulling it today is the right thing to do. At the very least, I am trying to implore Deputy Higgins to take it tonight and sit down and meet with the Chief Minister and the Minister for Treasury and Resources and the Minister for Economic Development and think this one just a little longer

through. I did not bring this proposition in December because I came up with the idea. I brought this proposition before December because of the work that Deputy Higgins had done, and because of the case that he had made throughout the Senatorial elections for the Depositor Compensation Scheme and the work that he had undertaken at the Jersey Financial Services Commission. It was also brought by myself in response to Mr. Francis Le Gresley from the Citizens Advice Bureau that raised the issue at the time. I saw that there was a need for this type of protection for the investor, for the individual, for the small person, to be able to have access to funds if they needed them, and I had a feeling that if we did not have that there could be a grave risk back then that when we reached July we could be approaching a position that we witnessed in Canada, because it did not happen overnight in Canada. They did not just decide not to get their licence overnight. They had strong suspicions they were not getting it, although they did not know until the last minute. But they certainly were keen to get the banking licence, months before, weeks before, and it was only when they lost it that everything changed overnight - everything changed overnight. It was a matter of weeks, the whole city changed in a matter of weeks. I thought that if I put the proposition in saying the States could get it done by July, I imagined, you know, there is no chance, but they probably will get it in by about August, September, maybe; we will be debating it in October. They are normally late, and I thought that is about a year from the crisis perspective, and hats off to them, they got it done. Yes, they did severely have flaws, and they have acknowledged those flaws in sharing information with Scrutiny and in involving Scrutiny in the beginning, and quite possibly - and I have experienced it - in denying access to information to Scrutiny for their own reasons when they should have been sharing it. So, we can tick the boxes on where to blame them for what they did wrong, and in particular it was pointed out and made clear in the presentation by Scrutiny when they said what they had not received in relation to this proposition in terms of compensation. They gave us the timeline of panel work on the Depositor Compensation Scheme which stretched back from 13th February 2009 as outlined in the paper that was presented during question time a couple of weeks ago. To use a word that was used this afternoon, there is a litany of non-co-operation or non-provision for whatever reason. Now, maybe it was because it was a difficult draft. Maybe it was because they were not able to deliver it. But they did it in the end, and they acknowledged their shortcomings, and they are now saying that they will give over to Scrutiny the ability to bring those amendments where they feel the scheme is not strong enough to give force to those areas. Now, it is a bit of an unusual one that we are in the first phases of Ministerial government in true form, because we are just beginning to mature into an operation that understands it, and the Ministers are starting to get a feel for it, and the Scrutiny Panels are starting to get a feel for it; we have got ability on both sides. But I am seriously concerned that it is going to be one in the eye for them, and one in the foot for us.

8.7 Deputy J.A. Martin:

Before the Chief Minister speaks, I would like to go over some of what Deputy Le Claire has just said. I am in a very awkward position. If Scrutiny does use Standing Order 72, I am in no position. If they use 79, and we get to vote on it, that is fair enough. I would like to hear from both sides, because I have the timeline. Last year I worked under Deputy Southern as Chairman for Scrutiny for Economic Development, and we did not always have the best relationship with the then Minister, Senator Ozouf. But we worked, and from the dateline on here I am being told in my left ear that they have not appointed an adviser. They have not done the scoping document. To me that is tardy work as well. I am not having a go. I know the 3 people on the panel are all new except one, and I think the other one is new to Scrutiny. That is where we are. I absolutely agree. I went to the meeting. I am not happy about the Strategic Reserve, but I was comforted that we are following along the lines of schemes used across many of the other jurisdictions. Before Deputy Higgins calls this in, if this is what he is going to do at the end of the day when he speaks on the principles, because he is supposedly the expert, and I bow to that - he has worked on Depositor Compensation Schemes - what I want to know is what is wholly wrong with this scheme. I want it pointed out. I want to know why it has taken so long to produce anything. I also want to know

from the other side, the Minister if he gets a chance to sum up, or one of the other Ministers, what has been the difficulty working with this new Scrutiny Panel. Now, “personalities” is not good enough, because if there was ever a personality clash it was Deputy Southern and Senator Ozouf, and we got around it. We produced some very good reports, and one, if I might say it myself, on telecoms. It was not very well received at the time, but my God, are we not lucky we still have got Jersey Telecom under our belt at the moment. If they had been in equity we would have gone bankrupt. Anyway, I need to hear this, and I really do feel the same sentiments as Deputy Le Claire. **[Aside]** Are you going to put all the houses in St. Helier? Might get my vote. Anyway, no. I really do think there has been some serious, serious breakdown in communications, very entrenched. Normally I would always say that maybe there was not time. But look at this timeline, and this is depositor scheme. I know how very hard I worked last year, and it might not seem a big issue to people in finance, but how hard the 2 Constables and Deputy Ryan and I worked on the Bull Semen. It took us 5 weeks from the day. We met practically every other day; we came in at weekends; and we had the report. The report was not on the desk until the Tuesday, and we debated on the last day of sitting, on the Friday. But we worked very hard. Now, I need to know why this has not been done. Then I really do suggest, as we are getting to near the end of the day and we are still talking on the principles, that the 2 heads get together with somebody in the middle like the Chief Minister. If there is anything that Scrutiny need to know in confidence that the Minister for Economic Affairs knows, I suggest he divulges it in this private meeting, if they have it. If they have nothing, that is fair enough. But I think this is all because they have not been told, and there is mistrust and misunderstanding on either side. But I am willing to listen to Deputy Higgins because, as I say, I expect that he has been working on this sort of scheme for many years. If he can absolutely point out just 2 or 3 fundamental flaws with it and he is going to call it in, maybe he would get the support of the House. But we have got to hear that. That is all I have got say, and I would say really think carefully, because Scrutiny and Ministries can work together and you can bring amendments. But as I say, I am not convinced yet that you may not need to call it in. You need to convince everybody else this is the best thing for Jersey. Not the best thing for Deputy Higgins, and certainly not between the Ministers and Scrutiny. It is not a good day; it really is not.

The Greffier of the States (in the Chair):

I saw a light. It was either Deputy Duhamel’s or Deputy Tadier. Deputy Duhamel’s light.

8.8 Deputy R.C. Duhamel of St. Saviour:

Yes, it was me hiding behind Deputy Martin. I have been listening to a couple of radio programmes in the mornings recently. There was one this morning which was particularly interesting about finance. I cannot remember the name of the programme exactly, but apparently you can play these things back off the internet if you are that desperate. Apparently what was being said was the anomalies and the contradictions that were arising in terms of the support that western countries and jurisdictions are having to give to the capitalist system. Now, we all kind of tick that box I would hope in this States Chamber, some of us a little bit on one side compared to another. But under the capitalist system the key issue is the exchange between profit and rewards against risk. What was being said was that it is entirely normal under the capitalist system to expect businesses, and that includes banks and banking organisations, to fail. What are we doing here? We are following the conventional or unconventional wisdom in propping-up the general system and suggesting that we should strike out this notion and start to move in the opposite direction and generate systems which guard against the risk or cover for that risk. Now, that is all very well, but as the equation goes that means that the levels of profit are going to be substantially less. What is being suggested by this scheme is that small sums of money up to £50,000 - which may be large sums of monies for some people - will be covered in this Deposit Protection Scheme. So, if you are a large player on the finance market and you have large sums of money to invest, what are you going to do? Well, you are going to split up those sums and you are going to spread them around in more banks in smaller quantities in order to reduce your risk. Now, that might well be sound

practice as far as the investor goes but is it the type of business that our finance industry is looking for, high volume, low sum investments? I do not know. I do not think there has been an adequate discussion as yet as to whether or not moving in this direction ... and it may well be that we have to because we have to go along with other jurisdictions and if they are doing things then we do not really want to be singled-out as doing something different in case the system fails and we are caught out to a greater extent than those other jurisdictions will be. I would have liked a discussion - and it did not really happen at the presentation that we had - to tell us what would be the knock-on effect of this risk cover in terms of the deposits that we are trying to attract to the Island. The other thing that worries me is that the £100 million - and we are told that it will not be £100 million and may be as little as £35 million or may even be nothing - is sufficient to cover all of this risk. I really do not follow the argument because there are 2,000 lots of £50,000 and you have got your £100 million. Now, they must be out of our population of 40,000 households and we have got around about 80,000 people who are probably economically active. This scheme is not just for residential monies. This is for people who have got deposits in the banks, as far as I can see, and I think that the £100 million is probably an insufficient sum to cover the risks should something go drastically wrong, but we have not really been told why the £100 million is sufficient. If it is going to be a greater sum, at what point do we break our own bank because we have only got a certain level of monies that are invested in other jurisdictions and we cannot go on kind of raising the level to go for the cover which would guarantee everybody having their money back should something go wrong. Now, one of the things I did raise at the meeting was what I thought was probably more important and that was a move towards introducing ethical rules and regulations to limit the risk of unscrupulous bankers in terms of overextending their banks' monies and others monies by lending out more than they have, and that for me really is the problem. For every pound that is placed in the bank one would expect, under the sensible rules of finance, that one pound would be lent but that is not the case. The monies that are lent are multiples, and surprisingly high multiples in current finance markets, of that one pound. So, for every one pound that comes in we might lend £10, we might lend £25, according to the risk of those monies having to be paid and whether or not there is an opportunity for the people taking out those loans to default. So, it is a risk business. Now, I think and I mentioned at the meeting that perhaps one simple way of dealing with things, to give the confidence to those persons who are investing in Jersey banks and elsewhere, the comforts of knowing that their monies were safely invested, might be something as simple as saying: "Right, let us tell everybody." You paste it up in a large poster or whatever at the front of the bank, the multiplier effect that is applied to every pound that is invested in the bank, so that you could weed out those and if they are lending 100 times what they are getting in then obviously they are going to be a lot more risky. Then you could take your money and put it with those finance organisations ... **[Interruption]** I am finishing, please, and those persons would then presumably have the option and the comforts of putting their monies into the banking systems with which they were most comfortable in terms of the risk element that the bankers were taking. But does it all matter? I do not really know. The point is even if we do bring in this Depositors Compensation Scheme, and I suspect that we will, what happens if the system does break? Now, we have only got to think ourselves to situations that happened in Germany with high pre-inflation and we do have some African countries and countries around the world that are still struggling with high pre-inflation. To my way of thinking there is no point in having a guarantee to have your £50,000 back or your £10,000 back if the actual confidence within the system is so far gone that people do not attribute any value in the monies that you are getting back. Money in itself has no intrinsic value and it is just used as a method for exchange of goods and services. So really what we are talking about, it seems to me, is to have a potential flaw should the worst scenario happen and that confidence is shaken within the community because the big banks have gone and over-extended themselves and there is not enough money to pay everybody back because we have all been too greedy. So, Members can probably tell that I have got some reservations as to whether or not what we are doing is, in essence, the correct thing to be doing and whether or not it does make sense in terms of one of these catastrophic scenarios that we are trying to cover ourselves against

because I think really I cannot see the particular logic. I have not had it adequately explained to give me the confidence that there is either enough money in the system to pay out if something goes wrong or that Jersey, albeit thinking itself to be quite a larger player in the financial world, has got the kind of access to the unlimited sums of monies that would give perfect confidence to those investors investing within the banking organisations that are represented here. At the end of the day one will have to vote and I am just wondering whether or not, if a scrutiny process is undertaken by one Scrutiny Panel or the other, there would be any merit in going into some of these matters a little bit more deeply or whether or not perhaps we should just tick the box and vote for the system, mainly on the basis that it is a good idea and the boat is going down, to be in the boat with everybody else, women and children first.

Senator S.C. Ferguson:

Can I give a point of clarification, Sir? The structure of the banking industry over here, most of our banks are moneybox banks which pool deposits which they pull in from branches from around the world and then send to head office for them to use. In other words, most of our banks hold assets, are asset-collecting institutions. We have very few banks over here which make loans.

8.9 Senator T.A. Le Sueur:

I had not intended speaking quite so early in this debate but I was prompted to catch your eye by the speech of Deputy Le Claire which, I have to say, is the best speech I have ever heard him make in this House [**Approbation**] and I say that not just because I agree with what he has said but because I think, more seriously, he made a speech speaking from real life experience. That I think is something salutary to us when we sometimes think here talking about theories and schemes and proposals. Deputy Le Claire was speaking about real life, what happened 2,000 miles away in Canada, could it happen in Jersey? He posed the question and all I would say is that is a risk and really all this debate is about risk and making sure that we minimise that risk, because clearly a risk in Toronto was quite serious; a risk in Jersey which has the finance industry at the heart of its activities would be even more serious. So, we have to take this risk very seriously. When he asks could the Chief Minister and the Minister for Treasury and Resources get together with Deputy Higgins and talk about this urgently and come to a resolution, yes, I will be glad to do that at any time of day or night but I think, in fairness to Deputy Higgins who might think he is being strong-armed by 3 Ministers, I would prefer to convince him and to convince States Members by the strength of the argument rather than by simply the weight of numbers. I think it is important that we do look at the arguments and, in particular, if we were to delay these Regulations until later in the year after they have been scrutinised, why that could be detrimental, even dangerous to the Island. I fully sympathise with the need to have this important piece of legislation scrutinised and I believe that that can be done equally well post the event but I urge Deputy Higgins to do it, as Senator Ferguson suggested, post the event having passed the legislation in the first place. But really, why the urgency to get this and do this now? My responsibilities as Chief Minister cover a variety of roles and one of those roles is in respect of our international reputation. Our international reputation is one thing which is going to seriously affect the confidence which the outside world has in Jersey, and as Deputy Le Claire himself said: "If the industry or a part of that industry loses confidence in Jersey they will make a decision to move overnight and there is not a thing that we can do about it." What we need to do is to make sure that that confidence remains totally intact. I see 4 clouds on the horizon, 4 things which cause me to question and to make sure that we have got this absolutely right, 4 reasons why I believe that delay could be dangerous to the Island. In that respect I agree entirely with Deputy Martin that what we have to do, to do what is right for the Island, is to put aside any little political niceties and point-scoring. It is what is right for the Island which counts in this most important matter. I said there were 4 areas which needed to be addressed. The first of those is a review currently being carried out by Michael Foot. That review is due to report in September, maybe October but probably September. That review is looking at and comparing Jersey and other Crown Dependencies and other overseas territories but, in

particular, Jersey and other Crown Dependencies. There are 2 possibilities, either Mr. Foot will be able to say: "Jersey, like the other Crown Dependencies, has a depositors compensation scheme" or he will report: "Jersey, unique among the Crown Dependencies, does not have a depositors compensation scheme." I perhaps do not need to ask Members but I will ask Members which report they would prefer to read. I know if I were in the finance industry which report I would prefer to see. I would prefer to see a report which says: "Jersey has an appropriate depositors compensation scheme similar to what exists elsewhere." So, that is the first reason why, if we delay, we will not meet the deadline of the Foot review and that would be, I am sure, detrimental to the Island's reputation. The second event which occurs in September is the next meeting of the G20 Group. Now, to some people G20 may be synonymous with tax and tax information exchange agreements. It is, in fact, a far broader issue than that and really the G20 Group are more concerned about banking regulation, banking supervision and proper banking environment. Again, for G20 to look at Jersey in comparison with other jurisdictions and say: "Yes, Jersey is the place, unlike anywhere else in Europe practically, Jersey is the place which does not have a depositors compensation scheme." At a time when Jersey's international reputation is becoming more and more vital to our future, to suggest that we could tarry and run that risk to me is a risk not worth taking. It is not worth taking when we can resolve it in the way which we can do this week. The third area I see on the international level which causes me concern is the fact that at the current time of low interest rates and difficulties in the banking industry, those banks with branches here, there and everywhere are going to look to a rationalisation and consolidation. If I were sitting in a bank head office in London or Geneva or New York or somewhere, choosing between whether to consolidate in Jersey or Guernsey or anywhere else and I was told: "Well, if you consolidate in Guernsey they have got a depositors compensation scheme that will be good for our reputation. If you do it in the Isle of Man you will be all right, they have got a scheme there. If you do it in Jersey they do not have a scheme." What decision is that head office more likely to make? They can have all the sweet talk which I can give them or the Minister for Economic Development can give them or the Minister for Treasury and Resources can give them; that will count for nothing. If there is not the legislation in place they will say: "Jersey is more of a risk." They are more likely if they consolidate to do that elsewhere. Do I want that to happen? No, I do not and I hope other Members would not want to either at a time when we have considerable economic difficulty where we have seen some banks reducing in numbers, the last thing I want to do is to say: "Yes and there is going to be consolidation of a major bank and they are going to move out of Jersey." That is not what I wanted to see. The fourth reason is one which is happening right here and now and that is, within the current economic climate where, as Senator Ferguson says, banks can gather deposits from around the world and pool them and reinvest them, Jersey is missing out on growth. We are seeing deposits, if anything, shrinking because placed with the choice of where an overseas investor deposits his money or her money they are more likely to choose a place where there is a depositors compensation scheme than one without. Those overseas depositors, at present, do not have the benefit of a statutory scheme. Yes, Jersey depositors have the benefit of an undertaking given by the previous Chief Minister and maintained by myself, not a statutory undertaking, not something you can put in a brochure but, from an international point of view, that is of no use whatsoever and so it means even now, right now, Jersey is missing out on deposits. Every day that we delay increases the danger, increases the risk of that business going elsewhere and staying elsewhere. That is why I am so keen that these Regulations do get passed this week. I do not want to ride roughshod over Scrutiny. I do not want to suggest that we are holding guns to anyone's head. I wanted to do what is best for the Island and I hope that all Members in this House want to do what is best for this Island. So, what can we do? What should we do? Well, to me, it is quite clear what we should do. We should accept the principle of these Regulations. We should accept the wording of these Regulations and we should continue to scrutinise them, to review them and, as the Minister for Economic Development himself has said, review them on an ongoing basis, but the important thing is that we must pass not just the principle this week but the principle and the detail of those Regulations. Unless we do that the reputation of the Island will suffer. Unless we do that

confidence in the Island will suffer. Unless we do that the Island runs a serious and unnecessary risk. The stakes are too high to play games, to play point-scoring and politics. The points are very much we have an obligation to the future of the Island, the future of our Island residents, the future of our people who work in the industry, the future of those who support the industry and anything that we do to undermine that must be detrimental to the Island. All I can do is to urge the Chairman of the Scrutiny Panel, if he still needs urging, to come and talk to me overnight. I hope that I will be able to convince him, to convince his panel and to convince all States Members that this is something vital to the future of the Island. Thank you, Sir. **[Approbation]**

8.10 Deputy R.G. Le Hérissier:

I do feel that the whole future of the world, in a sense, is upon the shoulders of Deputy Higgins. I was going to reply to Deputy Duhamel. I also switched on the radio this morning and heard a man speaking about a bridge to France. **[Laughter]** Sorry, well, yes indeed, it was a tunnel. I did suffer cognitive dissonance when I first heard it and it was indeed a tunnel where a big piece of a tunnel ... after a quick bit of not boring because the Deputy dealt with what was boring, **[Laughter]** after a hole was dug the tunnel would be thrown down and I am afraid - and here is where I have to divert from the Deputy - I do not think the world is quite as simple or as logical as perhaps he would like it to be because the reason why the economy is in the state it is is money does ultimately not depend on being a method of transaction. It depends on confidence and confidence is the most ephemeral and elusive factor one could wish for and that is why the banking system is in a crisis. We do not really know where it is going to end and, quite frankly, other than piling an awful lot of money into it and having stemmed the flood or like the little boy in The Hague put the finger in the dam, that is about all we can do at the moment and hope for the best and then from that point onwards hope there will be a slight recovery. Also, just to deal with that point because I was deflected by the Chief Minister, Deputy Duhamel went into some detail about would there be enough money. He was quite right, there probably would not be because the whole idea of having such a scheme is that it is essentially a nuclear option, you never ever expect to use it. If you have to use it, unless it is in restricted circumstances around one bank or whatever, it could well be game over. It is a nuclear option in that sense. What I would like to also say because, in a sense, there is a momentum building up against Deputy Higgins because they were very impressive speeches by Deputy Le Claire and indeed Deputy Martin of St. Helier, what I would like to suggest is whether there can be a pause for thought overnight. They perhaps would join the group because I think both of them made some very good points ... not join the scrutiny group, I can assure Deputy Martin, and discuss how to bring this forward because I do not think it is fair, at this point, to box Deputy Higgins and his panel in. I think they do need time to reflect on it and then they can report to us tomorrow morning but I do not like this idea of a momentum gathers, the panel gets boxed in and it becomes very difficult for them to break out. I do think the issues have to be looked at because it would be very unfortunate if we were to take the wrong decision, but I think Deputy Higgins and the panel have to have a chance to put their point of view forward but I think it would be better if it was overnight in a non-threatening environment where they could discuss and then he, or whoever, could report back to us tomorrow morning on what the findings were of those broader discussions.

The Deputy of St. Mary:

On a point of clarification, is the Deputy suggesting the adjournment?

The Greffier of the States (in the Chair):

No, I think the other Members are still speaking. Senator Le Main?

The Deputy of St. Mary:

This is serious because I am ready to go with a speech.

Deputy R.G. Le Hérissier:

I would like to suggest an early adjournment based on that idea. Thank you.

Senator T.J. Le Main:

I have pleasure in following the Chief Minister's ...

The Deputy of St. Mary:

Is he speaking because I thought I was? I had my light on for ages.

Senator T.J. Le Main:

Well, I was called by the Chair, Deputy. I am sorry but ...

The Greffier of the States (in the Chair):

Indeed you were, Senator. I am just querying whether Deputy Le Hérissier was formally proposing the adjournment at this stage.

Deputy M. Tadier:

If he is I will second that, Sir.

Deputy R.G. Le Hérissier:

Yes, I was.

The Greffier of the States (in the Chair):

I think that must be dealt with. Any Member is entitled to propose the adjournment at any stage during a meeting.

The Deputy of St. John:

Can we speak on it then, Sir?

The Greffier of the States (in the Chair):

Well, very briefly but there is no point ...

The Deputy of St. John:

Yes, I will be brief, but given we have an awful lot of work to do it is ridiculous to finish 25 minutes earlier. In fact, we should be looking at finishing later given that we have got an awful lot to do since my debate was delayed this morning. **[Laughter]**

The Greffier of the States (in the Chair):

I will put the proposition. Those Members in favour of adjourning now kindly show? Those against? We will continue and I had indeed called Senator Le Main.

8.11 Senator T.J. Le Main:

I have pleasure in following the Chief Minister. The reason being is that about 3 weeks ago, someone whom I know very well heading the wealth department of a large financial bank in Jersey spent nearly a week in Guernsey making presentations on behalf of the bank to a very, very wealthy investor and this was hundreds and hundreds of millions of pounds. They spent 3 or 4 days making the presentations on behalf of the Jersey operation of this international bank and it was lost. The investment was lost to Guernsey on the basis of this depositors scheme.

The Deputy of St. Mary:

On a point of clarification, please, would you like to give way ...?

Senator T.J. Le Main:

Well, there is nothing to clarify at all and I think you ought to sit down. **[Laughter]**

The Deputy of St. Mary:

This person is worth millions and a deposit of ...

Senator T.J. Le Main:

No, I am not prepared ... there is nothing to clarify. What I am saying is ...

The Greffier of the States (in the Chair):

Excuse me, Senator, can you please return to your seat. Senator, please resume your seat. Deputy of St. Mary, you must not interrupt. If the Member is not giving way you cannot overspeak the Member, please, and it is totally out of order. Senator Le Main?

Senator T.J. Le Main:

What I am saying is fact and the fact is that Jersey did lose a vast proportion - not all of it - of this investment that would have come to Jersey in normal circumstances. What I would like to say is that it is seriously concerning to hear stories like that.

Deputy M. Tadier:

Sir, I have a point of order.

The Greffier of the States (in the Chair):

Well, a point of order requires a ruling from the Chair so I will rule once you have given the point of order.

Deputy M. Tadier:

Yes, that is what I am seeking. It may or may not be a valid one but that is obviously for the Chair to decide.

The Greffier of the States (in the Chair):

Well, is it a matter you are satisfied will require a ruling from the Chair? Deputy, before you start, are you fairly sure it is a matter I will be required to rule on? If it is not then ...

Deputy M. Tadier:

Yes. The reason I believe it is valid, we have had a ruling in the House in the last couple of weeks when people have cited a letter and not given the reference from whom that letter came. I believe it was yourself, Sir, who had reservations about that being not really admissible so I think it is also valid in this case when a reference is given here and it is also of that magnitude trying to convince Members to vote in a certain way that is should be backed up. **[Approbation]**

Senator T.J. Le Main:

Absolute rubbish. The issue is the ...

Deputy M. Tadier:

I did ask for a ruling, Senator. I did ask for a ruling from the Chair, Senator.

The Greffier of the States (in the Chair):

I think what I did say from the Chair last night and I will say again, it is, I think, if Members are going to quote, obviously it is not always possible to give names and full details but I think Members are entitled to expect other Members to give sufficient details to be satisfied that what is being said is indeed the case.

Deputy M. Tadier:

Thanks for your clarification, Sir.

Senator T.J. Le Main:

I am very happy to give the details to the Minister for Treasury and Resources or the Chief Minister, but I am not prepared in this Chamber to start bringing out names and information like that. That would be totally out of order and, as I say, if the Minister for Treasury and Resources or the Chief Minister or the Minister for Economic Development then confidentially I am very happy to supply the information but what I am saying is absolutely correct. So, I urge Members to very seriously consider the implications as outlined by the Chief Minister. As someone that cares deeply about our Island - like all of us do, we would not be sitting in this Chamber if we did not - I look to Deputy Higgins and I know that Deputy Higgins will consider what is being said in this Chamber today and I have total confidence that Deputy Higgins and his panel will seriously consider some of the issues that are being outlined by Members of this Assembly who are seriously concerned at the implications of not getting these Regulations through today. So, I thank Deputy Higgins for listening and other members of his panel, but I seriously ask him to give very serious consideration to the issues that I and certainly the Chief Minister have raised. Thank you.

8.12 The Deputy of St. Mary:

Well, in response immediately to what the Senator has just said, to get that out of the way I suppose, he has claimed that a super-wealthy individual that he met has decided, on the basis of Jersey not having a Depositors Compensation Scheme, that he would not bring his millions to Jersey. Well, that is hardly credible because the Depositors Compensation Scheme is limited to £50,000 of protection and I think the officers, if I remember rightly, told us in a scrutiny hearing about this that the super-wealthy category, this D.C.S. makes little difference to them. I see Deputy Maçon nodding so I did remember that right that the super-wealthy category is not what the D.C.S. is about. It is about people for whom £50,000 is indeed a big amount of money and they want it protected, so I just thought I would get that out of the way immediately. Now, I was very concerned about the tone of the Chief Minister's speech. It was dramatic and all credit to him, but he used some phrases which I really think Members should reflect on. He talked about point-scoring and playing games. Well, I am sorry, this Scrutiny Panel is not playing games and we are certainly not in the business of point-scoring. This is a serious matter. Then to pick up on another thing, he said that we are not riding roughshod over Scrutiny. That is really an important matter, is it not? The first point in my speech is taking Scrutiny for a ride, but maybe before I get on to that the emphasis in his speech was consistently: "Delay could be dangerous" and we had plenty of shroud-waving about how dangerous delay in this matter will be. Now, let us be quite clear. The debate is ostensibly about the principles and the Minister has introduced the principles of this legislation and I do not think, with the possible exception of Deputy Duhamel and there are a couple of others maybe, but the principles are not really at issue and in fact I think the Scrutiny Panel is quite agreed that the principles are fine. What is at issue is this matter of the delay and how dangerous it might be. So, let us have a look at this "taking Scrutiny for a ride." We saw yesterday in Questions to the Minister that Scrutiny was being expected to do the job in a timeframe that was simply impossible. Deputy Martin asks about slowness, so let us look at slowness and who was being slow and why there is such a rush. In 2002 and/or 2003 this scheme was prepared. It was prepared by the chairman of Scrutiny in a former life. So if we are talking about rushed, I am sorry, this was ready 5 years ago. No, it is more than that, I cannot even add up, 6 years ago, so I am sorry, the whole idea of rushed simply falls down on that sole issue, that this was prepared in good time when the crisis that we now are in was not around, and what happened? It was shelved. It was shelved by Ministers. So, Members should remember that when they are thinking about the urgency with which we are now faced. It went through the board ...

[Interruption]

Senator T.J. Le Main:

Tell the truth, it is untrue that. It was not shelved by Ministers.

The Greffier of the States (in the Chair):

Senator Le Main, you cannot accuse another Member. Senator Le Main, I must ask you to withdraw that. You cannot accuse other Members of not telling the truth.

Senator T.J. Le Main:

Yes, I am quite happy to withdraw it and say what he is saying is untrue. [Laughter]

The Deputy of St. Mary:

I will gladly put a tad more detail in what I said. The legislation was prepared, it went to the board of the Financial Services Commission, it was approved by them, it then went to Ministers and then nothing happened, so I take that to mean that it was shelved by Ministers.

Senator P.F.C. Ozouf:

Would the Member give way?

The Greffier of the States (in the Chair):

The Member is giving way.

Senator P.F.C. Ozouf:

I have discharged the duties of Minister for Economic Development and previously been on Finance and Economics and also now Treasury. I think I need to be absolutely clear with the Deputy. Is he saying that the scheme was approved by the Board of Commissioners, because that is not the information I have. It was certainly not a scheme that was properly funded and could be funded.

The Deputy of St. Mary:

It was approved by the board. I am informed that maybe Deputy Higgins can speak to that in more precise absolute detail as he was instrumental in drafting the law. Now, following on from that, we were told by the Minister in his introduction to the principles that the reason for the urgency now was that international standards - or one reason - are changing and I find it strange. It is rather strange because many jurisdictions have had D.C.S.s for years so why so late and again why the rush? Now, let us look a little bit at the detail of the timing of this. In October 2008 - and we were told this in a scrutiny hearing where the Minister and his officers were present - there was a prospect of introducing a depositors compensation scheme, and I quote: "overnight". Now, of course, allowing for conversational exaggeration they were looking seriously at bringing in a D.C.S. very, very quickly. If Members take their minds back to October 2008 there was extreme volatility in the financial markets. It was not like the situation we face now. It was very, very uncertain and there was serious talk of doing it within a week or so. That opportunity or window or whatever, that decision was taken not to bring it in overnight and then Deputy Le Claire brought a proposition to this House and said it must be done. So, just remember that at a time of perhaps 100 times more volatility than now, when banks were falling and being backed by governments and it was in the headlines all the time, that Ministers decided not to do it in October 2008. They decided not to do it in 2002/2003 (sorry, it was Presidents and Committees at that time), they decided not to do it in October 2008. Again, where is the rush? Now, Oxera were commissioned in October, I believe, to do a report into the background for D.C.S. and of course they were put on fast speed when the Deputy's proposition went through, Deputy Le Claire's proposition. We are informed that that report was, to all intents and purposes, finalised in February. When did we get that report? We got it on 1st June. It was effectively finalised in February. The Scrutiny Panel received that report on 1st June. We were told that it had been modified in between and discussed and batted around, so I asked at the hearing we had with the Minister and his officers what difference there had been between the February version and the May version because obviously that is quite important. In my notes I have put: "Definite pause, the officer paused" and then he said in words to the effect that there were no points of substance. Of course, you can all check this in the transcript because I believe the transcript is now available. Whether it is on the website I do not know but I

am sure any Member who wants to check any of this can get hold of a copy from our offices. So, no points of substance, no real change between February and the end of May, so again I ask Members, where is the urgency on the other side of the House? We were denied the basic fundamental report which underlies this proposition. We were denied it for 3 months. Again, where is the rush? The first draft of the legislation that we received was draft 14 and we received it on 5th May without the Oxera report that underlay it so we noted it and carried on. We got the 16th draft on 18th May. Now, you cannot as a Scrutiny Panel go reviewing draft after draft after draft. You wait until the Minister has made up his mind and the officers have made up their minds about what they are going to do. That is my version of the timeline. Members, I think, have the detailed timeline in front of them. I hope they have; I am not sure that is true. They do, thank you, so Members do have the timeline and they can check all of that this evening. That was the timeline, and I think I have covered, really, "this delay could be dangerous." It appears that some delays are more dangerous than others. Delays on this side of the House perhaps are dangerous, on the side of Scrutiny, and when delays are ... I will not go down that road but it would be nice to co-operate on this and get the right answer, but please, please let us not have any point-scoring. Let us not have any games-playing. Let us get the right answer. As I said, we are not opposed to the principles but we are opposed to Scrutiny being taken for a ride, to not having the right documentation in time and then being forced, effectively, to do a review in an impossible timeframe. I just want to cover 2 other points. One is about the need to protect depositors. Of course we accept the need to protect depositors, that is an important issue, and there are 4 points I want to make quickly about that. The first is that we are now under a political guarantee. As I think the Chief Minister mentioned, it is unlimited. There are things wrong with it, the fact that it is unlimited and the fact that it only covers Jersey residents, but it does cover Jersey residents. It does exist. It is there now. We have been living under it for 6 months and it has not stopped raining. What I mean by that is that we have not called on it and we are never likely to, as speakers have said. The second point is that governments have shown in the interim between October, when the decision was taken not to produce a D.C.S., and now that they will protect their banks. We were told this by the Minister as well that the situation is at the hearing. The situation is now much more secure and this is a scheme that may very well or we hope will probably never be used. The governments are going to stand behind the financial system until it really all does go belly-up, if it does. The third point is that the environment around banks has changed; prudence, regulation are the order of the day. Banks can no longer go trawling-off and behaving irresponsibly, and partly because half of them are owned by the British Government and various other governments. So, the environment has changed. The level of risk has changed. Finally, we are told that it is all very, very low risk, that only the very best banks are in Jersey and, indeed, there have not been bank failures. Again, depositors need protection but I do have to query just how great the risk is and how urgent this whole matter is, whether 3 months of proper scrutiny will make a very great difference. Finally, the issue of being credible internationally. The Chief Minister made great play about this. There are 3 aspects. One is Foot, and the claim was made that if Mr. Foot has to report that Jersey is the only Crown Dependency that does not have D.C.S. this will be an eternal blot on our landscape. The truth is completely different and I will leave it to our chairman to go into that because he made the phone calls to Mr. Foot's office which show that that assertion is simply not valid, it does not stand up to scrutiny. The second issue is the G20. Now, we are told that the G20 are seriously concerned about our lack of a D.C.S. Again, this is slightly short of the truth. I asked in the hearing about what evidence there was that the G20 ... can you point to a document where the G20 goes on about D.C.S.s in offshore? Well, they do not go on about D.C.S.s, they have much greater, bigger concerns about the international global financial architecture and transparency and its role in the prices, and I am sorry, they really do not have a major focus on D.C.S.s. It is kind of near the bottom of the list of bullet points. The third point is about international credibility. It has gone missing. With that, I think I will conclude but I do just want to make sure that Members take that message home tonight that this idea that delay could be dangerous is a highly suspect notion. We have lived under the political guarantee for 6 or 7 months and it certainly was not Scrutiny that are

responsible for the very difficult position we find ourselves in of being forced to pull it in order to scrutinise it properly, and that was the third point about international credibility and international reputation. What would be the effect on our international reputation if we, as a legislature, waved through a piece of legislation with £100 million liability to the States on the basis that we do not even scrutinise it before we put it through? That would be an extraordinary way to carry on. People would wonder about the quality of our legislative process. I leave that with Members and wish them a good evening.

The Greffier of the States (in the Chair):

Yes, the adjournment is proposed. I will just draw Members' attention to 2 items that have been presented to the States. There is a report from the Minister for Housing - Dwelling Houses (Rent Control) (Jersey) Law, including the Rent Control Tribunal: Future of the Law; and comments of the Privileges and Procedures Committee on the proposition of Deputy Le Fondré - Composition and Election of the States: single election day each year. Those matters have been presented. The Assembly will adjourn until 9.30 a.m. tomorrow morning.

ADJOURNMENT