STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 12th MARCH 2008

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

PUBLIC BUSINESS – resumption

1. Code of Practice for Scrutiny Panels and the Public Accounts Committee (P.198/2007)

The Bailiff:

We return to the amendments of the Council of Ministers to the Code of Practice for Scrutiny Panels and Public Accounts Committee and I will ask the Greffier to read the amendment.

The Greffier of the States:

In the paragraph numbered 3.5, after the words "will review the matter and", insert the words "subject to the preservation of legal professional privilege and the privilege against self-incrimination".

1.1 Senator M.E. Vibert (The Minister for Education, Sport and Culture - rapporteur):

I hope we may deal with these more minor amendments much more quickly than the major amendments we dealt with yesterday. I thank all Members who spoke in that debate again. I had hoped, Sir, in the spirit of working together, this amendment and the following one might have been accepted and I still hope they might decide to do so. This amendment, amendment (a), relates to section 3, Powers of the P.A.C. (Public Accounts Committee) and Panels, and in particular paragraph 3.5. Section 3 sets out the proposed powers of the Public Accounts Committee and the Scrutiny Panels. As part of this, it sets out the proposed arrangements under which Ministers and other Members of the States will be expected to co-operate with the Panels. Paragraph 3.5 as it currently stands says that where there is a dispute between the Scrutiny Panel and the Member or Minister as to whether evidence should be given or documents produced, the Privileges and Procedures Committee will review the matter and direct whether or not the Minister or Member concerned should comply with the request. If a Member fails to comply when directed by P.P.C. (Privileges and Procedures Committee) to do so, he or she will be regarded as being in breach of the Code of Conduct and the appropriate disciplinary process will be initiated. Although the Chairmen's Committee say at paragraph 3.2 that, and I quote: "Panels will nevertheless use the procedure set out below that mirror those set out in the 2006 regulations when taking evidence from Ministers, Assistant Ministers and other Members", that is not, in fact, so. There is nothing which replicates the protection of Regulations 8 and 17 of the regulations which say that, and again I quote, Sir: "A person asked or required to give evidence or produce documents before a Scrutiny Panel or the P.A.C. shall be entitled in respect of such evidence and documents to legal professional privilege and privilege against self-incrimination." The Council of Ministers, Sir, considers this is an important principle and that the entitlement to those privileges for all States Members, including Ministers, should be maintained and therefore seeks to include it in paragraph 3.5 so that it does indeed mirror the regulations which the Chairmen's Committee says it should do. Sir, I hope this can be accepted and I propose the amendment.

The Bailiff:

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

1.1.1 Deputy S.C. Ferguson of St. Brelade:

No, I can unfortunately disappoint the rapporteur. We do not accept this. This does not apply to comments on legal advice. Please bear that in mind. This applies to any part of a Minister's testimony in a hearing. Now, the regulations to which the rapporteur is referring are these regulations: the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, P.A.C. and P.P.C.) (Jersey) Regulations 2006. I would refer the rapporteur to paragraph 2 which says: "Application to Members of the States. These Regulations shall not (a) confer any power to issue a summons requiring the appearance of or the production of documents by a Member of the States or (b) confer any privileges or immunity on a Member of the States." That is useful. Then, if you look at schedule 3 of Standing Orders, the effect of schedule 3 of Standing Orders in fact is to not

confer any legal privileges or the privilege against self-incrimination for States Members. So I think that is fairly clear. I think States Ministers are States Members, or perhaps I am missing something. The question is should there be a different standard for a Minister or a States Member when being held to account? Are not higher standards expected of them? We have already discussed the fact that this Assembly is effectively the uppercase Government, powers being delegated to the Executive to manage the running of the lowercase government. It seems fair enough. The Ministers are accountable to this House. Therefore, anything which can mask their accountability is prejudicial to the Government. This amendment merely gives a Minister who has made a questionable decision the opportunity behind the privilege against self-incrimination. I am sorry; this is not good government. I will concede that in the Minister's amendment on legal opinion, there is a provision in there for the Ministers to claim legal privilege with regard to legal opinion. I do not think we should have the Ministers claiming privilege against self-incrimination on all their testimony to a Scrutiny Panel. This is not good government and I ask Members to reject this amendment.

1.1.2 Deputy R.G. Le Hérissier of St. Saviour:
Just to confirm, unlike the Archbishop of Canterbury who was having problems with "unclarity" - a word unknown so far - I think the Chairman has given an exceptionally clear presentation and, Sir, the bigger issue which needs to be emphasised again is this considerable reluctance to concede and to move away from this culture of secrecy. We know what a vitiating problem it is in the system. We know where it can lead us, and I am so sad, Sir, to see that there could not be from the Council a gracious response to this issue. They are still living in a culture which, quite frankly, should be swept away. What they are seeking instead, Sir, is this broad exemption. We have seen with the Rehabilitation of Offenders Law how, as an organisation, we eat away at the spirit of an issue to such an extent that it totally undermines it. I would suggest, Sir, as the Chairman has said, this is precisely what is happening. I do ask the rapporteur, Sir, to take the gracious way out, to concede this is ultimately petty. This is all a remnant of the culture of secrecy which has been far too prevalent and, as with the Chief Minister yesterday, to experience, Sir, even at this late point a conversion on the road to Damascus. Thank you, Sir.

1.1.3 Deputy G.W.J. de Faye of St. Helier:
I had not intended to speak so early, but I really find myself in serious disagreement with Deputy Le Hérissier about this purported culture of secrecy. In my 2 years of experience as a Minister, certainly my department, and I believe most other departments, have been wholly co-operative, both with Scrutiny Panels and Members in terms of disseminating information. I can think of only one occasion in my 2 and a half years as a Minister where I blocked information being given out, and that was when I was being asked to provide detailed week-by-week accounts of maintenance programmes for the failing incinerator and it was my judgment that that would take up far too much civil service time and, frankly, it did not stack up to our general understanding of getting value for money out of our government on behalf of the public. I do want to remind Members that, in general, things within the States of Jersey do run very smoothly, very openly and satisfactorily, quite frankly. The purpose, in fact, of having codes of practice is to have a number of rules and procedures in place so basically when things go wrong everybody knows where they stand. We can all come up with lots of petty examples about why the Council of Ministers' amendment is so unreasonable and indeed, by the same token, the rapporteur on behalf of the Council of Ministers has indicated in his opening remarks that he thinks it is quite reasonable for the other side to concede. I have to say I agree. Why is that? It is because there is an element in what is being proposed of directing a Minister. That places Ministers in a very difficult position. The Assembly has effectively delegated executive powers to Ministers. I reject the personality cult that would appear that we are all running our own shows as portrayed by the local media. What is happening is that Ministers are executing the policies as laid down by the States Assembly and as ultimately decided by the States, but we do operate under this system whereby we are all individually

responsible in law personally for the department. I think Members need not consider what the general practice of events is but need to consider what could happen in more extreme circumstances. Let us suppose, for example, that we have a more significant political party presence within the Chamber and that we saw more of an opposition. It would suddenly become a potential political party tool to use this element in the Code of Practice to effectively keep Ministers under the cosh; constant demand for reports, for background details, and knowing that you have the power, with very few get-out clauses for the executive side, of being able to direct Ministers to perform. It is all very well if that is done in the spirit of good government. It is an entirely unsatisfactory business if at some time in the near or medium-term future we found, in effect, 2 sides of a House locked in combat, using the Code of Practice as a tool. That is why we have to be very, very careful about the wording of the Code of Practice and most particularly how we intend to use that Code of Practice. I do not think that asking for, as it were, a level of relatively minor concession here in terms of the ability for Scrutiny to direct results from the Ministerial side is being, in fact, unreasonable. It should be seen in the context of what proportions you need to have in hand when things start going badly wrong. The fact of the matter is that things are working, and I do not agree with Deputy Le Hérissier's view. Things are working pretty well at the moment and we want to ensure that things continue to work pretty well. That means that we do have to have the odd standby contained within the Code of Practice being laid out before us. So I want Members to consider as the debate pans out not the situations that they are used to, that they have seen and have experience of, but what Members do need to do is to consider what is the effect of what I have written before me when things are starting to go badly wrong, when the situation in the Chamber is not as it is now. That is not necessarily an inconceivable position.

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

Following on from the speech of Deputy de Faye, I believe I smell fish. I think it is a red herring. Again wonderful, fluid speech, but nothing to do with the argument in front of us. The fact is that yesterday this House probably hamstrung - handicapped - the actions of Scrutiny, improperly holding Ministers to account in one way. This amendment takes that further and provides what Deputy de Faye referred to as a standby provision. For "standby provision" read "bolthole". It is very clear. Scrutiny is here to hold Ministers to account for their actions and their policies. Ministers are under instruction to co-operate with Scrutiny in that endeavour. This amendment puts a little bolthole for Ministers to hide in while appearing to co-operate with Scrutiny to the fullest extent, to go and hide from time to time when things get a bit sticky. That is what this amendment does. It is absolutely clear. This House must make sure that Scrutiny can properly hold Ministers to account. In doing so, it must reject this amendment.

1.1.5 Senator T.A. Le Sueur:

I think, to me, this Code of Practice is rather like a partnership agreement in a commercial professional practice. It is something which I signed when I first became a professional partner, stuck in a drawer and never looked at again. I would hope that by and large this Code of Practice is something else that we could stick in a drawer and not need to refer to because I would like to think that there was generally the same spirit of harmony between Ministers and Scrutiny as there is within a professional partnership. I think just as there needs to be harmony in that respect, there also needs to be harmony and consistency within that Code of Practice. Pursuing the point just made by Deputy Southern, yesterday we agreed an amendment in respect of legal privilege and I think all that this amendment seeks to do is to ensure the consistency between that decision we made yesterday afternoon and the current Code of Practice. So I see no skeletons in the cupboard, no red herrings here at all, but merely an aim to be consistent. Now, it may be that I am not interpreting this correctly, and I am not going to try to hide behind my legal ignorance, but when we have an opportune moment, perhaps the Attorney General would like to confirm to me that discretion of legal privilege and the position we passed yesterday is underpinning the need for this matching amendment which we now have.

The Bailiff:
Does any other Member wish to speak?

1.1.6 Deputy J.A. Martin of St. Helier:
Is the Attorney General going to speak?

The Bailiff:
He probably would like to gather his breath, Deputy, if you would like to…

Deputy J.A. Martin:
Okay, I just want to make a few comments and I will be interested in what the Attorney has to say and obviously he will give his legal opinion. Listening on from what Senator Le Sueur has just said, I cannot see where the 2 are connected. We lost the amendment. Ministers' privilege and legal advice is protected. We have not yet had to use anything to subpoena a Minister or a Member of the States through a Scrutiny Panel and it has been working well. As the Senator said, may this continue, but I do not like the words of legal professional privilege in the amendment, Sir. I think we have already established that we do not need that in this because it is talking about a totally different Panel calling Members in to be witnesses on a subject. It may be a policy that has already happened and we already know what the legal position is. The next part says: "privilege [this is a Minister possibly] against self-incrimination." Well, I think it is what Senator Syvret said yesterday. We are supposed to be doing the job. The States of Jersey Law was set up to give the job to Scrutiny. They did not know who was going to be in Scrutiny then and we do not know who is going to be in Scrutiny in 5 years. We do not even know who is going to be the Chief Minister in 10 months, 9 months. I am not entrenched in this, but I am trying to now look at the system to say that on either bench of the House that I am sitting, it should be fair and I should be able to be held to account if I am a Minister and I should be able to call in a Minister without them having the privilege against self-incrimination. I look forward to the interpretation for the Attorney General because it is a legal opinion on what is the privilege of coming in or not coming in to a Scrutiny Panel to protect against self-incrimination. That is all I say. I think we watered down the Code completely yesterday. This amendment again is being, to me, picky. Again it is already going to P.P.C. It will be rued by the Greffier and if a person really feels that they cannot come in to be scrutinised or into a meeting of review, a hearing with a Scrutiny Panel, there must be a very good reason. What that reason would be at this moment I do not know. As I said, we have already covered the legal arguments and if a Minister cannot or any States Member cannot, after it has been asked, come into our Panel, I really cannot understand why they want to put this in. So I will wait for the Attorney General but I cannot see that he is going to persuade me, after the legal advice is already privileged, why there should be a privilege against self-incrimination. It is holding to account. Thank you, Sir.

1.1.7 Mr. W.J. Bailhache Q.C., H.M. Attorney General:
I think the Council of Ministers' amendment is indeed consistent with the amendments that were put forward and agreed by the Assembly yesterday. I would just like to take them in 2 pieces. The first of them is the claim to legal privilege. If one looks at the Chairmen's Committee's draft Code of Practice, at paragraph 3 it deals with the powers of P.A.C. and Panels and then at 3.4 there is provision in this way: "In common with members of the public who are able to challenge a summons, Members of the States will be able to write to the Greffier asking for a review of the request to provide evidence if they consider …" and then paragraph (c): "… that the evidence is or documents are legally privileged." Then at paragraph 3.5: "The Greffier will immediately refer the matter to P.P.C. which will review the matter and direct whether or not the Minister or Member concerned should comply with the request. If a Member fails to comply when directed by P.P.C. to do so, he or she will be regarded as being in breach of the Code of Conduct and the appropriate disciplinary process will be initiated." Now, the amendment that was adopted by the States

yesterday says this, and this is at paragraph 4 of subparagraph (e): "Scrutiny Panel members recognise and accept that Ministers and their officials will maintain their claim to legal advice privilege except in exceptional circumstances if questioned by a Panel and will not seek to interfere with that privilege." So it is very odd that on the one hand the Assembly has adopted an amendment which recognises the claim to legal advice privilege and, on the other hand, apparently intends to confer on the Privileges and Procedures Committee the power to override legal advice privilege. It is, in my view, quite inconsistent. The whole purpose of the debate yesterday was to establish that legal advice privilege needed to be protected and maintained and, to my mind, it has not been protected and maintained if the Privileges and Procedures Committee at any time can effectively direct a Minister to breach the privilege or else commit a disciplinary offence. So that is why I say that in relation to legal advice privilege, I advise Members that this amendment is entirely consistent with what was agreed by the Assembly yesterday. As to the privilege against self-incrimination, it is quite clear that there is no political privilege against self-incrimination. There is a matter of the privilege of self-incrimination that applies when a person is not obliged to admit to committing any criminal offence. The idea that a Minister should be committing a disciplinary offence by not admitting a criminal offence seems to me to be quite odd. The privilege against self-incrimination is respected in relation to members of the public and, as I say, it seems to me to be an odd idea that, for some reason, Ministers and Members should not have the same ability to say: "I rely on the privilege against self-incrimination." Of course the political consequences of doing that might be quite severe. It would be quite odd also if a Minister said: "I am relying on the privilege against self-incrimination" because the obvious political question that arises from that is: "I wonder why the Minister or the Member might be doing that" and one would expect that politically the Minister or Member would soon get his or her comeuppance at the hands of the Assembly. So, in my view, the amendment is an appropriate protection for the legal advice privilege and also protection for Ministers and Members in not having to admit matters which might be used in criminal proceedings or give rise to criminal investigations.

Deputy S.C. Ferguson:
I wonder if I can ask the Attorney General if this is the case, why did the Law Officers Department not put this particular provision into the Standing Orders? The context in which the Council of Ministers have brought it seems to imply that it applies to the whole of the Ministers' replies to questioning, not just questioning about any legal opinions and so on. I wonder if the Attorney General could explain those 2 things.

The Attorney General:
As to the first question, it was not the Law Officers' job to draft the Standing Orders. I do not recall being asked to comment on this particular Standing Order at the time, but I certainly was aware that the other provisions of Standing Orders required that a Code of Practice be brought forward. So I was anticipating that there would be detailed provisions about questions to Members from Panels at a later stage. Indeed I do recall that when the regulations were adopted, there was a speech from Senator Ozouf which recognised the importance of the privileges against self-incrimination and legal advice privilege, but I believe I am right in saying that that question was put to me about States Members at that time. So I do understand, looking at schedule 3 to Standing Orders, that it does give the impression that an elected Member shall co-operate. I think that statement stands. I think elected Members are expected to co-operate with Scrutiny Panels and committees, but that is not to say that the protections against self-incrimination and the protections of legal privilege should not apply. I am sorry; I have forgotten the second question.

Deputy S.C. Ferguson:
You have already in the legal opinion amendment as passed, made provision for Ministers to claim legal privilege and privilege against self-incrimination, but the way this has been worked into the amendments implies that Ministers will be able to refuse to answer any questions and claim

privilege. It seems to apply to the whole of the Ministers' testimony, not just the testimony about anything relating to any legal opinions.

The Attorney General:
I think that there is a function for the Privileges and Procedures Committee. Let us suppose a question was put to a Minister about where he was on a particular day and he says: "No, I am not going to answer that question because it is subject to legal advice privilege." On the face of it, unless there are exceptional circumstances, legal advice privilege could not possibly extend to that sort of question, and one would expect the Privileges and Procedures Committee to explore that matter with the Minister in accordance with paragraph 3.5 of the Code, to identify exactly why it was that the legal advice privilege was being claimed. So I think the distinction is between deciding whether or not there is a legal advice privilege, in which case one does not inquire beyond it, or not, as the case may be. In other words, the function of the Privileges and Procedures Committee is to identify that there is a legal advice privilege which is properly claimed. If it is properly claimed, then it is properly claimed and you stop there, but there is a function for P.P.C. in that respect.

Deputy S.C. Ferguson:
But, Sir, if we do not know the legal advice, how do we know that they are claiming it correctly? It is one of these sort of awful Möbius strip sort of things because there are a number of…

The Deputy Bailiff:
Deputy, sorry, can I…

Deputy S.C. Ferguson:
Good heavens; you have changed, Sir.

The Deputy Bailiff:
Yes. **[Laughter]** I understand you have already spoken.

Deputy S.C. Ferguson:
I am having a sort of legal discussion with my lawyer and I am claiming legal privilege. **[Approbation]**

The Deputy Bailiff:
On this occasion, privilege is going to be refused, I think, Deputy, because a discussion is not possible. Clearly, questions were, and I heard the last question but you are now expressing your views and I do not think that is open to you.

Deputy S.C. Ferguson:
Well, no, it was really a question and unfortunately, Sir, you have interrupted my train of thought and I cannot remember what it is. **[Laughter]**

Deputy G.P. Southern:
If I may ask a direct question? When the Attorney General referred to 3.4, in particular (c), is he not suggesting there that legal privilege is already covered in our Code of Practice? Secondly, is it not the case where somebody is claiming against self-incrimination that it will not be proven that there is a case that he has incriminated himself but that there may be a challenge? Although, in considering that he was acting legally as the Minister, that may be open to challenge without the possibility that this self-incrimination will be pulled in, on very little evidence whatsoever, on the possibility that the Minister was acting illegally although in best faith, thinking that the practice, for example, with rent rebates (which is just a scheme and has no place in law) or hardship cases where discretion exists - traditionally we have done it that way - may prove to be illegal.

The Attorney General:
I am sorry, Sir, what is the question? **[Laughter]**

Deputy G.P. Southern:
The question was, first of all, is legal privilege not already covered in 3.4(c), and is it not the case that immunity from self-incrimination would not be black and white; that would be very much a grey area? "I have been behaving under what I thought were my powers. There is a question raised. It may be illegal, I may be acting illegally, and therefore I do not want to incriminate myself."

The Attorney General:
It is not covered by 3.4(c). That allows the Minister or the Member to raise the issue of legal privilege in relation to evidence or documents, but paragraph 3.5 purportedly allows the Privileges and Procedures Committee to overrule that claim. So it is not sufficiently or adequately covered by 3.4(c). As far as the second point is concerned, it seems to me to be very unlikely, as a matter of fact, that a Minister or a Member is going to claim the privilege against self-incrimination which relates to criminal matters, unless there is a reason in a criminal sense for him or her to do so. I am not quite sure how to answer it and expand upon the answer I have given to the Members already. It seems to be quite plain that you would not wish to remove the ordinary privilege against self-incrimination, which everybody has, just because the person concerned is a Member of the States.

Deputy G.C.L. Baudains of St. Clement:
May I seek clarification from the Attorney General, Sir, because I was somewhat confused by comments he made earlier where he gave an example that somebody might refuse to explain where they were on a particular day and claim legal privilege which would seem to be unlikely and that the Privileges and Procedures Committee could then look into it. What I do not understand, Sir, is how the Privileges and Procedures Committee could look into it as they would not be allowed to know what that legal advice was. In fact, they would not be, as far as I know, allowed to know even that legal advice had been given.

The Attorney General:
Well, there will be a threshold, depending upon what the question is that is being asked where the Member or the Minister is claiming legal privilege. In nearly every case it is going to be perfectly obvious whether the matter is legally privileged or not. I only gave the example I did to illustrate, I thought in a reasonably obvious case where it would not be claimed, that the Privileges and Procedures Committee would then say: "This is not a proper claim to legal advice privilege." That must be something which the P.P.C. could do, not to inquire into what the advice is but just to establish whether or not the advice is privileged, whether or not it is a proper claim to privilege in relation to the question which is being asked.

Deputy R.G. Le Hérissier:
To what extent is this amendment needed, given part 5, Powers, Privileges and Immunities of the States of Jersey Law 34: "No civil or criminal proceedings may be instituted against any Member of the States (a) for any words spoken before or written in report to the States"…

The Deputy Bailiff:
I am sorry, Deputy, are you asking a question?

Deputy R.G. Le Hérissier:
Yes, Sir.

The Deputy Bailiff:
Because it is my understanding that you have already spoken.

Deputy R.G. Le Hérissier:
Yes, a question. To what extent is that amendment needed, given 5.34 of the States of Jersey Law?

The Attorney General:
It may well be the case that the responses which the Member or Minister gives to the questions will not themselves form evidence which is capable of being produced in a court, but that is not to say that it will not give rise to a train of inquiry which will establish the evidence somewhere else.

Senator P.F.C. Ozouf:
One of the central issues that we considered yesterday was that no other parliament in the world had provisions in place to share legal advice. That was one of the central issues. Can I ask the Attorney General whether or not he has researched, whether he is aware that this provision for immunity exists in other jurisdictions that have this problem of Ministers needing to be held to account but that at the same time these legal provisions are, I am sure, to some Members without legal training (including myself), if I may say, somewhat over our heads.

The Attorney General:
I am afraid I have not researched that.

1.1.8 Senator P.F. Routier:
It appears to me that what the Attorney General has quite clearly advised us is that to reject this amendment would be inconsistent with what we decided yesterday. It was quite clear, the decision that was made yesterday, with regard to privilege, and to make a different decision today would be totally inconsistent. So I urge Members to support this amendment and to move on.

1.1.9 Deputy C.J. Scott Warren of St. Saviour:
I was going to ask a question but otherwise I can put it in a speech, but I am concerned, Sir, that without legal privilege Ministers cannot, and nor would Members, feel able to fully provide information to Scrutiny Panels. Sir, I had a recent experience of this when I had to withdraw my working party to look into the operation of third-party appeals because I was informed by someone with legal knowledge that people risk being sued or they would not give full information to the working party which is why it is now coming back as a Committee of Inquiry. If you do not have legal privilege, Sir, it would appear to me that whatever you are going to hear is going to be not necessarily the full story, to put it bluntly, and I would appreciate whether I am correct in that, Sir. Thank you.

The Deputy Bailiff:
I am not sure that is a legal question, really, is it? I think that is a matter of…

Deputy C.J. Scott Warren:
What I am really saying is information is provided without legal privilege. It could be, to use the term of a former U.K. adviser, people, Members and Ministers particularly might be economical with the truth. Is that correct, Sir?

The Deputy Bailiff:
Well, I think that is a matter of opinion. I am not sure that is a matter of law for the Attorney General to advise you on.

Deputy C.J. Scott Warren:
Maybe I have not been clear. My reason for saying that is that the risk of being sued could make any Member of the States without privilege, and this applies to members of the public who appear, I believe, that any information given without legal privilege surely may not be the best information, if I can put it that way. Thank you, Sir.

The Deputy Bailiff:
Well, Mr. Attorney General, do you want to answer that question?

The Attorney General:
Deputy Le Hérissier was right to refer to Article 34 of the States of Jersey Law in this respect because that does create immunities against legal proceedings for what is said to a committee or Panel established under Standing Orders. So Members need not fear that they are going to be sued for information which they give to a Panel. That is not the same thing as the privilege against self-incrimination, which I have just said in answer to the response to Deputy Le Hérissier, might lead to a train of inquiry in criminal proceedings being taken in respect of other matters. So not what is said being used in evidence, but it may spark other inquiries. I am not sure I can really add much to that.

Deputy R.G. Le Hérissier:
Can I ask for further clarification on 5.34? Is the Attorney General suggesting, Sir, if, for example, a Minister - take the current situation - is brought before a Scrutiny Panel to examine childcare policy, could that Minister say: "Even though I may not be directly responsible for certain actions [which in itself is an issue], there is the possibility I might be held criminally liable for some aspect of childcare, therefore I cannot say anything to the Panel looking into the whole area of childcare services"?

The Attorney General:
My experience is that Members can say almost anything, but that apart, if a Minister had no responsibility for the particular time, it does not appear to me that he would ever dream of raising the privilege against self-incrimination. There would be no reason to do so. As I said earlier, it seems to me that a Minister who raises a privilege against self-incrimination is likely to be facing a very short-term political career in the future.

1.1.10 Deputy F.J. Hill of St. Martin:
Yesterday when I spoke, I warned Members that if they agreed to the principle of the right to legal aid or deny legal aid to Scrutiny Panels that there would be a knock-on. I made it quite clear yesterday. Now this morning my words have come into fruition because we are being told: "You agreed to it yesterday, therefore you must agree to it today." I also said that Scrutiny needed the tools to do the job. I stopped being a member of Scrutiny some months ago. I have no intention to remain involved with Scrutiny because I do believe that Scrutiny has been ham-fisted and is going to be continually ham-fisted if we agree to this amendment.

1.1.11 Deputy J.G. Reed of St. Ouen:
I would just like to make a couple of points following on from certain comments that the Attorney General and others have made. It would be this: that presently the States as a whole have not sought to cover the privilege of self-incrimination either in the States of Jersey Law or Standing Orders. We are equally aware, as has already been pointed out, that immunity from legal proceedings is protected. Secondly, 2 and a half years on and through practising Scrutiny and obviously the interaction between Ministers, it had been clearly pointed out that there has not been an issue. So why make it one now? Thirdly, we have included in the Code of Practice, and I would like to point out that if there is an issue and a need to cover the issue of privileges for self-incrimination, this is not the document to use. As I said before, we do have the States of Jersey Law and we do have outstanding orders. If we need to deal with these issues, let us deal with them in the proper format. This Code of Practice is just to deal with how practical things happen and expectations, but equally I would like to point out that we have included, quite rightly, the checks and balances, and the checks and balances ultimately rest with the Privileges and Procedures Committee, a committee that the States has set up for a whole range of responsibilities but ultimately a responsibility for States Member conduct and actions and everything else. Are we now

suggesting that that responsibility and remit of that committee is pointless? Are we going to remove any ability for them to determine properly and objectively what is and is not a responsible action or activities? I would say not. Therefore I would ask Members to properly consider the proposed amendment and what it means. I would ask them to vote against the amendment.

Deputy G.P. Southern:
Could I pursue the inquiries with the A.G. (Attorney General) further? The question is, can the A.G. confirm what I think he said to us is that a Minister might come to a Scrutiny Panel and say: "I am aware that I am immune from prosecution for the words I use at this inquiry but it may well be that some time in the future somebody else will further persue my words as a starting point and hold me criminally responsible for a particular act. Therefore I am saying nothing." Is that the case?

The Attorney General:
In relation to self-incrimination, yes.

1.1.12 Senator P.F.C. Ozouf:
Very briefly. I have heard the contributions of a number of Members, including the Deputy of St. Ouen where I am afraid to say, sitting where I am, I am interpreting his remarks as basically saying that he knows best in terms of what these provisions mean. I have to say to the Deputy of St. Ouen that we have a **[Interruption]** I am not giving way. We have a responsibility for the people that we serve as elected representatives to take advice. We have heard advice from - and there is no other Member of this Assembly who has legal training and we have to make decisions based upon legal advice - from the Attorney General and backed up eloquently yesterday by the Solicitor General and, frankly, I think it is an unacceptable position that Members do not take the proper advice from the proper officers that we have serving this Assembly. On that basis I cannot believe that any Member, any thoughtful Member, any Member that takes his or her responsibility seriously, would vote in any other way apart from act upon the advice that we have received. This is not about hiding behind legal privilege. That is not the situation. Those Members who wish to undermine the position of Ministers in some way and make it difficult for us to do our jobs, they may want to vote in favour of these amendments. But most Members, I think, act upon advice and upon proper advice.

1.1.13 Deputy P.V.F. Le Claire of St. Helier:
This is an interesting point, Sir. But I think it is rather twisted what is the case and that is that most Members have a high regard, or the highest regard, for the advice of the Law Officers of Jersey and it is our desire to seek to understand and witness that advice that is where we are coming from, from a Scrutiny perspective. Members of Scrutiny do not want to go out and seek advice from outside of the States of Jersey, they want to know what the Attorney General believes and when, on many occasions, we have been in camera Members vote accordingly. In this instance and in yesterday's instance, we are being told that unless we vote to not see the advice then we are ignoring the advice. It really is a very clever trick of the hand to suggest that we are not interested in the Attorney General's advice, or the Solicitor General's advice. The reality is as said yesterday by the Solicitor General, we can ask advice from the Attorney General. The reality is that if that advice relates to the advice that he has given to a Minister we are not able to see it unless the Minister gives it to us and the Minister at that time can say: "Sorry, I cannot give it to you unless the Attorney General tells me I can and because it is privileged, I cannot." So we are at a dead end as far as Scrutiny is concerned. We are now going to have to go outside to seek other advice and it is regrettable. It is regrettable because we all value the advice and we respect the Attorney General and the Solicitor General and the Officers in the Law Department, and unfortunately this leaves us no option but to go outside. As a demonstration of sincerity in what I am saying, on this occasion I will support this advice to demonstrate that this is the type of advice that we have been trying to

access in bringing these amendments. Unfortunately, in the future, when the Attorney General is not in the Assembly, as has been the case in the past, when perhaps his advice has been misrepresented as it was in the past by existing members on a committee as part of this Council of Ministers, we will be in a position of not knowing whether or not that advice has been misrepresented or not.

1.1.14 Deputy R.C. Duhamel of St. Saviour:
Briefly, Sir. It would appear that as in many card games there are some cards that can be played as wild cards or jokers and I think that this amendment is being played in this particular fashion. I have not been convinced by the advice that we have had from the Attorney General and I think it will provide more than a bolt hole for our Ministers to hide behind, it will effectively render the whole process of accountability, or bringing accountability into Ministerial actions, ineffective.

The Deputy Bailiff:
Does any Member wish to speak? Very well, I call upon Senator Vibert to reply.

1.1.15 Senator M.E. Vibert:
I will be very brief. Members have heard what other Members have to say, including the advice from the Attorney General. It appeared to me that a number of people speaking against this amendment appeared to be trying to re-run yesterday's debate and were not happy with the States decision. Well, the States have made their decision and to be consistent this is a follow on to be supported and I propose the amendment, Sir.

Deputy R.C. Duhamel:
Can we have the appel?

The Deputy Bailiff:
Yes, the appel is asked for in relation to the amendment to paragraph (a) of the proposition and I invite Members to return to their seats and the Greffier will open the voting.

POUR: 21		**CONTRE: 13**		**ABSTAIN: 0**
Senator L. Norman		Connétable of St. Mary		
Senator T.A. Le Sueur		Connétable of St. Clement		
Senator P.F. Routier		Deputy R.C. Duhamel (S)		
Senator M.E. Vibert		Deputy of St. Martin		
Senator P.F.C. Ozouf		Deputy G.C.L. Baudains (C)		
Senator T.J. Le Main		Deputy R.G. Le Hérissier (S)		
Connétable of St. Ouen		Deputy J.A. Martin (H)		
Connétable of Trinity		Deputy G.P. Southern (H)		
Connétable of Grouville		Deputy S.C. Ferguson (B)		
Connétable of St. Brelade		Deputy of St. Ouen		
Connétable of St. Martin		Deputy P.J.D. Ryan (H)		
Connétable of St. John		Deputy of St. Peter		
Connétable of St. Saviour		Deputy D.W. Mezbourian (L)		
Deputy C.J. Scott Warren (S)				
Deputy J.B. Fox (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Deputy Bailiff:
Then we come to the final set of amendments, amendments paragraph (f) and (g). Greffier, have you been reading them all so far? No. A short version.

The Greffier of the States:
(f), in paragraph 11.7: (1) after words "all witnesses" delete the words "who are not States Members"; (2) after the words "factual or descriptive passages" insert the words "where possible this will also include the Panel's findings and recommendations. This will help to ensure that the Panel has correctly interpreted the evidence and provides an early opportunity for clarification." (g), in paragraph 11.8: (1) after the words "circulate draft reports" insert the words "including findings and recommendations to the relevant Minister; (2) after the words "in confidence and" delete the words "when possible"; (3) after the words "and allow" insert the words "at least"; and (4) after the words "for comments" delete the words "on matters of a technical or factual nature only".

1.2 Senator M.E. Vibert:
I was hopeful that the last amendment would be adopted and would not take too long, perhaps I can hope that this might be the same. I say that particularly as I notice some comments from Scrutiny Panel members yesterday, Deputy Mezbourian talked about being open, transparent and accountable and so all we are asking in this is that Scrutiny are open, transparent and accountable. I hope they accept that and will react accordingly because these amendments, (f) and (g), are about how Scrutiny produce their reports, how they validate the evidence that has been received - either through documents from witnesses or expert advice - and how they publish their findings. Amendment (f) relates to paragraph 11.7 of the Code of Practice. A Code of Practice says that relevant draft sections of the report will be circulated to all witnesses who are not States Members and that they are allowed 5 working days to comment before the report is finalised. The Council of Ministers cannot see why this courtesy should not be extended to witnesses who are also States Members. We believe that States Members should be treated in exactly the same way as any other witness and have the same 5-day courtesy extended to them. Amendment (g) proposes a number of changes to paragraph 11.8 which the Council believes would ensure fairness and not at all compromise Scrutiny's ability to publish its final findings and recommendations. As it stands the Code of Practice says that finalised draft reports will allow, when possible, 5 working days for comments of a technical and factual nature only. Scrutiny has produced a number of valuable reports which have contributed to policy making. Policy is all the better for it. The Council wants to support this process and believes that there should be a short opportunity before final publication for comments to be given to Scrutiny on all parts of their report. Scrutiny will be entirely free to decide whether those comments are valid and should either be accepted or rejected. This amendment would ensure that opportunity is given in every case and they should only serve to improve the quality of reports still further. Without sight of the report, including the Panel's findings and recommendations in good time before publication, it is impossible for witnesses and the appropriate Minister to assess whether they believe the Panel has interpreted their evidence correctly. The amendments to paragraph 11.8 makes it clear that the final draft reports should be circulated in confidence to the relevant Minister for comment at least 5 working days before publication and should include the Panel's recommendations and conclusions. This would enable Ministers to assess how the Panel had interpreted evidence and give them time to make comments or make points of clarification to the Panel prior to publication. There have been occasions, Sir, when final Scrutiny reports have been sent to Ministers so close to publication that the Minister has not had time to consider the Panel's findings and recommendations and formulate any sort of considered response or comment. Sir, if the full report is provided in confidence 5 days beforehand the Council of Ministers believe it should not be a problem. Deputy Martin in the debate yesterday said in confidence should not be a problem. I agree. The Panel providing their full reports to Ministers in confidence should not be a problem. It should make for better government. Deputy

Ferguson yesterday referred to trust between Scrutiny and the Executive. Again, if we have that trust obviously there should be no problem in providing in confidence a full report to Ministers before it is published. The Deputy of St. Martin said: "Give us the tools to do the job." The Ministers need the tools as well and they need the 5 days and the full report to do their job. So in summary, Sir, the Council of Ministers believes it is unreasonably to expect a Minister to review what are often substantial documents on complex issues and then prepare an informed comment on what is often a very short timescale between receiving a copy of the report and publication. Council believes it is important that the appropriate witnesses and in particular the appropriate Minister should have an opportunity to review the draft reports findings and recommendations prior to publication. Of course it would be up to the individual Panel whether it accepted any comments or not. The Council of Ministers believe this amendment would ensure fairness and not at all compromise Scrutiny's ability to publish its final findings. It would also improve the quality and fairness of Scrutiny Reports and would also led to a much more workmanlike relationship between the Executive and Scrutiny from which we would all benefit. Sir, I propose the amendments.

The Deputy Bailiff:
Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendments? Deputy Baudains.

1.2.1 Deputy G.C.L. Baudains:
It does appear to me, Sir, that the Council speaks with forked tongue. They have on frequent occasions told this Assembly how important Scrutiny is, what a vital function it performs and our Ministerial government frankly could not operate without it. Then, Sir, they do their best to ensure that Scrutiny is as hamstrung as possible so it is unable to be effective as possible. Frankly, Sir, what this particular amendment seeks is outrageous; disguised as it is, an attempt to edit out of Scrutiny Reports that which the Ministers do not like. I believe that if this particular amendment is successful then it would probably be better if Scrutiny Panels disbanded and they effort that they and the officers put in, not to mention the consideration financial resources required… because those resources would then become a waste of time, a waste of taxpayers' money. This is nothing more than a blatant attempt by the Council of Ministers to control Scrutiny.

1.2.2 Deputy S.C. Ferguson:
I would remind Members that some year or 18 months ago we had in fact set up a Code of Practice for Ministers to remind them how they should react to a Scrutiny Report. If we look at amendment one, in the original discussions these paragraphs were worded this way because the Council of Ministers were demanding the full report as well as the parts where they had given evidence. It would have been inappropriate for all witnesses to have received the full report rather than the sections before completion. It certainly would be fairer if all witnesses received the section of report relating to their evidence. It does seem that we have made a slight mistake in excluding any States Members which must be against their human rights. I do wonder sometimes whether States Members are human, but that is probably non-parliamentary language. This is a slip up on the part of Scrutiny and if this Council of Ministers amendment is rejected we will amend it as soon as possible and, in fact, the Greffier will be possession of the required amendment by the close of play today. However, both paragraphs mention inclusion of findings and recommendations. Paragraph 11.7 makes it optional and paragraph 11.8 makes it mandatory. This really does not make sense. Until the draft is checked by the ministry to make sure that there are no inaccuracies or misquotes or errors in facts, the final recommendations cannot be made. If there has been a fundamental misunderstanding of a process or of facts, it might cause a complete reversal of crucial findings and recommendations because it will totally change the evidence. Once everything is correct then the completed report is circulated in advance of publication to the relevant Minister. The comment in the report to the amendments is: "Where possible this will also include the Panel's findings and recommendations. This will help to ensure that the Panel has correctly interpreted the evidence and

provides an early opportunity for clarification. If recommendations are provided this is done to provide the context of the report." Correctly interpreted the evidence? How patronising. It is not for Ministers to rewrite Scrutiny Reports. This tone is continued in 11.8. "Circulate draft reports and findings and recommendations." This really is control freakery at its best. The Minister will receive his chance to comment on the recommendations and findings through the formal States system as set out in the Code of Practice, paragraphs 11.15 to 11.17. Amendment 2 talks about 5 days. Panels cannot be held to 5 days. The pressure is put on them to produce reports due to the late supply of information by the Executive. There is considerable pressure to issue reports before major debates. The income support report and the G.S.T. (Goods and Services Tax) S.R.7 are good examples of this. I would point out that the Minister has already been able to review the entire report. Surely with the plethora of resources at his disposal, or her disposal, they can review 2 pages in 5 days? I mean they can probably review 2 pages in a morning. Come on. Similar arguments apply to amendment 3 as to the other amendments. This final amendment by the Council of Ministers is to change the phrase: "On matter of a technical or factual nature" to "for comments." We do not want to hear there is a spelling mistake on page 159, paragraph 300. We want confirmation that we have noted down the facts correctly and that we have not misquoted you. It is in the Ministers interests to make sure that the facts and the evidence are correct. Again, if we have made a factual mistake then this will almost inevitably change the finding. This particular amendment would set up a veritable merry-go-round. This is not efficient. Most importantly we must remember that Scrutiny must be independent, particularly of the Executive. Okay, recommendations may be uncomfortable for the Executive, nobody is perfect. Except me. That is only occasionally. It is much better that we sort matters out at the beginning of a policy rather than find out late in day when it all goes pear-shaped. This is only common sense. This amendment would undermine the independence of Scrutiny. Transparent government, I think not. I ask Members to reject this amendment.

1.2.3 Senator T.A. Le Sueur:

Far from undermining Scrutiny I think this amendment strengthens the quality of the final product. **[Laughter]** I say that because it is surely in all our interests to make sure that Scrutiny Reports are, as far as we can ascertain, factually correct and accurate and do not misrepresent, perhaps quite innocently, evidence that has been given. I think the fact that we now seem to be acknowledging that States Members giving evidence to Scrutiny should also be entitled to review that is an indication from the Chairmen's Committee that they do want to provide accurate Scrutiny Reports, and reports which are of most benefit to all of us, not just the Ministers or to that Panel, but to the process of arriving at proper policy. On that basis I think the amendments which the Council of Ministers are putting forward are not there to try to hamstring Scrutiny Panel reports or indeed to influence their comments. They are there to advise Scrutiny Panels in case that Panel has inadvertently made the wrong comment. In other words, it is there to strengthen the output of that Panel. Deputy Southern may disbelieve that but if we are going to work together to try to get good outcomes to Scrutiny Reports it surely behoves us all to make sure that we do that in a consistent and a constructive way. What the President of the Chairmen's Committee was just then saying was suggesting that we were trying to undermine that. Certainly speaking for myself I am not, I am trying to make sure that we have a report it has all the facts and the all the opinions presented in the right way and what conclusion that Panel comes to is entirely a matter for that Panel. But if they do not want to accept the comments of Ministers so be it, but at least let the Ministers have the opportunity to give them those comments.

1.2.4 Deputy P.J.D. Ryan of St. Helier:

I think with all due respect, and to try to be as fair as possible to the Council of Ministers, the choice of words that they have used in their accompanying report to this particular amendment is most unfortunate and has led to, as one can imagine when I read them out, a certain reaction from members of Scrutiny. I will read the particular bit: "Without sight of the findings and

recommendations it is impossible to assess [and here is the relevant bit] whether the Panel has interpreted the information correctly." The whole point about Scrutiny, Sir, is that there are usually… in fact I would say pretty much all the time there is more than one way of interpreting evidence and information. In fact that is the whole point of Scrutiny. Interpreting the evidence. That is why Scrutiny members are fundamentally opposed to having the Council of Ministers or anyone else tell them how to interpret evidence. That is why we are against it, Sir, that is why we will unfortunately be voting against it, although I do appreciate that it is certainly helpful, it is certainly advisable and, wherever possible, certainly my Scrutiny Panel has given that 5-day notice to the relevant Minister. But we cannot be held to that because there are occasions when it simply is not possible. Time constraints get in the way. So I would ask the Council of Ministers to accept that. This question of interpreting evidence is just fundamentally wrong. Thank you.

1.2.5 Senator P.F.C. Ozouf:
I have to say that I think as far as Deputy Ryan is concerned he does genuinely hold the Executive to account in a very fair and balanced way and the work that I have seen that his Corporate Affairs Panel does is really looking… as far as I am concerned, he is not afraid of commenting and being very critical where he thinks that evidence has not been taken and I think work that his Panel has done has been extremely helpful. I think the system of government because of the way he and his Panel conduct these affairs is better for it. The Minister for Treasury and Resources and other departments are stronger. I am not saying that to butter him up. I think he is genuinely walking the talk as far as Scrutiny is concerned. I have to say that is not my experience from other Panels.

Deputy G.P. Southern:
Would the Minister like to name them?

Senator P.F.C. Ozouf:
If he wants to, absolutely. The Economic Affairs Scrutiny Panel which I think all Members will know has been questionable in some of the assessments that they have made and some of the use of Scrutiny in terms of politicking. But I am not giving way, I am entitled to that view. Certainly the Minister who is subjected to some of this politicking is entitled to his say on some issues. I am sure Members can recall issues where the Economic Affairs Scrutiny Panel has engaged in some politicking on some particular issues. Sir, I understand what it is like to a scrutineer. In a previous life I was an internal auditor and it is in the experience of being an internal auditor that I have drawn considerable views about the way that Scrutiny can operate. One of the things that I used to have to do as an internal auditor… which was effectively scrutinising; it was not an internal auditor just on financial issues. I was sent into companies having to deal with some ferocious management people and asking what exactly they have been doing and whether or not to try and make an assessment of whether or not they had been making decisions. At the end of every single review that I had to do I used to have to produce a report. That report used to have to be shared with the management of the auditee organisation with recommendations. That was a change. We used to have to produce a report with recommendations and prior to the report being issued it also used to have to have a comment from management about whether or not the recommendation was agreed or not. That is almost 2 steps ahead of what the Council of Ministers is asking. It would be a good state of affairs in my view if we arrived eventually at a position where we had a report with recommendations and the acceptance of corrective action of the Minister at the point of the issue of the report. Because if you did that you would do away with a lot of the politicking. What we are asking for - and all we are asking for - is to have sight of the draft recommendations prior to the issuing of the report. It is, and I am sure Members on both sides of this argument will understand, virtually impossible for the Executive, for Ministers to be able to make an assessment as to whether or not we would have a comment to make on the report without seeing the recommendations. I have to say, as far as the Economic Affairs Scrutiny Panel is concerned, it is virtually impossible in many cases to link the actual report with the conclusions. Some of the recommendations that have

been made by the Economic Affairs Scrutiny Panel I think need to be scrutinised in terms of the connection between the report and the evidence given and the conclusions. Of course I do my research about how Economic Affairs conducts its business and I have to say they are, in my view, too political and I wish that I would have an Economic Affairs Scrutiny Panel which would genuinely hold me to account on realistic issues and improve the quality of decision making. But that clearly is not, and the contempt that he shows me just by his remarks and his gesticulations in the Assembly indicates to me that I do not believe that personally, Sir, that Deputy Southern is interested in raising the game, rather using his Scrutiny Panel for politicking purposes. I do not agree, I have to say, with other Members of his Panel which I have the greatest of respect for. **[Laughter]** Sir, I would have thought that Scrutiny Panels want to know whether or not the Executive is in agreement with some of those recommendations. I would have thought that it would be helpful to them to have a comment on their recommendations prior… and this is the key issue, the key issue is that we are being asked to have a draft of the recommendations. It is up to the Scrutiny Panel in the final analysis to issue their own report. They can, notwithstanding the comments of the Executive on the draft recommendations, issue whatever report they want. If Scrutiny are serious in listening to facts, listening to the opinions of Ministers on an important report I would have thought that they would have thought that, as Senator Le Sueur said, it strengthens their situation and strengthens the power of their report. I am afraid to say that all suggestions that this is a way of undermining Scrutiny, the strong representations given by Deputy Ferguson that it somehow ties the hand, that it does not mean that Scrutiny is independent, that is nonsense if I may say. Because ultimately all we are asking is to see the recommendations, to be able to comment on those recommendations and ultimately it is up to Scrutiny to decide what recommendations are made. If we did see those recommendations it might also speed up the whole process by which we could agree on some of those recommendations and either say: "Yes that is an improvement. Yes, hands up that we could have done that better. We should have made it a different thing, alternatively opposing it." I think it strengthens it just as it strengthens the reporting process between when I was a young graduate, as an internal auditor in raising the performance of the organisation. It improves it, it does not compromise the independence. It is a reasonable, and I would have thought, transparent way of operating between the Executive and Scrutiny.

1.2.6 Deputy C.J. Scott Warren:
Firstly, Sir, I am pleased that the Chairman has agreed to amend (f)(i) because I have recently received draft pages of a Scrutiny Report before it was published which I had been giving evidence on. States Members, as everybody else, should receive that information in advance. However, I cannot support the rest of these amendments. I would like to clarify that the Scrutiny Panels want comments of technical and factual nature. They want those comments but I agree with the Chairman, if there was a major fact or facts wrong and the Panel was informed their report had got something wrong, then it is possible that the findings and recommendations could change. So, Sir, I feel that the rest of these amendments are tying Scrutiny's hands. I would agree that it is in Scrutiny's interest to try to get the draft reports to Council of Ministers as soon as possible, it is in their interests to do that but it may not always be possible. So, Sir, I cannot support these other amendments. As I say the first one is sensible. I believe, Sir, that these amendments are tying Scrutiny's hands. I believe a good Scrutiny Panel will try, as I believe Scrutiny is good, to get the draft reports out as soon as possible but I do not believe that they… I believe these amendments are overly restrictive. Thank you, Sir.

1.2.7 Deputy J.A. Martin:
I would just like to make the first comment on paragraph (f)(i) which I agree that we have already agreed to amend - it probably was an oversight - on all witnesses. But I think on the oversight if they really truly want any information that is going to help them, 11.7 says: "The Panel will circulate relevant [and it is relevant] draft sections." But the amendment wants, with those relevant draft sections, which may be just a transcript of what the Minister for Economic Development has

told our Panel on something, he will not receive all the other evidence so what… if we send key findings or recommendations, what would they mean? I probably agree with the Minister, he would have a hell of a job trying to link any recommendation with the evidence he has got because he has got one transcript that he came and reported to the Panel. So let us get to really where these amendments are coming from, and I think the Minister has stood up, because you can see parts of this Code and input from the Council and we have just had an enlightenment from the Minister for Economic Development. He does not like the way his Scrutiny Panel, which I sit on, a Constable sits on, the Chairman obviously keeps us all in line because everything must be what the Chairman says. I am sorry, Sir, on our Scrutiny Panel it does not work like that, and Deputy Lewis is not here, and Deputy Breckon. I am talking about people who have been in politics a long time and people who are Constables, and people who have a wide cross-opinion. Now, I would say… and I may be just drifting a little, but the Minister was allowed to drift. He talked about politicking - obviously it is a word, Sir, I put down playing politics - playing politics across this Chamber. He accuses the Chairman of the Scrutiny Panel many times of playing politics and using his position as a Scrutiny Panel. I think this is an aside argument, Sir. We are all Members of this House and in question time we can ask anything, I am sorry if the Minister does not like it, Sir, and he does not seem to like some of the reports that we have produced. He did like the one on how to charge G.S.T. because we came and agreed it with him. There you go. Yesterday I was told that we have got to trust each other and I was even quoted by the rapporteur that I spoke about openness and trust. Well, that went out the window yesterday with all the votes against. Where is the trust on their side, Sir; on the Minister's side of Scrutiny? They have no trust. We cannot know any legal information and now we just pass it… basically if they do not want to come and talk to us they are going to be hiding behind some privilege or anything else. But they want us to send them everything… I think they want to scrutinise our Scrutiny work. I have got, on telecoms alone, 5 A4 lever arch folders of evidence. Did the Minister for Treasury and Resources want all that? This is how you reply. We only got it yesterday, I think, an S.R. This is how you reply. There is a lot of it he disagrees with in there obviously. But he did not go ahead with the debate so there was something in the report that made him think twice. He does not tell us why but I think Scrutiny had done a good job. We had done a job and the Minister had then decided not to have the debate. In fact if we had not have had Scrutiny, Sir, that debate would have gone ahead a year ago. Jersey Telecom would probably have been sold by now with: "Trust me, I am a Minister and I am telling you the whole truth and nothing but the truth and this is the best way to proceed. Sell it quickly and sell it now." But we had Scrutiny and I do not know what the Council of Ministers or the States of Jersey Law were thinking when they set up Scrutiny but I am supposed to be here to ask questions and gather the evidence and make recommendations. Now I am told the Council of Ministers or the Minister concerned wants all this information 5 days so he can look at it and then comment - obviously I presume he means comment in the media or have his media comment ready I would say, Sir, if it is not to comment in the media. I cannot see how Scrutiny can work with… these to me are going so over the top there is a lot of, Sir, unfortunately I have got to say after 2 years, disillusionment among Scrutiny Panels. I am hearing mumbles behind: "More than disillusionment." In fact it is a job that we try to do. I think we do it well. We are… I do it with the conviction that it is a very time consuming job and I also do it on the pretext that - probably pretense, that is what the Ministers would say - we are all working on a very tight timeframe as well and when we ask a Minister to come in… and I think we ask the Chief Minister to come in in late November, early December, Sir, to comment on the migration, we were told by his secretary, he had 2 dates late in February when he could come to see us. Well, that was not helping our Panel and we also know that the Minister's time is very precious. So I really cannot agree with this. I think it is written again to stop Scrutiny doing what it is supposed to do. We are not playing politics, across this Chamber there will be political debates and we are not all of the same political understanding. It would be a very sad House, Sir, if we were. But I leave this Chamber and I do not hold anybody personally responsible. I do not dislike anybody personally and I can do that. I respect their difference in politics. What I do not respect, Sir, and I will finish now, is that to me

the Council of Ministers with these amendments - which they see as innocent, which they wanted accepted - go too far, are impossible and go completely the other way to saying that we are trusted by them. We are not trusted by them obviously because they want to see everything in draft. That we cannot do and we cannot do it with our resources. So, as I say, Sir, I really urge the people… and I know a lot of the people in the House have worked on Scrutiny and I think a lot of people have also had some very fast reactions to some Scrutiny Reports that are totally not based on any fact or relevance from the Minister involved, just the fact that the Minister does not like what has been in a Scrutiny Report. I could name one but I will not. No, it was not one I was involved in but I know that all the Scrutiny members were very annoyed because there was no substance coming from the Minister and to this day I think there has still been no substance of the criticism of the way the Scrutiny Report was put together. So it goes both ways, Sir, I really think it will be a very sad day for Scrutiny. How sad it will be I do not know because as I say total disillusionment for the Code of Practice. It is called the Code of Practice for Scrutiny Panels and Public Accounts Committee. To me, if this goes through it might as well be another Standing Order for the Ministers of the States of Jersey. Thank you, Sir.

1.2.8 Deputy R.G. Le Hérissier:

It is unfortunate in a way but almost inevitable, I suppose, that a certain polarisation has taken place. Just 2 points, Sir. I was of the view, after there had been a particularly unfortunate episode with the Overdale Scrutiny Panel, that it might possibly pierce strong feelings if the Minister was to see the recommendations but I am now, like the Chief Minister, had a bit of conversion on the Road to Damascus. I am now of the view, Sir, that they should not see the recommendations because what happened with Overdale, which may be slightly atypical but is always possible, is that we ended up in massive trench warfare, there was never ever going to be agreement between the Minister and the Panel and the only way that the thing could be sorted out, Sir, was on the floor of the House. There was never going to be anything. That precisely was set in train because the Minister said: "I want to see the recommendations" and so forth and so on so my view would have been: "Well, let it be sorted on the floor of the House." That brings me to a refutation of perhaps of Senator Ozouf's points. It is the floor of the House where the integrity of reports will ultimately be tested. If the Senator is of the view that there is no necessary connection between the evidence and the recommendations, and that is quite a legitimate view, then let that be demonstrated, Sir on the floor of the House. There is no problem with that. The second thing is, and I suspect it may be different after the elections, if people do feel that Panels are imbalanced or that there is a certain political view over represented on a Panel or so forth and so on, they have every right to vote in people who will provide a balance. Quite frankly, because of all the jostling obviously, because it occurs in that way in this government and other governments, the jostling is always obviously for the so-called prized Ministerial position. Because that has occurred there was always the feeling obviously, and this was addressed in the run up to Scrutiny, that Scrutiny would of course consist of the second division. The result is, of course, that the membership of the Panels was probably pushed through over quickly and not thought about in terms of the balance on Panels and so forth and so on. But hopefully those things, Sir, will be taken more seriously and that will provide the comfort which Senator Ozouf is looking for. Because I think he is going up the wrong track to identify an individual and then put all the blame for political bias… there may well be political bias in an individual about this, obviously that is an issue perhaps. But that is not the point. The way to resolve it is to get balanced Panels and to make sure reports in the House are dealt with credibly and I am afraid, Sir, as Deputy Martin said, we have still got some way to go because there is no doubt in one or 2 ministries there is not a culture of dealing with criticism, positive criticism, there is a culture of pulling down the shutters, shutting up and just throwing a bit of abuse out in the hope that these irritating people will go away. Sadly, that is the point. So, Sir, I believe no recommendations… and of course that will lead to accusations, it will put the Ministers in untenable positions of being accused of interfering with reports. I am sure they would not wish to accused of that. They would wish to retain their distance.

1.2.9 Deputy G.P. Southern:
Yes, I did ask the Minister before previously to name the Panel he complains about and surprise, surprise it is the one that monitors him and his actions. I do so because we have had this time and time again from the Ministerial benches where: "We support, I support, Scrutiny but some Panels are not doing it right." That labels every Panel because nobody knows who has been picked out. It is usually me if anybody is confused, it is usually me because I have fiercely held, deeply held political convictions. But I am capable, as a trained scientist, of clearly distinguishing what is hearsay, what is assertion, what is a priori, and what is evidence - despite the Economic Development Minister's harrumphing - and clearly developing the evidence into key findings and recommendations. I am glad we have had a few speeches first because quite frankly after the Minister for Treasury and Resources sat down I would not have been able to speak because I was too busy laughing. I had lost my breath. In fact the first phrase that came to my mind was from a recent sitcom where the catch phrase was: "Is he having a laugh?" because that is, in any other Chamber, the reaction that would have been provoked. Are the Ministers having a laugh? The question is whose report is it anyway? Hang on, it is Scrutiny's report but we want your key findings and recommendations 5 days in advance in case we do not agree with any of them. We are quite happy to give as much information as we can in terms of accuracy, and the Minister for Treasury and Resources said: "We must know that it is factually correct and accurate." Yes, and that is what our proposition says. In terms of factually, if we have got any facts wrong, please tell us so we can fix it. Have we quoted you accurately? Is this what you said? Yes, we do not want to misquote you. But as to the interpretation of the evidence and the facts, by God, that has to belong to an independent Scrutiny function. Has to belong to the Panel. It is not open to a bit of argy bargy behind the scenes, behind the doors: "We think you are wrong there, let us have a fight about it, let us have an argument about it before you publish." That is not what the function is. Scrutiny is about reviewing the evidence in public, not 5 days before and we have an argument and see if we can soften some of your recommendations as we think you are wrong. That is not the function. Whose report is it anyway? It has to belong clearly to Scrutiny. Scrutiny has to have its independence protected. If we go down this route, if we accept that amendment, we will be chipping away at that independence. Whose report will it be? Oh, it may be a bit of the Minister's report on themselves. That is no way to proceed at all. We cannot even risk that. What would happen reminds me of the old All Blacks saying. They used to say in the first 5 minutes of any match get your retaliation in first. What we would have is an argument about the quality of the evidence, the conclusions we had come to going on from day one. So it would muddy the waters. Clearly 5 days preparation so you could get your retaliation in first, is no way to proceed. It would become mayhem with no clarity produced. What we have under the current system, which I believe is working well, is typically a response to our 5 recommendations here and 9 key findings prepared by the Minister for Treasury and Resources at an appropriate interval with consideration and were we still to be about to debate this would form the basis of the debate - this one is on telecoms - and that is entirely appropriate. The fact that the Minister for Treasury and Resources, as a result of gathering evidence in the public that was suggesting increasingly that what he was proposing was the wrong thing to do, the fact that he withdrew his proposition before the final report appeared was a piece of convenient politicking. Nonetheless this is the appropriate way to do it. But what we have got here are a series of disagreements over interpretations. So, for example, the Minister says: "I disagree with the assertion." An assertion I made, I am not going to have an argument with him about whether it is an assertion or it is evidenced based. "This is a simplistic and misrepresentative view", says the Minister for Treasury and Resources. Okay, fine, we will have an argument over it. Is the interpretation right or not? Fine, that is the key. But let us not have this on the day of release because that would just muddy the waters. Nothing would be clear. Then I have got a reinterpretation, I believe, that he has made of one of our key findings and we have got an assertion from him there and I believe over there a misunderstanding. So, yes, we still disagree over what the evidence is, but the fact is that as the evidence came to light the proposition was withdrawn. It is entirely appropriate and working that under the current system an

appropriate response is produced, considered and in the appropriate timescale in order to have improved factual debates in this House, which is one of the functions of Scrutiny. Finally, I would say - and we have heard this again and again during this debate about how we should proceed with our Code of Practice - how do other jurisdictions behave? Examine the other jurisdictions. The Scottish, the Welsh, the U.K. (United Kingdom), they do not release their key findings/recommendations to the people being criticised. They do not do it. This is common practice. This is seen as the effective way to do it, you make sure your report is accurate, you give them that, you save your key findings for precisely the reason that you do not want both sides of an argument, because it will be an argument, beforehand. On release you will just get obfuscation and lack of clarity and nobody can go anywhere. This way Scrutiny's report can be read, understood and make its points and then the Ministers can respond and the debate goes on in a timely and appropriate manner. So what we have in the Code of Practice is a correct way forward. I believe, and I must echo the words of Deputy Martin here, that despite thoroughly enjoying my Scrutiny work it has been very challenging. It is a very meticulous and demanding process and a very wearing one. If, at the end of that, we are to see Scrutiny Reports published and obfuscated and argued about from the first second of their publication, then I for one would think twice about putting the amount of effort that I do into my Scrutiny work to see an end result that is likely to be rubbished from the moment it hits the presses. I would have to think twice about whether the amount of effort was worth a candle. Certainly, I note in the proposition that amends that it is not compulsory (wherever possible, I believe it says) to publish the key findings and recommendations. If I were to be a chair of Scrutiny in the next House I would not be releasing key findings and recommendations because I believe that it would be a serious error and reduce the effectiveness - and I believe it is effective - of the Scrutiny process. Thank you.

1.2.10 Connétable M.K. Jackson of St. Brelade:

If I may, as a lowly Panel member of a lowly Scrutiny Panel, just make a couple of observations. I would urge Members to look through the personalities which come out very strongly, as is often the case in these situations. We have in the Economic Development situation, if I may say so, a strong Minister and a strong Scrutiny Panel chairman, both of whom I think, if I may say, independently are very good at their jobs. But Members must realise that our system is evolving. I do not think it will be until several years have passed and that the Ministers perhaps have been through the Scrutiny process themselves that we will be able to fully appreciate the system we have set up. To that end, Sir, I would suggest that perhaps the amendments being put are perhaps being a little bit pernickety, and I would urge Members perhaps to reject this proposition and leave the Scrutiny suggestions as simple as possible so that it can proceed in the ways that the Chairman suggested. Thank you, Sir.

1.2.11 The Deputy of St. Martin:

I very much welcome the Connétable of St. Brelade's speech because I think it is important that we do get a broad spectrum of speakers, because one thing I have found very disappointing here throughout the debate is so little support or opposition to what the Council of Ministers have put through. We are only getting 13 and 14 people and I would have thought that those involved in Scrutiny would have understood Scrutiny well enough to realise, really, that if Scrutiny is going to do its job it must not have its hands bound. Really, again, if we agree to this one, we might just as well all go home. The 5-day ruling I think is excellent. It gives everyone an opportunity to correct and amend things. Certainly, I know the Scrutiny Panels I have been involved with, we have involved all witnesses. This is important. I think it is an error that, in fact, it says in here no States Members. We have an assurance that that will be amended. In fact, I did not realise it was there because I have taken that if anyone has made a contribution towards this Scrutiny Panel - and I am getting a nod in agreement from Deputy Mezbourian - we have done it as a matter of course, all witnesses have had it, so that is important. I think what we have to do is to ensure that when the findings and recommendations come they are coming at the right time. Because it does happen

during the 5 days we get the results back, we get the comments back that there may well be a typo here, there may be a correction needed there, that the amendments and findings are altered. It does happen, but I do believe, as indeed we have heard from Deputy Southern, those findings and recommendations are the Panel's and the right time for those to be submitted are right at the end of it once we have all the evidence in, including any alterations or amendments, et cetera, that may have come during the 5-day hearing. Once the report has been submitted or presented, then there is time for reflection when the Ministers are able to come forward with their comments in good time. I am glad that Deputy Southern did raise the issue because I was going to and it is worth repeating. I do not think we will hear from the Attorney General, but we have been relying a lot on advice of the Attorney General. As he is not here, I will ask Senator Vibert. The one question I will ask is we have been hearing all along that we have to be in line with everybody else. Would he confirm that if we allow our recommendations and findings to go to the Ministers beforehand that we will be different from anybody else? Because, really, if we are, why have we got this amendment? I would ask Members to reject the amendment, leave Scrutiny to get on with its job and do not allow it to have its hands tied even tighter. Thank you, Sir.

1.2.12 Deputy G.W.J. de Faye:

I have to say as I have listened to one speech after another I have become increasingly disappointed. Frankly, the levels of self-delusion and hypocrisy are rising faster than floodwaters in a Gloucester Street basement in the Assembly this morning. Hypocrisy because on the one hand Scrutiny tell us that it does not matter if this is not done anywhere else in the world, Jersey's Government is different and, therefore, it is perfectly okay to introduce measures that no one else has. Then the very next day I hear that because they do this in Scotland, England, Wales and numerous other places, this is the right thing to do and we really ought to adopt this type of measure. That really is a measure of hypocrisy which gets worse, frankly, when on the one hand we want open and transparent government but, on the other hand, no, we do not really want to share any information with the Council of Ministers if we can possibly help it. That really is, I think, a matter of hypocrisy and self-delusion I have never seen in greater quantities in this Assembly. The Scrutiny side now seem to have acquired such powers of supernatural interpretation that they can see things that are not even in the documents before us. That really is a dramatic advance, I have to say. Perhaps Scrutiny in Jersey is at the cutting edge of world scrutiny. But to see things that are not there I think borders on the miraculous. What I have heard from the Scrutiny side time and time again is that the Council of Ministers are seeking to rewrite Scrutiny Reports, are seeking to edit Scrutiny Reports. That is absolute nonsense and I urge all Members of the House and those people who made those completely inaccurate and misleading remarks to read what the amendment says. It does not say anywhere that the Council of Ministers, or anybody else for that matter, is seeking to rewrite Scrutiny Reports in any way or interfere with them in any way whatsoever. It is simply suggesting a more open and transparent means of exchanging communication before it gets out into the public gaze and before people on one side or the other are revealed to have mistakenly interpreted facts. Now, I do intend to vent a bit of spleen, quite frankly, following the lead of the Minister for Economic Development. Let us get down to a few basics here. Here is what Scrutiny think is a great idea: "The Panel will circulate relevant draft sections of the report to all witnesses who are not States Members." Why is that? **[Interruption]** No, please, I am really not interested in any more nonsense in terms of interventions. It is not a question of whether that was going to come out and that is not the point I am going to make. What it is a question of is what was the mindset that put that in there in the first place? What was the mindset? Now you have been found out and I will tell Members what the mindset was. It was we do not mind checking evidence with witnesses from the general public but we do not want to tip off anyone in the States as to what is going on. That was the mindset. We would rather no States Members get to check this out; it might set off a few hares running. That is why the Minister was so right when he suggests that there is a bit of politicking going on. Oh, yes. I think all is revealed. Oh, sorry, no, we are going to put that right. Too late, Pandora is out of the box on that one. Now, let us just see how

draconian are these measures being suggested by the Council of Ministers, which I say are quite simply in order to ensure a free, fair exchange of facts before things go out into the public gaze. Can I just remind Members, I know it may be a bit of a struggle to understand this but we are all on the same side. I have heard Scrutiny is saying: "This is our report." No, it is a report of the States of Jersey under the auspices of the States of Jersey and it belongs to the public. That is the bottom line. So we do not really want, do we, inaccurate, poorly interpreted information going out purporting to be a States of Jersey report? No, we want to serve the public in the best interests of the public. That means getting the facts right and getting the interpretations right. So, what on earth is unreasonable about ensuring evidence received is fairly and accurately reported, asking a Panel to circulate relevant draft sections to witnesses and allowing 5 working days? Is this really asking too much to ask for comment in advance of finalising the report? This is not asking for an interference opportunity to rewrite the report. No, this is offering advice to the Panel. Where possible - not compulsory, not direct, not will - where possible this will include Panels' findings and recommendations. Why is this seen as so onerous? Because all I can say is if I do not really know what the findings and recommendations are it is going to make my job an awful lot harder to try and offer relevant advice in respect of the direction the Panel is going in. Do not forget this has all been done in confidence. This is to ensure that when the final documentation comes out it has had all the proper advice behind it. Indeed, it says: "This will help to ensure the Panel has correctly interpreted the evidence and provides an early opportunity for clarification." Well, I have had plenty of experience of this. The Minister for Economic Development works with one particular Panel. I work with the Environment Scrutiny Panel. Now, they are a chameleon-like Panel. **[Laughter]** On the one hand, they have a very fluffy relationship with the Minister for Planning and Environment. Indeed, they go on holiday together. **[Laughter]** They go and disport themselves in Malmö and various other places of novelty interest.

The Deputy Bailiff:
You are going to come back to the amendment, are you?

Deputy G.W.J. de Faye:
I can assure you this is entirely pertinent to the amendment because I have to say to the House that I received the other chameleon-like aspects of the Environmental Panel, which is a cross between the Shining Path Maoist guerrillas of Peru and the Spanish Inquisition. They love no more, no less than to use the 2 elements - ambush and surprise. **[Members: Oh!]** All I am saying is that, quite frankly, I could do with 5 days' notice if you do not mind, rather than being jumped on down some jungle path. So what, indeed, is the issue here when we look at amendment (g): "Panels will circulate finalised draft reports, including findings and recommendations, to the relevant Minister in confidence to allow at least 5 working days for comments." Not 5 days for the Minister to rewrite the report. Nothing of the sort, no. Entirely reasonable approach for an exchange of communications in an open and transparent way but in confidence so that we do not go and put our foot in it in terms of what the public finally gets as a report. That is all the Council of Ministers is asking in respect of both these amendments. I cannot see why this bizarre rearguard action is being conducted by Scrutiny. They so have the wrong end of the stick. To hear one speech after the other telling us that we want to rewrite what they are writing, no, thank you. I have quite enough writing of my own to do without wanting to rewrite draft Scrutiny Reports. These amendments are entirely reasonable and, frankly, if they are thrown out it strikes me that Scrutiny are being entirely unreasonable. **[Approbation]**

Deputy C.J. Scott Warren:
On a point of clarification, the 5 days is in the *Code of Practice Report*. It sounded like the Minister was inferring that it was not, saying we should give 5 days. That is in the report.

1.2.13 Deputy P.V.F. Le Claire:

Self-delusion, supernatural interpretation, hypocrisy, Shining Path and the Spanish Inquisition. It is a good job the Minister is leaving because he is not going to like what I have to say about him. "Absolutely appalling," were his remarks. In practice, I have gone out of my way in the past to make him aware, and other Ministers aware, of issues as they have become known to me at the time they have become known to me, including our good friend in the Environment Department when it came to environmental toxic ash entering into the Havre des Pas district, of which I am a representative. On the day that I learnt of this from a member of the public, I approached first of all the Acting Minister for Health and Social Services, Deputy Celia Scott Warren, and 5 minutes later the acting- and it is acting - Minister for Transport and Technical Services, Deputy Guy de Faye. The Assistant Minister for Health and Social Services immediately acted upon that and the Minister for Transport and Technical Services rubbished it, denied it, belittled it and ignored it. When it subsequently transpired that it was occurring, there was an almighty rush to make amends. The days required to make those amends were the days that the Minister spent most of his time trying to eke out of me where I had received my information from and trying to get copies of emails that I had been sent from Deputy Scott Warren in confidence, from her to me. It has to do with the management of information and the ability to be able to manage and control damage, embarrassment and the control of the Executive's operational functions. One must remember that not only do they have a very capable and well-staffed media outlet in the Council of Ministers, one post which is funded from the Minister for Economic Development himself, but they also have an opportunity at every opportunity to put their views across and their department's views across and their policies across and their policies and formation across to the media. So when reports, for example, like the 2020 je Report - £250,000 worth of taxpayers' money - was completed, why was it after 2 weeks of having that report leaked to BBC Radio Jersey, where Radio Jersey are still saying on air that they did not have it, why did it take me going on to Radio Jersey to put them on the spot, on air, live, to challenge them as the BBC for having had that information and having pretended that they did not have it? Why is it like that in Jersey? It is because the Executive and this enormous civil service that we have disproportionately for our small community, that lives, breathes and works and services our community, is all-powerful and all-fearful of embarrassment and in this instance we are getting a taste from the Minister for Transport and Technical Services of how grand the defences of their operations. We are not in politics to challenge the civil service and pull them up for their mistakes. We are here to represent the people of Jersey whom they are a part of and trying to endeavour to make our social ills better. We are higher doctors. Our practice is to address society and society's ills. Tweak them here and there if we can, improve them here, test a policy, if it works keep it, if it does not work be brave enough to accept it and remove it. Unfortunately, the debate has strayed well away from the issue. Where possible, we do allow and it is only good practice to give the Minister and those who have given evidence their evidence to review to confirm they are happy with it before it is submitted to a report. That would have been the case for members of the public as well. Are you happy with your information? Do you want it to be kept confidential? We have just seen it with the Jersey Live issue and the funding of private events. We had a load of submissions and we had a load of submissions that were confidential. Everybody was feeding into the process. Unfortunately, we have got away from focusing on what this debate and this amendment is about and we have taken 2 Ministers' speeches and turned it into a completely disgraceful exhibition of what is completely wrong with the States of Jersey. There may be something wrong with the civil service and there may at times be something that they do wrong, but those 2 last speeches from these Ministers demonstrate us at our worst.

1.2.14 Deputy A.D. Lewis of St. John:

Just briefly, I have been minded to support most of these amendments, but maybe in summing up the rapporteur could put some perspective on this. This particular amendment seems about semantics rather than about substance and I am slightly concerned about it. Because as any lawyer will tell you, there is interpretation that one can make of all sorts of different things in different ways. It is a matter of interpretation, I think, of the Panel, not necessarily of the wording that you

have here. I think interpretation from a Scrutiny Panel may well be different to the interpretation a Minister may have of it. I accept that the facts must be the facts, but interpretation is another matter altogether. I think really we are getting bogged down with semantics here and I think Members should be mindful of that when thinking about how they are going to vote on this. I would wonder if the rapporteur could clarify that and tell me what his interpretation, if you like, is of this particular paragraph; that is (f)(ii). Because interpretation is the key issue here and I think Scrutiny should be allowed to interpret it as they wish as long as the facts are correct. I think that is what we should be talking about. **[Approbation]** Thank you, Sir.

1.2.15 Deputy I.J. Gorst of St. Clement:
Some members of Scrutiny have referred to the fact that in the United Kingdom, particularly Scotland and maybe the Welsh Assemblies, that in their Scrutiny Reports recommendations and findings were not included. I wonder if the rapporteur could just confirm whether he is aware of that being the case or not. I have made the assumption, and maybe incorrectly, Sir, that it has not been stated that that is not the case and, therefore, assume that that is the case. I wonder if the rapporteur could confirm that to the Assembly, please. Thank you.

The Deputy Bailiff:
Does any other Member wish to speak? Very well, I call upon the Minister to reply.

1.2.16 Senator M.E. Vibert:
In respect of something the chair said to me yesterday, Sir, I do not believe that the tone of parts of this debate has done this Assembly any credit at all. Can I make clear, Sir, that I do not wish to see this exacerbated any further and so wish to give notice, Sir, that I do not intend to give way to any interventions. In the spirit of what the Council of Ministers would like to see, which is co-operation rather than confrontation, can I say that I welcome Deputy Ferguson's acknowledgement that the Chairmen's Committee made a mistake (a "slight" mistake; I thought it was a very important mistake) in excluding States Members from the witnesses to whom the courtesy of being able to look at their evidence and review it was to be extended. Could I say in the spirit of co-operation and as there seems to be general agreement that in (f)(i) we could delete the words: "... who are not States Members." I would like to propose, if you would agree, Sir, that abnormally in this place we split the votes into the paragraphs of which this is referred to so that Members can vote separately on that part whether to exclude those words. Because I think it would be a more preferable way of dealing with it rather than, if this amendment was defeated, the Chairmen's Committee asking States Members to vote on a Code of Practice which they knew was wrong in part. I hope that Members will agree and you will agree, Sir, that we will be able to treat that separately as we appear to be in agreement that it should not be in there.

The Deputy Bailiff:
If I may, Senator Vibert, I will ask Deputy Ferguson whether she has any views at this stage. Deputy, are you happy that that (f)(i) be taken separately?

Deputy S.C. Ferguson:
Yes, I think, Sir, it was an error in the way the English was written and it was not intended to exclude anybody.

The Deputy Bailiff:
Very well, in that case I am happy that that should be taken separately.

Senator M.E. Vibert:
Thank you, Sir. I think it is important that it is corrected and I prefer it to be done in this way rather than being asked to vote on something that is known to be wrong. Like I said, I would like to in this brief summing-up get back to what it is about and not go into that confrontation mode.

Scrutiny quite rightly, when they won the first amendment, were insistent they must have access to all available papers. 'Part B' back-up papers - background papers - we agreed Scrutiny should have, yet I do not see how that fits with Scrutiny not wanting to provide the fullest possible papers when they are available, where possible, themselves to the Ministers to look at. I do not see how that fits with what they were saying before their principles are. If I could be allowed to continue without interruption, I agree with Deputy Ryan, by the way, that some of the words in our report could have been expressed in a better manner, but we are not talking about the words in the report. We are talking and what we are voting on are the amendments in this area. It is very clear what Members are being asked, and amendment (f), which we want to do as well as include States Members who are to be given the same privileges of witnesses, what we are saying is when Scrutiny Panels provide the draft sections to Ministers, where possible (in other words where it is available, where they can do it) this would also include the Panel's findings and recommendations. It is not to edit the report, as Deputy Baudains said. There is no suggestion and there has never been any suggestion on the Council of Ministers' side of anything to do with that. It is thought to have as much information as possible with which to consider whether there has been any factual misinterpretation, but the Minister believes that they can provide this information to the Scrutiny Panel to consider and do with as they think fit, all in confidence. It goes back to whether there is any trust and belief between the 2 sides. Deputy Baudains obviously does not believe there is any trust and belief between the 2 sides and made it very clear. I do not think that is the way Scrutiny and the Executive should operate together. I believe in co-operation, not confrontation. Deputy Martin said yes, the Council of Ministers want the key findings and recommendations. Where is the trust on the Ministers' side? Well, the trust on the Ministers' side is we provide all the papers. We provide all our back-up papers, we provide our proposals, we provide everything that has been asked for. That is where the trust is. What we are asking in return, purely looking at it factually, is that if when you provide the papers you can provide the findings and recommendations, please do so. It does not seem to me to be an outrageous application. It is about co-operation, not interference. I regret the Deputy of St. Martin in his speech talked about regretting so little opposition from Scrutiny members to what the Council of Ministers were proposing. It almost seemed like he was suggesting that Scrutiny should oppose the Council of Ministers for opposition's sake rather than deciding an issue on its own merits. I repeat: co-operation rather than confrontation, rather than the other way round. Deputy de Faye in his speech (which was slightly amusing, I accept, but which I regret some of the points he made in it because I did not think they were relevant) did make a very telling point. He said: "Do Scrutiny not want to share? We share." He made the point we are not seeking to edit Scrutiny Reports and asked quite clearly in a simple question: is asking for sight of it in confidence 5 working days before it is made public asking too much? The Council of Ministers' view is it is not asking too much, Sir. I was asked about semantics rather than substance. Well, I think that when you have a Code of Practice as akin to the Regulations and all, semantics are very important as well as substance. It is certainly not semantics when it says: "All witnesses who are not States Members." That is very different to saying: "All witnesses including States Members" which has now been accepted. So it is very important to look at the wording. I am afraid I cannot give to Deputy Gorst and others who asked about how it is done in all other jurisdictions. I have not done that research any more than I see any research in the Chairmen's Committee's report as to whether it is done in other jurisdictions. I heard verbal evidence, if I can put it like that, from one of the chairmen, but I did not see anything in the report that it had been looked into in all other comparable jurisdictions. I think States Members have to make a decision for themselves about whether it is reasonable or not that Ministers should where possible be provided with a full report, including findings, 5 days beforehand so they can look at it in confidence and pass on anything they think may be factual misinterpretations for the Scrutiny Panel to see. But it is the Scrutiny Panel's Report. They will do with it what they will. We are just asking to be treated like Scrutiny wanted to be treated themselves and be provided with as much information as possible. Sir, I would like to propose the amendments and I will be guided by you

as to how we take them given that we wish to divide them up. I will ask for the appel on each part, please.

Deputy S.C. Ferguson:
May I give a point of clarification, Sir? Scrutiny has investigated the information that is given with a report to the Minister in any jurisdiction, in quite a few jurisdictions, that the facts that were given are correct. If the House would like confirmation of this, then we can supply it.

Senator M.E. Vibert:
Can the Chairman confirm it was not in the report submitted to the States?

Deputy S.C. Ferguson:
Well, no, we did the work after, unfortunately.

The Deputy Bailiff:
Very well. I think it has been agreed that we will take paragraph (f)(i) first on its own, so I put that matter alone to the Assembly. All those in favour of adopting paragraph (f)(i) of the amendment, kindly show?

Senator M.E. Vibert:
Could you say clear what paragraph (f)(i) is, just for ...?

The Deputy Bailiff:
Paragraph (f)(i) is the proposition to delete the words: "... who are not States Members" from paragraph 11.7. In other words, it is the matter which the Chairmen's Committee said they would themselves be bringing forward an amendment to like effect in ...

Deputy S.C. Ferguson:
Yes, I would confirm that as far as the Chairmen's Committee is concerned it is quite happy with that amendment.

The Deputy Bailiff:
So all those in favour of adopting paragraph (f)(i) kindly show? **[Interruption]** The appel has been asked for, then, on paragraph (f)(i), so I invite Members to return to their seats and the Greffier will open the voting.

POUR: 41		**CONTRE: 0**		**ABSTAIN: 0**
Senator L. Norman				
Senator W. Kinnard				
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator M.E. Vibert				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator F.E. Cohen				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				

Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy G.C.L. Baudains (C)				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

Deputy Bailiff:
Now, Senator, do you wish to take the remainder of the amendments together? They seem to be a package, so (f)(ii) and (g)?

Senator M.E. Vibert:
Yes, Sir. I think Members have debated it like that and it would be useful to take them together.

The Deputy Bailiff:
So, once the Greffier has had a chance to reset the matter, the matter now before the Assembly is (f)(ii) coupled with (g) of the amendments, all remaining amendments proposed by the Council. The Greffier will open the voting.

POUR: 10		**CONTRE: 31**		**ABSTAIN: 0**
Senator W. Kinnard		Senator L. Norman		
Senator T.A. Le Sueur		Connétable of St. Mary		
Senator P.F. Routier		Connétable of St. Clement		
Senator M.E. Vibert		Connétable of St. Helier		
Senator P.F.C. Ozouf		Connétable of Trinity		
Senator T.J. Le Main		Connétable of Grouville		
Senator F.E. Cohen		Connétable of St. Brelade		
Connétable of St. Ouen		Connétable of St. Martin		
Deputy J.A. Hilton (H)		Connétable of St. John		
Deputy G.W.J. de Faye (H)		Connétable of St. Saviour		
		Deputy R.C. Duhamel (S)		
		Deputy of St. Martin		
		Deputy G.C.L. Baudains (C)		
		Deputy C.J. Scott Warren (S)		
		Deputy R.G. Le Hérissier (S)		
		Deputy J.B. Fox (H)		

		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy S.C. Ferguson (B)		
		Deputy of St. Ouen		
		Deputy P.J.D. Ryan (H)		
		Deputy of Grouville		
		Deputy of St. Peter		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy D.W. Mezbourian (L)		
		Deputy S.S.P.A. Power (B)		
		Deputy A.J.D. Maclean (H)		
		Deputy of St. John		
		Deputy I.J. Gorst (C)		
		Deputy of St. Mary		

The Deputy Bailiff:
Very well. That completes the amendments, so we now return to the debate on the main proposition as amended. Does any Member wish to speak on the main proposition? Does no Member wish to speak? Very well, I call upon the Chairman to reply if she wishes to.

1.3 Deputy S.C. Ferguson:
Right, I think honours are about even, but I think the phrase is: "bloody but unbowed." The House has somewhat mangled our Code of Practice, but that is democracy. I do give due warning that any holding back by Ministers and we will be on P.P.C. and the Attorney General and the Solicitor General's doorsteps quickly. I think that everything that can be said has been said. Scrutiny is developing. We do not have the resources of the Ministers. We do not have the massive staffs. We started with a blank canvas. We will, unfortunately, have to spend considerably more on legal advice, but I trust the Minister for Treasury and Resources notes this. I think it has been a useful debate. We have had a lot of useful input from the Attorney General and Solicitor General and some useful input from some Ministers. **[Laughter]** I would hope that in order to improve the performance of Ministers the Council of Ministers will consider training programmes for Ministers as recommended in *Governing Well*. **[Approbation]** It would be a self-defence mechanism for them because it would certainly help to keep Scrutiny off their backs. Unfortunately, not all Ministers are forthcoming with Scrutiny Panels. I would remind Members of the email campaign regarding a particular report. The report happened to be more critical than friend. Sadly, this behaviour undermines the openness and integrity of those Ministers who are co-operative with Scrutiny. Anyway, we have thrashed this out. Let us now see if we can make it work. We shall certainly be trying to and I hope we get the same co-operation from the Council of Ministers. I commend the Code of Practice to the House. Can I have the appel?

The Deputy Bailiff:
The appel is asked for in relation to the Code, so I invite Members to return to their seats and the Greffier will open the voting.

POUR: 34		**CONTRE: 4**		**ABSTAIN: 0**
Senator W. Kinnard		Deputy R.C. Duhamel (S)		
Senator T.A. Le Sueur		Deputy of St. Martin		
Senator P.F. Routier		Deputy G.C.L. Baudains (C)		
Senator M.E. Vibert		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator F.E. Cohen				

Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. John				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

2. Draft Taxation (Land Transactions) (Jersey) Law 200- (P.185/2007)

The Deputy Bailiff:

Very well, that concludes the debate on that matter. The next matter on the agenda is the Draft Taxation (Land Transactions) (Jersey) Law 200- - Projet 185/2008 - lodged by the Minister for Treasury and Resources. Now, Minister, I understand here there is an amendment which you have lodged to the long title; in other words to the principles? Do you wish, therefore, for the debate on the principles to be proposed with that amendment?

Senator T.A. Le Sueur:

I think it would probably be clearer if we did do that, yes, Sir.

The Deputy Bailiff:

So I think, Greffier, then, if you would read the citation with the amendment proposed by the Minister included therein.

The Greffier of the States:

Draft Taxation (Land Transactions) (Jersey) Law 200-: a Law to provide for the taxation of the issue or transfer of shares, ownership of which confers a right of occupation of land, the taxation of a change in declaration of the trusts on which such shares are held, and for the taxation of any lending connected thereto, where the transfer, declaration or lending is effected otherwise than by contract registrable in the Public Registry of Contracts; and for connected purposes. The States subject to the sanction of Her Most Excellent Majesty in Council have adopted the following Law.

2.1 Senator T.A. Le Sueur (The Minister for Treasury and Resources):

I think this is one of the occasions where the preamble to the law is helpful because although the law is titled the "Draft Taxation (Land Transactions) (Jersey) Law" I think most of us know it better as the "Stamp Duty Law on Property Sales." Members would also notice that despite taking over 2 years to prepare for this draft law, I have already lodged a couple of small amendments to it. They will also note the comments of the Corporate Services Scrutiny Panel when they remark that this has been a very difficult law to implement. In saying that, they echoed the words of Jurat Peter Blampied who commented many years ago on the complexities of the problem and whose words are reproduced in the Scrutiny Panel Report. Indeed, as this Scrutiny Panel Report goes on to say, this sort of tax is very rare. Nonetheless, I appreciate and support the principles of equity on which the proposition of the Deputy of St. Martin was based and which this House approved. I make these preliminary comments, Sir, because there are some who might accuse me of dragging my feet. That is not the case. The fact is that this law drafting has had to be unique to Jersey and we have not been able to rely on similar examples from any other jurisdiction. It has been far more complex than I imagined when we first accepted the proposition from the Deputy of St. Martin and, indeed, it has proved so complex that for the present time it has been limited primarily to sales involving residential property. Having come to appreciate the complexities of the drafting and realising the difficulties even in the case of residential property, we decided to put commercial property transactions to one side for the time being. I make these preliminary remarks because I am conscious of the fact that we have already, in fact, in effect agreed the principles of the legislation when we agreed and accepted the proposition of the Deputy of St. Martin. The proposition before us today tries to bring the essence of that proposition into legal form, at least as far as residential property is concerned. Once that legal form is established, we shall see how it might be extended to share transfer transactions involving commercial property. However, I think it would be counterproductive today to try to bring an even greater level of uncertainty to what is already a complex area of legal drafting. I make this point in case anyone thinks I am going back on my obligations. I am not. Rather, I am anxious that we do make some positive progress in a matter which has already had considerable delay and where I do not want to see further unnecessary delay because I want to remove what is clearly an existing inequity. However, I am also conscious of the fact that the Corporate Services Scrutiny Panel has some significant questions which need to be answered and the sooner we can do that the sooner we can make further progress. Sir, although I have lodged a couple of amendments, they do not affect the principles behind this legislation, principles which, in effect, we have already agreed but we now need to reiterate. I therefore wish to propose without further delay that Members accept the principles behind this legislation recognising the details will then be subject to the Scrutiny process before being debated. I propose the principles.

The Deputy Bailiff:
Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? Deputy of St. Martin.

2.1.1 The Deputy of St. Martin:
As the States Member brought this forward and it was approved, if I may add, by 39 votes to nil, in the comments that supported the proposition it said the Committee has already indicated an intention to bring forward the proposals of my P.211/2004 in next year's budget on the grounds of equity. Members ought to be made quite clear that when we voted on it, I deliberately separated both properties, that one was residential and one was commercial. I deliberately did that because I was aware of the difficulties that may well come in law drafting and I was also mindful of what Jurat Blampied had made known: that there would be difficulties. However, I am disappointed that it has taken 3 years to get this far and even more disappointed when I read that we are not going to have any tax or any stamp duty payable on property which ... I will read this out. If Members would like to look at the bottom of page 4: "The draft law has been prepared to specifically exclude any share transfer transactions in companies where no right of occupation of land is secured as a

result." Well, I take it that means commercial property. I was disappointed on that because I would have thought in 3 years we would have found a way in which where property is sold, irrespective of how many people own it, stamp duty would be payable on that property. I really am disappointed that what is coming is not really what the States voted for, albeit, that said, do we have half a chicken or all the chicken? What I would be minded for Members to do is support what we have here and then Scrutiny go away, I would hope (that is a suggestion for Corporate Services) and come back to show why we cannot have the companies or the commercial property also included for stamp duty. I feel if we vote against the half we have today we may not get the whole eventually. We might not even get the half in the future. So what I would ask Members to do is support the half and we can come back with the other half afterwards. Thank you, Sir.

2.1.2 Deputy P.J.D. Ryan:
Well, Corporate Services is a little bit between a rock and a hard place here, as I am sure Members would appreciate. We obviously accept the principles that were agreed a long time ago that the Deputy of St. Martin has brought, but we are also mindful of the problems that the Minister for Treasury and Resources has had with this particular law and fulfilling the contents of the previous proposition, implementing them. So what we need today, before we do any work on this, is the Assembly to confirm effectively what are a new set of principles because what we intend to do is a legislative scrutiny. We do not want to scrutinise the principles. We, therefore, need to be sure of our ground before we waste any public money on this, frankly. We need to be sure that the Assembly are happy that it only applies to residential property and not commercial property at this stage. Whether the Assembly wishes to come back at a later stage about commercial property is another matter, but it is not something we will scrutinise. We will certainly look at the reasons as to why the Minister for Treasury and Resources thinks that at this point in time it is impractical to tax commercial property. We will look at that and report on it. We would also ask the Assembly to confirm that they are happy at this point at any rate that the law only applies to share transfers which give the owner the right to occupy that property. So there are 2 changes to the basic principles that were agreed in the previous proposition. Before we do any work we would like the Assembly to confirm that, but in any case if the Assembly agrees the principles then we would intend to call it in and to report on the suitability of the law itself to fulfil this new mandate, effectively. So that is really all I want to say, Sir. Thank you.

2.1.3 Deputy G.P. Southern:
Having had my attention drawn to the bottom of page 4 by the Deputy of St. Martin, I am very much concerned about why this exclusion should have been made for commercial property. All we are given in the text is this exclusion removes the need to grant wide-ranging exemptions for transactions which the draft law was never intended to capture, recognising concerns expressed by interested parties. I see no argument there to suggest that this exclusion is justified in any way whatsoever. It just says we would have to grant exemptions if we did not. Will the Minister clearly set out the case for exclusion of commercial properties as he sees it because otherwise this cannot possibly get my vote. In terms of getting half a chicken or a whole chicken, in the words of the Deputy of St. Martin, it seems what we have here is just a few feathers and perhaps a bit of the beak.

2.1.4 Connétable D.J. Murphy of Grouville:
I am a member of the Corporate Services Scrutiny Panel, so obviously I shall be assisting Deputy Ryan. But 2 glaring things that stand out in this legislation: firstly, in an attempt to exclude commercial property, I believe that the case of a person without residential qualifications buying a share transfer property would be excluded from paying this duty. This is how I read it in the report. If I may go on to the amendments lodged by the Minister for Treasury and Resources, page 3 on Article 1: "... where the change confers a right of occupation of land." That is throughout the law referred to as "occupation of the land" and at the bottom, 3(b)(ii): "Determining whether a right of

occupation is conferred, there shall be disregarded any lease or tenancy or other interest in land to which the right of occupation is subject and any restriction or requirement of the Housing Law." Now, does this mean that this law would override the Housing Law? These are questions that have to be asked. I am just giving notice that they will be asked at a future stage. Thank you.

2.1.5 Deputy P.V.F. Le Claire:
I am glad I let the Constable go first because he said it much better than I could. My concern was in relation to the housing, as has been quite rightly pointed out, and the implications to the Housing Law and the impact of any change in relation to the availability of housing, so while I am not certain if I will support the principles - and I am glad that the Corporate Services Scrutiny Panel is on the ball here - I would certainly ask them not to make it too narrow a legislative review that they only concentrate on whether or not the ifs and the buts are in the right places, but also take upon themselves the duties and responsibilities of ensuring that Members are fully aware of any housing implications by conducting their review and by speaking with the Minister for Housing and the Assistant Minister, who I note do not have any comments in relation to this today even though there are, by indication, some implications.

Deputy P.J.D. Ryan:
Would you allow me just to clarify a point on that, Sir, following the Deputy's speech? The problem with widening the terms of reference that the Deputy refers to is the amount of time that it would take. We are bound when we call in a law for legislative review to report back within a certain timescale. Members should be aware of that. We are quite happy to make a wider review, but the timescales would have to also similarly be reviewed. Thank you.

2.1.6 The Deputy of St. Ouen:
Just briefly, the Minister spoke about principles as dealing with inequities and yet it is quite clear, or at least from my reading, in the comments made by the Corporate Services Panel that the draft law as proposed, in other words the principles, covers and only applies where shares also give their owners the right to occupy that property, which therefore means that non-residents would not be involved and expected to pay this particular tax, which I would suggest for one is inequitable and, secondly, extremely strange when we are at the same time promoting laws that aim to encourage home ownership. So, following that, Sir ...

The Deputy Bailiff:
I beg your pardon, Deputy, I have been informed we are not quorate, so I ask the Chief Usher to summons Members.

Deputy P.J.D. Ryan:
Could we have the appel, Sir?

The Deputy Bailiff:
There is not any provision for calling an appel in such circumstances, but anyway, by the time it starts everyone is here. We are now quorate. I would ask Members before they leave to check whether the Assembly is quorate. **[Interruption]** No, I accept fully Members leave occasionally, but I think Members can become aware when the numbers are getting a little low and I think it is incumbent upon Members then not to leave until it is quorate. Deputy, I am sorry you got interrupted.

The Deputy of St. Ouen:
So, following on from my comments I made earlier regarding this particular law as proposed, I would like some clarity in a point that Deputy Ryan made. That is are we able to alter the principles currently proposed and, if so, I suppose the easiest question is how do we do it? Thank you.

2.1.7 Deputy S.C. Ferguson:
I am also a bit concerned about this business of excluding commercial property. Some of the most dreadful developments have been on the sites which were previously hotels. I am not sure that they should be excluded. I am sorry, I do not feel this law really covers everything we want it to.

2.1.8 Deputy C.J. Scott Warren:
I would also like, Sir, clarification about whether there appears to be in this Law one rule for those living in Jersey and one rule for those who do not live in Jersey, to the detriment of the people who live here. Thank you. **[Approbation]**

The Deputy Bailiff:
Does any other Member wish to speak on the principles? Very well, I call upon the Minister to reply.

2.1.9 Senator T.A. Le Sueur:
Can I say first of all I fully understand and appreciate the concern of Members that this Law does not go as far as it should. That is why, in fact, I make it quite clear that I am not at this stage or at any stage trying to exclude commercial property. That is still an objective which I have, but as the Deputy of St. Martin says, it is a question of doing this one step at a time and half a loaf better than no bread at all, to paraphrase his comment. I am reassured by the terms of reference, or at least not terms of reference but some of the issues that the Corporate Services Scrutiny Panel have already raised in page 3 of their report. The second of those issues (and I read) is: "In particular, would there be a practical way to tax commercial property transactions and property investors?" Now, if there is a practical way of taxing commercial property transactions and property investors and we can discuss that with the Corporate Affairs Scrutiny Panel and come up with a successful solution, I am perfectly happy to bring a further proposition or amend this proposition to include those transactions. What I did say to Members in my original speech was it has taken over 2 years already to get this far and I would hate to think that I am delaying even part of this process any longer than I have to. It is on that process that, if you like, with some regret I bring the law in its present form, but I recognise that we are at least making progress and I think just as I do not have a monopoly of knowledge, I think the assistance and the input from the Scrutiny Panel and maybe making Members aware of some of the complexities of the commercial property element of this will go some way to making a more informed debate when we come to that aspect of the stamp duty law. So I think, in echoing the words of the Deputy of St. Martin, it is important that we take this first step not just because it gets us somewhere along the road, but also because it opens the door to that Scrutiny Panel to work with me - and I emphasise work with me and I am happy to co-operate fully with that Panel - in order to see just what the problems and potential solutions for commercial property transactions are. If we can extend this in a workable way to those transactions, I will be the first to do that and I will be the first to express my thanks to the Scrutiny Panel for coming up with a solution which certainly in the past couple of years I have been unable to achieve by myself. So I think with the words of encouragement from that Panel I would propose these principles recognising that it may well be that the outcome of that Panel report is not as hopeful as we would like to think today, but at least let us examine the matter in detail. I know that the Chairman is concerned that by extending the terms of reference too far we could delay this activity. I think probably the answer to that one is we have to start opening the can of worms and seeing what it contains and then decide just what the terms of reference might be expanded to be able to achieve. I am not going to put words into the Panel's mouth. It may well be that they need to see an interim report after the 8-week period. Let us at least give them the chance, and give the Members the chance to investigate this, as I say, admittedly complicated area. It has been acknowledged even by Jurat Blampied many years ago that it was a complex area. It is still a complex area. If we could find a solution, let us do so. Meanwhile, Sir, I do urge Members that we

need to make progress, and in that spirit of making progress and going forward, I propose the principles.

Deputy G.P. Southern:
A point of clarification. Could the Minister clarify his response to, I believe my question, why we are making the assumption? Is it simply - and this is the point of clarification - that they do not know how to do it? In terms of any amendment coming forward from the Minister for Treasury and Resources, what timescale is he talking about?

Senator T.A. Le Sueur:
It is a question, Sir. We do not know how to do it effectively. The timescale will depend on the response of the Scrutiny Panel. I will respond from the outcome of that Panel report as quickly as I can within the complexities. I know the complexities of the legal drafting process.

The Deputy of St. Ouen:
Raising the issue of whether or not the principles could be altered or amended or adjusted to deal with the issues raised - obviously the Minister perhaps is unable to comment - are you able to give us some direction on whether we are… if we vote for the principles as currently described, we are limiting ourselves to those set principles?

The Deputy Bailiff:
If the Corporate Scrutiny Panel come back, for example, and it is decided to change the principles to include commercial property, then at that stage wide-ranging amendments would no doubt have to be brought, or probably this one would be withdrawn, and a new law substituted in its place. That would be a matter for consideration at the time. Clearly, it could be managed.

Senator T.A. Le Sueur:
Can I just ask, Sir, that the long title was amended by my first amendment in a reasonably long title and Members will notice that the words: "Where the change refers a right of occupation of land" are no longer in the preamble. I think that does give the opportunity that the Deputy of St. Ouen requires for there to be a wider interpretation than he previously might have expected.

The Deputy Bailiff:
Yes, but the likelihood is that, in reality, if commercial property is brought in, there are going to be wide-ranging amendments to this, in any event.

Miss. S.C. Nicolle Q.C., H.M. Solicitor General:
I wonder if because the issue about commercial property is partly a legal one, it might be of assistance if I did say something. The analogy between buying commercial property, if you buy the property, and transacting in shares in an entity that owns a commercial property, is not one that can be carried across. If you buy a commercial property - suppose you buy the Penny Bank Limited building - you buy the property, but many, many people can have shares in a company that owns a commercial property. To give an example, which is not really hypothetical, some years ago I was the holder of a joint bank account set up to service a mortgage. Unbeknown to me, the bank formed some company and out of the goodness of its heart it gave people who had accounts shares in this company, so I got something like one, possibly 2, shares in the company. If that bank owns a commercial property somewhere and I sell my share, that is a transaction. You simply do not get that kind of minutiae when you are just buying and selling a commercial property. When trying to work out exemptions, I think Members can imagine for themselves trying to work out how you identify what the exemptions are, how many shares somebody has to have to come within the ambit. It is very complex.

Deputy C.J. Scott Warren:

Can I ask for clarification on the issue of property, which is not going to be lived in, which is bought by U.K. residents and by share transfer?

The Deputy Bailiff:
Of residential properties?

Deputy C.J. Scott Warren:
Yes, residential property.

The Solicitor General:
If it is a residential property, it does not matter whether they are going to live in it or not. If the shares confer a right to occupy residential property, then that is a transaction that is caught and it does not matter whether you are going to live in it or not yourself or rent it to somebody else to live in.

Deputy C.J. Scott Warren:
On a point of clarification, I was referring to property that is bought as an investment, but it is not able to be… That applies similarly?

The Deputy Bailiff:
I think that is what the Solicitor General said. If it is residential property, it does not matter whether you buy it to live in it or to rent it out to somebody else as an investment. Is that correct, Solicitor General?

The Solicitor General:
That is correct, yes.

The Connétable of Grouville:
I am sorry, can I come back on that? Because as I read the Act as it goes through, it is: "With the right to occupy." If you have not got housing qualifications, you do not have a right to occupy.

The Deputy Bailiff:
It is whether the shares give you a right to occupy, I think.

The Solicitor General:
It does not matter whether there is a control by the Housing Law; if you buy shares and the shares themselves give a right to occupy, the fact that that right is controlled by something else does not affect the fact that it is a share that comes within the ambit of this law.

The Connétable of Grouville:
I am sorry, Sir, I do not want to cross swords with somebody who is as highly qualified as the Solicitor General, but I would say there is a huge difference between the right of ownership and the right to occupy.

The Deputy Bailiff:
This is clearly a matter the Scrutiny Panel will no doubt look at in due course. The matter before the Assembly then is whether to vote pour or contre to the principles of this Law. All those in favour of adopting the principles kindly show? The appel is called for in relation to the principles. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 30		**CONTRE: 2**		**ABSTAIN: 0**
Senator W. Kinnard		Deputy G.P. Southern (H)		
Senator T.A. Le Sueur		Deputy of Grouville		
Senator P.F. Routier				

Senator M.E. Vibert				
Senator P.F.C. Ozouf				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy G.C.L. Baudains (C)				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy P.J.D. Ryan (H)				
Deputy of St. Peter				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Solicitor General:
I wonder, Sir, if I could just go back to the question about the Housing Law? I think the answer is in the proposed amendments. The proposed amendment to Article 3 says that: "For the purposes of paragraph 1 [that is the paragraph about ownership; the share giving a right of occupation] in determining whether a right of occupation is conferred, there shall be disregarded any lease or tenancy or other interest in the land to which the right of occupation is subject and any restriction or requirement of the Housing (Jersey) Law 1949." You simply disregard the fact that the Housing Law implies a restriction.

The Deputy Bailiff:
Deputy, you have already indicated that you wish to have this matter referred for your Scrutiny Panel?

Deputy P.J.D Ryan (Chairman, Corporate Services Scrutiny Panel):
Judging by the amount of political comment and complexity, I am tempted to change my mind, Sir. **[Laughter]** I do not think I would be very popular if I did, so, yes, Sir, we would like to call this Law in, thank you.

The Deputy Bailiff:
That means that debate upon the Bill comes to an end. Under Standing Orders, the States must now decide at which meeting the Second Reading will be listed to continue, and that has to be not later than the fourth meeting following today's debate. I suspect you require your 4 meetings, do you?

Deputy P.J.D Ryan:

Yes, Sir. I think probably the proper course here would be to, at this point in time, ask for the 4 meetings, but if I could ask the States that, bearing in mind the complexities, we may need a little longer. I know the Deputy of St. Martin may feel that he would rather have this come back to the States sooner rather than later. I will have discussions with him; I will involve him as much as possible in this review. Hopefully we can conclude it as quickly as possible.

The Deputy Bailiff:
You ask at the moment for the fourth meeting, which is 3rd June?

Deputy P.J.D Ryan:
I have no choice other than to do that at the moment, Sir, but I would come back…

The Deputy Bailiff:
You could ask for an earlier one.

Deputy P.J.D Ryan:
It will not be earlier, certainly, Sir. **[Laughter]**

The Deputy Bailiff:
Does the Assembly agree that the proposed date for resumption of this debate will be 3rd June? That concludes debate upon that item.

3. Draft Goods and Services Tax (Amendment) (Jersey) Law 200- (P.17/2008)

The Deputy Bailiff:
We move next to the Draft Goods and Services Tax (Amendment) (Jersey) Law 200- - Projet 17/2008 - lodged by the Minister for Treasury and Resources. I will ask the Greffier to read the principles.

The Greffier of the States:
The Draft Goods and Services Tax (Amendment) (Jersey) Law 200-: a Law to amend the Goods and Services Tax (Jersey) Law 2007. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

3.1 Senator T.A. Le Sueur (The Minister for Treasury and Resources):

I have to admit, with some regret, that these propositions (that is both this proposition and the next one) are unlikely to win any prizes in the awards for clear and concise English. However, that is not their purpose. Their purpose is to devise a scheme that will be unique to Jersey for extracting a significant contribution to tax revenues in Jersey from a section of the business community, which otherwise would pay relatively little G.S.T. I say they would pay relatively little because although their businesses may consume products at quite a high value, the fact is that most of their services are supplied to non-residents and it means that they would be zero-rated and the institutions concerned could recover most of that input tax. I made it quite clear when I brought in, or proposed, G.S.T. that I was determined that the financial services industry should not be exempt from the tax burden being faced by all other Island residents. I asked them to make a worthwhile contribution of between £5 million and £10 million a year to the total required. Some Members may ask: "Why did you not try to get more from that source?" I would respond by saying that this is an additional tax burden faced by their clients that they will not face anywhere else in the world. In addition, those institutions are paying tax at 10 per cent on most of their profits in Jersey, unlike in Guernsey and Isle of Man, which both have Zero/Ten regimes which are more favourable to the financial service industries in those places. Were some of the businesses here to elect to go elsewhere, we would not only lose their G.S.T., but also their corporate taxes and the taxes on their

employees. However, I said a few moments ago, these G.S.T. arrangements are unique to Jersey. They were outlined in part 12 of the law that we debated last year. Members may recall at that time that I was chastised by the Corporate Affairs Scrutiny Panel for not allowing sufficient time for them to consider some later amendments that I had made to pass 12. I have learnt from this and we have been engaging with… in communications with this Scrutiny Panel since last November on the current legislation. Over the same period we have also been discussing them with members of the financial services industry, recognising that we are breaking new legal ground here. It will be fair to say that the general principles behind what we are doing, and the required legal framework, were agreed quite early on. What has taken the time is the final presentation of these principles in a way that is not only user-friendly, but which is designed to encourage new business opportunities for the financial services industry. Hence, even after I had lodged my proposals in January, we continued to work with the profession and with the Panel to see if there was an improved way forward. Having devised what I believe would be a better wording for achieving the same objectives, I refrained from lodging those amendments until I had discussed them with the Scrutiny Panel. I am pleased to say that we had a constructive meeting with that Panel and I should like to pay tribute here not just to the Panel, but to their professional adviser. This is not the easiest legislation in the world to understand, but I think all parties have applied themselves thoroughly and diligently, working to what we believe will be the best end result. Although, before I get too complacent, I would say that with any new tax like this, over the next 18 months we are bound to find some areas where there is scope for improvement. I would not be surprised to see further amendments in the light of that experience. The basis of this legislation and the principles behind it are to ensure that financial services businesses contribute to the G.S.T. pot in a way that bears some relevance to their size and nature. I should begin, perhaps, by saying that in order to qualify, business entities have to be registered with the Jersey Financial Services Commission. They then pay an annual fee, both for themselves and for the entities they administer. We do not, at the present time, have a precise handle on the number of the entities because they would include companies from overseas as well as the Jersey ones. However, our latest estimate, as indicated by the industry itself, is that it should yield something in excess of £7 million a year. This G.S.T. treatment is not compulsory and any financial services business that does not want to adopt it can instead opt out and be treated in the normal way, just as any other local business. If their taxable turnover exceeds £300,000 a year, they will register for G.S.T. and keep the required records. They will have to show, in that case, what element of G.S.T. relates to their local activities and what relates to their offshore activities. For many businesses, this will be such a great burden that they will prefer to take the alternative way out, being more cost effective. The fee to be charged to the different sectors has been negotiated with the industry and it was they who had the task of raising between £5 million and £10 million a year from their Members. I am grateful to Jersey Finance Limited for carrying out a survey of their members which resulted in a preference for this flat-rate scheme, rather than one linked to licensed activity or turnover or head count. It certainly made the law drafting easier. As I say, any firm that does not like it, or feels aggrieved by it, can take the alternative route. At the same time, Sir, this law provides minor changes to provide greater clarity in certain areas, but none of those are significant and I will deal with them when we deal with the individual articles. The industry is under no illusions that if these proposals fail to generate the required amount of revenue, I shall be back to them, asking them for more. I have got no reason to doubt the figures are in fact reasonable and time will tell. That, Sir, is a summary of the amendment to the draft law, and indeed to the regulations. I have, in fact, made one speech here that I think hopefully will cover both this proposition and the next. Dealing first with proposition 17, Sir, I propose the adoption of the principles, the amendments to the law.

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

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:
Is anyone going to speak? Then the adjournment is proposed, so the Assembly will reconvene at 2.15 p.m. I have been asked to give notification of 2 lodgings: Projet 41, Draft Goods and Services Tax (Jersey) Law 200- (Appointed Day) (Amendment) Act, lodged by the Minister for Treasury and Resources; and Projet 42, Draft Goods and Services Tax (Amendment) (Jersey) Regulations, lodged by the economic Affairs Scrutiny Panel. Now we will adjourn.

LUNCHEON ADJOURNMENT
The Deputy Greffier of the States (in the Chair):
We have finished proposing this morning the Draft Goods and Services Tax (Amendment) (Jersey) Law; does any Member wish to speak on the principles? Did you wish to propose it as amended?

Senator T.A. Le Sueur:
I would, yes, please.

The Deputy Greffier of the States (in the Chair):
You do have a lot of amendments.

Senator T.A. Le Sueur:
I do simply propose it as amended.

The Deputy Greffier of the States (in the Chair):
At this stage, we are on the principles only. Does any Member wish to speak?

3.1.1 Deputy G.P. Southern:
At lunch time I was hunting around for somebody who understood G.S.T. and I talked to at least a dozen Members and none of them claim to understand G.S.T. I have asked (and I will ask now publicly) the Minister for Treasury and Resources to explain his wording this morning. He seemed to imply that this was some sort of additional payment on behalf of the finance sector. I think he used the word "additional" tax. He certainly said it was a unique construction that we were engaged on. Sir, the question I want to ask him, and I wish Members to fully understand, and so I hope he can express it clearly, the question is, is it additional taxation and the finance sector being wonderfully generous? Because it seems to me that how the £7.5 million appears to have been worked out is that finance sector has been asked to estimate how much goods and services it resources, takes, from the local economy and how much from other economies. The answer that came out was approximately around £250 million worth of goods and services were sourced in the Island, on which the finance services sector would be, in effect, the end of the line, final customer. Remember, G.S.T. is a tax on the customer, on the consumer, and the finance sector would be the final end of the line consumer because, by and large, the vast majority of its services are supplied abroad. It cannot then pass on the G.S.T. that has been charged by its suppliers to its consumers. Nonetheless, it seems to me that the £7.5 million was due to have been paid. This is just a simple way of saying: "Do not mess around with the complexity of G.S.T. in finance services sector because you are our main export; let us have a simplified way in which you can pay us the equivalent of the G.S.T. that would have been due. In fact, what we would like to receive from you is around £7.5 million to say: 'There is the equivalent, now go away Mr. G.S.T. Inspector and do not bother us.'" My questions are (a) is that in fact what is happening and (b) why should that sort of package be not applied to any other business that is, in the main, an exporter? Why should somebody not… let us say - who is it; who is an exporter - from the fulfilment industry, highly profitable in certain sectors, say: "Here, Mr. Treasury Man, how much do you think we will be paying for activities sourced on the Island? Here is whatever the sum it is, £30 million, now put that in your trouser pocket and go away and leave us alone because we do not want to fanny around

with G.S.T. and spend our human resources in employing accountants to organise that." First of all, is that what is happening? It is a substitute - it is not in addition to, it is not generous - or a simpler way of doing it. Why, if that is the case, has it not been applied to other businesses who might equally be able to make a similar case, though less, perhaps, powerfully than our major exporter?

3.1.2 Deputy P.J.D Ryan:

I think I had probably better start at the other end of my speech from when I was originally going to start at having heard some of Deputy Southern's questions to the Minister for Treasury and Resources. It is not my job to answer those, as the Minister for Treasury and Resources, I am sure, will be happy to do so. Maybe it would help, before he does that, if I did say in very blanket, general terms to Members that indeed the £7.5 million, we have looked at it in great detail and we are very happy. We have had to, as a Scrutiny Panel looking at G.S.T., look into all of the nuances of G.S.T. very carefully. I can assure the Deputy that we do fully understand G.S.T. and we are happy that it is generally an extra payment from the financial services industry. I will let the Minister explain as best he can. If Members want to ask me afterwards, I would be delighted to spend time explaining exactly why and wherefore. That is on the assumption that they are not already convinced by the Minister for Treasury and Resources in his summing-up. Coming back to the start of what I was going to say, we are generally in support of these amendments to the regulations and to the law which flow as well. We have just, I suppose, one small … it is not a reservation even; it is a comment - it is an aside comment - which is that the process by which we have arrived here today has not been the best process that we could possibly have had. I think the Minister for Treasury and Resources has already referred to that in his opening speech. I think though that there are lessons to be learnt from that and hopefully those kinds of issues will not recur again in the future. When we were looking at financial services specifically we had one or 2 questions. We were worried that simply what was going to happen by avoiding the administrative burden on financial services, whether in fact that administrative burden would simply have been passed on to its suppliers and they would have the administrative burden. We looked at that one in some detail with the Treasury Department and also with Jersey Finance and we are satisfied that that will not be a significant problem. We looked at the question of a *de minimis* value for reclaims. Again, this was something we suggested in the early days. We have agreed that whether or not there is a *de minimis* on purchases by the financial services sector, this will be something that might need to be kept under review. We were worried about the lists of I.S.E.s (International Services Entity) being outside of direct government control, but it was explained to us that even though it would be outside direct government control - I am particularly thinking of trusts and the trust-company scenario - we were happy that: "Okay, we did an indirect government control, but the Jersey Financial Services would be able to monitor those lists and police accuracy in a good way." We were happy with that one. Sir, I think those are the main items that we have looked at. Overall, as I say, we are happy with the amendments that are now before us. We were intending, originally, that the treatment of the financial services industry would form a review, but in the event… for 2 reasons: one is that we ran out of time, and also there was not - having looked at these items - too much to put into a review. In fact, we decided to comment, and you have that comment in front of you - Members have that comment in front of them - rather than write a review. It would have been the last review in the series of G.S.T. As happens, this comment is effectively the last piece of work that my Panel will be doing on G.S.T. for the foreseeable future, unless something else comes up. I would just like to thank the Members of my Sub-Panel: Constables Murphy, Gallichan, and Jackson of St. Brelade, and to also thank our advisers and officers for all of the hard work that they have put in over the series of G.S.T. reports and this comment over the last 18 months or 2 years or so. With that, Sir, I will sit down and allow the Minister to sum up, perhaps.

3.1.3 Deputy G.C.L. Baudains:

I am glad that Deputy Ryan has suggested that he fully understands G.S.T. I wonder if perhaps he could, if he could spare the time, go around Jersey's businesses and explain it to them, because there are a number of business who have come to me complaining that they have inquired of the Minister for Treasury and Resources' Department, cannot get their questions answered, and frankly, they have not got a clue of how they are going to sort out various problems that they face. No doubt Deputy Ryan could be of assistance to them. **[Laughter]** For a fee, yes. As Members will know, I have always opposed G.S.T., Sir, on 2 or 3 main grounds. One of them has been the issue of complexity and the amount being collected being diluted by administration, Sir. Here we see amendments and amendments to amendments and I am coming to realise that if ever this tax is to be equitable, it will end up as complicated as the U.K.'s V.A.T. (Valued Added Tax) and then we really will be absorbing a substantial amount of the tax take by administration. For that reason, among others, I will maintain my opposition to all things G.S.T.

3.1.4 Deputy J.B. Fox of St. Helier:
I must admit, it takes a lot of energy in keeping tabs of where we are at with G.S.T., but I must congratulate the Corporate Services Scrutiny Panel on their last comments because it defines what the proposition is, where it has come from and where it is going to, in simple, straightforward terms. I thank the Panel for that. Certainly, to give us just a simple example to say why there should be a difference between all of us paying 3 per cent on everything to having a lump sum, if you like, agreed with the finance world makes sense. When you look at the example where a bank, for argument's sake, 98 per cent of its business is off Island and it buys a computer for £10,000 for use in its business. Then if you adopt the E.U. (European Union) style V.A.T. system, that the supplier would then charge the bank the £300 G.S.T. on the computer, the bank would then pay that to the supplier who pays it to the Tax Office. The bank then reclaims 98 per cent of the G.S.T. of £294 from the Tax Office. Clearly, it shows that that is totally impractical. That is just on one item; you multiply that a few million times and the bureaucracy that that would entail would be totally impossible to achieve. I will therefore be supporting this proposition. There is a lot of common sense in it. No, we do not like any new taxes, but this is the least painful of pain that might otherwise have been. Thank you, Sir.

The Bailiff:
I call upon the Minister to reply.

3.1.5 Senator T.A. Le Sueur:
It is perhaps a shame that Deputy Southern did not consult Deputy Fox as one of the 12 people he asked because the answer that Deputy Fox gives is probably as good and as simple as I could have done. If Members want a more detailed explanation, I shall try to do so, although I think Deputy Fox's was quite clear and simple. Any registered business for G.S.T. will suffer G.S.T. at 3 per cent on its purchases - you can call this input G.S.T. It will also charge its customers 3 per cent on its sales as an output G.S.T. and it will account to the Tax Office for the difference between its output G.S.T. and its input G.S.T. because it will offset the input G.S.T. against the output G.S.T. and pay the net amount over. Unless, of course, in any particular period its input G.S.T. on its purchases was greater than its output G.S.T., in which case it would claim a refund. The problem with the financial services industry, as Deputy Fox clearly enunciated, is that the majority of their customers are outside the Island and therefore sales, or invoicing of services to them, would be zero-rated, which means that when the financial institution comes to fill in its G.S.T. return, it can recover virtually all of its G.S.T. on its inputs against what very little output G.S.T. it has. There had been a situation from time to time - quite often, probably - of financial institutions recovering tax from the Tax Office; quite the opposite from what I was trying to achieve. This more elegant solution gets money from the industry that we would not otherwise get. I think it is far more beneficial to the taxpayer of the Island that we get money from the institutions, rather than from the ordinary taxpayer. It is a win-win situation, but not only is it good for us, it is also good for the

institutions. Deputy Ryan, in his comments - and I will speak in more detail about the Panel - referred to a treatment for retailers selling goods to the financial services industry of small amounts. If a shopkeeper sells the bank a jar of coffee, they will charge the bank G.S.T. It is clearly up to that financial institution to decide whether it wants to try to recover that G.S.T. against its proportion of local clientele. The fact is that no financial institution with any business acumen is going to waste its time trying to recover a fraction of G.S.T. on a small portion of a jar of coffee. In addition to the £7.5 million we get from this fee, we will also get a lot from G.S.T. on their little purchases that they cannot be bothered to reclaim. Again, it is a win-win situation. We get their £7.5 million from the fee, plus the odds and ends of G.S.T. on their purchases. Although I say "odds and ends", it is surprising how much coffee you can consume in the course of a year among a few thousand employees. That is just one example. I hope that has tried to explain, I think it was to Deputy Southern and to other Members, why we have gone along this particular route and why it is financially flatterable to the Island. Could other exporters try to jump on the bandwagon? I am sure they would like to, but of course the regulations as currently framed only apply to those businesses that are registered with the Financial Services Commission and the certain Financial Services Business, so they cannot. It may well be that in the course of the review that will happen over the next year or so into G.S.T., we might look at that and see if there is merit in that sort of activity. At the moment, I have got no evidence to suggest that there is, but we shall see. Because I think when I use the word "evidence", I will now go back and speak very favourably about the Corporate Affairs Scrutiny Panel. I shall probably miss my regular appearances before that Panel; it has been quite an activity over the last couple of years. It has been, I believe, a good 2-way process. I have listened to and learned from that Panel on things like the *de minimis* for retailers. We have worked together and listened to the industry's comments and seen the evidence before us of the problems. That Panel has come up with comments that I thoroughly endorse, which are comments effectively that we could say are joint comments between myself and the Panel, but I will not say that because they are the Panel's comments, very much so. We are in agreement with the general thrust of things. If there are matters in which we could have done things a little bit differently, a little bit better, I am sure we can. We continue this learning process. I am sure we are improving all along. To Deputy Baudains, who fears that businesses out there have not a clue, I would take this opportunity of getting some free advertising and remind those businesses that there are educational evenings every Tuesday, Wednesday and Thursday available to those businesses. Many businesses have already taken advantage of them and received, in small groups, advice in answer to the queries they have. In addition to that, the Tax Office will go on request to any business and give as much advice as the business requires. There is a permanent helpdesk at the Tax Office, 440555, which any taxpayer can access in order to get the information that they need. Businesses may choose to put their head in the sand; I hope they do not, but it is not because we are not providing them with every ability…

Deputy G.C.L. Baudains:
I have to object because the Minister is misleading us. It is not the businesses putting their head in the sand; it is his department that cannot answer the businesses' questions.

Senator T.A. Le Sueur:
Perhaps if the Deputy can give me a specific example of the questions that have not been answered, I can try to deal with them myself. I have had no evidence whatsoever of any business not being given an answer that they can understand.

The Connétable of St. Brelade:
If the Minister would briefly give way, I would just like to endorse the fact that the G.S.T. website is exceedingly good for those companies who are in need of advice.

Senator T.A. Le Sueur:

What I cannot guarantee, of course, is that businesses, having received the advice, will take it, but that is not for this House. I think I have probably said enough about the principles of this law. It seemed to have got general approval and maybe even a bit more understanding in the last half hour. I propose the principles.

The Bailiff:
I put the principles of the Bill. Those Members in… the appel, yes. I ask any Member in the precinct who wishes to vote to return to his or her seat. I ask the Greffier to open the voting, which is for or against the principles of the Bill.

POUR: 36		**CONTRE: 3**		**ABSTAIN: 0**
Senator L. Norman		Senator B.E. Shenton		
Senator W. Kinnard		Deputy G.C.L. Baudains (C)		
Senator T.A. Le Sueur		Deputy P.V.F. Le Claire (H)		
Senator P.F. Routier				
Senator M.E. Vibert				
Senator P.F.C. Ozouf				
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy C.J. Scott Warren (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Bailiff:
Deputy Ryan, I assume that your Scrutiny Panel does not wish to scrutinise the Bill?

Deputy P.J.D Ryan (Chairman, Corporate Affairs Scrutiny Panel):
No, thank you, Sir.

The Bailiff:
Minister, you have brought a number of amendments to the articles of the Bill. Do you wish to propose the articles as amended by your amendments?

3.2 Senator T.A. Le Sueur:
I took the advantage of a very helpful suggestion before lunch, Sir, that I proposed the original as amended and it was accepted by the House, but, yes, I formally propose the articles in their amended form. I think, by way of explanation, they are quite technical and I do not intend to do them one-by-one, but I will summarise the articles as best I can. The first 8 articles are really procedural ones and they are there to establish greater clarity in terms of residents, in terms of directions regarding imports, in terms of invoicing, and of giving the controller power to make certain concessions. Articles 9 to 15 deal with the financial services industry. They provide the conditions for listing as an I.S.E., which requires that the fee has been paid, sets out what bodies cannot be I.S.E. and under what conditions repeals certain parts of the law that are no longer relevant, and gives a right of appeal against delisting of an I.S.E. It also makes some provisions in respect of treatment of groups of companies. Articles 16 to 23 are minor amendments, which include the clarification of treatment of entities within those groups. I propose the articles and am happy to answer any questions on them.

The Bailiff:
The Articles are proposed; are they seconded? **[Seconded]** Does any Member wish to speak on any of the articles of the Bill? I put the articles. Those Members in favour of adopting them kindly show? Those against? They are adopted. Do you move the Bill in Third Reading, Minister? **[Seconded]** Does any Member wish to speak on the Bill in Third Reading? I put the Bill. Those Members in favour of adopting it kindly show? Those against? The Bill is adopted in Third Reading.

4. Draft Goods and Services Tax (International Services Entities) (Jersey) Regulations 200- (P.10/2008)

The Bailiff:
I come next to the Draft Goods and Services Tax (International Services Entities) (Jersey) Regulations 200- and I ask the Greffier to read the preamble.

The Deputy Greffier of the States:
The Draft Goods and Services Tax (International Services Entities) (Jersey) Regulations 200-: the States, in pursuance of Articles 56, 57, 59, 60 and 100 of the Goods and Services Tax (Jersey) Law 2007 have made the following Regulations.

4.1 Senator T.A. Le Sueur (The Minister for Treasury and Resources):
I said in my remarks to the previous proposition that I have already explained the rationale behind both these projets and I am not going to repeat myself. Having now amended the primary law, it is necessary to make certain regulations under that law and this sets out in some detail those regulations. They are concerned primarily with the charging of fees to I.S.E.s who opt for this flat-rate treatment. I remind Members that they are not obliged to opt for this treatment and if they do not, they will be treated as an ordinary, registered G.S.T. taxpayer, just like anyone else. The regulations also deal with the treatment of purchases of goods supplied to I.S.E.s by retailers having a value of a small amount of less than £1,000, which give the I.S.E., if it is so inclined, the right to recover the G.S.T. element that might be recoverable. I do not know that businesses will necessarily want to apply that right, but it is certainly there for them to do so. It makes life a lot easier for retailers who might otherwise be faced with I.S.E.s coming along waving an end-user's

certificate at them. Again, I express my thanks to the Scrutiny Panel for their assistance in the way that these regulations have been framed, and I propose the principles of the regulations.

The Bailiff:
Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles of the regulations? I put the principles. Those Members in favour of adopting them kindly show? Those against? They are adopted. Deputy Ryan, do you wish to scrutinise the Regulations?

Deputy P.J.D Ryan (Chairman, Corporate Affairs Scrutiny Panel):
No, thank you, Sir.

The Bailiff:
Minister, you propose the Regulations *en bloc*?

4.2 Senator T.A. Le Sueur:
Again, I propose the regulations *en bloc*. Regulation 1 talks about definitions. Regulation 2 deals with the ability to apply treatment *de minimis* of less than £1,000 on purchases. Regulation 3 provides the basis in which the fee is charged both in the first year and in subsequent years. I remind Members of 2008, the fee will be payable as if it were for a whole year, so we get a full 12 months' worth. Regulation 4 would allow for additional types of business within the category of I.S.E.s. Regulation 5 deals with a procedure should an I.S.E. wish to recover G.S.T. on its *de minimis*-type purchases. Regulation 6 is the clause relating to citation and commencement and provides that the regulations will come into force at the same time as the amendments to the law, which we have just passed. I propose Regulations 1 to 6.

The Bailiff:
Regulations 1 to 6 as amended by the Minister are proposed, and seconded? **[Seconded]** Does any Member wish to speak on the Regulations? I put the Regulations as amended. Those Members in favour of adopting them kindly show? Those against? They are adopted. Do you move the regulations in Third Reading, Minister?

4.3 Senator T.A. Le Sueur:
I do, Sir. I should like to make a rather long speech in Third Reading, simply in order to hope that by then an Acte Operatoire might be on Members' desks to bring the Law into force. I do not see it yet, but if I keep talking long enough I might do. **[Laughter]** Meanwhile, Sir, while that is being handed around to Members, having expressed my thanks to the Scrutiny Panel for their input into these last few Regulations, can I also thank the Law Draftsman. This has been quite torturous to get the Law into an understandable, simplified form, and the Law Draftsman has reacted willingly and quickly to all the additional things we had to throw at him. I would like to appreciate my thanks for all the help that he has given in order to achieve this. I would also, of course, like to thank my officers at the department and members of Jersey Finance Limited who have assisted both me and the Panel in bringing these into force. I will firstly propose the Law in Third Reading.

The Bailiff:
The Regulations are proposed in Third Reading, and seconded? **[Seconded]** Does any Member wish to speak on the Regulations in Third Reading? I put the Regulations in Third Reading. Those Members in favour of adopting them kindly show? Those against? The Regulations are adopted in Third Reading. I hope all Members will now have in front of them the copy of a Draft Act declaring that the Goods and Services Tax (Amendment) (Jersey) Law 200- shall have immediate effect. The Minister is entitled to propose this Act without notice, pursuant to Standing Order 80(a). I invite the Greffier to read the long title of the Draft Act.

The Deputy Greffier of the States:

Act declaring that the Goods and Services Tax (Amendment) (Jersey) Law shall have immediate effect. The States, in pursuance of Article 19 of the Public Finance (Jersey) Law 2005, have made the following Act.

4.4 Senator T.A. Le Sueur:
I think it is now understood procedure that taxation legislation is given immediate effect. This Act enables that to happen and I propose the Act.

The Bailiff:
The Draft Act is proposed, and seconded? **[Seconded]** Does any Member wish to speak on the Draft Acte Operatoire? I put the Draft…

Deputy P.V.F. Le Claire:
I ask for the appel, please, Sir.

The Bailiff:
I ask any Member in the precinct who wishes to vote on the Acte Operatoire to return to his or her seat. I ask the Greffier to open the voting, which is for or against the Acte Operatoire.

POUR: 32		**CONTRE: 4**		**ABSTAIN:**
Senator L. Norman		Senator B.E. Shenton		
Senator W. Kinnard		Deputy G.C.L. Baudains (C)		
Senator T.A. Le Sueur		Deputy J.A. Martin (H)		
Senator P.F. Routier		Deputy P.V.F. Le Claire (H)		
Senator M.E. Vibert				
Senator P.F.C. Ozouf				
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy C.J. Scott Warren (S)				
Deputy G.P. Southern (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

5. Draft Public Elections (Amendment No. 2) (Jersey) Law 200- (Appointed Day) Act 200- (P.12/2008)

The Bailiff:

We come to the Draft Public Elections (Amendment No. 2) (Jersey) Law 200- (Appointed Day) Act 200- and I ask the Greffier to read the long title.

The Deputy Greffier of the States:

Draft Public Elections (Amendment No. 2) (Jersey) Law 200- (Appointed Day) Act 200-: the States, in pursuance of Article 2 of the Public Elections (Amendment No. 2) (Jersey) Law 2008, have made the following Act.

5.1 Connétable D.F. Gray of St. Clement (Chairman, Privileges and Procedures Committee):

This, and the next projet, is the culmination of a process that started last summer with a proposition from the Deputy of Grouville in order to reduce the voting age from 18 to 16. This merely puts it into effect on 1st April. I move the proposition.

The Bailiff:

The proposition is proposed, and is it seconded? **[Seconded]** Does any Member wish to speak on the Draft Act? I put the Act. Those Members in favour of adopting it kindly show? Those against? The proposition is adopted.

6. Draft Public Elections (Amendment No. 2) (Jersey) Regulations 200- (P.13/2008)

The Bailiff:

Next, the Draft Public Elections (Amendment No. 2) (Jersey) Regulations 200-. I ask the Greffier to read the preamble.

The Deputy Greffier of the States:

Draft Public Elections (Amendment No. 2) (Jersey) Regulations 200-: the States, in pursuance of Article 7 and 72 of the Public Elections (Jersey) Law 2002, have made the following Regulations.

6.1. The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):

This is the final and second part. Really, it is to alter the form, amend the form, so that a person over 16 can be added to the register. I move the proposition.

The Bailiff:

The preamble is proposed, and seconded? **[Seconded]** Does any Member wish to speak on the preamble to the regulations?

6.1.1 Deputy G.P. Southern

This is the appropriate moment to ask what measure does P.P.C. have in place to try and ensure that under-18s do register from 1st April?

6.1.2 The Connétable of St. Clement:

It is the intention of the Parishes to draw attention to people of that age. Also, we hope that the media will take their part in promulgating this change in order that everybody eligible can register to vote this year.

The Bailiff:

I put the preamble to the regulations. Those Members in favour of adopting it kindly show? Those against? The preamble is adopted. Do you move the 2 regulations, President? They are seconded?

[Seconded] Does any Member wish to speak on either of the regulations? I put the regulations. Those Members in favour of adopting them kindly show? Those against? They are adopted in the second reading. Do you move the regulations in third reading? Seconded? **[Seconded]** Does any Member wish to speak on the regulations in third reading? I put the regulations. Those Members in favour of adopting them in third reading kindly show? Those against? They are adopted in third reading.

7. Draft Price Indicators (Jersey) Regulations 200- (P.14/2008)

The Bailiff:

We come next to the Draft Price Indicators (Jersey) Regulations 200- in the name of the Minister for Economic Development. I ask the Greffier to read the preamble.

The Deputy Greffier of the States:

Draft Price Indicators (Jersey) Regulations 200-: the States, in pursuance of Article 2 of the Price and Charge Indicators (Jersey) Law 2008, have made the following Regulations.

7.1 Senator P.F.C. Ozouf (The Minister for Economic Development):

Members will recall that following the introduction, and this Assembly's approval of the introduction, of G.S.T., the Assembly had to consider very carefully how consumers would be protected from potentially misleading pricing indicators following the introduction of the new tax. Members will recall the debate and the approval of the Assembly of the Price and Charge Indicators Law on 7th November 2007. The law received almost unanimous approval by Members. The law enabled the States to then go on to make regulations requiring the price of goods or charge of services to be indicated… enabled the States to make regulations of how the States would require the price of goods or charges would be indicated when they were offered for sale. I am pleased to say that the original law was supported and scrutinised by the Scrutiny Panel and they certainly assisted in the passage of the law through the States. We are now dealing with the regulations that sit below the original law. I should say that the law deals not only with the way of indicating of tax but also the issue of unit pricing. That part of the law will be dealt with later. We have given no commitment to introduce unit pricing at any time soon. It will be certainly something that will be given consideration within the next 18 months to 2 years. We will be eventually bringing Jersey's price marking in terms of unit pricing up to date with other jurisdictions. This deals with simply the issue of G.S.T. The overriding principle is to give uniformity and certainty in the way that retailers must indicate prices following the introduction of G.S.T. The default position has been that all prices after the introduction of G.S.T. should be inclusive and should be unambiguous, easily identifiable and clearly legible. Any exception to this default position needs to have compelling arguments in favour of it. Sir, these provisions are intended to put in place a consumer protection regime which supports that fundamental principle of what you see is what you pay. Members will have no doubt read in the *J.E.P. (Jersey Evening Post)* recently Chamber's opinion of the Minister for Economic Development continuing in office and it has to be said that I, as Minister for Economic Development, have had my moments with Chamber. I have to say that the issue of price marking has been difficult. They opposed it originally. They argued against price indicating but since the issue of price marking was accepted by the States, they have engaged, I have to say, in a very responsible way to find a way of bringing the regulations into force respecting that default position. I have had to consider, following the passing of the law, whether or not any exemptions should be considered. I do have to listen and this Assembly does need to listen to the concerns of business. I have met with the Chamber of Commerce and other business representatives from retailers and I have heard particularly the problems that retailers could face with the small percentage of goods, particularly pre-priced goods and such things as newspapers, et cetera. These goods notably are all goods that are imported in the Island that have, in the United Kingdom, a regime of zero rating. That is different from many other prices which already have inclusive pricing and it is the issue of goods imported into the

Island that has zero rating whereas they will not be zero-rated in Jersey, which is particularly relevant to the debate today. I have been extremely difficult to convince that exemptions should be made but I have been convinced of a number of exemptions that need to be considered. I believe that if we did not make certain exemptions it would be detrimental to business and ultimately potentially, because of the practical issues facing retailers of the sheer volume of numbers of goods we are dealing with in, for example, food and newspapers, that it could result in a reduction of consumer choice because retailers may well be in a position of not even being able to practically put those goods on the shelves. Now, we are going to hear an amendment from Senator Norman arguing against those exemptions so I will not particularly go into any detail there. All I want Members to know is that the default position of inclusive pricing remains. We have been extremely difficult in being persuaded that there should be any exemptions. In other words, the bar for getting over any exemptions has been extremely high. I do not enjoy an easy relationship with Chamber but, on this occasion, I have to say I have been persuaded on the arguments. There is a further amendment that is put forward. I will not go into detail of it. It is basically simply to clarify the definition of what catch-weight products are. Catch-weight products, if Members are not aware, are effectively pre-priced pre-packed variable weight products such as blocks of cheese which are wrapped and have a different variable weight and therefore a different price or, for example, poultry products or meat products such as pieces of steak or chickens that will have variable weights and therefore different prices. They are also, in the vast majority of cases, not goods that can simply lie around in a warehouse for a considerable period of time. They need to be moved in the fast-moving world from effectively container lorries straight on to shelves. That is what effectively a catch-weight product is and that is what this debate is going to be about and this is what the regulations are dealing with. As I said, my default position remains on inclusive pricing. These regulations attempt to strike a balance. They give an appropriate level of consumer protection to ensure that confident consumers can act in their purchasing and they address the real practical concerns of business. Sir, I move the preamble.

The Bailiff:
The preamble is proposed and seconded? **[Seconded]** Does any Member wish to speak on the preamble or principles of the Regulations?

7.1.1 Deputy J.B. Fox:
As a retired grocer many years ago **[Laughter]** among other things, I have been through all this before in the original areas. Yes, there is fast-moving traffic but I do not understand and I would ask the Minister if he could explain why we have not been through this process before it has come up today because this is nothing new. Of course, Jersey is a bit peculiar or a bit of a quirk anyway because the price of newspapers is a bit dearer than that marked on the newspapers in the U.K. and some categories of catch-weight, pre-food prices will have the U.K. printed price, but there is one store in Jersey which I understand charges 5 per cent more and if you add the 3 per cent G.S.T. on, that makes 8 per cent. Perhaps if the Minister could explain to us what sort of default position is then retained so that the customer in the shop knows exactly what price a product is going to be and how they are going to differentiate between one set of markings and another when the original concept before the amendment was that everything in the shop was going to be marked prior to going to the till which, of course, was nice and simplistic and straightforward. As I say, I have been through this process before many years ago, about 40 years ago, and it is not an easy one to deal with but I would like to have those answers before I consider anything further.

7.1.2 Deputy J.A. Martin:
It is a question. It is on page 6 of the example given by the Minister and it may be my non-understanding of G.S.T. and the pricing. We are talking about food at a base price of £5 per pack. Then the third paragraph in the example says: "The trader is registered for G.S.T. and therefore must charge G.S.T. on its sale calculated on the base price, making the selling price £5.15." I do

not want to re-rehearse the argument of the default position of having inclusive pricing but I thought we were all told that under inclusive pricing, if something was imported from wherever and it was a price, many retailers might forego the G.S.T. and remain on the price marked. I was on the Scrutiny Panel with the price marking and this is how I understood it. When we asked the G.S.T. man - I will not name him, we all know who we are talking about, a very nice man and very helpful - he basically said to our Panel: "Well, as long as I get my 3 per cent, it will be on the turnover and if they want to pass the 3 per cent on some items and none on other items I am really not worried." So I just want to really ask the Minister is he clearly explaining this or am I missing something because the words "if you are registered for and therefore must charge G.S.T." I think is misleading. I may be wrong, I would just like the answer, please, Sir.

7.1.3 Deputy C.J. Scott Warren:
These regulations, Sir, endorse my long-held opinion that food and books should have been exempted. Now, I was, I must confess, unaware of the higher price marking on certain newspapers that Deputy Fox has mentioned and I would like to know if he could elaborate on that because I was unaware of that. Sir, I still believe firmly that paying an additional amount on your daily copy of the *Sun*, the *Mail* or the *Times* will annoy tourists who expect this when they are on holiday in Benidorm but not when they are on holiday in Jersey.

7.1.4 The Deputy of St. Ouen:
Yes, I would just like to follow the point that was made earlier regarding the reasons for increase of pricing and the fact that, as I say, with some of these pre-priced goods from the U.K., it would encourage retailers to keep down our price increases, and that was part of the argument to not going for charging at the till which is still, I believe, the public's genuine desire. Rather than speaking about default positions, could also the Minister, clearly and in plain English, confirm whether the consumer is now going to be faced with the situation where they will be seeing inclusive pricing on certain items and a percentage charged at the till for others because if that is the case, I firmly believe that the aim for uniformity and certainty is completely and utterly lost.

7.1.5 Deputy G.C.L. Baudains:
There are 2 words that spring to mind immediately and that is "complication" and "shambles". Sir, here we have yet more changes proposed, more complication. I am not quite sure how the public are going to handle this. It seems to be adding more confusion. We recently debated amendments and amendments to amendments. I do not believe this tax is looking like good government to me, Sir, and it does also appear to me that Deputy Ryan's evening classes are going to be somewhat oversubscribed. It is going to take some talking by the Minister to persuade me that this is a good idea.

7.1.6 Deputy G.P. Southern:
I will not go as far as the good Deputy of St. Clement, Deputy Baudains, and use the word "shambles". That is his own inimitable style. However, what I do see here is what I call compound error building up. The fact is that we are having to make exemptions because we did not do what I believed was the common sense solution. Since we import 95 per cent of the things in our shops from the U.K. we did not make the simple step of adopting the U.K. system, and we would not have had this with pre-priced food in whatever form that is coming through. As the Minister for Economic Development correctly said in his introduction, inclusive pricing was supported by the Economic Affairs Scrutiny Panel. It did not believe the arguments for pricing on the till, exclusive pricing, and it did so on 2 grounds, which were basically consumer rights which was the right of the consumer to see clearly the price that we pay for goods and secondly, the right to know how much tax is being paid. Now, Members will see lodged on the table today we are bringing a measure to ensure that second right later on in the year. On the first one, we were absolutely supportive that consumers have to know what price they are paying. What we have got here, it seems, is a

compounding of error in that we will not have a clear situation in shops. We will have some goods inclusive, perhaps the majority, inclusive pricing and others exclusively priced with a little label on the side saying you are going to be paying 3 per cent at the till on these goods. It does not matter that that label is big and clear. We will have a dual pricing system, dual taxing system, in operation. This can only lead to confusion and is not an efficient way of doing business. I am afraid this is just error on error and we have got a bodge here that is going to satisfy nobody and it certainly, at the moment, does not satisfy me that this is the correct way forward. I believe the Minister should have stood out and insisted on his, I believe, totally supportable and justifiable inclusive pricing and that retailers would have had to adapt to that system. Now, whether that means that food which is pre-priced comes through and the retailer takes a hit on it and adjusts his prices elsewhere in order to compensate, in the case of food, that seems to me a way forward. I do not know if it is correct but I think the Minister should have held to his guns. On other items again, are we talking about toys which come pre-priced? I believe they do.

Senator P.F.C. Ozouf:
I probably should have not gone into the detail of the regulations because we need to go on to deal with this but we will go on to explore the detail of the amendment and the regulations. It is only for food, pre-priced food, catch-weight food that we are dealing with. Those are the only exemptions we are talking about or we will go on to talk about in the regulations, Sir.

Deputy G.P. Southern:
Right, we are only dealing with food in this particular case in which case we do import more than just food and I believe often pre-priced in certain companies from the U.K. It seems to me that they are pre-priced to the U.K. systems, that they already contain 17.5 per cent V.A.T. perhaps. We have got a partial answer to a partial problem. It seems to me we are into the land of Billy Bodge-it here. I do not think I can support these measures. I do not think they hold up.

7.1.7 Senator L. Norman:
Just very briefly, Deputy Southern and the Deputy of St. Ouen are absolutely right. There is a problem here. I have recognised that problem and that is why I have brought the amendments because my amendments, when we come to the articles, if they are adopted will remove this duality of pricing mechanisms by removing the ability of the retailer to say on certain items he can add a certain percentage to the price that is marked. It is quite clear we have agreed with the Price Indicators Law that we should have inclusive pricing and that should be on all items, and that we can deal with when we come to the regulations and my amendment which will simplify the whole thing, I believe. There is one question I wanted to ask the Minister, and Deputy Southern alluded to it. There are food items, which come down pre-priced. I have seen ice-creams, I have seen cakes, I have seen biscuits, and they come down pre-priced inclusive of value added tax. Therefore they should be reduced in price when they are on the shelves here. What is the Minister planning to do about those particular items which have one price for the U.K. which should be a lower price in Jersey and the Channel Islands?

7.1.8 Senator T.A. Le Sueur:
Senator Norman is correct that really the time for this debate is when we come to debate regulation 3 but I think on a more general issue of this question of pricing, particularly in food items, I am concerned about the States situation regarding inflation and the consumer. What I see here as a real danger is in reducing consumer choice because I suspect that if there are certain activities in retailing which are not open to retailers, that will limit the choice to the consumer. When we limit the choice to the consumer, we tend to have price rises and therefore greater risk of inflation. I think there are good reasons why even though exceptions to the overall principle of inclusive pricing are not to be generally welcomed, we do, I think, have to balance out the needs of the consumer and the needs of the inflationary policy of the Island and the economy of the Island. In

that respect, I think that when we come to discuss that regulation, Sir, we need to bear that in mind. Certainly from the point of view of agreeing the principle, clearly the principle of this has to be established first.

The Bailiff:
I call upon the Minister to reply.

7.1.9 Senator P.F.C. Ozouf:
I am grateful for all Members' contributions. I should probably say that irrespective of Members' views on the issue that we are going to go on to talk about, and that is the exemptions, Members do need to give us the opportunity of going on to it to require all price indicators to be marked because without these regulations, unamended or amended, we have no ability to bring in what the States was asking, which is a regime of inclusive pricing. So Members can vote in favour of the preamble and still reserve their position in respect to Senator Norman's proposition. If they are not persuaded by the arguments of giving an exemption to the default position then what Members can do is vote in favour of Senator Norman's amendments. I will be arguing why that should be the case or that should not be the case but Members do need to, if I may say, agree the principle of the Bill in order for us to go on to then deal with whether or not we are going to allow any exemptions. If we throw the Bill out at this stage, we have got no inclusive pricing regime at all, which is what we want. I hope that is clear to Members. I am looking at Deputy Southern. I am not sure whether he understands the point I am making. I will give way if he wishes.

Deputy G.P. Southern:
Yes, Sir. If we consider that Senator Norman's amendment is an even worse situation, of course, then we would have to vote against the principle of this Bill anyway.

Senator P.F.C. Ozouf:
What I would say to Deputy Southern and to Members, with respect, is the fact is that without regulations we have no price marking at all so we cannot bring into force anything to do with inclusive pricing follow to G.S.T. and therefore we will have no regime in place whatsoever to deal with inclusive pricing. If Members are not persuaded by the arguments for food and newspapers, then they must vote in favour of Senator Norman's proposition because then the proposition will be put to the Assembly as amended, but which will have no carve out and we will end up with the default position covering all goods and setting out the requirements of price marking. I hope that is clear to Members. They must vote in favour of it otherwise we will have no regime whatsoever. Just dealing with the comments of individual Members; Deputy Fox asked, quite rightly, why we were in this position today and he is absolutely right to say that it is quite late on in the day that we are dealing with this whole issue of inclusive pricing. However, because the uncertainty was prevailing on the issue of zero rating and exclusions we could not make any decisions concerning price marking until the issue of… and Deputy Scott Warren makes the point and other Members made the point that we would not perhaps need to have any exceptions for price marking if we had agreed for exclusions of food and newspapers. Now, the Assembly made the decision about making zero rating in food not exempt and so it follows that we have had to put in place measures, and I was able to bring forward arrangements for that. Without an agreement on the implementation of G.S.T., it has been impossible to deal with the issue of inclusive. I would also remind Members that it was only very recently or relatively recently that we made the overall decision about G.S.T. The final decision… there was a petition and there was a debate about whether or not G.S.T. was going to be brought in and it was only when we had the certainty that G.S.T. was going to be brought in that I could deal with the knotty problem of how prices were to be marked. I will also say that it was originally conceived - I did not particularly like this position - but there was a view that at the time there should be a free for all for a period of months. That, also with the support of Scrutiny, was done away with as Senator Norman brought a proposition

requiring the issue of price marking to be dealt with so that is why we are dealing with this issue. It is important for us to make a decision. G.S.T. is coming in either on 1st May or 6th May, I am pleased to hear, this year so we have got to deal with it now. It is the second week of March. We now need to give retailers certainty in order to deal with their computer programs, et cetera. That is why I hope Deputy Fox will understand that while it is late on in the day, we were faced with this position and had no alternative. Deputy Martin raised, quite rightly, and I think that I do have a fundamental agreement with her, we are as one on the issue of the default position being inclusive price. What I will say to her as we go on to debate the detail of the regulations is there is, I am afraid, a difference between those goods that are sold in Jersey that are inclusive of U.K. V.A.T. and those that are not and that that is effectively the difference. The only areas that I have been persuaded on yielding anything on price marking are those goods which do not attract U.K. V.A.T. If Members will think about it, effectively requiring a retailer to retail a good that does not attract U.K. V.A.T., to require it to be retailed at exactly the same price in Jersey, I think we all know that there is an additional cost of doing business in Jersey. There is the problem of freight costs. They are not prices quite as large as some people would wish us to believe them and certainly the costs of business in Jersey are not as high as some people would lead us to believe. However, there is an additional cost and therefore if we are accepting - and I think Members will know that the supermarket industry, the consumer goods retail industry in the U.K. is very competitive - if we are requiring, effectively forcing businesses to charge the same prices in Jersey as they are in the U.K. and they are not able to take the margin of V.A.T., which some goods in Jersey do have, then that is an unacceptable position to be in. I have got, like Deputy Martin, no sympathy with those and, indeed, I work and try and help consumer groups such as the Consumer Council and the Fair Play pages of the *Jersey Evening Post* in trying to bring consumer awareness of those companies that charge U.K. V.A.T. prices in Jersey. That, we are all agreed on, is an unacceptable situation but that is not the issue that these regulations are going to go on to talk about. We are dealing here principally or, in fact, exclusively with goods that do not attract U.K. V.A.T. and that really is the fundamental difference why I am persuaded on the exemptions. I hope that the remarks I have just made answer the Deputy of St. Ouen's questions. They are only going to be a very small number of exemptions that are going to be proposed. I am afraid that Deputy Baudains, I do not think, has ever been a fan of G.S.T., if I may say. He, I think, has voted consistently and one respects that. It is a situation he has voted consistently against G.S.T. I understand his comments that this is a complication. However, I would say that the complication that we are going to be discussing in terms of price marking for a limited number of goods is less than the complication of having a complex G.S.T. arrangement which would be a dual rate of zero or 3 per cent. There are unintended consequences of that which we are dealing with today but it is the lesser of 2 evils, if I may say. As for Senator Norman, we are going to again go on, I am sure, to fundamentally agree that there should be the default position of inclusive pricing and I think that I would say to him that it is competition and it is the market that is going to be the best regulator of price. What I do not think this Assembly can do is require effectively, because the practicalities of requiring retailers to re-price every single item of variable weight product in the food line - and it is only the food line and newspapers and books that we are talking about - is simply impractical. It is just simply not going to be possible. If Members can visualise a container load of variable price products of steaks, of poultry products, of cheese which are different weights, it is simply impossible, I would argue, for every single item to be re-priced having regard to the G.S.T. and that is the reason why we are asking for these exemptions and going on to do it. So I have probably gone into too much of the debate of the actual fundamental of the issue of the regulations. All we are asking at this stage is to accept the principle that the regulations must be passed prescribing price marking and going on to consider whether or not any exemptions should be made. Sir, I move the preamble and ask for the appel.

The Deputy of St. Ouen:

I did ask one question which I do not think has been answered by the Minister and that is to clarify that, indeed, certain items are going to be charged on the price indicated on the shelf and certain items are now going to be charged at a 3 per cent addition at the till.

Senator P.F.C. Ozouf:
I did not do justice to the Deputy's question. He is absolutely right. There are 3 options really in pricing. At the extreme lower end, no regime at all, complete uncertainty as far as the consumer is concerned, you only find out what the price is at the till. Unacceptable position. The next best situation is to know what the price of the good is by reference to a shelf indicator, a clear sign. That is the next best position. The best position is knowing on an individual item exactly what the price is that you are going to pay on the individual item. Now, that is the default position, that every single item should be clearly identified with its price that you will effectively pay for at the till, and what we are doing is we are really debating whether or not any goods should fall into that middle category of having an override of the unit price that is on the individual lines and indicating it on the shelf. I agree with the Deputy. I will not shift anywhere in moving to that third effectively free for all situation that you only find out at the till and I would respectfully say, and I saw Deputy Ferguson nodding in agreement with the Deputy of St. Ouen when she believes that effectively we should not be having inclusive pricing at all. I would respectfully remind the Deputy of St. Ouen that V.A.T. - which effectively G.S.T. in Jersey is - everywhere in the world has brought in, in conjunction with the inclusive exclusive V.A.T. model, a system of certainty of pricing and it is only the United States that has the tax added at the till but that is not V.A.T. It is not the system of input/output taxes. It is a different form of tax and so therefore I would…

The Bailiff:
I think he wants to question you.

Deputy J.B. Fox:
Sorry, Sir, can I just…

The Bailiff:
Not if we are going to get into a debate on matters…

Deputy J.B. Fox:
Well, he has not answered my question, Sir, which was on the case of newspapers that were already charged 1p more and also one store charging 5p more. If you are going to take away the tax that is added at 3 per cent, how is the marking going to be done on those cases which are above and beyond that which is marked on the product?

Senator P.F.C. Ozouf:
Sorry to Deputy Fox that I have not answered that. Again, we are going to deal with this in the detail of the Regulations. We are just dealing with the principle here but he probably is recalling a situation where there was a Jersey supplement to newspapers that used to be applied. I cannot remember exactly what it was. I think it was 5p per newspaper or something supplement that was applied, a 1p supplement. That is not the position at the moment but if I may say to Deputy Fox, we are going to go on to deal with the issue of newspapers later on.

The Bailiff:
Very well. I invite any Members in the precinct who wish to vote to return to their seats. I ask the Greffier to open the voting which is for or against the principles of the Regulations.

POUR: 33		**CONTRE: 6**		**ABSTAIN: 0**
Senator L. Norman		Deputy G.C.L. Baudains (C)		
Senator W. Kinnard		Deputy C.J. Scott Warren (S)		

Senator T.A. Le Sueur		Deputy J.A. Martin (H)		
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator M.E. Vibert		Deputy S.C. Ferguson (B)		
Senator P.F.C. Ozouf		Deputy of St. Ouen		
Senator B.E. Shenton				
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy P.J.D. Ryan (H)				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Bailiff:
Now, the matter of technicality. Perhaps I can just draw Members' attention to the first of the Minister's amendments to the recital of the Regulations. I rule that this does not require a debate because the Price and Charge Indicators (Jersey) Law 200- has, in fact, by operation of law, now become the 2008 Law and that any debate on that would be otiose, but Members will perhaps note that the 200- in the recital has become 2008 and I accordingly invite the Minister to move Regulation 1 unless you would like to move Regulations 1 and 2.

7.2 Senator P.F.C. Ozouf:
Yes, Regulation 1 deals with simply the interpretation provision. I think it is self-explanatory, Sir.

The Bailiff:
Regulation 1 is proposed and seconded? **[Seconded]** Does any Member wish to speak? I put Regulation 1. Those Members in favour of adopting it, kindly show? Those against? It is adopted. I invite the Minister to move Regulation 2.

7.3 Senator P.F.C. Ozouf:
This is the principle of where the debate is going to happen. This is the Regulation that allows any exemptions to be made and exceptions to be made to the default position so I move Regulation 2.

The Bailiff:

Regulation 2 is proposed and seconded? **[Seconded]** I beg your pardon, Deputy Southern, I omitted to ask you whether you wish to scrutinise these Regulations having approved the principles.

Deputy G.P. Southern (Chairman, Economic Affairs Scrutiny Panel):
No, thank you, Sir. We have made our comment.

The Bailiff:
Regulation 2 is proposed and seconded? **[Seconded]** Does any Member wish to speak? I put Regulation 2. Those Members in favour of adopting it, kindly show? Those against? It is adopted. Do you move Regulation 3, Minister?

7.4 Senator P.F.C. Ozouf:
I was moving ahead of myself there, Sir. Regulation 3 is the substance of where we are going to be debating whether or not there should be any exemptions, any exceptions to the default position so I move Regulation 3.

The Bailiff:
Regulation is proposed and seconded? **[Seconded]** Now, there are amendments in the name of Senator Norman and I invite the Greffier to read the amendments.

The Deputy Greffier of the States:
Page 11 Regulation 3. (1) In paragraph 4(b)(ii) delete the words "or of the percentage of the price marked on the package." (2) In paragraph 5(b)(ii), delete the words "or of the percentage of the price so printed."

7.5 Senator L. Norman:
I wonder if it would be in order if I could talk to both amendments because the arguments for them are precisely the same for pre-packed food and for the newspapers, books and periodicals.

The Bailiff:
Yes, indeed, I was taking the view that your next amendment was really consequential that the States adopt this one but…

Senator L. Norman:
Well, they could do it for one and not the other but the arguments are more or less the same, Sir.

The Bailiff:
Well, in the interests of good order, then, I wonder if I could perhaps invite the Minister whether he proposes Regulation 4 as well.

Senator P.F.C. Ozouf:
Very happily, Sir, as amended.

The Bailiff:
Yes, as amended by the Minister. Regulations 3 and 4 are proposed and I can now invite Senator Norman to speak to both his amendments.

Senator L. Norman:
As the Minister said, he and I are absolutely at one on what we are trying to achieve here. That is clear, unambiguous, uniform, consistent price marking on goods that are offered for sale in shops in Jersey. The only way in which the Minister and I differ is that as Minister for Economic Development, he is quite understandably biased towards the interests of business, in this case,

retailers, while I, and I hope the majority of States Members, are biased towards the interests of the consumer. Sir, in his comments, the Minister says that the retailer has 3 options on how he indicates the selling price of the exempted items and that is all we are talking about here, the exempted items; newspapers, books, periodicals, pre-priced food, 3 options. I say, Sir, the Minister is wrong. The retailer, under the Minister's proposition for regulations as drafted, has 5 options on how to display the prices on these exempted items. Firstly, he can leave the items as marked. Nothing to stop the retailer selling the newspaper that comes in at 45p, the chicken that comes in at £5 for the item price on the goods he is offering for sale, in other words effectively absorbing the G.S.T. He could, if he wished, place a new label over the one already on the product or on the newspaper or on the book. He can do that, that is true. He can place a sign showing the new selling price of the goods in question alongside the goods as long as it is clear and unambiguous. He could have a list of newspaper titles with the new selling price, price of cheese or whatever. He can place a sign showing the amount in cash terms that will be added to the marked price of the exempted items. In other words, he could put a sign saying *Daily Telegraph* 2p will be added, *Jersey Evening Post*, 1p will be added, *Daily Mirror* and so on, so he can do that. Or under the Minister's proposals, he can place a sign showing a percentage that will be added to those exempted items which he is offering for sale. Of course, one of the problems with those 5 options is that the retailer does not have to choose one of them for all the exempted items. He could choose one system for books, another system for newspapers, another system for chickens, another system for steak, which is why I was very keen that we should have the Price Indicator Law in effect before G.S.T. because if that happened on everything, you can imagine the confusion that will arise, and what confusion is going to arise on these items if my amendment is not adopted. What my amendment does is to remove one of these options, the one giving the retailer the ability to indicate that a percentage will be added to the marked price of an exempted product at the till. Sir, I am not opposing exemptions. I am not opposing the various options that the retailer has, just this one option of being able to show that he is adding a particular percentage. Nothing wrong with percentages, of course, by themselves, but in this context, everything is wrong with them. Firstly, as I say in my report, we do not pay for our shopping in percentages. We pay in cash. We pay in pounds and pence. Therefore it follows if our joint ambition is to have clear, unambiguous and consistent price marking, goods offered for sale must be marked in currency of the realm, in pounds and pence and not in percentages. Also it cannot have escaped our notice that the Minister's proposal does not say what percentage is to be added. We might all assume that it is going to be 3 per cent, or whatever the rate of G.S.T. is at any given time, but the regulations do not specify that. They simply say the percentage of the price marked on the packaging or in the case of newspapers, periodicals or books, the percentage of the price so printed. This gives a retailer absolute *carte blanche* by law to add any percentage that he wishes or to show that he is going to add any percentage he wishes, any percentage he can get away with. That is not in the spirit of the primary law and neither is it fair to the consumer. Sir, the Economic Affairs Scrutiny Panel did produce some comments. I am surprised at the Scrutiny Panel producing comments, their reports are normally evidence-based; they did not bother to talk to me about it. But they talk about my amendment brings variations to the rate of G.S.T. charged. What a bizarre statement. The rate of G.S.T. is 3 per cent whatever price the retailer charges for a particular item. If you have a pre-priced item, a newspaper, 45p, a retailer has every right, if he so wishes, to charge 10p for it. He also has a right, if he wishes, to charge £1 for it though the rate of G.S.T. will not change. It will be 3 per cent of the base price of the article. If he charges £1 for it, clearly the base price is something like 94p or 95p, whatever it is, but my proposition does not affect the rate of G.S.T. and neither does my amendment fix the G.S.T. cost per *J.E.P.* at either 1p or 2p. The rate of G.S.T. remains at 3 per cent and the price the retailer charges, only the retailer decides what that price is going to be. Sir, I submit that the regulations as drafted are, in fact, unworkable. Article 4 requires, quite rightly, that the percentage shown to be added must be unambiguous and easily identifiable. I submit, Sir, that this is impossible as I have tried to show in my report. We have spoken about a 45p newspaper, currently 45p. Now, to add 3 per cent to that, you come to 1.35p. Clearly that is

impossible because we do not have a 0.35 coin yet so presumably the retailer would simply add 1p. Now, that means he is not adding 3 per cent to the price, he is adding 2.2 per cent recurring. So on a 45p newspaper, if he is going to do it in percentage terms, he would have to have a sign up saying: "*Jersey Evening Post* 45p plus 2.2 per cent recurring." If it is a 60p newspaper and he wants to add 1p, he would have to show it is 1.66 per cent recurring. It is absolute nonsense. Much easier just to put: "1p will be added to the newspapers" or "2p will be added to the newspapers." That people will understand. They will not understand all these weird and wonderful percentages. Sir, I have spoken to the major retailers and it is absolutely clear and absolutely true they would prefer that my amendments were not approved. They have not said to me that my amendments are unworkable. They have made it quite clear that my amendments will be inconvenient for them absolutely but I suggest that my amendments are not unreasonable in the best interests in the consumer. After all, the retailers will still have 4 options on how to indicate the selling price of these exempted goods. They can still leave the price as the items are marked. They can still put a label over the existing price. They can still put up a sign saying 2p, 3p, 10p, or whatever it is will be added to the marked price of this product, and they can put a sign up alongside the goods saying these will be priced at 50p, 45p or whatever it is instead of the marked price. Whichever one of those options the retailer takes, the consumer will know how much they are going to pay. They will not know that if they are allowed simply to add any percentage, a percentage, any percentage of the retailer's choice at the till. Sir, these amendments are in the interests of the consumer and I commend them and make the proposition, Sir.

The Bailiff:
Are the amendments seconded? **[Seconded]**

Deputy G.W.J. de Faye:
I wonder if I just could also put a question to the Solicitor General perhaps to consider. I did not wish to interrupt the Senator in the flow of his speech but he did raise something that I found a little baffling. At one point, he said he was describing the sale of a 45p newspaper and then referred to, as it were, the good seller and the bad seller, that someone could sell it at a 45p marked up on the paper at 10p or a retailer might sell it at £1. Where my confusion lies, and it is probably a lack of understanding of the proposed law, certainly my understanding of the law in the United Kingdom if an item has a price marked on it, the purchaser is entitled to insist that the product is bought at the price as marked. I do not know what the position is in Jersey but the question I have for the Solicitor General is in essence if someone did sell a 45p marked up newspaper at £1, is the G.S.T. charged on the 45p or on the £1?

The Solicitor General:
The position as to what price someone is entitled to buy at is that if an item is offered for sale at a particular price, then the person who accepts the offer buys it at that price. I took the Senator to mean that a retailer who obtains goods from some other jurisdiction is entitled to sell them at a different price from what is on them but he will just have to change the price marking and the G.S.T. will be on the price that he sells it at.

Deputy C.J. Scott Warren:
Can I ask a question on that, please? I do not know, I thought it was still the situation. I may be wrong but could I just ask, because I believe that a certain well-known brand of shop has for some years brought in food at U.K. prices and added 4 per cent on at the till. Is that still happening and if it is, is that illegal?

The Solicitor General:
Well, it is not illegal in the sense of being criminal. If there is a sign saying that a percentage will be added to the price and somebody chooses to pick something up that is marked £3 in the knowledge that a percentage is going to be added, then that is the price at which they can ask for it,

but if something is offered for sale at £3 and there is no indication that a percentage is going to be added, then the purchaser is entitled to say that there has been an offer and there is an acceptance and we have concluded this contract at the marked price. It is not unlawful in the sense that it is a criminal offence because there are no regulations as to price marking.

The Bailiff:
Deputy de Faye, do you wish to continue the speech which I think you have started?

Deputy G.W.J. de Faye:
I am sorry if I gave the impression it was a speech. It was a question and I reserve my right to speak at a later date. **[Laughter]**

Deputy P.V.F. Le Claire:
I am sorry, I do not wish to speak, Sir, and I beg your…

The Bailiff:
Well, no, I am sorry. I think it is… we cannot put the Solicitor General in the witness stand and simply throw questions at her. You can speak but we must move on and…

Deputy P.V.F. Le Claire:
I was distracted by the telephone going off, Sir, I did not hear the answer. **[Laughter]** I did not hear the answer, Sir, because I was…

The Bailiff:
To the last question?

Deputy P.V.F. Le Claire:
I did not hear the answer to the question, Sir, because I was distracted by the telephone going off and I was only going to ask for clarification. Was the answer that if something is marked, for example, at 10p, then it can be bought at 10… I missed the answer, Sir, because of the telephone. Sorry, Sir.

The Solicitor General:
Yes, as a matter of contract law, if an item is offered for sale at a particular price and the offer is accepted, that is the price at which the buyer is entitled to buy it and what I then said was that I had understood Senator Norman to be suggesting or to be referring to the situation where a retailer imports something which has a price marked on it and then decides that he will sell it either for a greater or a lesser price. He is entitled to do that provided he marks it. For example, one will sometimes see books marked down in a bookshop. They have a marked price on them of £20 and there will be a thing on saying: "Special offer for sale at £10." The retailer has chosen to mark it down but he puts the price on it and then it is the price at which he sells it which is used as the base price for the percentage.

Deputy P.V.C. Le Claire:
Thank you, Solicitor General. Thank you, Sir.

7.5.1 Deputy J.B. Fox:
Overall, we voted last time with Senator Norman because it did provide a surety to the customer and that is very important. The retailer, yes, quite rightly will go for the easiest and most profitable way that they can conform to any new regulations that are put their way and they will obviously try and influence that to the best of their ability to achieve that goal. At the end of the day, as a States, as a Parliament, we have got to look at ways that are the best for the consumer. The consumer needs something that is pretty straightforward. The alternatives that I have seen that are proposed

by the Minister at the moment have all sorts of connotations that I am unhappy about, whereas that which has been produced by this amendment is far simpler and far more straightforward and up-front. The one thing that has not been mentioned, of course, is that our goods are virtually brought in daily now. We do not have warehousing here, we do not have goods that are kept for any considerable period of time and goods in various areas can be marked at different prices, especially by large organisations. Whether it is cheese or whether it is magazines or whatever, it is not that difficult for them to have a different price on it from the source of manufacture or the source of distribution or anything else like that. I shall vote for this amendment. It is in the best interests of the consumer and the other aspects are getting more complicated every time someone comes up with a variation to the theme that will be less and less straightforward to the consumer.

7.5.2 Senator P.F.C. Ozouf:

I am interested to hear that Senator Norman would say that I would be biased in favour of Chamber. Certainly I do not know where he lives or what periodical he reads, et cetera, because I do not quite feel that from where I am standing here normally. Certainly I do have a difficult relationship with Chamber because I tell Chamber that my primary duty is that of Jersey and my overwhelming priority is to deal with consumer affairs, and that is the dominant issue and the reason why perhaps I have such a difficult relationship with Chamber. Perhaps that is why Chamber do not like the competition issues that we are putting in place, the arguments in favour of more competition in the retail sector, *et cetera*. So I have to say to Senator Norman that he is simply not going to get away with me remaining silent on suggesting that this is an amendment which is simply biased in favour of Chamber. I would repeat to Senator Norman, I have been extremely difficult to persuade on the issue of exemptions and if I am persuaded then there has to be a compelling set of reasons. I would remind Senator Norman and Members that the exceptions that he seeks to strike out are very, very limited and they are only in goods which do not attract U.K. V.A.T., and that is the difference. I am not suggesting that retailers should be allowed abilities to charge additional prices and not absorb U.K. V.A.T. prices. I am simply dealing with a situation where there are multiple fresh products and newspapers which are, I would argue, both just in time products, which are numerous in their variety which number literally hundreds of items that come in every day, and those are the exceptions that we are asking to be exempted from the zero position. That is effectively why I have been persuaded. Effectively, there are 2 options. If this amendment was to go through there are 2 options that food retailers dealing with catch-weight products will have. Either they absorb it or they re-price each individual item. Now, because they are not enjoying the U.K. V.A.T. priced products, they do not have an additional margin. A number of Members are looking quizzically at me. I am going to explain this in some detail if Members are not clear because I do not think I am getting through to Members. If there is a good which attracts U.K. V.A.T., for example, a toy or let us say a widget that is attracting U.K. V.A.T., if it retails in the U.K. for a unit price of £2, in the U.K. 17.5 per cent of the pound product is remitted to the Chancellor of the Exchequer. If that good is imported in Jersey, and at the same price, they do not have to remit V.A.T. to the Chancellor of the Exchequer and therefore they are enjoying higher margins than they otherwise would get. If we are dealing with goods which do not attract U.K. V.A.T., such as food and newspapers, they do not have that margin to play with. Now, I do not agree with shops in Jersey charging U.K. V.A.T. prices because I am not persuaded that 17.5 per cent equates to the increased costs of doing business in Jersey. I think it is less than that but it is certainly not zero. Effectively what Senator Norman is suggesting, and what the Economic Affairs Scrutiny Panel is saying, is that retailers can absorb it. Now, I am not sure what the rules are of reading out emails, Sir, and my BlackBerry is off transmission but I received an email from Chamber just before lunch time because they were not aware that the comment of the Economic Affairs Scrutiny Panel had been made, but they do say that the Economic Affairs Scrutiny Panel, and I think Senator Norman is saying in his remarks not in his report, that retailers can absorb the 3 per cent. Now, I am told by Chamber that they have not been approached by either the Economic Affairs Scrutiny Panel or Senator Norman, and I am not sure that anybody can say that retailers can

absorb the 3 per cent. What evidence have they got? I think Members will be aware that, as I said earlier, the U.K. food retailing market… I will give way to Deputy Southern if he wishes.

Deputy G.P. Southern:
In either of the 2 comments, either on his amendment or on Senator Norman's amendment, in neither of them is there a remark, I believe, that the retailers can absorb this. Please do not make statements on my behalf.

Senator P.F.C. Ozouf:
I will draw Members' attention. I have certainly read the comments of the Panel saying that they believe that retailers can absorb - the comment - I am just going to get a copy of them now just to read it, but effectively in voting in favour of or against the amendment of Senator Norman, Members are basically saying if they believe…

Deputy I.J. Gorst:
Perhaps if the Minister would give way, I believe it is in the fifth paragraph down on P.114 comment that we will see that statement, thank you, Minister.

Deputy G.P. Southern:
Yes, we need to complete the full statement which says: "By passing on the costs back to the consumer on other items." They simply transfer where they weigh their…

Senator P.F.C. Ozouf:
Right, Sir, I think this debate is getting a bit… I will not give way again, Sir, but in the interests of... back to the amendment. The amendment is basically asking Members to exempt items on food issues and if Members are going to vote in favour of that then they are basically either saying that they think that the practicalities of re-pricing every single item of food, so every single steak, every single packet of chicken legs, every single block of cheese, every single bag of lettuce, every single other numerous item of food that has a variable weight can be re-priced. Now, I just ask Members to think of the practicalities of that. One Member rightly made the point that warehousing in Jersey for the retail industry now operates in a just-in-time basis. Most of the goods are effectively brought in overnight. They are brought in on the Condor ferries in the morning and they are taken from the early boat straight on to supermarket shelves, and I would remind Members if they are in any doubt of the just-in-time deliveries, to consider the situation just before Christmas when effectively one or 2 cancelled boats effectively ended up with us not having goods on shelves. Let us be in absolutely no doubt at all that we operate in a just-in-time system and what Members are effectively saying, if they vote in favour of Senator Norman's amendment, is either that they believe that you could individually re-price those products, I say to Members impossible; or they are effectively saying to retailers they must absorb that price and there is absolutely no evidence that that is able to be the case. If Members do not have any detailed knowledge of the evidence I am sure that they will know of the competitive issue of the U.K. supermarket sector and indeed they are effectively saying that the prices could be absorbed. Now, what Deputy Southern's comment is saying, and I think it is important that we are absolutely clear what he is saying, is that what the Scrutiny Panel is saying that it is all right to absorb the prices on food and you can basically push it on other items. I am afraid on competition grounds I have to say that I fundamentally object to that kind of pricing approach. He is effectively saying that one should be subsidising food products by some other product in a supermarket, and I am afraid that that sort of thing effectively distorts the market and I would urge Members to vote against that. I will just say 2 final comments. Senator Norman says that there will be a *carte blanche* for charging a percentage and he is absolutely correct in saying that the regulations do not prescribe a percentage, and certainly one Member has already indicated that there is at least one supermarket that does have a price premium attached to food products and again the arguments are exactly the same, that they are effectively a premium which represents the additional cost of doing business in Jersey and

business there. We might not like that but that is the reality of it. But what the difference is in this regime of price marking, is it requires that statement of the uplift of percentage to be absolutely clearly indicated, because Deputy Scott Warren is right when she is concerned that in the past that was happening and there was no certainty about it and certainly even a few months ago I went into a number of stores across the Island and was not clear about whether or not that percentage was going to be applicable to that good or not and indeed what percentage will. What I would say to Senator Norman, not a *carte blanche*, but clarity to the consumer, certainty to the consumer, and effectively what we are dealing with here is we are dealing with a requirement that supermarkets or food retailers will have to declare that percentage in a very visible way on the shelf. I would suggest to Senator Norman, who I know is an advocate of free market competition and advocate of competition, the consumers will use their 2 feet. If they are confronted with a sign that says: "Our food is uplifted by 5 per cent or 10 per cent" and another supermarket or food retailer says that the uplift is 3 per cent, then consumers will effectively walk with their feet and the key safeguard for consumers is certainty and transparency in what the pricing approach would be. I would like to have kept this to an absolute zero exemptions policy but because of the issue of zero-rated goods in the food line and newspapers I am afraid it is not practical. Transparency in pricing on the shelf is the best issue for consumer protection. That is the issue which will ensure the consumers are informed and can make informed consumer choices. Members have a choice to make. If they vote in favour of Senator Norman's amendments they are saying that effectively, "Supermarkets you shall absorb it on food" and I would ask Members to ask themselves whether or not they have the evidence. Certainly I am told that there is no evidence of that issue. Certainly if they are not convinced that retailers can absorb the price then they are effectively saying that it can be individually re-priced at the port, and I have to say that that is simply impossible. I would like to agree with Senator Norman, but on the plain facts of practicality I am afraid that I urge Members to reject Senator Norman's amendment.

7.5.3 Deputy C.J. Scott Warren:
I do believe that people should know what an item costs. I again, Sir, would state that I believe these problems should have been anticipated before we did not exempt G.S.T. on food. I do not support percentages being added at the till and it is against our former States decision. On the other hand we have been told quite clearly by Senator Ozouf that Senator Norman's amendment will in effect cause mayhem. We are, Sir, between a rock and a hard place.

7.5.4 The Deputy of St. Ouen:
I would just like to pick up on a couple of comments made by the Minister for Economic Development just recently when talking on this particular amendment, and he speaks about the fact that with the pre-priced food items regarding the fact that V.A.T. is not charged on them, that local shops will not have a margin to play with. However, what I am struggling to understand is that that is the same Minister that is currently continuing to promote increased competition on this Island to reduce prices, including an additional supermarket, on the understanding that the local retailers seem to be charging too much and the Island can benefit from competition. So, maybe Senator Norman would care to comment on those particular points and give his view on those 2 perhaps conflicting views.

7.5.5 Deputy J.A. Martin:
Where are we today? I am being told off, Sir, by the mover of the amendment that the comments are wrong and I am being told off by the Minister that the comments are wrong, but the Minister is commenting on the comments of his proposition and not the one on the report. We are all getting very confused and I think the Minister has just confused us even more. I have not quite decided yet because I am probably of the opinion of voting against the amendment and voting against this whole regulation and we would then be back to what we agreed months ago on recommendation from the Scrutiny Panel. But what the Minister has just told us, Sir, and I would like Senator

Norman… because I thought I understood him very clearly in his opening speech, that removing a percentage of the price marked on the package does not mean that everything will have to be relabelled but that they can put a price by it and the Senator, Sir, is nodding. So, I think the Minister is going a little far when he is saying that this is what it means. It is very hard, and I can see why, if you are thinking about the consumer who has the money to spend and they need to know there is their packet of biscuits, or is it a Jaffa cake? Does that have V.A.T. on it? Now, we already had this debate and I am sorry that Deputy Le Fondré is not in the House today because he could go through a whole list and tell me which ones should be sitting there, which even makes it more confusing because all our supermarkets do sell luxury goods, massive big lovely chocolate Easter eggs. Are they V.A.T. free? I do not think so. But let us get back to the principles. I think I am edging towards the amendment at the moment because the Minister is confused, even though I am probably going against the comments of the Scrutiny Panel in theory, but I think we are all getting confused and late in the day. Who is it best for? Who are we protecting? At the end of the day we wanted the simple system. We are getting more and more and more complicated and as the mover of the amendment said, this does give 5 options and this just removes one. For people to walk around worrying about percentages or a percentage, all right the shop will probably put 3 per cent because most people know that V.A.T. is going to be 3 per cent, or they may put 2 and when they get to the till it will be added on. This is not what we wanted but I think the other comment by the Minister that says that we have not consulted goes back to where I think he misleads us again, and I did ask the question in the preamble. He says that if somebody is registered for G.S.T. they must then charge 3 per cent G.S.T. and he has now accused the whole of the House of how do we presume that retailers can absorb 3 per cent V.A.T? Well, that is because, Sir, I must have listened to the same Minister and the Minister for Treasury and Resources and the Chief Minister telling this House that many consumers, if prices were inclusive, many retailers, and they did not differentiate, Sir, from base V.A.T. or whatever, would be willing to absorb the 3 per cent G.S.T. and pay it on to the V.A.T. man. The V.A.T. man would want his bit but they would absorb it. So, he now cannot come back and tell me why we have comments here that they will be absorbed, because it was always brought up by anyone you spoke to in this House, anyone who was a retailer or had retailer connections, if you want me to absorb any of these prices it must be fully inclusive. Otherwise, I cannot possibly do it. My hands are tied. So, the Minister should remember speeches made in the past and be consistent at least. So, Sir, I think I am vying for supporting Senator Norman if it just takes out one, as he said, 5 different ways of selling products in our stores. Very, very silly. We are really in a stupid situation.

7.5.6 Deputy G.W.J. de Faye:

I think I would like to add a little confusion to the issue. There are of course a number of ways that local retailers will tackle the issue of G.S.T. and where the 3 per cent is going to come from, and we have had a number of theories expounded already. I think we have, at least I hope we have, determined that 3 per cent at the till really was not a great idea; (1) No one really knew what they were going to pay until they got to the till, and (2) it ensured that the retailers were basically home and hosed. The entire burden of 3 per cent would go on to the customer's bill and therefore they did not have to worry about anything. It seems to me that is quite clear. I have seen, and it is interesting that the price of the *Jersey Evening Post* was used in the comments submitted by the Economic Affairs Scrutiny Panel because one of the other options about how you would deal with this is that you would sell a product for £10 and simply pay the G.S.T., as a retailer, yourself and not try and put it on to the customer in any way. My deep throat at the *Jersey Evening Post* tells me that the recent price increase from 40p to 45p was not entirely uncoincidental with the looming of G.S.T. on the horizon. Therefore a number of very fascinating calculations as to what the future price of the *Jersey Evening Post* might be. I would suggest strongly to Members that in fact the future price of the *Jersey Evening Post* is going to be 45p and that the *Jersey Evening Post* has quite generously agreed to absorb the 3 per cent add-on and good for them. I want to reinforce and some Members may not still have really twigged on to it, the arguments being presented by Senator

Ozouf. The amendments that are being brought forward will not help the position very much. The Senator is quite right to point out the difficulties that we have in an Island with the importation of large numbers of products, particularly where they are sold elsewhere, where they are pre-priced and those prices appear on our shelves. It is, I think, by now fairly well known among Members that where stuff is pre-priced, and it is subject to V.A.T. in the United Kingdom, for some time retailers locally have been very happy to sell it in Jersey at that price and we have had all sorts of novelty excuses as to why 17.5 per cent mark-up was jolly fair because it was the cost of transportation, extra documentation, administrative stuff, and we have all basically swallowed it. I see absolutely no reason at all why those retailers cannot just take 14.5 per cent greasing and 3 per cent to the community which they are effectively charging extra to anyway. That seems reasonable and I do get the drift, in fact, that local retailers of that order are prepared to do it, but I think what Senator Ozouf, and the measures that are contained in the original proposition, clearly understands is that a number of our areas of retail sale where U.K. V.A.T. does not apply and in consequence it then does create an issue when stuff marked up, pre-priced, priced up in the U.K., and he is quite right, this does apply to so many kilograms of various meat products and so on and so forth. It is all those things, all coming in, every single one if you are looking at chickens and steaks and sausages, every one at a slightly different price but pre-marked. There will be a very serious issue. If that all comes in, a retailer here is faced with the choice that has been made clear; either with absorbing the cost or re-pricing everything. It simply makes no sense at all for us to insist that everything has to be re-priced by 3 per cent. That really would be an utterly impractical way to go, so we therefore fall back quite simply on, do we insist, do we go with Senator Norman and insist that the retailers must absorb, must take the hit in that respect in terms of the pre-priced but unV.A.T. liable goods. I do not think in all fairness that is the right thing to do because it does, it boils down to is it fair? No, I do not think it is fair because it will have different impacts according to the type of shop you are and the breadth of your product. It is one thing if you are a massive supermarket and it is quite a cosy idea to say: "Oh, well, let them take the hit but they can put it up on the clothing section and the furniture and the hardware goods. They can take the 3 per cent out of that." That is fine if you are a big enough supermarket and you have that breadth of capacity. It is not so fine if you are someone who basically specialises in selling chickens and meat and you do not have anything else that you can lay that 3 per cent hit off against. So, it is a question of looking at the fairness of this and how it is going to cut across our local retail community. I think I have to say that the Minister for Economic Development has come up with a solution that will provide a fair result for retailers. I am not at all convinced, while there may be a benefit to consumers, that Senator Norman is offering a benefit to consumers that is fair to retailers and I think that is a powerful issue to say let us not go there because this could be causing more damage in the long term than it may be of benefit to consumers potentially in the short term. I strongly suggest you reject the amendment.

7.5.7 Deputy G.P. Southern:

We appear to be having a very wide-ranging and somewhat confusing debate on lots of issues here, including inflation, G.S.T., retail and consumers. I will try and stick to the amendment of Senator Norman but I must first point out, because what I am going to say is that I am going to go back to this compounding of errors. The first error was G.S.T. not based on the U.K., second was now exemptions to inclusive pricing, and I think the third one is a real actual price rather than percentage. I think that is 3 errors compounded. We have to face the fact that we are in this pickle, as it were, debating these various compromised positions because basically G.S.T., like it or not, is going to put prices up. How it does that and the extent to which it does that we do not know yet, but it will. It is inflationary and all the competition and good words around competition in the world will not bring those prices down. G.S.T. will put prices up. I think Deputy Martin said, when she referred to that very nice man, the G.S.T. man, he said to us he did not care how retailers did it, he would look at their turnover and say: "I want my 3 per cent. Where is it? Pay it up." Where that is distributed in a particular business's turnover, where they do that is up to the

business. We already see supermarkets producing loss leaders to drag people in, goods sold at under price without the mark-up, such as it is, in order to get people in. Where they price is up to the retailer and that takes me on to the rounding issue. Now, this is where I deal specifically with Senator Norman's amendment and the amendment we have from the Minister. I will go to my comments, if Members will look at the comments on the amendments. If we take the *J.E.P.* and I just received news that the *J.E.P.* will stay at 45p, nonetheless newspapers will go through, require 3 per cent on them to be paid at some stage on turnover and 3 per cent at 45p is, as Senator Norman says, 1.35 pence. That is either going to be rounded down to a penny or rounded up to 2p, depending on the retailer's choice, or kept at 45p and nothing put on and the retailer decides to take a hit on the *J.E.P.* in order that it gets people in the shop and they buy other things where he has a different mark-up on. The illustration we use is if we go along with Senator Ozouf, the Minister's amendment, that the prices marked plus 3 per cent clearly then someone who comes in and buys 10 *J.E.Ps* for his co-workers, that price would be marked up at the till and 10 *J.E.P.s* at 1.35p, 13.5p extra goes on his bill. That will be rounded at the till up or down to 13 or 14p. It approximates to 3 per cent. Now, under Senator Norman's amendment, I think, he wants to see a clear price marked: "*J.E.P.s* will be sold with an additional charge of 1p or 2p." If you buy 10 of them for your co-workers, take them back to the office, you will end up paying an additional 20p on your bill, I believe, if that rounding was up to 2p; 20p now is markedly different from the 3 per cent we are supposed to be charging and therefore it seems to me what Senator Norman is proposing quite frankly does not work, it does not fit, because the price you will be paying will depend on the price of the item, how big or small it is and what the rounding does to it, away from the till, or the number of items that you buy and what the rounding does when you finally get to the till. Therein lies the rub. Now, that focuses on this whole issue of what will the retailer do with G.S.T. because there is a rounding issue there. I could charge 1p but at the end of the year when the G.S.T. man comes to me he is going to look at my turnover, including how many *J.E.P.s* I sell and say: "I want this." Now, if I am not charging it there I am going to have to take that hit or I am going to charge it elsewhere. If I am charging 2p then maybe elsewhere I am leaving something off, or maybe I am making extra profit. What will happen? We simply do not know at this stage, but overall it seems to me that that fundamental flaw in the logic at the till marks 3 per cent you will pay 13 or 14p extra on your 10 units. With the price marked up, possibly at 2p extra, you will pay an additional 20p. That cannot be right and that is the way in fact this amendment, while it seems like a good idea on the surface because everybody understands 1p or 2p extra, not everybody maybe understands what 3 per cent extra means. That logic is absolutely clear but I do not think in practice it can be made to work.

7.5.8 Deputy S. Power of St. Brelade:

I have been sitting, Sir, for the last day and a half in a semi-lethargic state here trying to concentrate on what is being said and the last three-quarters of an hour has galvanised me to get to my feet. I made a very poor speech last year, Sir, about the mortality rate of sheep at La Moye and on that day the Bailiff correctly pulled me up on that speech but, Sir, like the sheep at La Moye, I am losing the will to live at the moment. I really am. When we talk about price marking, whether it is a container load of mutton or lamb chops, I have to confess that I never realised the intricacies of moving that lamb chop from the container to the shelf and the complications that it seems to be causing. I think that the speech of Senator Ozouf and the earlier speech of Senator Norman I think I was even more confused than I was when I first read the proposition and the subsequent amendment. I now feel that having listened to all of the speeches that have been made this afternoon that there is slightly more clarity to Senator Norman's because I am worried about the use of the word percentages and unless I hear a strong speech to the contrary I will be supporting this amendment. The effort and the time that Senator Ozouf went into explaining his case to me in actual fact confused me slightly even more and I think while Senator Ozouf prepares his homework, almost to an exhaustive extent, and exhausts us, I do feel that there was a little bit of over-detail in it. So, I hope that we can bring this debate on the amendment and on the proposition

to a close pretty soon because otherwise, Sir, I shall be looking for a bed and a home for the bewildered. Thank you, Sir.

7.5.9 Senator T.A. Le Sueur:

I do not know if I will be able to convince Deputy Power but I will just make a couple of brief comments. Firstly, I think Members should appreciate that the amendments from Senator Norman are very clearly focused on a very small area of these regulations and I think, as with any legislation, it is important we read and understand precisely the words in the regulations, and as drafted by the Minister for Economic Development, I emphasise the word "may": "The selling price may be indicated by a combination of ..." In other words, it is an option open to the retailer. Now, why do retailers need options? They perhaps need options because they want to attract customers, and if they confuse customers, they risk losing customers; if they have signs and methods which are understandable to customers, then they may retain and increase their customers. I think, rather more importantly, Members need to focus on the areas to which this particular debate on percentages applies. It applies in 2 narrow cases, firstly in terms of books and newspapers, but perhaps rather more importantly, I think there has been some misunderstanding in the question of food. I regularly meet constituents in supermarkets and I get my ear bent on frequent occasions about G.S.T., so I think I have picked up quite a few vibes over the last couple of years. Certainly, I also do my own shopping there and there are only certain items to which this applies, and I read Part 4A, where before its importation into Jersey, when it is pre-packed elsewhere, food is packaged in the units to which it is being sold to consumers in the units. Just to go back to the interpretation clause, Article 1 says that units refers to kilograms, pounds, litres, pints, yards, metres and so on; units of measurement, not of price, to which those goods whose price varies according to their size or their weight. For that narrow group, there is really, I think, a common sense approach to be adopted, a common sense, practical approach. But where you are faced with a container load or a boxful of cheeses, each of slightly differing weights, any calculation based on simple mathematics of price would be cumbersome, would be time-consuming and would leave the customer absolutely bewildered, and I think it is in the customer's interests. I was surprised to hear Senator Norman suggest that Senator Ozouf was thinking in terms of the retailer, than the customer. I think it is in the customer's interest that where you have items like this priced in units of measurement, the customers simply need to be advised that these prices will be increased by a percentage. It is up to the retailer. The retailer could make it 2 per cent or 5 per cent or any per cent they like, but in common sense terms, it is going to be 3 per cent. The retailer will simply say to their customers: "The price of this hunk of cheese will be increased at the till by 3 per cent" and that is communicating a message to the consumer. I mean, these regulations about price indicators are all about benefiting and helping a consumer, and I think in that particular narrow field where goods are displayed by a weight, it is in the consumers' interests that retailers have the ability - it is not mandatory - to show a sign to say that their price will be increased by 3 per cent. That is the effect of the regulations that are proposed by the Minister. Senator Norman's amendment denies those retailers the option of displaying their goods in that way. I think that is detrimental to consumers' interest and therefore I suggest it is not something which this House should adopt.

7.5.10 Senator F.H. Walker:

I will be very brief, but it is very clear from the speeches I have heard that there is obvious confusion among Members about what is entailed in the amendment, and indeed, what is entailed in the proposition. This is - as Senator Le Sueur has said - a limited area where the G.S.T. regulation is limited, but important, and it is a very, very simple matter. What it applies to is those goods that are not charged V.A.T., they are exempt from V.A.T. in the U.K., and the proposition, what the Minister for Economic Development is saying, they should be exempt from the price marking regulations in Jersey - not exempt from G.S.T., that will apply in exactly the same was as it does to other products, but exempt from the price marking - and the reason for that is very practical and very simple. The pre-packed food that comes into Jersey goes on sale very, very quickly from the

moment it arrives, and if the retailers have to re-price all of that food, which they would have to do if the amendment goes through, they simply could not cope in the timescale open to them. There would be a very considerable additional cost to the retailer, and guess who would pay? Not the retailer, the consumer. Any additional cost will be passed on, and that is where this amendment - although I have some sympathy with what Senator Norman is trying to achieve - is flawed. It is not as if the consumer will be unaware under the Minister for Economic Development's proposal of what they are going to pay, because his report says very clearly, and if I may, Sir, I quote: "To ensure that consumers are made fully aware of these exceptions, it is a requirement that those retailers who offer such goods provide clear signs alerting customers to the fact that either a fixed amount of percentage will be added to determine the final selling price." So consumers will be clearly and fully informed of what they will pay, and it is a simple matter: where we force retailers to re-price between the arrival of these goods in Jersey and their sale, at a cost which will be passed on to the consumer or not.

The Bailiff:
I call upon Senator Norman to reply.

7.5.11 Senator L. Norman:
Yes, thank you, Sir. I think I can be brief, because many of the speeches seem to me to be quite identical, but I would say to Deputy Martin, who was inclined to support me, but was a bit worried that would be going against the comments of the Scrutiny Panel, I say to her, do not worry about that. Those comments were bizarre, as I shall show in a moment. I regret that the Minister was upset with me when I suggested that part of his role was to support business. I did really think that was part of his role, but I do accept totally that he does not speak for the Chamber. I accept totally that he fights and no doubt fights regularly and hard with the Chamber, but I also submit that on this occasion, he has been persuaded and seduced by Chamber, because I have not - I never have - suggested that G.S.T could or should be absorbed by retailers. The price that retailers pay for their goods, whatever their cost, is totally up to them, and when you think about it, we are talking about pre-priced goods, and we could be talking about things like ice cream, which are subject to V.A.T., we are talking about biscuits, which are subject to V.A.T., we are talking about cake, which is subject to G.S.T., Easter eggs and other things like that, which all have V.A.T. prices on their boxes on their labels, and all of these things under the regulations as proposed by the Minister, the retailers can say: "We shall be adding 3 per cent, 4 per cent or 5 per cent to those" if they so wish.

Senator T.A. Le Sueur:
May I just clarify? My understanding is that the article only applies to goods packaged and sold by units, not to general sales.

Senator L. Norman:
I accept what the Minister is saying, but he is quite aware that some retailers do intend to absorb some G.S.T. and newspapers are an example. There is a well-known retail chain who has a shop in town who has said they are going to absorb the G.S.T. on newspapers. They have not mentioned, of course, that they are going to continue to charge the V.A.T. equivalent on 90 per cent of their other goods, but they are going to be absorbing the G.S.T. on newspapers. Now, where the Economic Development Scrutiny Panel are a little bit mixed up, and Deputy Southern expanded on it in his speech, the G.S.T. to be added will be 3 per cent, and if it is 1.35 per cent, and a normal practice throughout the Western world, that will be rounded down to 1 penny. Anything under half a penny will be rounded down to the nearest lowest penny; anything over half a penny will be rounded up to the next penny. So that is the practice throughout the world, and certainly the major retailers over here have assured me that will be the case and I totally accept that. But the things that seem to be worrying the Minister, Senator Le Sueur, Senator Walker and one or 2 others was these things they call the catch-weight products, products which vary in weight - steaks, chickens and

cheeses and so on - and the Minister said, and others repeated what he said, that the choice for retailers will be to absorb the G.S.T. on these products or to remark, re-price each product. That is absolutely untrue. They will have another option, and it is quite clear in my report. They could, under the regulations proposed by the Minister - not my amendment - indicate the amount to be added at the till in cash terms within certain price or weight bands, so a sign next to cheese saying: "Up to 100 grams, add 5p; up to 200 grams, add 10p" and so on. Not a problem. Do not have to re-price, do not have to absorb; they put up the sign. So there is no pickle about this. As I said in my opening comments, the retailers, on these exempted items, still have 4 options on how to price these exempted goods: newspapers, periodicals, books and pre-priced food. They can sell them at the marked price; they can re-price if they so wish; they can put a sign up showing the price; they can put a sign up showing the amount of cash to be added to each product. Not difficult, a totally reasonable thing for a retailer who has the interests of the consumer at heart; no problem whatsoever. Pricing will be clear and unambiguous, uniform and consistent. That is what I want, that is what the Minister wants. If we do not accept this amendment, that is not what we are going to get. I maintain the amendment, Sir.

The Bailiff:
I ask any Member in the precinct who wishes to vote to return to his or her seat and I ask the Greffier to open the voting, which is for or against the amendments of Senator Norman. The appel is asked for in relation to the proposition of Deputy Fox. I invite Members to return to their seats. The Greffier will open the voting.

POUR: 10		**CONTRE: 30**		**ABSTAIN: 1**
Senator L. Norman		Senator F.H. Walker		Senator B.E. Shenton
Connétable of St. Mary		Senator W. Kinnard		
Deputy R.C. Duhamel (S)		Senator T.A. Le Sueur		
Deputy of St. Martin		Senator P.F. Routier		
Deputy C.J. Scott Warren (S)		Senator M.E. Vibert		
Deputy J.B. Fox (H)		Senator P.F.C. Ozouf		
Deputy J.A. Martin (H)		Senator J.L. Perchard		
Deputy of Grouville		Connétable of St. Ouen		
Deputy P.V.F. Le Claire (H)		Connétable of St. Clement		
Deputy S.S.P.A. Power (B)		Connétable of St. Helier		
		Connétable of Trinity		
		Connétable of Grouville		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. John		
		Connétable of St. Saviour		
		Deputy G.C.L. Baudains (C)		
		Deputy R.G. Le Hérissier (S)		
		Deputy G.P. Southern (H)		
		Deputy S.C. Ferguson (B)		
		Deputy of St. Ouen		
		Deputy P.J.D. Ryan (H)		
		Deputy J.A. Hilton (H)		
		Deputy G.W.J. de Faye (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy D.W. Mezbourian (L)		
		Deputy A.J.D. Maclean (H)		
		Deputy of St. John		
		Deputy I.J. Gorst (C)		
		Deputy of St. Mary		

The Bailiff:
Now the debate returns to Regulations 3 and 4. Does any other Member wish to speak on the Regulations unamended? Do you wish to say any more?

7.6 Senator P.F.C. Ozouf:
No, Sir. I am grateful for Members' support. It was a difficult issue about the exemptions issue, but I am pleased and grateful for Members' understanding for this issue, and I will continue to work with Trading Standards, et cetera, to ensure that while there has been an exemption to the default position, that we will make this as a requirement for the signage as easy as possible for consumers. I am grateful for Members' support and I make the proposition, Sir.

The Bailiff:
I ask the Greffier to open the voting, which is for or against Regulations 3 and 4 of the Regulations.

POUR: 30		**CONTRE: 8**		**ABSTAIN: 0**
Senator L. Norman		Connétable of St. Brelade		
Senator W. Kinnard		Deputy of St. Martin		
Senator T.A. Le Sueur		Deputy G.C.L. Baudains (C)		
Senator P.F. Routier		Deputy C.J. Scott Warren (S)		
Senator M.E. Vibert		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy S.C. Ferguson (B)		
Connétable of St. Ouen		Deputy of St. Ouen		
Connétable of St. Mary		Deputy P.V.F. Le Claire (H)		
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Bailiff:
Do you wish to propose the remainder of the Regulations *en bloc*, perhaps?

7.7 Senator P.F.C. Ozouf:
Yes, Sir, I think we have dealt with the controversial issues. Paragraph 5 deals with the permission to allow reductions for selling prices for general price reductions and for sales, et cetera, that is only reductions in prices; 6 deals with the issue of the relating price indications in advertising; and

finally, the offences provisions and the commencement date, which irrespective of whether or not the Assembly goes on to agree with the Minister for Treasury and Resources' proposal to vary the date of the implementation of G.S.T. will remain on 1st May. I do not believe that is any difficulty with the price-marking coming in on 1st May even if G.S.T. is varied to become introduced on 6th May. I move paragraphs 5 to 8.

The Bailiff:
Regulations 5, 6, 7 and 8 are proposed and seconded. **[Seconded]** Does any Member wish to speak on any of those Regulations? I put those Regulations. Members in favour of adopting them, kindly show; those against. They are adopted. Do you move the Regulations in Third Reading?

Senator P.F.C. Ozouf:
Yes, please, Sir. **[Seconded]**

The Bailiff:
Does any Member wish to speak on the Regulations in Third Reading? I put the Regulations. Those Members in favour of adopting them, kindly show; those against. The Regulations are adopted in Third Reading.

8. Draft Boats and Surf-Riding (Control) (Amendment No. 27) (Jersey) Regulations 200- (P.16/2008)

The Bailiff:
We come next to the Draft Boats and Surf-Riding (Control) Amendment No. 27 in the Jersey Regulations and ask the Greffier to read the citation of the draft.

The Greffier of the States:
The Draft Boats and Surf-Riding (Control) (Amendment No. 27) (Jersey) Regulations 200-: the States, in pursuance of Regulation 4 of the Harbours Administration Jersey Law 1961, have made the following Regulations.

Senator P.F.C. Ozouf:
I know my Assistant Minister enjoys his duties in relation to harbours, and therefore I ask my Assistant Minister if he would act as rapporteur for these items.

8.1 Deputy A.J.H. Maclean of St. Helier (Assistant Minister for Economic Development - rapporteur):

Thank you, and can I thank the Minister, Sir, for his kind generosity in this fashion. I would be delighted to take this. These Regulations are intended as a means of maintaining information for sea rescue purposes, organising mooring spaces, checking insurance and promoting safety at sea, depending of course upon the type of craft. I would just like to draw Members' attention to an inaccuracy in the report that states that these registration fees have not been increased since 2005. This should read 2004. This amendment seeks to increase fees by 8 per cent, which represents a rounding of the last 2 years cost of living index increases. I would also like to mention that the new inshore safety regulations have been drawn up and that they are currently at the consultation stage. It is hoped that these will become effective from January 2009, and will indeed replace these boat and surf-riding regulations as a far more effective regime, but for now, Sir, I propose the preamble.

The Bailiff:
The principles of the regulations are proposed and seconded. **[Seconded]** Does any Member wish to speak on the principles? Deputy Ferguson.

8.1.1 Deputy S.C. Ferguson:
Yes, Sir, I just wonder how much is raised by these Regulations. Perhaps the Assistant Minister could tell us.

8.1.2 Deputy R.G. Le Hérissier:
Could the Assistant Minister tell us why indeed there was a gap in raising the revenues and can he tell us when this system will be abandoned and what he thinks is a more rational system; and thirdly, Jersey Harbours continues to make significant economies in its workforce, page 3. Could he give us the percentage saving that has been incurred as a result of that particular programme?

The Bailiff:
I call on the Assistant Minister to reply.

8.1.3 Deputy A.J.H. Maclean:
In response to Deputy Ferguson's question, in 2007, £32,000 was raised. It should be pointed out that the sums raised are done on a cost recovery basis; it is not an income generating exercise. I would like to thank Deputy Le Hérissier for his kind questions. I am particularly delighted, considering I have generously passed jelly babies down the line today in the hope that he would keep quiet. It is sadly not the case, Sir. With regard to the gap, there was a hope that the new inshore regulations would be able to be brought forward in a more timely fashion, and that they would be certainly a more effective way, which answers his third question in dealing with these matters. I think it is fairly reasonably recognised that the current regulations are probably not the most effective way for managing these particular issues, and we would hope, Sir, that the new inshore regulations that are currently out for consultation and are due to be implemented, subject to the approval of the States in January 2009, would meet that objective. I think that hopefully answers the questions, apart from the percentage savings which Deputy Le Hérissier asked about. I do not have the figures to hand, but I am more than delighted to supply those to him in due course. I maintain the preamble and ask for the appel.

The Bailiff:
Very well. Any Member who wishes to vote who is in the precinct is asked to return to his or her chair. You did ask for the appel?

Deputy A.J.H. Maclean:
I did, Sir, yes.

The Bailiff:
I thought I had not misheard, no. I ask the Greffier to open the voting, which is for or against the principles of the Regulations.

POUR: 33		**CONTRE: 0**		**ABSTAIN: 0**
Senator W. Kinnard				
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator M.E. Vibert				
Senator P.F.C. Ozouf				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				

Connétable of St. John				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy G.C.L. Baudains (C)				
Deputy C.J. Scott Warren (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy S.C. Ferguson (B)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Bailiff:
Does the relevant Scrutiny Panel wish to scrutinise the Regulations?

Connétable M.K. Jackson of St. Brelade:
I can say on behalf of the Panel, I think not, Sir.

The Bailiff:
Very well. I invite the Assistant Minister to propose the Regulations.

8.2 Deputy A.J.H. Maclean:
En bloc, please

The Bailiff:
They are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of the Regulations? Deputy Ferguson.

8.2.1 Deputy S.C. Ferguson:
In view of the fact that these fees only raise something in the order of £32,000, how on earth can the Minister justify the service that is provided for that sum? I mean, it seems to me there is less collected than it costs to provide the service, and it probably costs more to collect it than the amount they collect. This sounds like financial stupidity. I would appreciate his comments.

Deputy P.V.F. Le Claire:
We could even ask the Public Accounts Committee to look into it, Sir.

The Bailiff:
I ask the Assistant Minister to reply.

8.2.2 Deputy A.J.H. Maclean:
I would be more than delighted to supply Deputy Ferguson with a more detailed breakdown, if it would be of assistance to her in due course, but I can assure her that this is a matter of safety, and

on that basis, I am more than satisfied that the revenues generated are appropriate in terms of discharging and the personnel required in order to fulfil that obligation are appropriate.

The Bailiff:
I put the Regulations. Those Members in favour of adopting them, kindly show; those against. The Regulations are adopted in Second Reading. Do you move the Regulations in Third Reading? Seconded? **[Seconded]** Does any Member wish to speak on the Regulations in Third Reading? I put the Regulations. Those Members in favour of adopting them, kindly show; those against. They are adopted in Third Reading.

9. Draft Civil Aviation (Jersey) Law 200- (P.18/2008)

The Bailiff:
We come to the Draft Civil Aviation (Jersey) Law 200- and I ask the Greffier to read the citation of the draft.

The Greffier of the States:
The Draft Civil Aviation (Jersey) Law 200-: a Law to provide for the safety of civil aviation in Jersey; to establish the office of Director of Civil Aviation and charge the Director with functions in respect of the safety of civil aviation in Jersey in its airspace and correlated matters. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

Senator W. Kinnard (The Minister for Home Affairs):
Thank you, Sir. With your permission, I would like my Assistant Minister to deal with this matter.

9.1 The Deputy of St. John (Assistant Minister for Home Affairs - rapporteur):
This projet is essentially about airport safety and providing a sufficiently robust regime by which to regulate aerodrome safety in an independent manner as possible in a small jurisdiction. Passengers' expectations are high in an age of increasing reliance on air transport; safety is of paramount importance. Thankfully, public confidence in aviation safety is justified, but safety, Sir, does not just happen. A very significant amount of research, standard setting and compliance monitoring goes on in the background to deliver the excellent reputation which flying has for a being a safe activity. Much flying takes place between one country and another, and so common standards and practices have to be adopted. There could be serious consequences if one country operated to one set of rules and the other country to another, even worse, if the pilot was operating to yet another set. This was recognised in the very early days of flying, and many countries of the world agreed that at a convention in Montreal in December 1944, and I quote from the following from the Convention: "The undersigned governments agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner." There are now 188 countries that have signed the Convention which established the International Civil Aviation Organisation, or the I.C.A.O., as an agency of the United Nations. The organisation makes rules by adopting standards and recommended practices and publishing these annexes to the Convention. The rules are applicable in all countries signatory to the Convention on international civil aviation, commonly known as the Chicago Convention. The U.K. became a signatory of the Convention on 1st March in 1947. Jersey is, through the United Kingdom ratification, a party to the Chicago Convention and under the Convention, the United Kingdom is responsible by international law for ensuring the maintenance of international standards of aviation in the Crown dependencies. Some Members will be aware that, historically, governments were aircraft and aerodrome operators and in some cases, even aircraft manufacturers. They regulated themselves, but the potential conflict of interest is of course obvious. Consequently, steps were taken to remove such conflicts. The United Kingdom separated their Aviation Regulator from the service providers in the Transport Act of 2000. The I.C.A.O. requires that there be a clear and demonstrable separation between the Safety

Regulator and the service provider. Today, the Minister for Economic Development is responsible for the operation of Jersey Airport and the regulation of matters regarding safety. To provide the required separation, a law, the Civil Aviation (Jersey) Law 200- has been drafted. It will provide the separation through an establishment of the Director of Civil Aviation, answerable through Home Affairs and not to Economic Development. The draft law also went out to consultation on 10th December 2007 and closed on 20th January this year. Comments from Scrutiny were published on 6th March and I shall respond to their comments shortly. Members may also be interested to know the Isle of Man has already enacted similar legislation and Guernsey is in late draft form. The draft law will allow for the establishment of a Director of Civil Aviation independent of the airport operator. It is considered appropriate that he should report to the Minister for Home Affairs. The responsibilities of the Director of Civil Aviation include licensing Jersey Airport. It is through this responsibility that the Director exercises authority as the Safety Regulator. In order to meet the requirements of the Chicago Convention, the Director is also required to provide advice to the Minister on many aspects of civil aviation, both national and international. The draft law identifies why an aerodrome licence is required and how it may be granted by the Director, and that there is a fee for this. It is this fee, payable by issuing of a licence by Jersey Airport, which will meet the running costs of the office of the Director of Aviation. The payment of the fee is in line with a user pays policy or principle, which is widely accepted in the public sector and there are other precedents to this such as at Jersey Telecom and Jersey Post. Under the law, the Minister has powers to issue directions to an aerodrome licensee. This could be used to direct, in this case, Jersey Airport to do or not to do something which was in the interest of the Island as a whole. There are provisions to make air navigation orders. These again are to give effect to the Chicago Convention. Such orders already exist, but these were made by the Harbours and Airport Committee. It would be through such orders that approval for air traffic control services and requirements for carriage of certain classes of goods would be required. The I.C.A.O. recognised some 10 years ago that while all 188 contracting states have signed the convention and would abide by the standard recommended practices, not all were indeed doing so. An audit programme was established, initially of just those required standards concerning aircraft operation and maintenance. The United Kingdom was subject to such an audit in July 2000. This included United Kingdom's overseas territories. Jersey was not included as no activities were deemed to be controlled from Jersey. The audit report was critical of the United Kingdom in respect of the overseas territories, not only for having out-of-date laws and orders, but more significantly, it concluded: "The United Kingdom has not established an effective system for fulfilling its safety oversight obligations and responsibilities in its overseas territories." Sir, we are not an overseas territory, but we are a Crown dependency, and these same concerns have been expressed about the Crown dependencies by United Kingdom Department of Transport, Ministry of Justice as well. In fact, quite recently Her Majesty's Attorney General attended a meeting with the Ministry of Justice where this was explained. If Members want more detail on that, the Solicitor General may be able to find them, if they wish to ask. The date of the next audit of the United Kingdom, which will include the Crown dependencies, as the audit programme now includes aerodrome and air traffic control. This audit was confirmed that it would in fact occur between 30th and 20th February 2009. Some Members may ask, what would the consequences be if the House chose not to approve this draft law? So I will endeavour to explain. If the required separation between safety regulator and operator is not provided, it is the United Kingdom that will be in breach of its obligations under the Chicago Convention. Members will recall that the main thrust of the Chicago Convention is the safety of civil aviation. For this House to conclude that safety is less important in Jersey than in those 188 contracting countries is frankly, Sir, unthinkable. But what would the United Kingdom do about that if we fail to respond? That, Sir, can only be speculated upon. But we know that the U.K. is unlikely to sit back and accept being in breach of an international obligation on the account of Jersey. Various pressures could no doubt be exerted or perhaps the U.K. could advise the I.C.A.O. that Jersey did not meet international agreed safety standards. If that was the case, it rather alarmingly would simply mean that some airlines would discontinue flying to Jersey. It

could even mean, Sir, that some airports would not allow aeroplanes taking off from Jersey to land at those other airports. Sir, I have heard comment that there already is an aviation regulation for Jersey in the form of the United Kingdom Civil Aviation Authority. I can dispel this misconception by advising Members the United Kingdom Civil Aviation Authority has no authority in Jersey. It is not the regulator here. That currently, Sir, is the Minister for Economic Development. The C.A.A. (Civil Aviation Authority) has been invited, from time to time, to provide expert advice to the Airport Director and the Minister, and it is at the sole discretion of the Minister that any such advice is heeded to or not. Many other organisations and companies are employed to provide advice across the States, and these, of course, range from architectural advice to waste management, and the C.A.A. is no exception to this. The Scrutiny Panel, in their comments on 6th March 2008 concluded: "Further clarification should be provided on how the Director of Civil Aviation will be demonstrably independent from the Minister for Economic Development, and indeed, from undue control of the States of Jersey." While there can be no total independence from the operator of Jersey Airport, for ultimately both the Civil Aviation Director and the airport operator are answerable to the States of Jersey, there are degrees of independence. Currently the safety regulator of Jersey Airport and the operator of Jersey Airport are one and the same. Under the law, the Director of Civil Aviation has a number of statutory functions. In fact, in Article 10 which, in effect, guarantees his independence because he would be in breach of statutory duty if he did not fulfil them, the Scrutiny Panel also question the financial manpower implications. Work to identify the fine details of the role have been going on. There has been debate, for instance, as to whether safety regulation of aircraft operations or maintenance would fall within the scope, or if the production of aeronautic information to pilots would have to be included. There has also been some presumption against entering into any contracts or agreements until the States of Jersey have reached a decision on establishing of an independent or Jersey Airport safety regulator. There are many specialist areas within aviation, and it is intended that audit reports on these will be produced with the assistance of others such as the C.A.A. There will be a cost associated with this, but these costs would no longer be incurred directly by Jersey Airport. For the avoidance of any doubt, Sir, the annual cost of running the office of the D.C.A. (Director of Civil Aviation) would be £109,000, which is made up of £5,000 in general expenses and accommodation costs, and includes social security payments and pension provision. Members should also note that the cost of auditing safety procedures, which is largely carried out by the C.A.A., is estimated at £60,000; a cost which is currently borne by Jersey Airport but in future will be paid via the office of the D.C.A. Members may also be interested to know that a similar salary structure is in place currently in Guernsey. The draft law also allows for the establishment of an aircraft register. This is not required by the I.C.A.O., but may be a business decision which the States could choose to consider in the future. I understand Economic Development are looking at that. The Isle of Man has established one; Guernsey has not. It is not intended to establish an aircraft register at this time. To do so would, of course, involve additional staff. That, I say, would be a business decision perhaps in the future. Furthermore, the Director may enter into contracts with another person, or other persons, as was identified in the consultation response published on 4th February 2008. "Person" can be a corporate or incorporate body. An example would be a contract with a technical expert to produce a report advising on a particular issue. There is no identified requirement to be satisfied today which would require more than one full time equivalent post. Sir, the Scrutiny Panel also asked an indication of how the implementation of the draft law would affect military aircraft, and they also wanted to know a layperson description of what constitutes the Channel Islands Air Zone, as described in Article 10. The draft law, Sir, would have no effect upon military aircraft. It is a civil aviation draft law. The Channel Island Control Zone is a piece of air space extending from sea level to 19.5 thousand feet. It extends approximately halfway to the U.K. and halfway to France, but with holes in it that surround the 3 Channel Island airports. Jersey Airport provides air traffic control services in this air space on behalf of the French and British Governments. This is arranged through a Memorandum of Understanding between those 2 Governments, with the States of Jersey receiving financial recompense from those Governments, which currently is about £4.5 million per

annum. Sir, I know this has been a lengthy explanation but I hope that it allays any concerns that Members may have as the necessity for such an act. In an ideal world I, like many Members, would like to avoid this kind of bureaucracy. But such laws inevitably create. Unfortunately in this instance, to ensure that we keep within our international obligations and ensure the continuance of safe air travel in Jersey, it is essential, Sir, that this draft law is adopted. Sir, I propose the preamble to the Bill. Thank you.

The Bailiff:
The principles of the Bill are proposed and seconded. **[Seconded]** Does any Member wish to speak on the principles?

9.1.1 Deputy S. Power:
I do understand that the operational side of the airport does have to be separated from the regulatory side of the aviation business. But I would like clarification on why this position is based at Home Affairs and not at the Chief Minister's Office, as my understanding is that the Chief Minister's Office does deal with all international relations that the Island deals with, whether it be constitutional affairs, the British Irish Council, and whatever. I do feel that this position should be more appropriate to the Chief Minister's Office and I look for clarification on that. The other area that I would like clarification on from the Assistant Minister is how much effort was put into negotiating with the other small Island jurisdictions, Guernsey, Alderney, and the Isle of Man, and why this position of Director of Civil Aviation could not have been shared. I would hope that the Chairman of the Education and Home Affairs Panel does speak on this, perhaps call it in. Thank you, Sir.

9.1.2 Deputy S.C. Ferguson:
As a lapsed pilot I can confirm that this is a pretty good air space in Jersey. It is permanently instrument meteorological conditions, which is how I feel in this House sometimes. I do wonder, we are establishing our international presence, I understand. So, why are we still linked to the U.K. with this? Sorry, but that goes on to the point made by Deputy Power, why is this not with the Chief Minister's Office? I also wonder if the position was advertised and where was it advertised, because this is a position where you would expect to find, you know, R.A.F. (Royal Air Force) safety officers being rather good for this. You know, people who know what flying is. Did the Appointment Board supervise the recruitment? The comment about the aircraft register, I hope this will be pursued. I am sorry the Minister for Economic Development is not here, but I hope that the point about having a local aircraft registry is pursued, because I understand that you can gain a good income from this area. Thank you, Sir.

9.1.3 The Deputy of St. Martin:
This must be one of the very hasty propositions that have come to the States for a long time, particularly as, I think, we have to go back to the year 2000 when the Civil Aviation Organisation drew it to Jersey's attention about the possibility of a separation of responsibility. So we have had this speedily coming through with just over a month's consultation. Members may well know, also, that I have twice asked oral questions of this particular official proposition which I was not aware was going to come to the House when I first asked. In fact, the second time I asked I was not aware either. But on 20th November 2007, when I heard they were about to appoint, or in fact, that an appointment had been made, of a Civil Aviation Director, I did ask for what costs, and the *Hansard* records that at the time the Minister had no idea of the cost or the manpower implications. On 29th January 2008, I asked what were the implications, and we were told, really, that they were about £105,000. We have heard now that it is £109,000. Again, we were told it is not really any financial implication because that is going to be paid by somebody else. That is going to be paid by a license fee from Jersey Airport. Well, we all know that there is no such thing as a free meal, but what I would like to know is, is the Jersey Airport Authority already paying a sum, that fee,

already, and how much is the fee? If that fee is already being paid, obviously it will be not an additional fee for the Jersey Airport, but if it is not getting paid, it is going to be an additional cost. That additional cost will, of course, be passed on to those people who use the airport. They may well be saying: "Well, what am I getting for my money?" Well, what they are getting is someone else doing the job, and I know the Connétable of St. John tried to ask a question yesterday of the Minister for Economic Development, and got a bit of a short shrift, which I thought was rather unkind. I think it was a genuine question: "If someone has been doing this job already, why do we need to have to pay that amount of money to do it now?" I do understand, of course, because of the need to separate the 2 tasks. But again, I think it is very important we do get to know what the real costs are. Deputy Power has mentioned something which I certainly was going to mention, because it was asked of the Minister on 20th November 2007, when we were asked was it possible to have a joint director throughout the Channel Islands. The Minister replied at the time that she thought an attempt had been made to see if that could happen, that had failed, but was not sure. What I would ask, if the rapporteur could confirm that attempts had been made, if attempts had been made, why did they fail? If they have not been asked, or if no attempts had been made, could I have an assurance that the attempts will be made? But, as it stands at the moment, I am not terribly happy with it. I might have asked for a reference back but I will not. I think the easiest thing to do is to vote it out until we get all the answers we really should have.

9.1.4 Deputy G.C.L. Baudains:
Building on what the 2 previous speakers have said, Sir, I am probably unlikely to support this proposition because on the information that I have, I was trying to follow the rapporteur, as much as I could, Sir, but I found he was reading his speech rather quickly and I had difficulty keeping up. It does seem to me that what we are doing, or thinking about doing, is paying £104,000 for somebody to do a part-time job. It does seem terribly expensive to me. Perhaps the rapporteur could explain where I have got that wrong. But, as I say, building on what the 2 previous speakers have said, Deputy Power and the Deputy of St. Martin, if it is, in fact, a part-time job, surely, presumably Guernsey will have such a requirement in the future if they do not already have one. I would have thought it was an ideal situation for somebody able to do a job for one Island to do an identical job in the other Island. Why can we not share one? It does seem slightly expensive to me, Sir, and like the Deputy of St. Martin, I would appreciate answers as to precisely what initiatives have been made with our fellow Islanders as to the possibility of pursuing that. It is all very well to throw money at things. Also, I have to say, it is so easy to be seduced by the suggestion that well, it is not going to cost us anything so it does not matter. No, but of course there always is a cost and somebody is paying for it. It is slightly vague in that the Airport will be paying for it. Well, I did not know that the Airport had a big pile of money up there, so presumably they will be raising fees from travellers or somebody to pay for this. I would like to know exactly where the money is coming from if it is coming from charges to airlines which will then be passed on to travellers, then it is going to affect tourism as well, Sir. There is simply not enough information.

Deputy S. Power:
May I make a point of clarification? I never said that the position was a part time-job. My question was related to the 3 Islands, or the 4 Islands, sharing that position. Thank you, Sir.

9.1.5 Deputy R.C. Duhamel:
What annoys me with this particular proposition is that we appear to be again putting the cart before the horse and taking this House for granted. Here we are, an advert has been placed, the person has been selected and designated for the job, and then we are coming back to the House to create a law which sets out, among other things, the job that has already been created. To what extent does the process of doing things back to front tie and bind the hands of this House? It is making an absolute mockery of this House in my opinion. We should have had the whole thing done in a different fashion. There should have been a request from the Minister for Home Affairs

for the law to be put in place first of all, and then, on the assumption that the law was adopted by this House, then a placement of adverts. But we are doing it back to front, and on that basis, Sir, I do not think that a proper case has been made for this particular job, and I think we are holding the House in high disregard. On that basis, Sir, I cannot support the proposition.

9.1.6 Deputy J. Gallichan of St. Mary:
Interesting enough, Sir, although I sit on the Scrutiny Panel which has looked at this law and produced a comment, I am still able to find something new to think about when I listen to the proposer. It was just simply… obviously my mind is very focused on user-pays principles at the moment, because we have just published a report, and he mentioned this in his speech. As the Deputy of St. Martin has already said, was this service effectively being covered by some sort of fee before and, if not, following up from what the proposer has said, is this a new user-pays charge? Because if it is, then of course the States has already taken its decision back in 2003 that no new user-pays charges be introduced without receiving prior approval in this Assembly. So if this is a user-pays charge, is this implicit in the acceptance of this proposition, that we accept this charge, in which case it is user-pays by stealth, is it not, Sir? Thank you.

9.1.7 Deputy D.W. Mezbourian of St. Lawrence:
I, too, am disappointed that the consultation period was undertaken over the Christmas and New Year period, which allowed my Panel very little time to make more detailed comments on this. Nevertheless, Sir, we have looked at it and our comments have been acknowledged. We did look for mention of this within the departmental business plans for both E.D.D. (Economic Development Department) and Home Affairs, and saw no sight of it. It seems to me, Sir, that this has been rushed through for reasons which perhaps the Assistant Minister as rapporteur will be able to explain in his summing up. I ask, too, Sir, that the Assistant Minister can give me some clarification on the reference he made to the fee of £60,000 which is paid to the C.A.A. as an audit fee, because I believe I heard him say that that money would come from the directorate and, if that is so, I wonder whether an explanation could be given as to where that money would be resourced from and how it would increase the total costs of running the directorate. In addition, on page 5 of the Civil Law, under Financial and Manpower Implications, reference is made to Jersey Airport currently contracting with technical experts in various fields. These contracts and the cost of them will be transferred from Jersey Airport to the Office of the Director of Civil Aviation, and perhaps the rapporteur would be able to confirm whether those are in addition to the £60,000 C.A.A. audit fee to which he has already referred. Finally, Sir, we have been told by the rapporteur that we are obliged, in effect, to approve this law today, in order to comply with the I.C.A.O. regulations and the fact that Jersey is, through the U.K., a party to the Chicago Convention. I understand, Sir, that at the moment Jersey does not in fact conform with all regulations of the I.C.A.O. I may be incorrect and I am sure the rapporteur will address my point. For instance, my understanding is that at the moment our runway is too close to the terminal buildings and the control tower, and to some taxiways. My question, Sir, is, would an independent Jersey D.C.A., as a corporation sole, and when this law has been approved, if indeed it is approved by this House, be obliged to close down Jersey Airport until this or other operational matters have been complied with? It seems to me, Sir, that if that is the case, it is a case of this House appointing a Director as corporation sole, and the States of Jersey would have no say in the matter of closing the airport down. I wonder whether the rapporteur will address that. Sorry, Sir, I had a note passed to me then. I was just reading it and I have lost my flow. So, will the rapporteur address my comment that I believe an independent director, if he was doing his job properly and complying with I.C.A.O regulations, would be obliged to close the airport down. Thank you, Sir.

9.1.8 Deputy P.J.D. Ryan:
The Economic Development Department and the previous Economic Development Committee were aware of this particular issue at least in 2005, possibly even 2004. My memory fails me, but it

was certainly at least since that time. What concerns me now is that the relevant Scrutiny Panel seem to be saying that they have not been consulted upon this. So I would like to know from the Assistant Minister why it has taken so long, possibly also from the Economic Development Department why it has taken so long to bring this to the States. That is the first point. The second point is that Deputy Baudains asked the question, who was going to pay the £100,000-odd a year that this will cost. Might I suggest that the Economic Development Department look at withdrawing their suggestion that the start date for Goods and Services be delayed by 5 days, because that would pay for it for the next 5 years. Thank you, Sir.

9.1.9 Deputy P.V.F. Le Claire:
I am hesitant to say anything, obviously, because I have got a speech in regard to safety coming up, and one does not want to be seen not to be supporting things that are to do with issues of safety and the transportation of people to and from airports, access to foreign airports, et cetera. But I just stand to say that I find it remarkable, one week we are being chastised for bringing stand-alone venture propositions like Deputy Fox's the other week, calling for capital and revenue expenditure to support waste strategies to give the Transport and Technical Services some money, and we are being criticised for bringing that outside of the budget process and trying to put something ahead of everything else. Here we have this law which, it seems, has not really caught many people's attention. I confess it has not caught mine. I do not know why that is. But I thought that there was a sort of corporate game being played here, and it does not seem that there is any corporate resistance to this. So I am wondering whether or not this is one of those instances where perhaps the Ministry has had to pick something up that another Ministry did not want to pick up.

9.1.10 Deputy J.B. Fox:
Public safety, and that of airlines and airports, are of extreme importance, and we went through for years with public services being the supplier of goods and the caretaker of goods, but was also the arbiter, et cetera. This is one of those clear cases where you need to have a separation, and it seems very sensible to me that there is a transfer of positions in order for that to be achieved. Yes, there will be some minor office expense, I note that, and no, it cannot necessarily be all done at the same time, but at least it has been done as a whole, which I think is very important. It is not piecemealing things. It is not cherry-picking things. It is looking at it in a more comprehensive light, so I shall be voting for this proposition. Thank you, Sir.

Deputy R.G. Le Hérissier:
I wonder if it might be time to move the adjournment. I do not think we have reached a natural break, and reconvene in the morning.

The Bailiff:
Are you proposing that the Assembly adjourns until 9.30 a.m.? Yes? Well, the proposal is made and seconded. Do Members agree to adjourn until 9.30 a.m. tomorrow morning? Very well, the meeting is closed.

ADJOURNMENT