

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 22nd NOVEMBER 2007

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

PUBLIC BUSINESS – resumption

The Bailiff:

Before the debate continues may I just remind Members that yesterday afternoon there was laid on the Table the Draft Employment (No. 4) (Jersey) Law 200- (P.178/2007), which has been lodged *au greffe* by the Minister for Social Security.

1. Goods and Services Tax: Zero-Rating for Foodstuffs, Books, Newspapers and Magazines (P.169/2007) - continued

The Bailiff:

Now the debate continues on the proposition of Senator Shenton and I saw the Constable of St. Martin.

1.1 Connétable S.A. Yates of St. Martin:

If I could collect my thoughts from where we left off yesterday evening. The letter in last night's *Jersey Evening Post* is most fortuitous. It is a letter which says: "I will certainly feel G.S.T. (Goods and Services Tax)", and why it is fortuitous is because it illustrates exactly the situation - the only remaining situation that I am concerned about - the support of social security or low income support for a sector of the public who are zero-tax, no income support and with a small amount of rent rebate. I have, among my welfare clients, 2 similar, almost exactly mirror-image, and one other slightly similar. We are dealing with a single-parent family, one child, part-time work, fairly good income for that part-time work, and it is well worth Members studying this letter because from a monthly net income of £1,650, with all the outgoing standing orders listed and the weekly expenses of petrol, parking charges and food, this lady has a disposable income of £327 per month, that is £76.30 per week. From that income she must pay for clothes, she must pay for replacement breakages, the sort of things that we all have, the washing machine goes wrong, the need for a new toaster, other activities such as birthday parties and presents. She says: "Eating out is a rare occurrence; cinema is a luxury." Now, I think this is very important because this... I am happy that vulnerable people in the current welfare system are going to be protected. This side of the vulnerable community is outside the net at the moment: no income tax, no income support. I believe that when I was elected Constable of St. Martin, I took on a commitment. My commitment is simple. It is to offer the care and protection of the very old, the very young, the poor, the sick and the people who could not look after their own affairs. That is my job and I have learned quite a lot about that. Now, why am I opposing this particular proposition? The reason that I have been converted to the concept of G.S.T. is because I believe sincerely that it is the best option for the people I have to care for. Why did I oppose the deferring of G.S.T.? Because I understand that the option of raising funds from other sources - creating efficiencies in the States administration - are 2 years down the line, but probably 3 years down the line. That is to say, I support research into these savings and I am sure that they are ongoing but the point is they are 3 years down the line and we need to have a resolution now. Since I was elected I have been speaking about commitments and obligations. In the last 2 weeks I have been talking about commitments and trust. I am a supporter of G.S.T. because it is the best option for the people I care for. My aims and ambitions are exactly the same as the aims and ambitions of the Members on the opposite benches, exactly the same. I believe that the options are we have the choice of waiting 3 years to get efficiencies in the States or we can do this now and, I believe, we have to do it now because it is the best option. I mentioned 2 weeks ago about the electorate's concept or the electorate's perception of G.S.T. and the fact that G.S.T. appears to the electorate as a nice, shiny brass tap with a label over the top of it which says "Easy G.S.T. Money" and I cannot accept this. I need the Ministers to give us a firm commitment on the rate of G.S.T. and how this G.S.T. money is going to be used. I could not, in all honesty, support this proposition if I thought that G.S.T. was going to be used as a convenient tap to access money. I believe that. We had the Minister for Treasury and Resources yesterday

saying he has modified his 3-year commitment. He said it should last for a lot longer, many years. I mentioned yesterday that I believe the public - the electorate of this Island - need to have a commitment. I believe that we are building a better society. The society that we wish to build is a combined effort between the Department of Health and Social Services, the Department of Social Security, the Treasury and the Department of Economic Development. In order to deal with this better society that we are aiming to build, we should not be looking at income support as a separate entity. It comes along in parallel with other factors. Please think of income support as a temporary measure, temporary in each circumstance. When I have somebody coming to see me at the Parish Hall, I am able to help on a temporary basis because my aim is that; if I have a vulnerable person come in, in trouble, I never think about this as being a lifetime commitment. I think about how can I help this person? How can I get him or her back into better situations, back into work, back into a fulfilling lifestyle? I think this is what we should be thinking about in terms of income support. It is part of the strategy of building a better society. Now, I take exception. A couple of Members yesterday referred to income support as the last resort. I take exception. There was also reference to crumbs falling from a rich man's table. I take exception. This is part of a strategy to build a better society. We all need help in our life sometime. I would like today to ask the Chief Minister, the Treasury Minister and the Social Security Minister to make that commitment. We must have some sort of bit which says that G.S.T. will not go above 3 per cent. We will keep it simple. We have a stabilisation fund with, I am told, £38 million in it. Why should we not use that stabilisation fund to guarantee that G.S.T. will not rise above 3 per cent? We are building a society, which is going to be better for the population of this Island. On the idea that we should be working together through the departments of the States, I would like to bring you one little anecdote. Not an anecdote because it happened last night in my Parish surgery. One of my clients came in and said: "I am in trouble boss." "What is the problem?" "Well, I have actually had my social security cheque and incapacity benefit halved this month." "Oh, why is that?" "Well," he says: "I have a medical board to go to on 3rd December. Here is the letter." Sure enough, a medical board to attend on 3rd December to see if he is still incapacitated and fit to receive his incapacity benefit. In the other hand, he showed me 2 other letters; one was for an appointment for an X-ray for his condition and the other one was an appointment with an orthopaedic surgeon for 5th December; medical board 3rd December, orthopaedic surgeon 5th December. He is going to have an operation, a major operation. Now, for goodness sake, when we get this thing going, can we get the computers to talk to each other? The net result was he was on half of his incapacity benefit and he had his rent to pay on 1st December. Now, to him, that was a big problem, a very big problem, because he just did not have the money. To me it was simple because I could say: "Right, we will give you a temporary loan to tide you over until your incapacity benefit goes back up to the full value, which apparently is going to take 2 weeks after his medical board. I think this is just plain administrative stupidity. I mean, why can the departments not talk to each other? I would please address that to the departments. Thank you, Sir.

1.2 Deputy S. Power of St. Brelade:

I will be brief. The principles of G.S.T. have now been passed. I was one of those that did not accept G.S.T., I opposed it and opposed it even before I stood for election. I voted against it every step of the way. Sorry, Sir. When colleagues decided to accept G.S.T. as a new tax, I was left with either accepting the majority view for G.S.T. or working in another direction towards, for example, the rescindment motion. I think I read the mood of this Assembly fairly well when it is my opinion that there is no mood for a rescindment motion on G.S.T. My view is it would fail. So what are my choices? Well, I was faced yesterday with a tempting morsel from Deputy Lewis. He wanted to exempt G.S.T. on clothing for the under-14s and my problem with that, as was pointed out by a colleague, was that it applied to all children's clothes and to all parents, irrespective of whether they had high amounts of income or low amounts of income. So those that would struggle to pay G.S.T. were included with parents who could well afford to pay G.S.T. and it seemed to me that this was not really fair and did not benefit those that needed the most help. So here I am again this

morning facing the prospect of yet another decision, facing G.S.T. and its introduction, and I am being asked by my colleague Senator Shenton this morning to consider exempting food and books as is indicated in this proposition. Now, having read the Senator's proposition and having read Senator Le Sueur's amendment, I have come to my own personal conclusion that the exemptions, as is in the U.K. V.A.T. (Value Added Tax) model, is a minefield and a nightmare. It is not something that I would endorse but I qualify what I am about to say by saying that I am not an accountant and I do not have an accountant's mind. But can I say this to the Assembly, that not everything the U.K. does and not everything the E.U. (European Union) does is a model of correctness. I think, here, this is an important decision for us to make as a Jersey Assembly and I would like to bring the Assembly's attention to a number of specific examples in the U.K. V.A.T. notice codes that, I think, illustrate my concern. I also say that we cannot cherry-pick the U.K. code, so every exemption is going to cause cost to the staffing levels in Treasury. Every single exemption is going to cause cost. I draw Members' attention to Senator Le Sueur's comments and I am going to run through 4 specific examples, which will take a minute, on exemptions; the difference between a zero rate and a standard rate. As Members will know, meat and poultry, beef and lamb and chicken and such are zero-rated, as is horse, ostrich, crocodile and kangaroo, if that were a basic foodstuff. Live animals are zero-rated because they are a species generally used for food and consumption. Live horses, however, are standard-rated. So, if you do own a horse and you want to eat it, you may have to pay G.S.T. on it. Sandwiches: sandwiches as a grocery item are zero-rated, but sandwiches as part of a buffet or party service are standard-rated. Bread in a supermarket in the U.K. is zero-rated; bread rolls, baps and pita bread. But if a bap or a roll is served as a hot takeaway food it is standard-rated. Alcoholic dessert jellies are zero-rated but semi-set alcoholic jellies, designed to be swallowed as cocktails, are standard-rated. Do not ask me what they are. Roasted or salted nuts supplied while in their shells are zero-rated and all other roasted and salted nuts are standard-rated. Charcoal biscuits - whatever they are - are standard-rated and, finally, Sir, 2 of my favourites, sweetened, dried fruit, held out for sale for snacking and home baking, are zero-rated; but standard dried fruit held out for sale as confectionary or snacking, are standard-rated. What is the difference? My favourite, Sir, is this last one. Chocolate body paint is zero-rated, whereas Turkish Delights are standard-rated. **[Laughter]** So, not having Senator Shenton's brain or Senator Le Sueur's brain, Sir, I defer to the Assembly to make up their mind. I know I have taken a slightly quizzical look at the U.K. V.A.T. codes. However, my main concern here, with exceptions, is the cost of implementing and where it will stop. My other concern is that at the G.S.T. office at Treasury, I do not want another army of public servants being recruited to check consignment notes, G.S.T. returns and shipping manifests to verify the classification or code as it applies to a consignment coming into the Island. Senator Shenton referred to barcodes and software, simplifying the charging process. I accept, Senator Shenton, I think that is a very relevant point. However, in a wholesale scenario, where consignments come in, they are broken, bulk or split, this may be far more complicated. So I do not want the Treasury Minister, now or in the future, coming back to this Assembly and saying something along the lines: "Because of the exemptions that were passed and the cost of the exemptions, I now wish to raise the base rate of G.S.T. to x per cent." I never, ever, ever want to hear that in this Assembly. Sir, my belief is that now that we have G.S.T., and I accept that we have G.S.T., let us keep it a simple model of implementation. There is an acronym used in the U.S.A. (United States of America). It is called the K.I.S.S. principle and it says: "Keep it simple, stupid." I am not inferring there is anyone in this Assembly that is stupid but it is a very simple acronym. Now that G.S.T. is here, I believe the simpler the model the longer the chances are that the base rate will be kept low. As a long-term opponent of G.S.T., I believe that if we have to have it, and we are going to have it, the fewer exemptions there are, the lower the base rate will be. Sir, I admire Senator Shenton and Deputy Lewis for their well-intentioned efforts to bring this proposition and these amendments to the Assembly. However, I have to be honest here this morning and say that I will be opposing exemptions on food, as I did yesterday on children's clothing and books, owing to the sheer complexity of the process. Thank you, Sir.

1.3 Senator P.F. Routier:

Having debated G.S.T. on food and newspapers and magazines 3 times previously, I am convinced that the horrors of the U.K. system should be avoided, as quite eloquently said by Deputy Power just now. In fact, Deputy Ferguson started the trend yesterday afternoon and I was really impressed with the way she had looked through the codes and seen the horrors which behold the U.K. V.A.T. system. As Deputy Power has just said, it is not a simple system. There are so many variances of very similar foods, some you pay tax on and some you do not, and it would be an absolute nightmare. It is not only a nightmare for the shopkeepers; it is a nightmare for manufacturers, wholesalers, importers, transport companies and not forgetting the army of tax collectors and inspectors. Of course, what has changed is that we now know that the Island has benefited from an uplift in our economy and our tax returns. The problem with that is that when we debated deferring G.S.T. last sitting we also took into consideration that perhaps we could not guarantee that for the future. But Members did reaffirm our decision to implement G.S.T. in May of next year, and during that debate it was recognised that, although we had benefited from an upturn in the tax receipts, there is still a need for G.S.T. Even Senator Norman has now been converted, and so has Deputy Power, of the need to keep it simple. Today we have to decide how the Island should perhaps benefit in their pocket from the upturn in the Island's better performance. There are, of course, many ways of achieving this and how do we choose? Do we choose the Shenton way, the Le Sueur way, or perhaps some other way? I am convinced that the Island should benefit from our better performance and I sense most Members are of the same view. Do we introduce the complex nightmare of zero-rating food, books, newspapers and magazines, or do we use a simple, cost-effective way of distributing our newfound riches? Looking at the previous votes on the food, books and newspapers option, I think it is fair to say that a good majority of Members recognise the failings of that option. But I can say that I can understand why some Members have now leaned towards thinking that we should perhaps share our newfound riches by supporting this proposition. Now, this was the first option which was put forward and I can see why some see it an attractive option. Members have said to me that the Council of Ministers were slow in coming forward with options and that they are considering supporting this amendment because the Council did not come forward with something to help the community and for them to benefit with our newfound income. That may be a fair comment. But I know that several of us were keen to find an appropriate, sustainable and cost-effective way to ensure that any redistribution was equitable and fair. I certainly had, and I still do have, my thinking cap on. Senator Shenton's proposition has come at what is a late stage in the G.S.T. process and it now appears that we, the Council of Ministers, are fire-fighting to put the position right. Well, that is far from the truth. I have to say I was delighted that the Minister for Treasury and Resources came forward with his suggestion; that he is prepared, if this proposition is rejected, to redistribute the funds to income tax payers. Of course, as some Members have said to me, they recognise that people on income support will also be protected. They also recognise the undoubted benefit of Senator Le Sueur's offer; not only in the additional significant financial benefit being proposed to be given to the taxpayers but, very importantly, they have not forgotten the need to avoid the nightmare and complexity and the very costly administration that will happen if we make the mistake of using the U.K. style, zero-rated food option. Yesterday Deputy Martin attempted to put some doubt into Member's minds about income support. Well, I know and can be satisfied that those people within the income support system will be protected from G.S.T.; that is including food, books, newspapers and magazines. It should be remembered that this was done in anticipation of G.S.T., at the request of Deputy Martin's Scrutiny Panel. They wanted the additional rates approved by the States to ensure that there was no going back on covering the costs of G.S.T., including food and the remainder of the other goods. If this proposition was successful we would perhaps, no doubt, have to consider the rates we have already approved. Senator Le Sueur's option of increasing the income tax thresholds is very simple and cost-effective and it is a simple method of redistributing some of the available funds. It is far more equitable than this proposition because it directs more money to those people who are the lowest taxpayers. I am sure Members have looked at the Treasury Minister's comments and on page 3, if

Members wanted to have a quick look at that, there is a table there which is very clear that the middle-earners will be better off; not like the food option, which really benefits the high-earners the most. So it is clear that the best redistribution effect by far is the income tax option. Now, of course, the issue that some Members have asked about is how can we give additional support to those who would not benefit from either income support or from the option of reducing the tax burden for taxpayers? Of course, I, too, recognise the need to ensure that there are no gaps in the redistribution of the new funds that the taxman has received. I cannot just accept that that would be the position. It cannot just be those taxpayers and those within the income support system who should benefit from the new wealth. It must be the whole community. It must be a complete package. I know that Senator Le Sueur is of the same view. I know that because we have been meeting to discuss this very issue and we have been researching the best option. Last night we had another meeting and I can tell Members that we are now agreed that we have identified a very easy option which can be implemented with little administration overheads, which was, of course, a major concern to all of us. For my part, as I have said previously, I am satisfied that the income support system is a good system, which directs support to those on the lowest incomes, and the States have already approved the protection from G.S.T. for them. The basic components which attract G.S.T. will be increased. While the Minister for Treasury and Resources indicated during his speech yesterday that he would support additional monies through an amended income support system to those who would currently not qualify, we have now agreed that this would not be the appropriate approach because it would be a burden on those claiming a small amount of G.S.T. protection with an application into the income support system. It would also be blurring the pure principles of income support, which I would not want to do. After all, the issue that we are resolving is a tax issue not an income support issue. What Senator Le Sueur and I are proposing is a very simple application to the Treasury Department. Anyone who falls between either the income support protection and the increasing of income tax threshold protection would make a single application to the Treasury Department or wherever we make those opportunities available. They would just require a proof of identity, a residential address and a declaration that they do not pay tax and they are not in receipt of income support. This would just have to be verified and the payment made. This solution would not be a means test. This would be very simple and, most importantly, be targeted to the right people. The Minister for Treasury and Resources will need to calculate the appropriate level of G.S.T. refund that would be paid to each household. This can be done in time for the introduction of G.S.T. in May. He has assured me he will propose a level that is sufficient to cover the costs of the G.S.T. of food, *et cetera*. The details of this final piece of the jigsaw will be proposed by Senator Le Sueur in the coming months to ensure that, together with the protection given by income support, the protection given by the income tax threshold increases and, finally, the simple tax refund for those in the middle, he will have ensured that, other than the very highest earners in our community, we will have shared in the continued improvement in the Island's financial position. While I think of it, I would just like to comment that in recent weeks I have been quite dismayed at some of the comments and the personal comments that have been made about Senator Le Sueur over the G.S.T. issue. I, for one, am very thankful that we have a Minister for Treasury and Resources who is socially minded and cares about our community and wants to ensure that the package that he brings forward is equitable and fair. In summary, Sir, zero-rating food, books, newspapers and magazines gives too much money to those on high incomes and not enough to those on middle incomes. It is an administrative nightmare and is administratively costly. The administration costs for both retailers and the States would be totally out of proportion in relation to the benefits. I would prefer to give the money to the people of Jersey rather than employ an additional 8 staff and inflict the additional burden on retailers. Another real concern is that there would also be a considerable disadvantage to small retailers who would want to register, even though they are below the £300,000 limit. They would be faced with additional administration and costs out of proportion to the size of their business and they could not get the benefits of economy of scale which the large retailers like the Co-op (Channel Islands Co-operative Society) can. They would, of course, want to pass on those out-of-proportion costs into higher

prices. The package the Minister for Treasury and Resources proposes to increase the income tax threshold and to provide the protection through income support, and finally through ensuring that those in between can be protected, has to be the best option; not only because it costs less to administer but because more real benefits will go directly to the people of Jersey. This should be recognised as a time when people can say that they are benefiting from an Island economy that is doing well. With the assurances that I have been given by the Minister for Treasury and Resources regarding the sharing of the Island's new upturn in finances, I am convinced that we must avoid the nonsense of the nightmare of the U.K. V.A.T. system which would be brought to the Island. I urge Members to reject this proposition.

Deputy C.J. Scott Warren of St. Saviour:

Can I ask for some clarification? We hear about the administration costs but what would the administration costs be of replacing G.S.T. on all the people that fall between low income support and ... How would you know what those people have spent on G.S.T. and I would like to know is there an amount envisaged to replace this? Would it be one set amount for everybody? How does this operate?

Senator T.A. Le Sueur:

This was hammered out by the Minister for Social Security and myself yesterday evening and what we have at the moment is an outline framework. The outwork framework will be a very simple one but anyone who falls in the gap, as you might call it, between income support and paying income tax would be entitled to claim a flat rate amount each year. That would make the administration very much simpler and very much cheaper and be much more cost effective. The amount...
[Interruption] No, I am trying to clarify the question. If Members want more detail, I would hope to be able to bring that in time for the budget in 2 weeks' time. But at the present time, Sir, I am just trying to give an outline; to give Members an indication that it can be done in a simple, cost effective way, to deal with all those people in the gap between income support and paying tax.

Senator L. Norman:

Sorry to take the time of the States, Sir, but I did not want to interrupt the Senator during his speech, mainly because I was not in the Chamber at the time. But I did hear him say and just for clarity, he may have given the impression that I had somehow been converted to support G.S.T. or to support exemptions. That is absolutely not the case. I have consistently opposed the introduction of G.S.T. That remains my position. I have consistently opposed exemptions and that also remains my position. That is for clarity, Sir.

Deputy I.J. Gorst of St. Clement:

If the Minister for Treasury and Resources could just confirm, he did not quite answer the question of clarification for an amount. If we assume that quintile 2 will, on average, be paying between £67 per year in G.S.T. on food or the exempted items of food proposed in this proposition and quintile 3 around £86, can he confirm that it will be of this amount?

The Bailiff:

Briefly, Minister, we cannot have question time, particularly from your Assistant Minister who I assume is aware of the proposals.

Senator T.A. Le Sueur:

My Assistant Minister was not aware of those proposals. I only discussed them with the Minister for Social Security last night. The amount has not been fixed but I would envisage something between £75 and £100.

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

In fact what has just occurred was something I was thinking of. It strikes me on the one hand, as part of the collapse of western civilisation approach of the Minister for Treasury and Resources, we are talking increasingly of this bureaucratic monster and people have basically taken up this theme and it has obviously become embedded in this debate. While we are now seeing, on the side but increasingly mainstream, the creation of another bureaucratic monster. I just feel, Sir, that by creating income support as a salvation for some of this group, by making all sorts of promises - and I do not doubt the sincerity of the 2 Ministers at all - we are going into virgin territory in that regard and we are creating yet another monster. Not only that, as Deputy Martin... although I do not often agree with her on the growth or the extension of welfare, I thought she made a very good point in the sense that here we are creating even more dependency for people. Here we are creating even more dependency. That is, in a sense, what worried me, Sir, about the Constable of St. Martin's speech. It was a very heartfelt speech but I could not work out where he was coming from. I know he is coming from St. Martin. **[Laughter]** Well, I hope so, but I could not work out, Sir, whether in his heart he was really trying to convince himself that G.S.T. really was not on; because he was bringing in so many conditions to hedge the introduction of G.S.T. that certainly, Sir, if I was the Minister for Treasury and Resources, I would say: "No way, José." I mean, I really do not see where it was... Either he agrees with G.S.T. and he accepts the notion that at some point circumstances may result in it increasing or he wants to strengthen the welfare system because of the deficiencies he sees in that system. But I am not sure you can balance yourself on both cusps, so to speak, as he seems to be doing. So that is another issue, Sir, that I think is worth thinking about. But the major issue, and it is the one to which Senator Syvret alluded to earlier, is in a way this debate is not about this particular exemption or zero-rating. I have no doubt a lot of the arguments about administrative complexity could be well true. It is really about the fact that there is a certain group of people living in a very high-cost economy and are enormously frustrated about that and they do not see us, as a government, as being terribly effective. Now, all sorts of proposals are being thrown about now to put the finger in the dyke, so to speak, in order to try and stem the public protest and to stem this concern. But the fact remains that the people who are bringing us G.S.T. are the people who brought us, and indeed enthusiastically encourage, this kind of economic growth and good luck to them. But they must realise that sometimes one goes very much with the other. If you want this kind of economy with very fast economic growth, if you want a very high-cost industry and it brings massive high costs and these are unequally distributed at the end of the day, that is just the nature of that kind of free market economy that we have gone for and this is what has happened and this is the frustration that people are mirroring back to us. All the bureaucratic manipulation in the world, which may have occurred last night, and all the schemes to try and stem that, they cannot, I am afraid, Sir, hide that fact. I will support Senator Shenton but I would like a bit more detail, quite frankly, from him. That said, Sir, yes, there is going to be complexity. I was, for example - moving to a more detailed point - a bit worried, as he knows I am, not because I like liquorice allsorts but I was worried about the fact he is going to act as some kind of health policeman in this process and tell us what is or is not healthy to eat and he is going to use the G.S.T. system. Now, we are using duty on alcohol to create that kind of health policing but I am a bit worried that he seems very enthusiastic about applying that to matters like confectionary, for example. So I would like more explanation from him as to how he is going to proceed along that point. As I said, Sir, I have drawn attention to this paradox that here we are going on and on about the simple scheme we have at the moment. Well, is it the simple scheme at the moment? There is an awful lot of assumption built-in to that argument which I do not think have been fully tested. Of course, one of the things that worried me from the early time when I did accept Senator Le Sueur's premises that: "Look, we are in dire straits and things are getting really bad and we

really have to plan ahead, blah, blah, blah.” When I accepted all that, it was on the basis of simplicity but, of course, he then made the mistake of saying he will go in for very extensive consultation and as that consultation has proceeded ... Sorry, Sir, as the war between the 2 sides, so to speak, has proceeded, it has become clearer and clearer that it is not clear. In other words, the system is becoming more and more complex by the day, there are all sorts of subsidiary arguments raging around about *de minimis*, about what we can or cannot bring in from England and France and how we can bring it in and so forth. We have had examples before these exemptions were discussed about the enormous workload it is going to place upon the Customs Service, for example, even before these sorts of things occurred. So, all of a sudden, we get this retreat into the argument that it is an enormously simple system and if you dare to interfere with it... Of course, several countries have and they have not collapsed as a result. If you dare to interfere with it, you know, the whole thing is going to collapse. Much better, it seems, to make more people dependent on the welfare system. Because Senator Routier, quite rightly, has had to be rather vague about this - although we know it is not in his nature - we do not really know what we are leading to. He is struggling to set up a brand new system but where are we going to there, in that system? We do not really know, and I do accept he is having to deal with some imponderables. But here we are, Sir, talking about we must at all costs, to the point of almost overdoing it, keep a simple system; while on the other side of things, Sir, we are creating, it seems, a potentially very complex one and making a lot more people dependent on welfare. Thank you, Sir.

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

I have opposed the exemptions in the past with the exception of the medical items and medicines, because I came as one of those people that believed in keeping it simple. But, of course, clearly, from that time, we have moved the goalposts and exemptions have come in and now, of course, we have the offer of raising the income tax threshold. So, clearly, I think it is time for a rethink. If we look at the income tax threshold, I think it is quite interesting, following on from Senator Routier's speech, because we have heard a lot about the people who are on income support and those who are pensioners but very little about the rest of the people who are on minimum wage, and there are a number of people on that. They are unlikely to benefit from income support, nor from the raising of the tax threshold. The Minister is not in the House but I understand the Minister for Treasury and Resources has not spoken yet but maybe when he does... He has, has he? I was forgetting who has been speaking. Well, I would like to get some indication of the number of people who are on income support. Does anyone have any figures at all that may be able to help me? If not, possibly if we could have that before we come to the debate because I think it is very important because these are the sort of people who are going to slip in-between. The thought of setting up some bureaucracy whereby they may be able to get some form of handout when they go to a food counter for their food, I just do not know how it is going to work because, quite frankly, if someone is like that, they could easily buy food for somebody else. So the whole thing really lends itself to even more bureaucracy. But, anyway, having given some thought now, again, to the G.S.T. system, I can see certainly amounts of support I could give for exempting foodstuff but what I could like to suggest, to avoid all the issues we have heard about - is a biscuit a cake or *vice versa*, and all the problems the U.K. have - is it possible that the foodstuff be defined as anything we eat. You would not then need to worry about all this business. That is a much more simple way, Sir. I am going to ask, but you will probably tell me it is not possible, whether on (a)(i) can we just delete everything after “foodstuffs”? That would make it nice and easy, but you are going to tell me no, Sir, but I am going to ask for the sake of being refused.

The Greffier of the States (in the Chair):

You have effectively answered the question, Deputy. The proposition is worded in the way it is. It would have been open to any Member to have brought an amendment in time to have taken those

words out but no amendment has been tabled. Senator Shenton particularly wanted those words in and that is what the States are being asked to agree.

The Deputy of St. Martin:

Deputy Baudains has reminded me about foodstuff for dogs and cats. Well, if people want to eat dog food they are entitled to but I was hoping we were going to keep a simplistic thing, which is “for human consumption” may be an easier way of doing it. But I think that may well have been an easier way of overcoming it. Probably I could be blamed, I have had other things on my mind, but even a small amendment to that may have made it a lot easier. But certainly I am minded to support part (a)(i) but I would really need more information to know whether I could support part (b) because really our books ... I know we have heard about school books but I am sure the Minister for Education can find some way of ensuring those people who really do not have the funds to buy school books, some means will be made to ensure that do not go short. But does it really affect people across the board that want to buy a newspaper or a magazine or books in general? It is just a feeling that may not be an essential, more the luxury, Sir. I am certainly minded to support part (a) on foodstuff and I possibly may well consider supporting part (b) - that is the books - but maybe more information is needed. Thank you, Sir.

1.6 Deputy C.H. Egré of St. Peter:

A long debate so far. I have taken careful note of the debate to date and it appears that a lot can happen between 2 sittings in this Assembly. Let us reflect for one moment on what happened just over 2 weeks ago. We had a situation where over 19,000 Islanders had petitioned this Assembly to delay the implementation of G.S.T. At that time, there were concerns that the vote may be close and that there was an underlying feeling in the Assembly that, as a result of the better than forecast tax returns, namely £38 million, something should be given back to the people of Jersey. We all recollect the debate when the G.S.T. delay proposition was lost by 28 votes to 23; a debate where reassuring messages were given that something would be done. It was clear to me that day that the Minister for Treasury and Resources appeared to indicate that a G.S.T. food exemption was certainly on the agenda. Furthermore, the Minister for Economic Development in the following debate on inclusive pricing suggested to this Assembly that concerns expressed on food pricing in the supermarket would fall away if the debate on zero-rating of foodstuffs was successful, implying to me that zero-rating of food was quite probable. How things change. How can that view change so rapidly from the probable to the dangerously impractical? I do not believe for one minute that work had not already been done on this very feasibility study as to whether we could zero-rate food. Listening to Deputy Ryan’s speech yesterday, it appeared that the arguments used against this proposition have, in the most part, been grossly exaggerated. Sir, I was one of those 28 that voted not to delay G.S.T. I took the bait that was offered. I returned to my Parish and informed those who questioned me on my vote - and they did - that I was confident that the food exemption would be supported, based on what I had been told. Sir, there is a disconnect between Members of this Assembly, I believe. Furthermore, there is a disconnect between this Assembly and the people that we represent. Sir, I support this proposition and encourage others to do the same.

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

We started off that we did not want G.S.T. Nobody wants G.S.T. It is something that is being forced on us or we could continue looking at the alternatives. I have spent many a session, along with many other people, looking at alternatives, both from States Members and other members of the public that have either been individuals or representing other organisations. We came to the conclusion that G.S.T. was the only possible long-term... that we could consider at this moment in time. But in politics, it is the art of the possible and the less painful that we try to penetrate and try to come through and, yes, what the previous speaker has just said is what we have just come through. We have been through a process of trying to do things bit by bit, see how it goes on, and then put another titbit in to see if that would make it more palatable or make it a better part of this

painful process. Normally, when we are looking about the reconstitution of the States and everything else, we want to do it in a whole package and we do not want to entertain anything unless it is in a whole package because that is the way that we should do things. But this one has so much conflict built into it; it has not made it possible. Having said that, I represented my Minister some 2 weeks ago in the Council of Ministers and I would have much preferred, at that time when it was discussing the final stages of G.S.T. being accepted, there was also this amendment of the Senator on the table. It would, in my opinion, have been good that all the subject of the remaining issues on the table at that time should have been discussed together. It was decided it would be left in abeyance for 2 weeks. I personally think that we still have to look at having consistency, and this is one of the areas that I think that consistency would be most useful. I have always advocated that Assistant Ministers - who are supposedly part of the Executive - do not feel part of the Executive in many areas because they do not know what is going on in the Council of Ministers, apart from what is on the agenda, until after the event. I think that one of the qualities of Assistant Ministers is that they have their ear to the ground, they have the ear more so of their colleagues, though I have got no doubt that the Ministers will dispute that. Therefore it would add another voice for consideration for thought that might not have been brought up at the time or considered in the same vein. Yes, 2 weeks ago we did get the unspoken, almost, impression, that there would be an acceptance of having zero-rating on food. Today we are in a position that we are looking at an alternative. It is a good alternative, it is not a clean alternative, but it is a good alternative inasmuch as that we are now, yet again, after the dragging-out of this process and overnight considerations, filling in the gaps that have been there, that even were there yesterday. So there are an awful lot of people making statements yesterday that did not have the benefit of the new information today. But I think it is important that we do consider it. I do not like bureaucracy. We have been challenged by the public to reduce bureaucracy and this today, this particular amendment, increases bureaucracy. That is the difficulty I have. My instinct is that I want to have nil tax on food. So does everybody else. The Constable of St. Martin eloquently described it in a very plain simple way, and, indeed, Senator Len Norman put it in a different way. But both were saying the same thing, in principle. There is an alternative now. Unfortunately, this has been done piecemeal. It is messy. I do not like piecemeal, messy things. We are, if you like, trying to find a solution on the hoof, on the floor of the House. I think that this should have been done before. I cannot support this amendment because of the bureaucracy that is, nevertheless, going to come forward. I hope that the overnight thinking, together with the other proposals that are laid down before us, are going to work, and to do exactly the same as the original or the intentions of this amendment. I fear that they are not going to be quite as simple as that. But bearing in mind if there is something that is not working, States Members, whether individually or collectively, can always come back and put another proposition to rectify something if it does not work. Thank you, Sir.

1.8 Deputy J. Gallichan of St. Mary:

Last night I went over and over what I had heard during the debate because there are a good many pertinent points raised on both sides of the argument. People have described this as a moral issue and that Members have singled this issue out particularly in this way does give me some concern, simply because I consider that almost everything I do is a moral concern because every action I take has a consequence and therefore the potential to either harm or to help someone. On that level, this is no difference to the many other decisions I, as a States Member, am required to make. A little over a year ago I said that my desire, in fact, my commitment, was to make sure that all sections of the population were treated fairly in the impact of G.S.T., not just the first quintile; the second and the third quintile too. I said that it was up to the House to make sure that the future income support system would take care of those that were qualified. But it was up to us at that time, when we were discussing the last exemptions, to make sure that we did not allow the overall burden to be increased on everyone, especially those falling just outside the limit for income support, by effectively offering the Treasury and Resources Minister the opportunity, and an invitation, in fact, to increase the basic rate. Then, as now, I was concerned that G.S.T. would, in

fact, push more families on to income support. I stated then that this surely could not be the intention of a socially responsible government. Of course, I still have those concerns. I am concerned about the impact of all aspects of our fiscal strategy on middle-Jersey. I can appreciate that the Treasury and Resources Minister's offer of increasing thresholds means, for the first time, that some middle-earners stand to gain. However, yesterday I thought that I would have been more impressed, if not completely seduced by that, if the extra work needed to link with the Social Security Minister, and therefore protect those at the margins of income support but not yet taxpayers, had already been done and I could understand the impact of those measures. So I must welcome the offering of the Social Security Minister this morning, although of course I do not now have the opportunity to question him on his and the Minister for Treasury and Resources' proposals. I would, however, encourage them to ensure that the mechanism is kept as low key as possible. The alarm bell that is still ringing is, to paraphrase the advice given to investors in mortgages: thresholds can go down as well as up and your quality of life may be at risk as a result. Has the Treasury and Resources Minister given me comfort that he will strive to maintain the impact of proposed new thresholds for at least the medium term? Perhaps one of his assistants could comment on that. I listened with great interest to Deputy Ryan's speech, especially the part that talked about the zero or reduced rates on food throughout the rest of Europe. I wonder, though, how different the outcome might have been if he had turned the information on its head. Looking at the table on page 13 of the comments, only 4 of the 27 countries listed have a rate for food of zero or less than 3 per cent. In fact, looking at that, Cyprus and Malta will soon lose that rate, which will be required, I believe, under their transitional arrangements, to rise to a minimum of 5 per cent. Only the U.K. and France have an open-ended transitional arrangement. The fact is, though, that our rate is already so low that it may just not be viable to zero-rate food on the grounds of bureaucracy and administrative cost. The real time to consider a reduced rate for food may well come when some future Minister for Treasury and Resources has the difficult task of trying to convince the House of the day of the need to increase the base rate beyond 3 per cent. The application of the extremely complex U.K. schedules cannot in any way be squared with my stated hopes of keeping G.S.T. as simple as possible. I believe I am on record as saying that we must learn to target our policies more accurately to ensure that the people who benefit are those that are most deserving, that our policies are equitably applied. So, finally, what has helped me make up my mind is: who will benefit the most from this complexity? Not the poor, not the middle-earners and maybe not even the rich, but possibly the bureaucrats, the accountants and the lawyers. I apologise to any accountants and lawyers here, Sir, but not to any bureaucrats. **[Laughter]** Other speakers have talked about the complexity of the U.K. models. Let me just close with a current example which has been anonymised to spare the blushes of the B.B.C. (British Broadcasting Corporation), from that popular publication, Confectionary News: "X Foods could end up paying more for its fruit bars as the U.K. Customs and Revenues are arguing that the snack is a confectionary product and so should be taxed. Under U.K. law, all confectionary goods, including ice creams, soft drinks and crisps currently come under the umbrella of the V.A.T. (Value Added Tax) tax, set at 17.5 per cent in the country. In March, X Foods were optimistic about its tax bill after successfully arguing to a V.A.T. tribunal that it should not pay a £192,723 tax bill because the fruit bars are not considered confectionary as they do not contain sweetener and are not cooked. However, the High Court is now backing a Customs and Revenues inquiry by arguing that the product does not need to contain sweetener to be classed as confectionary. The case will now go back to the tribunal for further discussion." Bureaucracy: I think so, Sir.

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

I found Deputy Le Hérisser's speech this morning very illuminating, and, like him, I too was somewhat concerned by the earlier speech of the Constable of St. Martin, Sir, because I had noted that he repeatedly stated that G.S.T was the best option. Well, in my view, Sir, it is the worst because surely if it was, indeed, the best we would not need all these exemptions in order to make it

semi-acceptable. I will not refer to Senator Routier's somewhat mistaken and rosy view of the Goods and Services Tax from his speech, Sir. In my view, as I have stated previously, the introduction of this tax will damage business, it will damage tourism and, of course, we all realise that at a stroke it removes any incentive for future economies - heaven knows we have little incentive for present ones - meaning more taxes in the future, Sir. It will require an enormous amount of manpower to implement, hugely underestimated in my view, Sir, because I do not believe we have yet realised the manpower and financial consequences in relation to administering imports and re-exports faulty goods.

The Bailiff:

You are speaking to the amendment?

Deputy G.C.L. Baudains:

I am, Sir. I will be there in just a moment. I am leading right up to it, Sir. Goods for repair so that they are not double-taxed and so forth, Sir: I believe it is a considerably more complex issue than Ministers would have us believe. This is where I am coming to it, Sir. All these exemptions can only exacerbate the problem. If, indeed, G.S.T. was the best option, we would not have our first aid kit out again, treating the symptoms rather than the cause. I think that the simple answer is to realise that we have, indeed, made a huge mistake in being seduced into believing that G.S.T. would be simple, it would stay at 3 per cent and all the rest, Sir. Having said that, as other Members have said, it does not seem likely that this Assembly is big enough to admit it has got it wrong, so where do we go from here? Well, Sir, I started out believing that Senator Shenton's proposition was the way to go, mainly because of my serious concerns about the Goods and Services Tax in the first place and the effect of it. We all realised that the low income support will assist the poor but, of course, that makes those just outside low income support the next vulnerable. I come back to my sticking plaster analogy. Sir, I believe that the proposition was the way to go. Then, Sir, along came the make-it-up-as-we-go-along piece from the Minister for Treasury and Resources, which, again, concerns me about the Goods and Services Tax. It does seem to be now that so many people have given up smoking there is obviously a lot of fag packets lying around because they seem to be used quite often. The Minister for Treasury and Resources' alternative is seductive, Sir. So, having studied that, I thought: "Yes, that is the way to go". I am minded to prefer the Minister's alternative. Then, having reflected yet again on the subject, I thought: "Yes, but it is almost certain as the sun rises in the morning, as certain as that, I would imagine, that Goods and Services Tax is not going to stay at 3 per cent." Of course, as it does rise, and presumably will be heading towards 10 per cent in the not too distant future, the alternative suggested by the Minister for Treasury and Resources becomes less attractive. The more the Goods and Services Tax rises, the less helpful the Minister's initiative. Weighing the 2 issues again, I come to the conclusion, Sir, that I am minded to support Senator Shenton's proposition, bearing in mind all the time, Sir, as I believe is the position of Senator Norman, that I remain philosophically opposed to Goods and Services Tax in the first place.

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

I think I might be the last so I will be quick, Sir. I had one question. Maybe Senator Shenton could answer it. We have recently been circulated something on *de minimis* level being set at £12 and I have asked my colleagues to the left and right of me. We do not seem to be able to figure out exactly what it means, what it is in regard to, whether it is import or sales or purchase or retail. Anyway, it is probably importing. Some people have made some points about G.S.T. being forced upon us when, in actual fact, it is not being forced upon us at all. It is a step that we have acknowledged, and it has finally been admitted, that we have taken in order to address a tax preference of introducing a system that will retain an advantage for the finance industry which we have become heavily dependent upon. The reason we have introduced G.S.T. is to broaden the tax base across the community so that there is more of a spread of the collection of tax in our

community than at present, which is dangerously thin in respect of the people that we take it from, predominantly the finance industry. So is it not a little bit interesting when you look at the cost of a house today in Jersey averaging £420,000, I think I read in the *J.E.P. (Jersey Evening Post)*, for the average 3-bedroom with an 8 per cent possible rise in the cost of flats? Is it not interesting when you look around at the amount of share transfer properties that are on the market that are guaranteeing incomes of £650 per week? Is it not interesting with the shortage of housing that one sees in Jersey the inability for local people and residents of Jersey to get into the housing market? Is it not interesting when you hear promises at election time of addressing the differences in the community by supporting people in low income support systems due to the fact that new taxes such as G.S.T. will be introduced to help them get over the fact that they cannot afford their rents? There will also be introduced shared-equity schemes. There will also be introduced a migration policy that works. In 2002, I think, I went with Senator Le Main to talk about I.D. (identification) cards which are being proposed to be introduced at the end of 2009. I asked then how long would it take to introduce an I.D. card? I was told at the Policy and Resources Committee, along with Senator Le Main, 6 weeks.

Deputy I.J. Gorst:

Sorry, Sir. I am not sure whether the Deputy would like to give way for clarification. He has mentioned a number of times there an identification card. I think he will find, if he was at the briefing last week, he will realise that it is a registration card or certificate, not an identification card that is being proposed.

Deputy P.V.F. Le Claire:

Well, I did not stay for that part, I had to leave, which I did tell the Minister, who supplied me a slide of information as part of the presentation. At the end of that slide it says: "Introduce identification cards at the end of 2009." Now, maybe I stand to be corrected. But it is not that that I wanted to focus on. What I wanted to focus on was the fact that there are a whole raft of measures being introduced to guarantee opportunities for local people who find themselves in this community, in some cases, through no choice of their own. They are born into it and in many cases they are born into their circumstances. So I find it quite crass when people talk about the rates of G.S.T. and V.A.T. in other countries when they have no understanding of the cost of food in those countries or the quality of life or the opportunities in those countries or the lack of them. It really is a little disappointing that I must say the vast majority of my colleagues in the States of Jersey who have such a breadth of knowledge and experience and business acumen, have very, very little experience on a personal level of what it is like to try to retain one's pride in a very costly community. Broadening the tax base and implementing support systems and broadening the welfare mechanisms in our society and taxing food is going to make retaining one's pride in this community a little more challenging for those people that attempt to on a daily basis. It is unless you have lived a life of absolute getting-by that you will understand this. Regrettably, although I can learn many things from my colleagues in the States, I have yet to be able to discuss this with more than 2 or 3 per cent of them. There are issues about whether or not we wish to adopt a U.K. mechanism and I share the concerns of many that introducing U.K. mechanisms to our jurisdiction is not one of my preferences. There are issues about the V.A.T. system and the complexities and the issues at hand in relation to identifying packages as to whether or not they are involved at zero-rating or are they food, are they chocolate spread. I must apologise to the Constable of St. Lawrence, for months now I have been getting upset with him thinking he was not sharing his chocolates, only to learn this morning that chocolate spread is the flavour of the day to the Deputy sitting next to me. So, apologies to you. I think, really, in a nutshell, it comes down to the fact that this is going to be a tough one for the Senator to win. He is going to have to convince many Members in his summing-up speech that his suggestions are the right ones. I will support him but I would also urge him, if he is unsuccessful, because of the speeches of some of my colleagues, to bring back an exemption for food... if this is unsuccessful today, on G.S.T because the issue is

really: do the States need to broaden their tax base? Yes, it does. Do the States need to tax food? In my opinion, no, it does not. But if they do decide to do this and if they do decide to broaden their tax base across the board and if they find that that collection of money from those items: from children's clothing to foodstuffs, is inadequate to attain the competitive advantages to the finance industry, then they will seriously be facing a more serious challenge from the ordinary men and women in Jersey in relation to positions in this State of Jersey because they will be attempting to make sure that the next time the knife is held against their throat as to: "Do as you are told and lump it and like it or the wealthy will leave," more and more of them will say: "Our tax base is broadened. Let them go." Where are the opportunities? Where are the guaranteed opportunities? Where are the retraining schemes? Where is the housing? Where is the control on the costs of housing? Where is the control on the costs of foodstuffs? You can buy food cheaper in the railway stations in central London, in the shops that serve food there, than you can on many of the shelves in the corner shops in Jersey. So, please, do not preach to those of us who have experience in this issue about whether or not we are getting a low rate of tax. You are taxing food. If it has got to that level, and it will increase along with everything else that has increased in time, then we really are digging to the bottom of the barrel. I think this community is more than just about looking after our finance industry, that is less and less, it appears, looking after us and more looking after itself. 1,200 new jobs. If only we had had 1,200 new homes.

1.11 Deputy J.G. Reed of St. Ouen:

During this debate, and, indeed, prior to the States agreeing to the introduction of a Goods and Services Tax, many real concerns have been raised by both States Members and the public alike about the effects that the new tax may have on certain sectors of our community which we cannot ignore. I supported the introduction of G.S.T. with the proviso that we should help those on low incomes, which is why I supported the introduction of the low income support scheme. Presently we do not know how effective this scheme will be. But what this Assembly should be doing is to commit to ensure that the scheme will achieve its aims. I ask, should we be trying to second guess the impact that G.S.T. will have on certain sectors of our community or should we instead be saying to those concerned: "Your concerns have been heard and we will do all we can to ensure that those in need are helped"? One must ask; will zero-rating of food help raise people above the poverty line? Will it target those who have been identified just outside of the present limit of the income support scheme or does it help everyone? Does it reduce the gap between rich and poor? Equally, does it help keep the G.S.T. rate at 3 per cent for a longer period of time? I am afraid the answer is no. What it will do is to redirect funds which could be used in a targeted manner for those in need to benefit all sectors of our society. Ask yourselves: how does this compare with other States' decisions on tax measures, such as 20 means 20, where those on higher incomes will contribute more? We have, in the Assembly, committed to eradicating poverty. However, how does this fit with the proposal? Why do we take and continue to take such a narrow view? We need to be encouraging the Minister for Social Security and the Minister for Treasury and Resources to focus on supporting those who need help in a meaningful way. The Minister for Treasury and Resources' proposals to raise tax thresholds will help but it is not the complete answer. More thought must be given to those presently falling between, if you like, those 2 stools of income support and those who are eligible to pay tax. We have heard today that there is possibly an option that should be explored and could be used to deal with these people, help these people. But is it? I do not know. Do I want it explored? Absolutely. Let us do what we should be doing, and, I say, target our help to those in need. Let us stop just scattering money across the whole sphere of our society as we have done in the past. If we are... and I fully support and applaud Senator Shenton, Deputy Lewis and others who have focussed this Assembly on the concerns of the people and others. They are real. We cannot ignore them. But it is not just by zero-rating or fiddling around with G.S.T. that is going to help. If we really do want to help these individuals then we have got to be far more focussed on their needs and then direct funds where necessary to help them. I would also ask Members to consider: can we guarantee that even with zero-rating

food it will not go up? The past has shown that when duty on items such as alcohol and petrol, for argument's sake, have not been changed, retailers still put up the price. Who, then, does this benefit? As I said before, helping people less fortunate than ourselves is not just linked to G.S.T. Many other issues impact on their lives and Deputy Le Claire highlighted one: housing costs. What are we doing to deal with that issue? We read in the paper rents have gone up 10 per cent. Housing prices, 20 per cent. Is zero-rating food going to help, going to really impact on the lives of the people that are living on our Island? I think not. We have got to open our eyes and minds to the bigger picture. If we are serious, and I believe we all are, about dealing with and helping our community, let us do it in a proper manner.

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

It will probably come as no great surprise, Sir, that I will not be supporting this proposition. Of the many speeches we have heard on this one matter, some have referred to the fact that the last-minute proposals by the Minister for Treasury and Resources... in fact, I think the term has been "rabbit out of the hat." I think, just put that into context, bear in mind that the mood of the Assembly a year ago was that food exemptions were thoroughly rejected. But now we want to give more money back to the Islanders. That is fine. But let us give money back in the right way. I would like to totally endorse the comments of the previous speaker. Senator Shenton only lodged his proposition 4 weeks at the eleventh hour. It is not exactly long-term in the political life of this Assembly, I would say. Senator Le Sueur has come up with an alternative, simpler offer. Senator Norman focussed our minds on what this is all about. Who is offering the better deal: Senator Shenton or Senator Le Sueur? I think he came to the right conclusion, preferring the proposal by Senator Le Sueur, based on a rational analysis of the position and also despite him being up for re-election, as am I, next year. Now, a few weeks ago many Members in the Assembly were deeply concerned about levels of expenditure and part of that is all about spending money in a smart, targeted manner. How can we even claim to be serious about controlling expenditure if we choose a hideously expensive way of spending roughly £3 million? I also think that the Deputy of St. John made a key point, and I think it has been referred to elsewhere as well. If we exempt food, and a number of the other things suggested, will that just bring us closer to increasing the rate at some future date? I think that is key. Keep it simple and keep it low. Make it complicated, make it expensive, and it will be a lot easier to increase the rate in the future. Do not forget if rates do go up in the future it will be in the hands of Members at that time to do whatever they want at that time. Now, the problem the Minister for Treasury and Resources has is that he listened to some of the concerns expressed during the last debate on exemptions. He moved his position fractionally on certain items: school fees and medical services, basically. Now, a number of Members see that as a weakness and feel we have already complicated matters so much as to justify the additional measures being proposed today. I would say they could not be more wrong. We need to go back to the debate of last year and consider the 2 aspects that the Minister has moved on. Both the burden of compliance and of administration, exempting school and childcare fees and medical services were, and remain, low and simple. Put simplistically, it is very easy to define a doctor, dentist or and optician. Put even simpler, basically what you do... it is a matter of stating the individuals registered under the Opticians (Registration) (Jersey) Law 1962 are exempt. That is it. It is very easy to define, it is very simple in terms of administration. What we are facing today is a completely different scenario. Food exemptions, books, newspapers: very difficult to define, legally complex and probably will have unintended consequences. Do not forget that one of the key points that came out time and time again on the consultation was keep it simple. Now, Deputy Ryan spoke very well and very eloquently yesterday. I did love the numbers but I got somewhat blinded by the science at the end of it. But let us stand back a bit. Average salaries approximately £31,000 in the Islands. Therefore there will be an awful lot of people earning more than that in the Island, including accountants. I am sorry, overall as a body, they will spend more on their food that they purchase and they will benefit from this proposition if it is approved. Using households as a statistical unit as regards consumption is legitimate. I would say it is disingenuous to suggest

otherwise. Where we do probably all agree is that it is asset-rich, cash-poor individuals, probably mainly pensioners, that are likely to be more affected. But let us keep those numbers in perspective. In quintile 2, in G.S.T. terms, we are talking about £1.30 a week per household and in quintile 3 it is £1.67. Out of that if we adopted Senator Shenton's proposition - do the maths, Deputy Southern, if you like - it is going to cost about 30p a week to exempt food, if this proposition is going to be adopted. That is to everyone. So if you were going to donate to a charity would you donate to one that has 25 per cent administration costs? Would you give money to that? As regards costs, I think the arguments that Deputy Ryan is using are a little bit too simplistic. At the end of the day, from my point of view, we have a G.S.T. Director who has got, I think, 35 years of experience. I am afraid I am going to trust his judgment on that one and I rather think he has got the wider experience, he has got the global experience and that is the person we should be listening to. Bear in mind that the proposals of the Minister for Treasury and Resources, even just on thresholds, will be 3 times as beneficial to the lower-middle income bracket in just exempting food. Now, what we are concerned about is the burden of compliance on everyone, not just the States of Jersey. I have to say, personally, I have never been worried about legal cases being brought in Jersey. What I am concerned about is the application of such U.K. decisions in Jersey, future ones and also the 30-odd years of weird ones that already exist. That does bring me quite nicely on to the subject of food in detail. So, as I said, up to date, we have predominantly excluded services. That is quite important. That is relatively simple. While food can be argued about one item, shops could carry probably carry 20, 30, 40,000 lines of stock or possibly even more. That is not an exaggeration because I know I have had a non-food retailer who had rung me up and said he has got 20,000 lines of stock. Each one of those will have to be considered separately to be compliant. Even if you follow the archaic system from the U.K., they will still have to be locally checked on a regular basis internally and then because they have got to be checked internally and because they are going to be charged differently they will have to be checked by the G.S.T. teams. So exempting food is a nightmare. As soon as compliance gets complicated and as soon as it is your average individual who starts having to work out what is zero-rated and what is standard-rated, mistakes start happening. Sometimes they are not even mistakes. You get greater potential for fraud going forward. We have heard the U.K. experience is in the order of one and 2 visits detect mistakes, many of which have to do with misinterpretation of what goods are taxable. To put another argument into context, what we are talking about is the difficulty of having 2 rates, whether it is a zero rate or a standard rate or a lower rate and a standard rate. It is irrelevant. The basis of most European systems is to have at least 2 rates, and that is what makes it complicated. We tend to refer to the U.K. because that is what the proposition is all about. But the principle holds good in Europe, as the likes of France and Germany and whoever set up the system, I am going to say, around the same sort of time. It has always been the point that what we are trying to emulate are the newer systems outside of Europe, such as Singapore, because they have learnt from the experience of others. Fiscal package, introduction of G.S.T., broad-based simple system, that was the intention. The changes we have done so far have not impacted upon simplicity. But exempting food destroys that principle. Now, Members who attended the G.S.T. briefing a few weeks ago may recall the words of the OXERA. (Oxford Economic Research Associates) economist who described the sheer administrative impact of exempting food as a dead weight on the Jersey economy. That is one of the key points. It is not just about the cost to the States of Jersey or even to the Income Tax Department or the G.S.T. Department. It is the sheer regulatory impact upon all of Jersey businesses, which, in turn, will increase their own costs and it is likely that those costs will be passed on to the food anyway. I would also note that the same economist did categorically state that there is a huge difference in the reported regressivity, depending upon whether something is measured as a proportion of gross income or disposable income. That, irrespective of Deputy Southern's comments yesterday - I am sure he will pick me up on it later - Members do need to remember that. Senator Shenton sent Members all an email on 12th November, which was last week. In it he analysed certain figures to arrive at a total revenue impact on exempting food. He also said: "Please note, G.S.T. will still be payable on unhealthy items like crisps, ice cream,

chocolate, cola, *et cetera*.” In fact, even last Monday night he stated on the radio: “It is really only basic items that have been excluded.” I have to say, I am sorry. I think that rather demonstrates the singular lack of understanding as to the complexities that are involved. What will happen if we adopt this proposition? I say again, I stood on a platform and was elected upon supporting in general terms the fiscal strategy and G.S.T. with a simple system. Even then, when I was knocking on the doors and discussing such things as food exemptions if they did come up, when you explained it to them, individuals agreed that the simple system outweighed the call for exemptions of various items. So I can say I have discussed this with hundreds of parishioners, and, indeed, only yesterday I was wished good luck by one of them for this G.S.T. debate. Now, I am not going to go into the examples I provided last time round but I did spend a few more hours with the G.S.T. Director last week and came out somewhere between being a bit depressed and being hysterical. I will just correct Senator Shenton, or elaborate on Senator Shenton, to say that I think he used frozen yoghurt as an example and frozen yoghurt is a wonderful example because it depends whether you use it and you eat it like ice cream or whether it has been frozen for preservation reasons and then defrosted before being consumed. They get taxed at a different level. Deputy Power has already reminded us or told us about takeaway food, whether it is hot, cold or just warmed-up. Just to pick up on something that Senator Shenton said, before I start on food properly. He states in his report that when anything new is introduced you can start with a clean sheet of paper. It is a tremendous opportunity to put in place the right structure. I agree, absolutely. What he is proposing is to impose an archaic system that no one in their right minds would even contemplate, and a system that is staggered to its present place in evolution over a period of about 30-odd years and which is used in a country of 55 million people. Now, is that really a system that is appropriate for an Island of, say, 85,000 people in the 21st century? Senator Shenton is a lot more eloquent than I can ever hope to be and in his report he uses a wonderful turn of phrase: “The States - we should not be charging O.A.P.s (old age pensioners) tax on a loaf of bread, the sick for their chicken soup, the ambitious for their textbooks.” He states that the food component of a restaurant meal would be tax-free. He is wrong on that. Under the proposed rules it will be taxable. He states we should be being economists, not accountants, because the former aimed to improve the wellbeing of all of the people and manage the economy, while the latter, no pun intended, are effectively being counters. He then reminisces about a rather stupid and confused Robin Hood, stealing from the poor and giving to the rich. Well, I am sorry, this accountant has listened to the economist who said: “Do not exempt food if you want a simple system.” He said the related administration suffered by the entire economy would just be a dead weight. It would benefit the rich more than the poor and it would achieve nothing. This accountant has listened to the professionals, who have put systems in all over the world and who have practical global experience in these matters. They say: “Keep it simple, that we simply are not prepared for the difficulties that these proposals would unleash.” But this accountant has also listened to all Members who want to ensure we have greater support for those who just fall between that gap, between income support and tax. Let us just go back to Robin Hood for the moment and I rather think, Sir, Senator Shenton has been rather influenced by that Saturday night series that is presently showing on B.B.C.1, although I do have a problem trying not to picture him running around in green tights. In particular, he seems to think that horses are a standard means of transport in the 21st century. Why do I say this? Why else does he want to exempt horse feed. I repeat, horse feed. Obviously it must be that most basic food that nourishes the least well-off and not what is consumed by the well-fed animals owned by many members of the equestrian set in Jersey, many of whom I know and like but would certainly not classify as impoverished. I do not think that is Robin Hood. It seems to me that the only person which is there is possibly Senator Shenton. Now, Senator Shenton said that he is not excluding unhealthy food, and let us just move on to that point. Members may recall Deputy Gorst’s confession a while ago for his predilection for cakes - cream cakes in particular, I think. I hope he does not drool too much during the next part of my speech and equally, although unfortunately he is not here, that I do not add to the Dean’s disappointment of the unfairness of their different sizes when I do confess my enthusiasm for all things made of chocolate and for many things made of sugar. I do have to

confess a leaning towards confectionary. So, Sir, being a very sad accountant, I went on a G.S.T. shopping trip to a variety of Jersey stores, including the Co-op, to acquire certain sugary items and then to consider their proposed G.S.T. treatment. For example, Sir, we do have the infamous gingerbread man, who is getting slightly concerned, after Deputy Ferguson's speech the other day that he about to lose rather a lot of his chocolate faculties, I believe, and be left with just 2 eyes. But consider this. I do rather like marshmallows, Sir, and these ones must be healthy because they are fat-free. These are confectionary and confectionary is subject to V.A.T. Those are marshmallows. However, these, Sir, are naturally bought from the Co-op, are Co-op tea cakes. A tea cake is defined as a marshmallow perched on top of a biscuit dipped in chocolate. That is yummy. That is a really unhealthy combination, that is. Guess what? It is not subject to V.A.T. I then turn my sweet tooth and my now rumbling stomach to shortbread. That, of course, is Scottish. I believe it says "organic" as well. Now, that is excluded from V.A.T. But these, which are covered in chocolate, are taxed. That might be logical because these are obviously richer than those. However, if you get a bakery to take that shortbread, whack on some caramel and cover that in chocolate, and you can call that a caramel slice or a millionaire slice, guess what? That is zero-rated. That is nice and logical, is it not?

Deputy P.V.F. Le Claire:

Could I just ask for a point of clarification? Is the Deputy comparing apples with oranges? [Laughter]

Deputy I.J. Gorst:

Could I ask the Deputy to make a commitment to place all these goodies in the Members coffee room for later? [Laughter]

Deputy J.A.N. Le Fondré:

We can certainly pass the bags round shortly, Sir. So, plain shortbread is excluded, chocolate-covered shortbread is taxable but chocolate-covered shortbread with caramel is not subject to tax. Oh, yum, yum. I am really glad that last one is not because obviously it is healthy. Put that in a more serious context in the days of a lot of talk about obesity. I am also glad, Sir, I was not the only one to spot that not only toffee apples but chocolate body paint are also excluded from V.A.T. under the U.K. rules. Perhaps we will move on rapidly from there. It has been argued, Sir, that that is okay. It is tricky but the U.K. will do it all for us and it has been referred to; it can be done on the barcodes. Well, again, that is fine for the likes of the 2 larger supermarket chains over here, including the Co-op but also including others as well. What about all of the smaller local businesses? If the local retailer does not have U.K. assistance or pre-priced items, or, dare I say, produces their own products, or possibly imports those goods from, say, France, or Portugal or Poland, how does having the U.K. as a reference point help them? This exemption will only help the larger retail outlets. Administratively, all the smaller outlets - specialist outlets - all the ones importing food from anywhere other than the U.K. will have a problem. I would like to ask Senator Shenton in his summing-up how his proposals will help the medium-sized local business. Now, those businesses will have to individually judge what is taxable and what is not. Do these proposals not just favour the larger corporations in this Island? It is not just about business. All these extra costs will push through to the consumer in some shape or form. I think I am also a little bit puzzled, what happens... because I understand, from a couple of sources that the U.K., probably under a long-term pressure, is under a degree of pressure to end zero-rating. So we do not know what will happen at that point. You could end up with multiple bands of V.A.T. being brought in there and that would then mean that we would be having a system that was hideously complicated and potentially no one else was using at the time. Bear in mind that only 4 of the 25 countries of Europe zero-rate food. The rest have ranges from 3 per cent up to 25 per cent. Does that make the French, the Germans or the Danish immoral? What about the local bakeries? Back to cakes, again, Sir. They do not have the full backing of a U.K. associate to support them. What about some of

the local hotels over here who bake their own products and sell them outside of that hotel? I know that because our G.S.T. teams have been visiting them. They are going to have to go through every product line and consider which item is taxable or excluded. Do not forget that even garages sell food these days, sometimes warmed-up. Is that a simple system? I do not think so. Again, bear in mind a chocolate cake is excluded but a chocolate biscuit is taxable. I think I have got that the right way round. I remember a story of reference to our colleagues up in that particular media cubicle which was on B.B.C. Radio Jersey around the end of October about the difficulties the Canadians were having. Oddly enough, it was to do with pumpkins. Essentially, if you buy a pumpkin to make soup and would never even consider making it a decorative lantern, that is fine. You do not pay G.S.T. or whatever it is, sales tax, over there. But if it is for decorative purposes, and funnily, those really cynical, suspicious people in Customs thought that for Halloween people might be buying pumpkins as a lantern, then that would be taxable for sales tax, and they came up with a form to allow people to reclaim the tax if they could demonstrate that it was for the purposes of food. Do we really want to get into that sort approach? What happens when the U.K. regulations next change due to a court case? What happens if Jersey falls out of synch with the U.K.? Are we going to have businesses following the Jersey system or the U.K. system? Because you are going to have to keep those regulations moving forward. Let us move on to some of the other items in Senator Shenton's report. Item number 2 on his list was animal feeding stuffs. Well, the only thing I want to add to that is that these are also complicated. Animal feed ranges from grazing rights to bird feed, for example, pigeons, unless they are being fed food similar to parrots. There are different treatments for different types of dog food. The Senator wants to help the dairy industry. He has said that. Well, so do I. But there is already a means under the current G.S.T. system that will assist them and if the system is kept simple, the assistance will be simple as well. Item number 3 refers to seeds. So now what we want is every garden centre to go through all of its plants, seeds and bulbs and distinguish between tomato seeds and seeds for growing geraniums. Item 4 is live animals of a kind generally used as or yielding or producing food for general consumption. Do you know what that captures, amongst other things? Bees. A bumblebee is treated differently to a honeybee. Pets, for example; dogs will be taxed. But rabbits are still regarded as a food source and are excluded. All I can say is it is a good thing we do not live in Korea. To continue, straw food is zero-rated but straw for bedding is taxable. Well, Sir, in conclusion on that, by exempting food, we are imposing a burdensome and weird system on to food retailers, garden centres, bakeries, animal food suppliers and pet shops. Is that a simple system? I do not think so. Is it complicated? Yes. To who? Everyone. Is it likely to lead to increased admin costs throughout Jersey? Yes. Is it likely to increase prices anyway? I would say so, yes. Is it morally wrong to tax food? I think when we are aiming for a simple system and a reasonable system, designed with Jersey's own scale in mind, then I do not think it is wrong to tax food, particularly as we are already protecting those who need protection, and I think we are deluding ourselves if we think it will have no impact on the administration burden or we think that it will mainly help the less well-off. Sir, I rather hope Members will support the Minister for Treasury and Resources in rejecting this part of the proposition. I am very, very briefly going to talk about publications. "It is wrong to tax the ambitious" says Senator Shenton. It has been suggested we are taxing knowledge. Well, I think, again, that is oversimplifying matters. What are we trying to achieve by exempting books, newspapers and magazines? Bear in mind that includes music, maps, brochures, pamphlets, leaflets. What is the difference between a magazine and a brochure? Members may recall I directed their attention during the last debate on this subject and I held up and queried the educational merits of things like *GQ*, the *Sunday Sport*, even *House and Garden*. Given that most school books are purchased by schools who are excluded from G.S.T. and given we have a central library and mobile libraries, can we truly be said to be taxing knowledge? Can we truly be said to be taxing education? Now, I do not think so. I think that given 90 per cent of books of knowledge are already covered, we are just exempting what effectively amounts to entertainment and potentially pornography. I will just focus on my colleagues at the front of this section of the Chamber, Sir. If they are Members of a political party wanting to print a political pamphlet, I

presume they are going to go to a local printer. That printer will have to assess the purpose before being able to say whether the transaction is subject to G.S.T. or not. So if it is a political pamphlet for a political party, that is fine. That will be excluded. But if you add a tear-off strip, perhaps asking for readers to join the party, supplying their name and address, then it will become taxable. Does that even sound logical? I think it has been said before: we need to be thinking with our heads. If our hearts are saying we need to be doing more to assist the less well-off, then for goodness sake let us think and let us help them in the right way. The public do expect us to listen. However, they also expect us to act rationally, to base our voting on the information in front of us and to use their money in the best possible way. So, in summary here, Sir, we have a very simple choice in front of us; let us go for a scatter gun effect, let us spend £3 million and give £2 million-£2.5 million to people who can already afford the tax. Let us spend hundreds of thousands of pounds on administrative costs in so doing. Or we target the money. We give all of the £3 million to those who need it. That is the rational thing to do. Sir, really just to focus people's minds here, we now have a commitment, which perhaps I can elaborate on a little bit more. What the revised proposal is, from the Minister for Treasury and Resources and the Minister for Social Security, is to have a rebate of G.S.T. It will be a tax rebate, not a benefit. It will cover those between income support and tax thresholds and it will be in place by 1st May of next year. We will give a further commitment and more detail in the budget. But we estimate at the moment that the cost will be approximately £200,000 and probably £50,000 admin costs. We accept and we commit that we will need to be proactive on this to ensure that we include all of the group that do not currently get the protection that Members want. I also commit that we will work with the relevant concerned Members to ensure that we do so and that this is a simple system and that it will capture those that we intend to capture. So let us support the Minister for Treasury and Resources, let us support the Le Sueur way and let us support him in retaining a simple system and in targeting the people everyone keeps saying we want to help. This proposition moves us away from the basic principles of keeping it simple, of having a modern, simple system, of fitting something of this century, not the last. Therefore, Sir, I will not be supporting this proposition and I rather hope the majority of the Members of this Assembly will reject it in its entirety.

Deputy G.P. Southern of St. Helier:

Can I have a point of clarification, Sir? The Assistant Minister, who seems to know all about G.S.T., suggested that schools were exempt. I believe school fees are exempt. The supply of books to a school, I do not believe can be made exempt. That is what he seemed to imply.

Deputy J.A.N. Le Fondré:

In practical terms I think the Deputy will find that most schools that might come under this will be defined as charities, Sir, and therefore they will be able to reclaim the tax.

Deputy G.P. Southern:

Can I seek a further point of clarification? Is he redefining States school education as charitable?

1.13 Deputy D.W. Mezbourian of St. Lawrence:

Following on from my colleague, I have to say that my conscience does not permit me to support tax on food and books.

1.14 Deputy G.W.J. de Faye of St. Helier:

At a recent meeting of the Council of Ministers, Ministers were very pleased to hear explanations and observations on this proposition from our Director of G.S.T. This gentleman is an extremely experienced gentleman in his field, which is why he was appointed to the job. It became apparent that, in fact, the vast weight of experience that he possesses comes from the United Kingdom and he had an extremely extensive knowledge of how the British V.A.T. system worked and was able to talk in very intense detail about the implications of Senator Shenton's proposition. Interestingly, I thought, due to a coincidental shuffling of seats around the Council of Minister's table, the person

sitting immediately next to the Director of G.S.T. was, in fact, the Minister for Health and Social Services, Senator Shenton. So I watched the body language and the reactions of the Senator as the Director of G.S.T. proceeded to describe the impact of the Senator's proposition in, frankly, progressively gloomy detail. I simply draw Members' attention to the paper that they have had on this subject; the briefing note from the Director of G.S.T. and this is really giving snippets of the awful predictions that were being laid before us. But, in short, U.K. exclusions, if replicated in Jersey, would impact on hotels, restaurants, cafés, takeaways, bakeries, butchers, fishmongers, agricultural merchants, farmers, garden centres, pet shops and printers. Interestingly, there will be less of a challenge for the supermarkets importing pre-priced, pre-packed goods, therefore clearly creating administrative difficulties for a number of smaller businesses, but unfairly advantaging some of the bigger players in the retail market. Complexity of the system has a major influence. The U.K. National Audit Office reported in 1994 that V.A.T. audit staff found under-declarations at 55 per cent of traders visited. This is high by international standards. In broad terms, the Director of G.S.T. made it very clear that if we were to pick from sales tax systems, in particular relating to food from around the globe, he could not possibly have picked a worse example than taking a lead from U.K. V.A.T. directions on food as outlined in Senator Shenton's proposition. But, as I say, I was observing the Senator, and he remained almost unblinking and implacable throughout this discourse which made me reflect on his position, because I know the Senator to be an intelligent man - indeed, he is developing a reputation as a decisive decision-maker. In fact, so decisive that he can make decisive decisions and change them in less than 24 hours. He is perspicacious. So, why did he remain so totally unmoved when it was clearly explained by an expert who I suspect is unlikely to be surpassed in experience by many other experts, why did he remain unmoved? Well, in many ways I congratulate Senator Shenton for his unquestioned political acumen, because that is now what I see he possesses in this matter. On the one hand, this proposition has a clear popular support, and the Senator has developed steadily a reputation of putting forward the popular concerned view. It also has a side-benefit in internal political terms of distancing the Senator marginally from the rest of the Council of Ministers, and I can see the advantage in doing that. So, that is another "tick the box" I think for the Senator there. In general, taking this position and bringing this proposition forward, I believe, in marketing terms can be seen to be enhancing and building the Shenton brand in broad terms. But I think perhaps most brilliantly where I admire the Senator in the position that he has taken up and the way he has pursued this proposition, is that he has managed to convince the Minister for Treasury and Resources that this Assembly might support the Senator's proposition. In consequence he has skilfully wrung out some very interesting and last-minute concessions from the Minister for Treasury and Resources and, indeed, the Minister for Social Security. Now, some people may say this has happened in a hotchpotch way; it is pulling rabbits out of the hat. But, frankly, Sir, I do not mind what description Members wish to apply. I think that I did not expect to stand here today and see essentially an offer from the Treasury Department for 6.5 per cent advantage on income tax allowances, then backed by an additional support from the Minister for Social Security to assist those people who are falling in between income tax support, but are not paying income tax so the allowance deal may not be of benefit. I really did not expect to have, I think, these extraordinary - I would say "extraordinary" is an exaggeration - but these offers on the table at this stage. I have to say I agree with those Members who have spoken beforehand to say that now we can see what is on the table - and I trust my fellow Ministers to deliver, if I can give reassurance to the Connétable of St. Martin who has sought assurances on these matters from the start - I will find it very difficult to turn around to my constituents and say: "I rejected a 6.5 per cent tax allowance that you could have received in favour of imposing the worst V.A.T. system with respect to food, newspapers, periodicals, magazines, *et cetera*, that has ever been devised in the history of the world." So, I am deeply thankful to Senator Shenton. I admire his skills in having engineered this. I think it is a matter of consummate political genius and acumen and I want to appeal to those Members who have not understood this last minute shifting of the political sands to take advantage of the situation that has been put before us, because I daresay it will not come around again for a very long time. I commend Senator Shenton,

and it is with some regret that I have to say I am going to have to vote against his proposition, but I am so tempted - I am so tempted - by what has been put before us. I do believe that it is in the public interest, because if we simply look at the very simple redistribution of wealth that is going on, the Senator's proposition is still giving advantages in taxation to rich people buying food. The proposition being put forward by the 2 Ministers is clearly redistributing the wealth to the lower and middle income bracket. I think that is what all Members would prefer to see, and that is why I am going to vote against the worthy Senator.

1.15 Deputy A. Breckon of St. Saviour:

I would like to come back, Sir, to the reality of G.S.T. and I have heard some Members talking about the red tape. I think this is very interesting, because when we had the price marking debate nobody really mentioned it. Deputy Le Fondré mentioned somebody contacting him who had 20,000 items in stock and how, if this was implemented, then they will have to do a lot of double-pricing and checking and whatever else, but he did not mention that in reference to on-the-shelf price marking - in fact, nobody did. I was also interested - I think he has gone out to have his lunch, Sir, have a coffee and consume some of what he bought - but what he did not say; he did not tell us what any of the prices of the items were. It is interesting to wave them about, but how do they compare? The question I would ask Members to ask themselves is: should we be taxing some of those items, or should they be exempt - some or all? The other thing, Sir, that has tactfully not been mentioned by many Members is the existing cost to many businesses of implementation of G.S.T., in effect, collecting tax for us. What is the reality of that? What is going on out there? I do really wonder sometimes if Members know that, because there is a significant cost to collecting G.S.T. and businesses, for the time being, will bear that cost, but as sure as night follows day, that cost will be passed on. To give Members some idea, Sir, I have done some very basic research in this area, and what I can say is between Jersey Telecom, Water, J.E.C. (Jersey Electric Company) and Gas the cost of implementing G.S.T. will be over £500,000. That is as it stands and most of what we are talking about today has absolutely no effect on any of those at all. I also had a conversation with a manager of a High Street store, not a couple of minutes from here, and I asked him: "What is the cost to you as we stand without this?" He said: "About £200,000 and our head office does not understand it." They do not have a clue what is going on and we are going to have some real problems here and some staff, in his opinion, will disappear - they will not bother messing about with it. So that is the background we have that other Members quite tactically have not mentioned, and it has nothing to do with Senator Shenton's amendment; it is where we are. Now, if you put that across the economy that is going to collect G.S.T., the cost to business is probably above £5 million. That is the cost to businesses. If you roll that out about a number of areas there: one big High Street store; there are a few others, that is the cost that businesses are going to have to bear without this, but who has spoken for that? Now businesses will take a hit for now, but as sure as night follows day, somebody is going to pay. Who is going to pay? We all are. Not 3 per cent. It is not going to be a blip on inflation; it is going to be a lot more than that and it is going to filter down, and it is going to filter up. I had an interesting conversation with a gentleman the other day who has a small business. He said to me, not that long ago, that I was nuts to oppose G.S.T. - it was the best way forward. He has changed his mind. He sought out more information - he is in the service industry - he does not have a large number of employees, and his estimate now is it will cost him £30,000 to implement G.S.T. So, now I would say he is not best pleased. He did make inquiries but nobody told him before. We hear about prices and movements, about inflation. We have had house prices yesterday, we have wages indexed and we have the retail price index. So what are the real living costs? What are people paying? Should we be targeting a tax somewhere here because in Jersey we are giving this stuff away? Well, the Statistics Unit since 2000 have been working on Jersey/U.K. price comparisons. So, we have stuff that is so cheap in Jersey that we can target it for tax. It is a fair gain to go forth because people have a substantial benefit. When you get into some of this stuff, if you look at basics like meat and fish, the difference is they are up to 40 per cent more expensive in Jersey. So, therefore, is it a fair target to

tax some of these things and make them more expensive than they already are? Now that is the reality of taxing food and basic items in Jersey. Fruit and vegetables, again, up to 57 per cent in some cases in some vegetables, and up to 46 per cent more expensive. Why should bananas be 46 per cent more expensive? I have no answer for that. When we get to items like bread, the differences are astronomical. Absolutely unbelievable some of them. There must be a reason for that, so the question then is why are we going to tax that? I want to come to that in just a little more detail, because Senator Walker will remember and Senator Le Sueur and former Deputy Voisin, we had some conversations in 2004 and 2005 about figures that were coming from Jersey/U.K. price comparisons and why was this difference so exaggerated. Since January 2005 people on behalf of the Consumer Council working under a service level agreement have been going out monthly into supermarkets and into convenience stores and gathering information. I should say before that this information was not readily available, so we are building-up a database. On 18th and 19th October this year and last year, we did a check across U.K. supermarkets and Jersey ones, and I spent 2 days last year on 18th and 19th October in 3 big U.K. supermarkets, and it was indeed a worthwhile experience. The reason I say that, Sir, is because there was no history, there was no archive of prices, and in order to make meaningful comparisons you have to build this up and you cannot do it overnight. But the other thing, Sir, it was done again this year on 18th and 19th October and what it does show, and this is still being worked on as I speak, but on some basic items - and these are very basic - there are some differences for no explainable reason of about 50 per cent more expensive in Jersey. A jar of mustard, for some reason, is 50 per cent more expensive in Jersey. There are other things as well for some reason. Peanut butter is about 50 per cent more expensive, that is between U.K. and Jersey. The question that raises is: why should we tax it then? Should we not dig in and say: "Well, why is this?" and I must say I have had some business-like meetings with former C.I. Traders and, indeed, the Co-op. I want to quote an example, Sir, because this is a classic and it is if you use something that is measurable, if you use a branded good in a size then it is comparable. The Statistics Unit use generic things so it is not branded, but if you get into a brand, then you can compare it. If I say to Members that in the big supermarkets in the U.K. a Hovis Brown Loaf is 57 pence, and the U.K. supermarkets watch each other on prices - they are keen. I am looking at the Economic Development list, and I think we are in agreement here, we maybe could do with a little bit more competition to sharpen a few pencils. But in Jersey the cheapest one is £1.05, and it ranges from £1.05 to £1.11, so that is very nearly twice the price. So why would we want to tax something uncertain? If you look also at white sliced bread in the U.K., the U.K. supermarkets virtually give it away - it is under 30 pence. In general terms, we all do that now. It has been said it is a loss-leader. We could not bake it. If we bake to that level we could not eat it all, but having said that it is available to consumers here, generally, it is around about £1. Some of the other loaves are up to £1.60 - sliced loaves with various connotations to that. But the question that raises, Sir, is why are we taxing stuff that is so expensive anyway? That is where I started from. The reality of G.S.T. is what people pay. Now if we were taxing perfume or cameras or something like that, you do have a choice. With some of these items you do not necessarily have that choice, and that is really where people are feeling the pinch, and they are squealing about this, because it is a very real issue. You can buy other things, perhaps on the internet, or somewhere else, but you cannot necessarily buy these things - not regularly anyway - and you do not have that choice. The other thing, Sir, that is linked to this is affordability. If we look at the pension rate of, say, a single pensioner £168, it sounds a lot, but when a single pensioner comes to spend that money, then what does it buy? I know this is something that Senator Syvret and I share concern about, the pound price parity and what does a pound buy in Jersey and what does it buy elsewhere? We have never really had that as well, and I know there is a move to include a part of the retail price index that removes taxation, and I think that is dangerous because we must need to see the effects of what we are going to do if we are going to do it. The other thing, Sir, that other Members have mentioned is the moral issue, and I think there is a moral issue. If people are so hard up, as it were, to raise money that we have to tax these basic things, then where have we gone wrong? That is the question I would ask Members to ask themselves, because perhaps we do not have other

things quite right. I understand where the Minister for Treasury and Resources is coming forward with other things for them at the eleventh hour and the 59th minute - I can well understand that. I can see the logic of it, but for me there is still the moral issue of whether or not we should be putting tax on these basic essentials. I would just like to mention something that Deputy Ryan said yesterday, and he talked about things being important and being on the docks. But I was given a copy of a letter that came from a shipping agent, and what it said is that people who were receiving items must have a clearance from Customs that included payment. Now, the way that was put to them is even if they were small operators, they had to prove that before they could take their fresh goods - and they were fresh goods - off the docks. I would just like to close, Sir. The other thing that has been mentioned is there has been smoke and mirrors about the U.K. and the complication, or whatever, but I think for many, a system would fit over the top of this because where the confusion would be is this would not be a G.S.T. exemption on supermarkets. There are many items in a supermarket, as has been demonstrated, that do attract V.A.T. I think that there could be a mixed message here, and that is a possible danger, but having said that, receipts and notices and stuff would cover that. But the biggest black hole that is appearing in the U.K. with V.A.T. is not in any of these areas at all, it is about the threshold of £60,000. Many traders now, even from a corner shop, if you sell D.I.Y. (do-it-yourself) stuff you can trade on the internet and the V.A.T. inspectors cannot keep a track of this, so that is really where the black hole is, and it is not about anything on chocolate biscuits or jaffa cakes or anything like that, Sir. But I would just ask Members to consider what I have said, because the reality is the real - the very real - cost of living in Jersey. These basic items, how much more expensive they are and something like, as Senator Shenton will know, the Co-op Grand Marché would carry something like 15,000 lines, so it is not possible for the Consumer Council to keep a track on everything, although we are working still with supermarkets, and we do have a new incumbent hopefully to have more transparent pricing. That is the other thing that we do not have which is available in the U.K. and I will support the amendment, Sir. I do see some of the complexities, but I also see people's real living costs and I understand their concerns for a further increase, and although we might follow it with various subsidies and complications and grants, and anything else, I think the cleanest way would be for us to show some lead on this issue, and give this exemption - it has been done in other areas; it is not impossible to achieve - and I would ask Members to support it.

1.16 Senator P.F.C. Ozouf:

May I give notice, Sir, that I think this issue has been very well debated, and I would like to give notice of the closure motion.

The Bailiff:

Very well. Does any other Member wish to speak? Deputy Troy.

1.17 Deputy P.N. Troy of St. Brelade:

Well, Deputy Le Fondré, let us call a rabbit a rabbit. Certainly, you looked like one when the surprise deal was revealed by Senator Routier. Deputy Le Fondré is the Assistant Minister at Treasury and I am the Assistant Minister at Social Security, and I know for a fact that neither of us were involved in this "late in the day" deal. Up to 20 minutes ago I was going to support Senator Shenton. That is because a week ago I said to Senator Routier when he advised me that the Treasury Minister was going to offer to raise income tax thresholds by 6.5 per cent rather than the 3 per cent which had already been proposed in the budget, that those above income support and who are non-taxpayers would not be protected. That was before the item was lodged, and I said to Senator Routier that I still had misgivings about that - that that gap was not covered. But this morning's revelation, however, will help those who are non-taxpayers and who do not receive income support. They will now have a simple process of declaring on a form that they are non-taxpayers and that they are not in receipt of income support. Once that has been submitted to, I presume, it will be the Tax Department and the Comptroller of Income Tax, then that will result in

a cheque being sent to them. The Treasury Minister's proposals will not be bolted on to the income support administration and I, as the Assistant Minister, personally would not have supported that administrative route if it had been proposed. But it is going to be a separate issue which will be via the Tax Department, I presume, and, of course, will involve considerably less administration than Senator Shenton's proposals. So I ask Members now to support the rabbit - whether it is Deputy Le Fondré, Senator Le Sueur or Senator Routier, I am still not sure. But rejecting Senator Shenton's proposition is now the right course of action.

1.18 Senator S. Syvret:

Sometimes people are very critical in this Assembly of propositions - policies - being brought back time and time again for debate. It is not a criticism I have ever agreed with. I think it is more than justified if Members, even if they are in a minority, wish to have their policies tested, discussed and decided upon in this Assembly. But we have very good evidence in this particular debate of the efficacy of bringing things back and trying and trying again: the costs we have had, concessions from the Minister for Treasury and Resources and concessions from the Minister for Social Security. So, this is a significant and beneficial step forward for ordinary people. That would not have been achieved unless it were not for the fact that the Council of Ministers were very frightened that there was a chance of Senator Shenton winning this proposition. So I think it is useful to remember: if at first you do not succeed, try and try again. I spoke yesterday on one of the amendments when I said that the particular calculations, the detail of them, being bandied about across the Chamber were not really the issue that we need to focus on. One could say that there are costs to this or that policy, and X or Y group of people will benefit from the other, but in the big scheme of things the sums we are talking about are comparatively small. I believe that this Assembly, and many of the Members who are sat in it, would be well advised to understand and begin to appreciate the importance of a little symbolic empathy with worried members of the public. People out there are not satisfied with the States of Jersey at the moment, or its Council of Ministers. I find it difficult to remember a time when there was such widespread public irritation and exasperation with their Government. It is an exasperation that spreads, I think, across the political spectrum. That ought to give Members pause for thought and, certainly, I can say for various reasons, the public image of the States is not likely to get better in the coming months. I really think we have to understand that we, as a very, very wealthy community with lots of very, very wealthy people in it, need to find occasionally some other ways of helping find the tax income we need. There are mechanisms we could use to raise some small amounts of tax from other sources. That is not to advocate high taxation, or any kind of a caricature of tax and spend policies that one might have discovered in the Labour Party in the 1970s, but the fact is the total tax taken as a proportion of G.D.P. (Gross Domestic Product) in Jersey is extraordinarily low. So there is capacity and there is scope there for other mechanisms to raise tax. I think the community of Jersey - the people of this Island - would feel a little less irritated with Members of this Assembly if we were to say: "Okay, we are not in fact going to put a tax on the apples and bananas in your fruit bowl, the bread on your table, the meat in your fridge, the milk - all of it." We are not going to tax those essential commodities of life while at the same time maintaining a zero-approach to capital gains tax which enables people to structure their wealth stream - let us call it that as opposed to income - in such a way that they can accrue vast capital sums and pay not one penny of tax upon those sums as capital gains to the Island's Exchequer. I really think we should, even some of those Members who perhaps were planning to vote against Senator Shenton's proposition now. We have seen the great benefit of trying and trying again, and really forcing the issue. We have seen how it can draw out concessions - important concessions. Well, I think what we need to do to force this issue is support Senator Shenton's amendment, and in so doing send a very, very clear signal to the Treasury that we want them to look at some other mechanisms as well, and a clear signal to this community that we are listening and we do have some empathy with it. Let us face it, the argument against exemptions of any kind in principle is gone, buried, it is history, and it was, frankly, at the very outset of this exercise. To cast your minds back, we have a Treasury who were insisting that it

was absolutely against the fundamental principle of their policy to have any exemptions at all and were rabidly resistant of all of those times when I sought to get the Assembly to agree to exempt certain things. But at the same time at that stage they were planning to exempt things like property repairs. Get your conservatory fixed; have your swimming pool serviced; that was going to be G.S.T. free. If you want to buy a loaf of bread and some food for your children, for your families, that is going to be taxed. It just will not wash. Members would be well advised to grasp reality.

1.19 Deputy G.P. Southern:

I would like to start with the admission from the Minister for Treasury and Resources yesterday that G.S.T. is regressive. At last, after 3 years, he said: "G.S.T. is regressive" and he did not qualify it with the word "slightly". When looked at in terms of income and income quintiles it approximates to twice the impact on the least well paid to on the highest paid: approximately 2 to one. He then, of course, went on to make comparisons about actual spending which reduces the amount of regressivity, but nonetheless we have that admission. Therefore, having said that I think we have come to the position where the Minister for Treasury and Resources decided that he had to do something to mollify opinion; to offer something in order that he should not lose face in order that this proposition should not be carried. Because as Deputy de Faye quite correctly mentioned the Minister for Treasury and Resources is an intelligent man and a perspicacious man and also, in terms of politics, a hard man. His instinct, once he has made his mind up, is to stick with his decision come what may. I know, because I have tried negotiating with the Minister for Treasury and Resources, and it is damn hard. Once he has made his mind up, he sticks there. No compromise, no adjustments, no nothing. On the other hand, the Chief Minister is a far more pragmatic politician, and, offered a compromise, he will often move towards it. Thus it was, I think, last week, when Senator Walker perhaps had a case of the "wobbles" and started to suggest to the Minister for Treasury and Resources: "Well, could we accept this as a problem? How is the vote going to go?" In that sort of circumstance with a little, perhaps, persuasion from the Chief Minister, the Minister for Treasury and Resources said: "All right, I will make a move." Because he thought - and let us be practical about it - there was a risk that he might lose. He stuck to the hard line: there was a chance, and certainly I believe Senator Walker thought so, that the numbers would go against him. So he moved. He moved at the last minute. Now, just think a minute about moving at the last minute; offering something at the last minute. I can adjust it. I will knock something together in the next fortnight. Imagine any one of us coming to the House with a proposition, a fortnight old, saying: "Oh, this is a good idea." How would it be described by the Minister for Treasury and Resources? Well, I have been on the receiving end of those descriptions - I am quite used to it. It starts with: "This amendment has been made up on the hoof" or: "Here was an adjustment made up on the hoof." Let us go laughing: "It is completely *ad hoc*." Then, not from the Minister for Treasury and Resources, oh no? Yes, on one occasion he then described it as: "Back of a fag packet." Well, let us return the compliments, because what we have seen today is a compromise position made up on the hoof, completely *ad hoc* and, in fact, made up on the back of a fag packet. Just knocked together to quieten the plebs down. Lo and behold it turned out to have a hole in it: "We will adjust income support and then we will make adjustments to taxation, to exemptions" but it was pointed out it had a big hole in the middle. People who were really going to be hit were just between the 2. So we can make another adjustment, and that adjustment was being made today. In conversation, in the back room, between the Minister for Social Security and the Minister for Treasury and Resources, which he then set about trying to convince his Assistant Minister, and others, that this was workable. Being made up on the hoof. At one stage I heard him say: "It will be like the Christmas bonus." Wow. People go along with their little signatures to say: "Can you give me some money? It will be about £60 or £70." When was that figure picked up? Go along to Income Tax and claim your bonus. All the while we are told that we cannot exempt food because we want a nice simple tax system. A simple tax system, a simple income support system, all unified and done together, wrapped up in a nice big bow, apart from these people who can go along to the Income Tax with a piece of paper and say: "Can I have £70

please?" Wonderful system. *Ad hoc* off the back of a fag packet. Let us go on a bit further, and I have received it, so I will dish it: Mickey Mouse, smoke and mirrors. Why would the Minister for Treasury and Resources risk my epithet, this man who likes playing hard ball to do so? Why? Because let us look at what he is offering. He is tied to G.S.T. for at least 3 years; he has guaranteed that. If he wanted to move that he would have to bring it back to the House, and I think he knows that if he came back within 3 years with more than 3 per cent we would turn it down. Any House would. It has no chance of doing that. So he offers something on income tax. One that is one of my favourites that I have been telling him about for the last 3 years, about raising exemptions, not giving in to fiscal drag which, if you do nothing, drags more and more people into taxation. More and more relatively low-earners into taxation. So he offers 6 per cent which just about covers the 3 per cent G.S.T. and whatever inflation is running at anyway; 3 per cent, 6 per cent: "Oh, that will do" for one year. He offers no guarantees. The year after that, what are we going to do? Why? If he does nothing and nobody notices within 2 years via fiscal drag - and who knows what is going to happen to inflation - gets eroded away. It is gone. So, yes, a canny trick. He is, as you say, very clever; very perspicacious. So a good trick, but that is why he has done it. But will it work? Does it make a coherent hole? Is it *ad hoc*? Of course it is *ad hoc*. Does it make a coherent hole? No. It is akin to a last minute adjustment. It is a last minute adjustment and, therefore, I do not believe worth considering. So what do we have instead? We have this argument about simplicity; we have this argument about administration and compliance costs. Well, now I must refer to Deputy Ryan yesterday who took us through exactly what is wrong with the arguments that have been presented. It is absolutely clear. He refers to the Australian Senate Select Committee: "Compliance costs of zero-rating food as an issue have been grossly overstated" and that turns into the view of the U.K. National Audit Office that the United Kingdom V.A.T. system which exempted food had lower compliance costs than the New Zealand system which fully taxed food. So the costs of compliance, the costs of conversion, the costs of administration, overall the National Audit says are low; relatively low. But we are presented with figures that suggest 8 new offices and £800,000 of expenditure. Who are we to believe? I think the answer is we are to believe the National Audit Office. It is clear that the costs of exempting food in terms of compliance and administration are minimal and have been exaggerated, and have been exaggerated during this debate. The adviser to the Corporate Services Panel says: "Not 8 new offices; absolutely ridiculous. That is a complete over-estimate." He says between one and 2; absolute maximum. So that is the reality. That argument, as demonstrated by Deputy Ryan yesterday is completely false. So what about the costs for business? Here we have a wonderful irony that the Minister for Treasury and Resources has decided to introduce G.S.T. and he accepts that there will be - obviously there will be - costs to business, because effectively he is saying to businesses: "You administer it, you collect the tax, we will collect it and then you pass it on to the consumer. So you do the tax collection for us, of course, it is a cost to you." We have heard today from Deputy Breckon about how significant some of those costs may be. In terms of exempting food the question is: does that exemption make those costs that much worse? The answer is: well, probably not. Why? Because a lot of our goods - a vast majority of our goods - we import from the U.K. So, far more convenient and simple wherever we can to mirror the U.K. arrangements, that way it makes it easier. If you need a new program for your till or your computer, your labelling system, then it is far easier if you are based on the U.K. system to make those adjustments, and the costs are far lower than if you have to set up a complete whole system. One of those areas where it is particularly significant with something like 15 per cent or more of our food imported from the U.K. pre-priced, significant extra cost to not exempt those because they come pre-priced with a U.K. exempt price - so significant costs for not doing it, certainly in the food sector. So compliance costs proven to be relatively low. Cost of business? The argument is out, but certainly no particularly additional costs. Except that the argument is, of course, if the Minister builds-up the compliance costs and exaggerates the compliance costs, which has been done of exempting food, then instead of saying that he is responsible for the additional costs and the additional burden on business, he is responsible for that, which he is, because he has decided to go - we have decided,

but at his initiative - for G.S.T., it becomes the exemptor's fault that these costs are there. Absolutely. It is like that child in the playground saying: "It was not me, it was him." They are to blame. Absolute nonsense. One last point before I close, I must refer to Deputy Le Fondré who I admire completely for his knowledge of the V.A.T. system. What a wonderful list he gave. But he misses the point. If you parallel the U.K. system, which this proposition does, then all those arguments around chocolate and marshmallows and biscuits and cakes have been had. The legal cases, the arguments, will not be had in Jersey all over again, they have been doing it for 30 years. What we get, the complexity we will get, is there is a list. It might be a long list: these are exempt; these are not. All the arguments about the anomalies and absurdities have already been done and dusted, and there is no point in going there. Deputy Ferguson started yesterday by putting up some gems. Deputy Le Fondré took it further today considering his sweet tooth and his obsession with chocolate. Let us put that in context. It is not about an argument over what amount of chocolate constitutes food, it is an amount of this House deciding to put G.S.T. on people's basic foodstuffs: so your carrots, your apples, your cabbage, your chicken. That is the reality. That is the reality. Now this House, I do not believe, should be doing that. It is perfectly possible to exempt food, and I think it is the way forward which we ought to take. So I urge Members to support this amendment.

1.20 Senator F.H. Walker:

As soon as I became aware of the improved tax receipts which were announced, of course, now a number of weeks ago, I immediately came to the conclusion and, indeed, suggested to the Minister for Treasury and Resources and other Ministerial colleagues that we should zero-rate or exempt food. That was my immediate reaction. I thought it was the simplest, and without question, with no doubt it would be the most popular way, on the surface at least, to give something back. I was convinced then, and I am convinced now, that we do need to give something back. However, Senator Le Sueur and my Ministerial colleagues strongly disagreed with me that zero-rating food was the right way to do it, and thank goodness they did. Because they were right and I was wrong. I jumped to a simple conclusion and, as I said, no doubt a popular conclusion, and I was quite wrong to do so. The more I have looked into it, the more convinced I have become that zero-rating food is anything but simple, anything but desirable and ultimately will be anything but popular. The more I have looked into it, the more convinced I have also become that it would be a costly nightmare for the States, the small businesses and for the public. As other speakers have said, it is not really a problem for the large retailers - for the large retailers. But my goodness me, it is a problem for all those retailers who sell food and/or newspapers who have a turnover of less than £300,000 a year. The small retailer that we, on so many occasions in this House, have said we want to support - the small businessman - and here we are talking about landing them with a huge administration problem. A problem - and a cost - which will undeniably be passed on to their customers, and that is not ultimately in the customer's best interest. Now Deputy Breckon said earlier there is a cost to introducing G.S.T. and, of course, there is, and he quoted examples. Whether they turn out to be right or wrong, time will tell. But this report and proposition adds significantly to that cost. Now if there is a cost already why make it worse, which is really the argument that Deputy Breckon was pursuing and, certainly, the position that the report and proposition is recommending. Deputy Breckon also asked the question: who has been talking to the small retailers? Well, I can tell him that there has been a help line set up, there have been numerous visits by the Tax Department, and any small business who has wanted advice has had it freely available to them, and I do mean freely both in terms of time and cost, and most have already taken advantage of that some time ago. So we have also heard that Jersey is an Island where prices are very high, and it is - there is no denying that at all. What we do not hear is that household income in Jersey is also 70 per cent higher than it is in the U.K. I see Deputy Scott Warren shaking her head, but that is the expenditure information produced by the Statistics Office who also produce, of course, the cost information. That is household income. The information for the Deputy and others, Sir, is, of course, as always from the statistic view, freely available. Of course,

under both options that we currently have - the “keep it simple” option or the zero-rating food - the less well-off are protected in the same way. It is unarguable that zero-rating food will add to the cost of the States. There is an argument just to how much it will add to the costs of the States, but it will add to the cost of the States, and my bet is with the Minister for Treasury and Resources and his team who have looked into this more thoroughly than anyone else, my bet is that their estimate is the best one; the most reliable to look at. There is a cost to the small retailer, and there is a cost to the public. As we heard yesterday this is exactly the same principle as the proposition yesterday to zero-rate children’s clothing, and as we heard in the debate yesterday, this is a slide - an extricable slide or would be - towards the highly discredited U.K. system where the U.K. themselves would no way introduce the same system today that they introduced now many years ago, and that is confirmed from all quarters. Of course, that is a slide that this House has rejected already previously - not this week; previously - on 3 separate occasions and rejected in principle again yesterday on children’s clothing. There are no new arguments before us today. We have been here before on exempting food. Senator Shenton has not put any new arguments in front of us of any substance whatsoever. I cannot see why, at this late stage, we should now be changing course so fundamentally and doing something which quite specifically we have said we did not want to do; we did not think was the right thing to do in the past. To me, it does not make sense. It did not make sense to do it then, and if it did not make sense to do it then, it certainly does not make sense to do it now. Sir, we have heard some people argue that it would not add to the complexity. Well, can I refer Members to the Treasury and Resources Minister’s comments: there are 52 pages here of instructions and information to retailers in the U.K. on how to deal with food - 52 pages. Now please do not say to me that that will not cause a real headache and a real problem to small retailers, because it most certainly - most certainly - will, and that is absolutely unarguable. Some Members might not like it, but those are the facts. That is a U.K. V.A.T. document which we would have to closely follow or do something very similar if we were to zero-rate food in Jersey. Sir, I was impressed yesterday with the examples that Deputy Ferguson pulled out of this document, because she exposed the nonsense of the administrative nightmare - the bureaucratic nightmare - that small retailers would have to go through, if food was zero-rated. Deputy Le Fondré this morning I thought gave a quite brilliant exposé. Like Deputy Gorst I think he must have a little shop there in the back row, but a quite brilliant exposé of the nonsense of it. This is zero-rated; this is standard-rated. Now, how many retailers are even aware of that complexity at this juncture? Certainly, how many members of the public are aware of it? Very, very few. Sir, we are told the G.S.T. - and particularly G.S.T. - on food is immoral. Yet, as other speakers have said, 21 out of 25 countries in the E.U. have a tax on food. It is at different levels, but they have a tax on food, and nearly all of them are above our level - our standard level - of 3 per cent. If you add Singapore and New Zealand who have recently introduced indirect taxation such as V.A.T. or G.S.T., the figure goes up to 23 out of 27 countries have a tax on food. I see Deputy Scott Warren looking puzzled again, but that is in a table included in the Minister for Treasury and Resources’ comments.

Deputy C.J. Scott Warren:

I am only looking puzzled because it does depend on what you can buy with the equivalent of each pound money-wise in each country. For instance, a pound in Jersey is not worth the same as a pound in the U.K.

Senator F.H. Walker:

That is a very interesting argument - I am not sure it is very relevant. The fact is that 23 out of 27 countries do tax food in one form or another, and nearly all of them, and some of them, very significantly higher than Jersey’s standard rate of 3 per cent. Now talking of 3 per cent. The Connétable of St. Martin has, twice in the last 2 days, asked for a commitment that 3 per cent will remain the level for, I do not know, as long as possible, certainly. Sir, he has asked me to give him a commitment, but of course, as Members know, and I have spoken to the Connétable about this, I

cannot give a personal commitment, because it is a matter for the States. At the end of the day, it is the States, and the States only, who will decide what rate G.S.T. is to be levied at. What I can say to the Connétable, and this has been absolutely endorsing previous comments by the Minister for Treasury and Resources, that if we stick to the fiscal strategy, as already approved by the States, then there is absolutely no reason why G.S.T. should go up from 3 per cent, at least until 2015, and probably through until 2020. I agree with the Connétable that I personally think that the States should look at using the Stabilisation Fund before it looks to raise the rate of G.S.T. I absolutely think he is on the right lines in that respect. If, though, we zero-rate food, it will inevitably make holding the rate down more difficult. You just cannot escape that basic reality. I think our real maxim here, our slogan if you like, should be: "Keep it simple and keep it low", because that is really what the Minister for Treasury and Resources is fighting to achieve and he is absolutely right. Even, as some speakers suggested, some people do not believe it is simple already, but it is much, much simpler than other forms of indirect taxation around the world, what justification is that to make it more complex still? If Members feel it is complex today, zero-rating food can only add to that complexity and that seems to me to be a self-defeating argument. I am delighted that even long-term opponents of G.S.T., such as Senator Norman and Deputy Power, have looked at this thoroughly, thought about it, and said: "No, I do not like the principle, but we have got the principle. For goodness sake, now keep it simple." They are absolutely right. What we have got here is a chance to learn from the mistakes of other countries, who introduced V.A.T. some years ago, to learn from the successes of countries who have introduced it more recently, and stick to the simple low cost, low rate option. So, we all agree that we do, on the back of a very successful economy, and on the back of the very high level of tax receipts that it is generating, we all agree that we need to give something back. There is no argument; I think every Member of the House is signed up to that belief. Of course, the budget proposals, which seem to have been almost completely overlooked, do exactly that. They did exactly that in their original form. Thresholds increased by 3 per cent, child allowance increased by 20 per cent, a significant give-back to those particularly in the middle of our society who are the ones probably, of all, hardest hit by the fiscal structure, the fiscal strategy overall. Now, that seems to have gone largely unnoticed and it was certainly long before the report and proposition came forward from Senator Shenton. But what the Minister for Treasury and Resources has done is listened - we are often accused of not listening - he has listened to the people, he has listened to other Members of this Assembly, and he has said: "Okay, I understand you want to give back more, well, here is a much better way, a much better alternative than zero rating food, and what I will do is raise the threshold by 6.5 per cent in total." It is also why, having listened, the Social Security Minister and the Treasury and Resources Minister have reacted to the very legitimate concern aimed at those in the so-called gap, between income support on the one hand and income tax on the other. Remember, they have had very little time to do this. The report and proposition was only lodged 4 weeks ago. Until 4 weeks ago, the Treasury and Resources Minister thought we had an agreed simple G.S.T. system. This proposition was lodged only 4 weeks ago. Deputy Lewis' proposition was lodged only last week. So, the Minister for Treasury and Resources has had to react. He has worked with the Minister for Social Security to ensure they can react. What they have got now is - yes, the details need finalising and fine-tuning, absolutely - but a very simple low-cost way of also protecting those between income support on the one hand and income tax on the other. Should it have been done before? Should it have been done earlier? Well, absolutely, ideally, yes it should. But they have reacted and are reacting in a proactive way to the circumstances, which, through none of their actions, have unwound, if you like, in front of them. They are reacting in a positive way, to the benefit of all, particularly those on middle incomes and now particularly those that fall into the so-called gap. I have to say, I am taking it now as a commitment. I think the States now have had a commitment from the Minister for Treasury and Resources, and indeed the Minister for Social Security, to do just that; to fill that gap in the most appropriate direct and beneficial way to the people concerned, who very much need our support. So, I am taking it as a commitment and I know that is how they have put it forward. So, I do understand why Senator Shenton has brought this proposition; I do

understand why there is some sympathy and support for it. As I have said in my opening remarks, I have been there myself. But, having looked at it, having investigated it, I just do not believe it is the right way forward for Jersey, or indeed the people of Jersey. As Senator Syvret has said, there is no doubt it is currently popular and it would send out a message. Unfortunately, ultimately, it would send out completely the wrong message, because we would be introducing the wrong form of G.S.T. and I believe that that will come to be widely recognised over ensuing months, if this proposition was passed, when people realised the effect it would have on them. How many people currently have any real idea of the complexity of doing it? How many people are aware of Deputy Le Fondré's example; Deputy Ferguson's example, and what is contained in the U.K. document; very, very few. What they are saying is: "Of course I do not want to pay tax on food. Please do not levy it on food." But they are not aware of, as yet, the complexity and the cost of doing so, but they would become so if we passed this proposition. Sir, this proposition is wrong for the small retailer, it is wrong for the consumer, and it is wrong for Jersey. There is a better way. There is a much better way, which benefits all the people we need to benefit, the people we need to target. Senator Shenton's proposition gives the most benefit to the well-off. Senator Le Sueur's proposition targets the benefit to (a) the less well-off, (b) middle incomes, and (c) now, crucially, the gap in between. It is the right way forward, it is the right choice, and I urge Members to take it.

Deputy C.F. Labey of Grouville:

I wonder if I could just ask the Minister for Treasury and Resources a question, based on the Chief Minister's speech just now. I would just like to ask if the Minister for Treasury and Resources agrees that the Stabilisation Fund should be used to avoid an increase in G.S.T. rates in the future?

Senator T.A. Le Sueur:

I think that is probably rather peripheral for this debate, but we have just set up a Fiscal Policy Panel to look at the policies for the Stabilisation Fund and the Strategic Reserve, and I would be guided primarily by them in advising the States Members in the future.

Deputy C.J. Scott Warren:

Could I also ask a point of clarification, because I think it is important. The money that is being agreed from the Minister for Social Security for the people that would not be affected under income tax, would the people have to wait a year before getting that money back, or would they get it when G.S.T. starts?

Senator P.F. Routier:

The intention is that the Minister for Treasury and Resources will bring forward a proposal, which will ensure that people will get their money when G.S.T. comes in, in May of next year.

Deputy G.P. Southern:

May I ask a further point of clarification from the Minister for Treasury and Resources, I think it is important?

The Bailiff:

I think this must be the final one, Deputy.

Deputy G.P. Southern:

So be it. Does the Minister for Treasury and Resources accept that the function and purposes of the Stabilisation Fund are markedly different from adjusting for G.S.T., and it would be unlikely that...

The Bailiff:

No, that is not a question. No, Deputy, I am sorry, that is not a question for clarification. That is a statement.

Deputy G.P. Southern:

He just made a statement about...

The Bailiff:

I am sorry, you are not asking the Minister for Treasury and Resources for clarification. That is, in effect, making another point, another political point, which I am afraid you have already made your speech. I call upon Senator Shenton to reply.

LUNCHEON ADJOURNMENT PROPOSED

Senator M.E. Vibert:

I was going to say, to be fair to Senator Shenton, it is nearly 12.45 p.m. and other people may wish to speak, but must speak in the next 2 minutes. So, personally, I am not supporting Senator Shenton, but I think to be fair to Senator Shenton, he should have the lunch hour, if he wishes it, to prepare his reply.

The Bailiff:

Very well, the adjournment is proposed. Members agree? We will reconvene at 2.15 p.m.

LUNCHEON ADJOURNMENT

PUBLIC BUSINESS - resumed

Goods and Services Tax: Zero-Rating for Foodstuffs, Books, Newspapers and Magazines (P.169/2007) - continued

1.21 Senator B.E. Shenton:

The Greffier of the States (in the Chair):

Very well, I understand no other member wished to speak, therefore it falls to Senator Shenton to reply.

Senator B.E. Shenton:

Thank you very much. It has been a long debate and quite an interesting one. Senator Le Sueur kicked-off proceedings so to speak with a message that the content was very much to keep G.S.T. simple and - as certainly businesses will find out next year - G.S.T. is not a simple tax. What he was saying was keep it as simple as possible. He also said that it was part of a tax package and we should accept the whole fiscal package in one go. But also as part of that package I believe that there were certain assurances regarding savings and I think also at that time we did not realise the arithmetic of the Treasury would be so far out and that we would end up with a £38 million surplus. He argued that he wanted the best G.S.T. system in the world but from what angle is he looking at it. Is it the best system in the world for consumers when there are no exemptions. He produced some figures giving the indication that the wealthy would be much better off from this proposal if food exemptions were agreed when in actual fact the expenditure on basic items by the wealthy is not that much different from those earning the lowest amounts of income. Obviously Senator Le Sueur and I have different friends or different groups of friends, the very wealthy that I know eat out in restaurants a lot which would be taxed; the very wealthy that I know tend to have kitchens that are more show kitchens than actual kitchens. The wealthy that Senator Le Sueur know seem to sit at a table and eat loads of potatoes and vegetables. Three times as much. He said that zero-

rating causes complications and he wants to do what is the best for Jersey. But is what he is doing - the best for his department - necessarily the same thing as doing what is best for Jersey? I have spoken to the small shopkeepers as well and, yes, with exemptions there is an extra burden, but this extra burden is mainly on the set-up costs and the software and so on that they will have to bring in because G.S.T. is coming in anyway. The National Audit Office quoted lower compliance costs than New Zealand whereby they have a system that does not zero-rate food. By contrast Senator Le Sueur quoted National Audit Office figures from 1994: why pick figures from 1994, 13 years ago? Deputy Ryan made an excellent speech and he obviously knows this subject quite comprehensively. He argued that exemptions are in fact quite straight forward for the retailer and he also pointed out that the differential between those on the lowest income and those on the highest when it comes to expenditure on basic food stock stuffs is not that much different. He also said that he did not believe that 8 extra staff costing £800,000 was a credible figure and given the number of importers into the Island I would tend to agree with him. The Scrutiny Panel came to the conclusion that compliance costs of zero-rating food was grossly over-stated by the Treasury. And then of course, we had the last minute proposals by the Treasury. In my opening address I pointed out that raising the tax allowances for 2008 will not benefit anyone until the first half of 2009 because we pay tax on a prior-year basis. So for the first year of G.S.T. the proposals of the Treasury do absolutely nothing. I don't want to keep this speech too long so I will move quite quickly. Deputy Scott Warren spoke for her support of the proposition and I thank her. She pointed out that the tax on newspapers is one of those little things that tends to annoy the tourists when they come over. The Deputy of St John spoke. He said that the proposition was populist and was one of the reasons was to win votes. Well I am not up for election for four years so it is a little early to start my election campaign now. It's the perception that is important, the perception from the public - and the public do not want food taxed. The Deputy of St John said and I quote "It is more work for my department - I represent Customs". More work for my department - I represent Customs. Well I would like to point out to the Deputy of St John that he does not represent Customs he represents the people of St John and the people of Jersey. **[Approbation]** I am sorry, the Deputy of St John has just come into the Chamber: he was probably down at Customs. The Deputy of Trinity spoke and I say to the Deputy of Trinity let your heart rule your head because food is a tax on the family it does not over complicate because G.S.T., sir, is not an easy tax anyway and I say to you that you are responsible for looking after the families of the Island. Senator Norman spoke and I had a few phone calls last night about Senator Norman's speech and I can't say what was said because I would breach Standing Orders. Senator Norman said that it added too much to the complexity of the tax. He said he was minded to support it, but he is not minded to support it now, in light of the response from the Treasury Minister. He indicated that businesses should absorb some of the costs of G.S.T., but this is not a tax on business. This is a consumer-based tax. I joked with Senator Norman after the debate yesterday that I had not realised he was anti-business. Deputy Martin spoke and pointed out the intelligence of Deputy Ryan's speech. Income support is not with us yet and we are already looking at ways to redefine it. As Deputy Martin pointed out, in October next year the first level of protection falls away, hitting about 33 per cent of people that receive income support initially. I thank Deputy Lewis for his support. We had a speech from Deputy Ferguson, who gave the impression that the tax is far more complicated than it actually is. With computerisation, barcodes and everything else, not only is it a relatively simple process for retailers, it is also a relatively simple process for Customs and so on. The Connétable of St. Martin referred to a letter in last night's *Jersey Evening Post*, which I thought was an excellent letter, and it showed how G.S.T. will affect the people of Jersey, and it also shows how the initial response from the Treasury was flawed, inasmuch as it gave nothing to the person that wrote the letter. The Connétable of St. Martin said that, as a politician, his commitment was to offer care and protection to the old and the young and the sick, and then he says he would not support the proposition, even though it did nothing for the person who wrote the letter. Exempting food will do something for that person, doing nothing will not. We cannot give a firm commitment, as a House, that G.S.T. will stay at 3 per cent. This House will change at the end

of next year and we will have a new body and a new government and they can move G.S.T. to whatever rate they wish. Deputy Power said that he was persuaded by Senator Le Sueur's late offer and was concerned about staffing levels at the Treasury, but 19,000 people signed an anti-G.S.T. proposition and we are offering them nothing back. I asked Deputy Power to think about who he is representing. Is he representing staffing levels at the Treasury or is he representing the people of Jersey. He mentioned the K.I.S.S. principle, which is not something I am aware of: "Keep it simple, stupid." It is a pity that we did not apply the K.I.S.S. principle to pricing at the till, because then perhaps we would not be having this debate today. Senator Routier said that we have debated this 3 times previously, and this is the fourth. What I would like to point out to Senator Routier that my lucky number is 5 and it will come back if it does not go through today. Again, he mentioned that they want to redistribute the income to those that deserve it most. But, again, he failed to mention that the Treasury proposals do nothing for people until the first half of 2009. He also brought up this new proposal whereby those not on income support and not paying tax would be able to go to the Treasury and get a handout by taking some form of proof. Obviously, this only came to light this morning, so none of us have the details, but I thought that this was the type of welfare system that we were trying to get away from, a system where people turn up and ask almost with begging letters in hand for relief. Surely, it would have been much easier to stop being stubborn and just to accept that food must be exempted. Deputy Le Hérisier pointed out that the tax may rise and we do have a high-cost economy that is causing all sorts of problems. I would hate to be a first-time buyer in Jersey at the moment with the way the house prices have gone. How can you afford to put money away for a deposit on a house if you are also being taxed on all the bare essentials in life? He had concerns about tax on confectionary and if he wants to have a chat afterwards I can let him know whether his liquorice allsorts will be taxed, and answer any questions he has. What we have here is a system, or an offer by the Treasury, in exchange for not giving exemptions on food. What they are going to do is they are going to take a group of people, not currently in income support, and they are going to add them to the welfare system by making them go to Treasury to claim money. The Deputy of St. Martin said that he was opposed in the past, but he is minded to change. The reason I propose that we go with the U.K. system is because, obviously, the U.K. is our major trading partner. The system is well understood by all the importers into the Island. Furthermore, it does still tax the luxury items and exempts the food essentials. The Deputy of St. Peter pointed out that there is a discontent among the public with the current States Chamber that do not appear to listen. £3 million, or just over £3 million is all it would cost to exempt food, yet we do not appear to want to listen to their demands. We would prefer to listen to the consultants and the advisers. Deputy Fox was quite right; he was at the Council of Ministers meeting that I was at when this proposition was not on the table to be discussed. The only discussion was on how to defeat the Connétable of St. Helier's proposition. Surely, the 2 were inter-linked. I say to Deputy Fox, because he did say that he would like zero per cent on food, to vote for this proposition, because the bureaucracy has been overestimated. The Deputy of St. Mary welcomes the concessions by the Treasury and quoted from a B.B.C. article about how complicated the system can be at times, but I think to some extent the Deputy missed the point, because the V.A.T. ruling on individual products is normally challenged by the manufacturers. By the time they get to our shores, everything is sorted and everything is quite straightforward. Deputy Baudains pointed out quite rightly that G.S.T. is not acceptable to the Jersey public and has said he was originally seduced by Treasury's make-it-up-as-you-go-along approach. He also expressed the certainty that G.S.T. will go up in time. Deputy Le Claire pointed out how costly it is to live in Jersey and I must admit I was still reeling last night from the clothing debate where the Treasury came out with a figure of £150 per annum to clothe a child. I do not know any child that could be clothed for £150 per annum. The Deputy of St. Ouen applauded the fact that this proposition brings the focus of the Assembly on to a very important issue, and says that we should help the people less fortunate, but because G.S.T. is a regressive tax, exemptions on food is the best way to help those that are less fortunate, not through Treasury handouts. Deputy Le Fondré talked about spending £3 million on something else. It is not a case of spending £3 million;

it is a case of not raising £3 million, a subtle difference. “Keep it simple”, he said: “it will be a burden for the retailers.” So, why is the Chamber of Commerce, who represent the retailers, in favour of exemptions? He also mentioned that some establishments have 40,000 lines of stock. I can certainly say that there is no supermarket in Jersey with anywhere near that figure of lines of stock. It is the right structure with no tax on food. He talks about the local retailer and the small business. The local retailer and the small business will be sinking under the burden of G.S.T. anyway. It will be a cost and the businesses in the U.K., they can cope with V.A.T., so why can the businesses in Jersey not? I think when you are talking about the U.K. V.A.T. system, you have to bear in mind that all we are asking for in this proposition is food and newspapers, not the level of exemptions that you have in the U.K. I am afraid that halfway through Deputy Le Fondré’s speech he had lost me completely. He started talking about the tax rates on bumblebees and I just could not work out why anyone would want to buy a bumblebee. But he did produce a number of goods from behind his desk.

Deputy J.A.N. Le Fondré:

If the Senator will give way for one moment, they are in the Members’ coffee room now, for consumption.

Senator B.E. Shenton:

He demonstrated what a simple tax exemption is, because he stood up one by one and pointed out which ones were exempt and which ones were not, and it was not at all difficult, was it? **[Laughter]** I thank Deputy Mezbourian for her very short speech in support. Deputy de Faye spoke and he spoke specifically about a meeting at the Council of Ministers where the Treasury’s tax experts gave evidence, and he was right, I was a little bit annoyed at that time, because he did say it was the worst system, but he would not comment on which was the best. He acknowledged that a lot of countries exempt or have low rates for food, but his discussion was purely based on pointing out that the U.K. was perhaps the worst system. It would have been nicer if he had of turned around and said: “I would not do it that way, this country does it this.” He went in there with a message for the Council of Ministers, he delivered it, and he left. I am glad I brought this proposition, even though we have discussed it before, because if nothing else, we have now got a 6.5 per cent increase, increased income support, and further allowances. Deputy Breckon mentioned about the red tape in price marking and how this was not mentioned during the price marking debate, and I say again that the cost of introducing G.S.T. is the main cost. As in exemptions or zero-ratings, it is just the tip of the iceberg, and yes, it does add costs. It does add costs to business. But it is what the people, I believe, it is what the people want. Deputy Troy said that although he is the Assistant Minister for Social Security, he was not involved in the negotiations of the deal, but he had been persuaded to change his mind from yesterday. I say to Deputy Troy that: “Perhaps you are working for the wrong Minister.” **[Laughter]** Senator Syvret, I am not sure where he is at the moment, or what he is doing, says he understands and appreciates the importance of connecting with the public, and I think we have disconnected with the public over the whole G.S.T. issue. If it was the right thing to do, and introduce G.S.T., we obviously made a very bad job of selling it to the general public. Deputy Southern pointed out that the Minister for Treasury and Resources admitted that G.S.T. is a regressive tax and the weaknesses of the rabbit that the Minister has pulled out of the hat. Again, he stated that the compliance costs have been overstated, or appear to be overstated. This debate, as he pointed out, should primarily be about whether we should tax food. Senator Walker said that he was minded to support the proposition a few weeks back. He was minded to support it because it would be giving something back in light of the improved financial position. He has now changed his mind. When I change my mind, it is a U-turn. **[Laughter]** He says that it adds significant cost, but it does not. He said it will add to the costs of the States. Again, I would reiterate that Senator Walker, like the rest of us, is elected to represent the people, and we are meant to do what is best for the people, which may not be always the same as what is best for the States. He went on to say how atrocious the U.K.

system was, which is contrary to some of the research that I received, and certainly if it was as bad as the picture that Senator Walker painted, they would have changed it years ago. You have to remember that we did have a 19,000-signature petition and an added surplus. He also mentioned that in the E.U. the majority of countries do tax food. Perhaps he should have also mentioned, to balance it out, that in the U.S. the majority of States do not. He says that by exempting food, or zero-rating food, the prospect of tax increases in the future increases, but I am not quite sure what the margin for error the Treasury Minister has when calculating the £45 million tax take, but I would guess that around about £3 billion would not be far out. He said that the measures of the Treasury Minister were reacting in a positive way. Well, yes, they did react in a positive way, because he was risking staring defeat in the face. He asked how many people are aware of the complexity of food exemptions, and I would say that most of the members of the Chamber of Commerce are, and they are in favour of exempting food. I stood on the election platform 2 years ago and, as most of you will know, I did not have a whole raft of policies. **[Laughter]** However, I do not believe that the taxation of food is morally right or right for this Island. The people are against the taxation of food. The Chamber of Commerce, that represents the retailers, are against the taxation of food. I hope that this proposition is successful today, but if it is not, the fortunate thing about being a Senator on a 6-year term is that you can bring propositions back, and this proposition will return in September next year to be debated after the next elections. I call for the appel.

The Greffier of the States (in the Chair):

Thank you, Senator. Did you wish, Senator, to separate the vote on foodstuffs from books, or do you want to take them together? Very well. I am calling the Assembly, all voting, 2 parts. Firstly, the votes under paragraph (a) on the introductory words and subparagraph (i), which refers to zero-rating foodstuffs. So, the vote is firstly on foodstuffs. The Greffier will open the voting.

POUR: 21

CONTRE: 28

ABSTAIN: 0

Senator B.E. Shenton

Senator L. Norman

Connétable of St. Mary

Senator F.H. Walker

Connétable of St. Clement

Senator W. Kinnard

Connétable of St. Helier

Senator T.A. Le Sueur

Connétable of Grouville

Senator P.F. Routier

Connétable of St. John

Senator M.E. Vibert

Connétable of St. Saviour

Senator P.F.C. Ozouf

Deputy of St. Martin

Senator T.J. Le Main

Deputy G.C.L. Baudains (C)

Senator F.E. Cohen

Deputy C.J. Scott Warren (S)

Senator J.L. Perchard

Deputy R.G. Le Hérisssier (S)

Connétable of St. Ouen

Deputy J.A. Martin (H)

Connétable of Trinity

Deputy G.P. Southern (H)

Connétable of St. Lawrence

Deputy P.J.D. Ryan (H)	Connétable of St. Brelade
Deputy of Grouville	Connétable of St. Martin
Deputy of St. Peter	Deputy R.C. Duhamel (S)
Deputy J.A. Hilton (H)	Deputy P.N. Troy (B)
Deputy P.V.F. Le Claire (H)	Deputy J.B. Fox (H)
Deputy D.W. Mezbourian (L)	Deputy S.C. Ferguson (B)
Deputy S. Pitman (H)	Deputy of St. Ouen
Deputy K.C. Lewis (S)	Deputy G.W.J. de Faye (H)
	Deputy J.A.N. Le Fondré (L)
	Deputy of Trinity
	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 Greffier of the States (in the Chair):

Very well. I will ask the Greffier to reset the voting system and the vote will now move to paragraph (a)(ii), which refers to zero-rating books, newspapers and magazines, in line with U.K. V.A.T. arrangements. The Greffier will now open the voting.

Subparagraph (ii) has been rejected. 16 votes were cast in favour, 33 votes against.

POUR: 16

Senator B.E. Shenton
 Connétable of St. Mary
 Connétable of St. Clement
 Connétable of St. Helier
 Connétable of St. John
 Deputy G.C.L. Baudains (C)
 Deputy C.J. Scott Warren (S)

CONTRE: 33

Senator L. Norman
 Senator F.H. Walker
 Senator W. Kinnard
 Senator T.A. Le Sueur
 Senator P.F. Routier
 Senator M.E. Vibert
 Senator P.F.C. Ozouf

ABSTAIN: 0

Deputy R.G. Le Hérisssier (S)	Senator T.J. Le Main
Deputy J.A. Martin (H)	Senator F.E. Cohen
Deputy G.P. Southern (H)	Senator J.L. Perchard
Deputy P.J.D. Ryan (H)	Connétable of St. Ouen
Deputy of Grouville	Connétable of Trinity
Deputy P.V.F. Le Claire (H)	Connétable of St. Lawrence
Deputy D.W. Mezbourian (L)	Connétable of Grouville
Deputy S. Pitman (H)	Connétable of St. Brelade
Deputy K.C. Lewis (S)	Connétable of St. Martin
	Connétable of St. Saviour
	Deputy R.C. Duhamel (S)
	Deputy of St. Martin
	Deputy P.N. Troy (B)
	Deputy J.B. Fox (H)
	Deputy S.C. Ferguson (B)
	Deputy of St. Ouen
	Deputy of St. Peter
	Deputy J.A. Hilton (H)
	Deputy G.W.J. de Faye (H)
	Deputy J.A.N. Le Fondré (L)
	Deputy of Trinity
	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 Greffier of the States (in the Chair):

Very well, and paragraph (b) clearly falls away as there is nothing to implement.

2. Draft Crime (Transnational Organised Crime) (Jersey) Law 200- (P.132/2007)

The Greffier of the States (in the Chair):

The Assembly therefore moves to the next item of business, which is the Draft Crime (Transnational Organised Crime) (Jersey) Law 200-, in the name of the Minister for Treasury and Resources, and the Greffier will read the citation.

The Deputy Greffier of the States:

Draft Crime (Transnational Organised Crime) (Jersey) Law: a Law to provide for the implementation in Jersey of the United Nations Convention Against Transnational Organised Crime, adopted by the General Assembly of the United Nations on 15th November 2000, the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons and the Protocol thereto Against Smuggling of Migrants; to amend the Police Procedures and Criminal Evidence (Jersey) Law 2003 and the Extradition (Jersey) Law 2004; and for related purposes.

2.1 Senator W. Kinnard (The Minister for Home Affairs):

My Assistant Minister was supposed to be taking this through for me this afternoon, but has been called away unexpectedly, so I will do my best, sir. The Crime (Transnational Organised Crime) (Jersey) Law will implement part of the United Nations Convention Against Transnational Organised Crime and protocols adopted by the General Assembly of the United Nations on 15th November 2000, and it is to prevent, suppress and punish trafficking in persons and it is also against smuggling of migrants. The Law contains offences, which may be committed in any country or territory. However, Article 8 sets out the necessary links with Jersey that must be established by the prosecution in order to bring a prosecution in Jersey for an offence against the law. Under the International Monetary Fund assessment in 2008, Jersey will be assessed against the recommendations of the Financial Action Taskforce on Money Laundering, and this includes a provision under Recommendation 35 that, and I quote: "Countries should sign and ratify, or otherwise become a party to and fully implement, the Vienna Convention, the Palermo Convention, and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. The Palermo Convention is the United Nations Convention Against Transnational Organised Crime, which came into force in 29th September 2003 and was ratified by the United Kingdom in February 2006. It is the main international measure against transnational organised crime and is described by the United Nations Office on Drugs and Crime as a major step forward in the fight against transnational organised crime and signifies the recognition by member states of the seriousness of the problems posed by it, as well as the need to foster and enhance international co-operation in order to tackle these problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organised crime, including the creation of domestic criminal offences, which are things like participation on an organised criminal group, money laundering, corruption, and obstruction of justice. It is the creation of these new offences, for the purpose of implementing the Convention and the first 2 Protocols, which is the object of this draft law. The new legislation criminalises participation in an organised criminal group. There is currently no such offence in Jersey law, therefore it is necessary to create a new offence, which criminalises the participation of a person in the activities in such a group, knowing the object of the group is to commit crime and that this participation will contribute to the achievement of that objective. It criminalises the obstruction of justice, to establish as criminal offences the threats or use of force, intimidation or an offer of a reward or advantage, to induce false, or interfere with, testimony. It also criminalises the trafficking, that is the recruitment, transportation, harbouring, or receipts by means of threat or use of force, coercion, abduction, fraud, deception, or abuse of power, of persons. This includes the trafficking of children and consenting victims who have been coerced in any way. Further, the draft Law will extend the existing provision under the Immigration Act 1971 in order to fully implement the criminalisation of the smuggling of migrants and the forgery of documents. It supplements the legislation by prescribing aggravating factors, for example the killing or subjection to inhuman or degrading treatments, which would influence the

sentencing. It also establishes jurisdiction over offences covered by the Convention for residents of Jersey who, and Jersey companies which, commit offences against the Law overseas and where the victim of the offence is a resident of, or found in Jersey. I propose the Bill.

The Greffier of the States (in the Chair):

Are the principles seconded? **[Seconded]** Does anyone wish to speak on the principles for the draft law?

2.1.1 The Deputy of St. Ouen:

Yes, just very briefly, I would like to congratulate the Minister for Home Affairs, and also the Law Officers who have been involved in this particular piece of legislation. As most people are aware, the trafficking of people - the smuggling of migrants - is a web that spreads throughout the world, and as such, I think that it is only right that even in our small way we can help to try and combat this problem, and therefore I would implore all Members to support this.

2.1.2 Senator W. Kinnard:

I thank the Deputy of St. Ouen for his very kind comments and I maintain the principles.

The Greffier of the States (in the Chair):

I put the principles. Those Members in favour of adopting them, kindly show? The appel is called for. All Members who wish to vote in their designated seats. The Greffier will open the voting.

POUR: 30

CONTRE: 0

ABSTAIN: 0

Senator F.H. Walker

Senator W. Kinnard

Senator P.F. Routier

Senator P.F.C. Ozouf

Senator T.J. Le Main

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 R.G. Le Hérisier (S)

Deputy J.A. Martin (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 D.W. Mezbourian (L)

Deputy S.S.P.A. Power (B)

Deputy A.J.D. Maclean (H)

Deputy K.C. Lewis (S)

Deputy I.J. Gorst (C)

Deputy of St. Mary

The Deputy of St. Martin:

Could I just ask, is there a problem with my button?

The Greffier of the States (in the Chair):

You voted pour, Deputy.

The Deputy of St. Martin:

The lights are flashing.

The Greffier of the States (in the Chair):

Yes, your vote has not been recorded, I just wonder if the vote was closed before you pushed the button.

The Deputy of St. Martin:

All I can say, I know I voted.

The Greffier of the States (in the Chair):

We will note that, Deputy. Deputy Mezbourian, your Scrutiny Panel does not wish to...

2.2 Deputy D.W. Mezbourian (Chairman of the Education and Home Affairs Scrutiny Panel):

No thank you, sir.

The Greffier of the States (in the Chair):

Minister, how do you wish to propose the articles? There are a number of amendments of course in your own name. Is the Assembly content the Minister should propose the articles as amended by her own amendments? Very well. Minister?

2.3 Senator W. Kinnard:

I am very grateful for that. I can perhaps just propose it by just making a few comments, perhaps, on the amendments. The further amendments were made as a result of some very helpful comments from legal advisers at the Ministry of Justice, to whom the draft Law was sent for comment regarding its compliance with the requirements of the U.N. Transnational Organised Crime Convention and protocols, and in the light of those comments, it became clear that some small changes did need to be made to the draft Law in order to ensure compatibility. So, sir, I propose the articles, if I may, *en bloc*.

The Greffier of the States (in the Chair):

Very well, is that seconded? **[Seconded]** Does anyone wish to speak on the Articles to the draft Law? I put the articles. Those Members in favour of adopting them, kindly show? Any against? The articles are adopted. Do you propose the Bill in Third Reading, Minister?

Senator W. Kinnard:

I do, thank you.

The Greffier of the States (in the Chair):

Seconded? **[Seconded]** Does anyone wish to speak? I put the Bill in Third Reading. Those Members in favour of adopting it, kindly show? **[Appel requested]** The vote is pour or against the draft Law in Third Reading. All Members in their designated seats. The Greffier will open the voting. The voting system does appear to be working correctly.

POUR: 29

CONTRE: 0

ABSTAIN: 0

Senator F.H. Walker

Senator W. Kinnard

Senator P.F.C. Ozouf

Senator T.J. Le Main

Senator J.L. Perchard

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 R.G. Le Hérissier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S.C. Ferguson (B)
Deputy of St. Ouen
Deputy J.A. Hilton (H)
Deputy G.W.J. de Faye (H)
Deputy D.W. Mezbourian (L)
Deputy S.S.P.A. Power (B)
Deputy K.C. Lewis (S)
Deputy I.J. Gorst (C)
Deputy of St. Mary

3. Draft Proceeds of Crime (Cash Seizure) (Jersey) Law 200- (P.133/2007)

The Greffier of the States (in the Chair):

Very well, we come now to the Draft Proceeds of Crime (Cash Seizure) (Jersey) Law 2000, also in the name of the Minister for Home Affairs, and I ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Proceeds of Crime (Cash Seizure) (Jersey) Law. A Law to provide for the search for, and the seizure, detention and forfeiture of, cash that is to be used in, or intended to be used in, or obtained in the course of, from the proceeds of, or in connection with, the commission of an offence against a law of a country or a territory, including Jersey, and to amend the provisions of the Proceeds of Crime (Jersey) Law 1999 regarding the making of confiscation orders and saisies judiciares.

3.1 Senator W. Kinnard (The Minister for Home Affairs):

Thank you, I am sorry that was such a long mouthful. The draft Law provides a single legislative basis for the search, seizure, detention and forfeiture of cash, suspected of representing the proceeds of crime, or being intended for use in, or obtained in the course of unlawful criminal activity. It repeals and replaces the provisions on cash seizure currently contained in Articles 31 to 36 of the Drug Trafficking Offences (Jersey) Law 1988, and Article 27 and Schedule 4 of the Terrorism (Jersey) Law 2002. It is intended that the draft Law will act as a deterrent to those individuals who believe that crime pays, and will also assist in upholding the reputation of the Island. The Law fulfils the Strategic Plan objective 2006 to 2011, which tasks the Home Affairs Department with introducing civil asset recovery legislation to target local criminals by 2008. The draft Law

expands civil forfeiture powers in line with the criminal justice policy. The draft Law implements part of the special recommendation 9 of the Financial Action Taskforce on Money Laundering, the remainder to be implemented under the Draft Customs and Excise (Amendment No. 5) (Jersey) Law, to bring Jersey legislation into line with the Financial Action Taskforce recommendations before the International Monetary Fund inspection next year. Under existing legislation, Police and Customs officers can only stop and restrain cash if they reasonably suspect it is the proceeds of drug trafficking and it is being imported or exported from the Island, or if the cash is reasonably suspected of being related to terrorist financing. A separate stand alone law, rather than the provisions under the existing Drug Trafficking Offences or Terrorism Law, is needed, in order to alleviate the potential difficulties that we currently face. For example, if a Police officer finds £100,000 in the back seat of a car and there is no legitimate explanation for the cash given by the driver of the vehicle, with provisions implemented under both the Proceeds of Crime and Drug Trafficking Laws, the Police officer is faced with having to reach a view as to whether the cash represents the proceeds of drug trafficking, or whether it represents the proceeds of some other crime. If the officer is faced with silence on the part of the car driver, the question arises as to what evidence will be admissible to prove the reasonable grounds for suspicion that the money represents either the proceeds of drug trafficking or the proceeds of crime. It is obviously important for the officer to know under which statutory provisions he is proceeding. At this stage, he may suspect that the money is the proceeds of some criminal conduct, but he may not know whether that conduct relates to drug trafficking or some other crime. By having a stand alone cash seizure law, this potential problem is removed, because it removes the requirement for the Police officer to virtually on the spot make the decision as to whether to seize the cash under the Drug Trafficking provisions or the Proceeds of Crime provisions, at a stage when the evidence may be such that an officer cannot really confidently make that distinction. In relation to the civil forfeiture of cash, the draft Law continues to allow for civil forfeiture of cash, regardless of whether any criminal proceedings for particular offences have or are taking place. If civil proceedings were brought with separate provisions under the Drug Trafficking, Proceeds of Crime, Terrorism Laws, it would be essential to identify under which statute the forfeiture of cash is taking place, and again, it may be difficult for the Police to prove, even on the balance of probabilities, that the cash represents either the proceeds of crime or the proceeds of drug trafficking. So, under the draft Law, the Royal Court may, on the application of the Attorney General, make a forfeiture order, forfeiting cash, which has already been detained, if the court is satisfied that on the balance of probabilities that cash is tainted cash. If the individual in whose possession the cash was found is able to satisfy the court that the seized cash is from a legitimate source, then no other order would be made by the court. It has been agreed with the Minister for Treasury and Resources that the money forfeited under this Law will go into a new special fund, the Civil Asset Recovery Fund, to be established under the Civil Asset Recovery International Co-operation (Jersey) Law 200-. At the end of the year, any money retained in that fund will be transferred to the Consolidated Fund and will form part of the States' monetary process in the following year. Sir, I propose the principles of the Law.

The Greffier of the States (in the Chair):

Are the principles seconded? [**Seconded**] Does anyone wish to speak on the principles for the Law?

3.1.1 Deputy R.G. Le Hérissier:

I wonder if the Minister could tell us whether, in cases where people will be taking money from under the mattress to put in the bank, will the onus therefore be upon them to prove that this money has been lawfully obtained? What if a person is suspected of having tainted money, and is able to advance this reason? How will, in practical terms, that be dealt with?

3.1.2 Deputy G.C.L. Baudains:

In a similar vein I am not sure that I can support this proposition, Sir. It is one of those highly seductive propositions which is going to solve a major problem and we all thoroughly support it, until one looks at the detail, and I am afraid it is with the detail that I have problems. Others have a greater regard for the human rights legislation, as opposed to human rights themselves, than I do and I wonder if perhaps those people might look more closely at the ability of this proposition to conform with human rights, I do not believe it does. Because it seeks to address one problem and in its wake creates others, which Deputy Le Hérissier has alluded to, and I do not think that as a consequence it should receive this Assembly's consent. In my view, and I do have a problem with this and similar laws which run contrary to the principles of British justice where normally a person is deemed innocent until he is proven guilty. In this proposition a person is guilty until he can prove his innocence and I am afraid I cannot support such things. We read on page 5, and indeed the Minister in her opening speech told us of the hypothetical case of £100,000 lying on the back seat of a car. That may seem to make the argument reasonable but nowhere, unless I have missed it, Sir, in the Law does it make £100,000 the activating figure. Nowhere does it make that the figure upon which a police officer can act. So I presume it is in the discretion of an officer as to what sum might represent a sum which he should be concerned about. Is it £1,000, is it £500, is it £200? We do not know or I do not know. And I can see a number of innocent people being severely disadvantaged by this Law, having to go through an embarrassing, lengthy possibly expensive and maybe potentially unrewarding process at the end, simply to get their money back which they legally own. This is a sledgehammer to crack a nut, Sir, and I really cannot see how I could possibly support it.

3.1.3 Deputy K.C. Lewis:

Should a large amount of money be detained? Page 9, Article 7 requires some money to be held in cash detention order, to be placed in an interest bearing account. At a much later date, should the money be found to be legitimate and the cash returned, would this include the interest?

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

Given the disquiet with which this House regards special funds, I am a little disappointed that in Article 9 it says nothing about which fund this shall be paid into. Now, we have the Minister's assurance that it will go into the fund to be set up under the Draft Criminal Justice (International Co-operation) (Amendment) (Jersey) Law but there is no statutory need for it to go into that fund and I would prefer to see it specified, perhaps with a summary of the conditions as there are in the conditions under which payments out may be made, such as there is under Proposition 135. So, perhaps the Minister would put our minds at rest under that otherwise I am not sure that I can support this.

3.1.5 Deputy J.B. Fox:

I shall certainly support this. It is not just on the whim of a Police officer or his superior officers as to whether a person is guilty or otherwise. He goes through due process of law and it goes through the legal system, and believe you me, there is nothing worse than when you have detained somebody and you have a lot of unaccounted for money. With the other circumstances you know that this is criminal money but because of... it can be through language, it can be a number of things, you have to hand it back. It also happens with other things than money. I had on one occasion behind the front light of a car some white colourless stones which in fact was £46,000 worth of diamonds. We had to hand them back. It went back to the U.K. and the poetic justice was that the Customs wanted £46,000 V.A.T. import duty before they could be released. Sometimes there is a God out there.

3.1.6 Senator J.L. Perchard:

Just a couple of little questions that the Minister may care to answer when she sums-up. It is just the methods that are going to be adopted for accounting for these funds. She did explain that the

funds would be transferred into this Civil Asset Recovery Fund before going into the Consolidated Fund which would be done annually, I understand. A couple of questions on how the funds would be accounted for. Will the court and case costs of the recovery of each seizure be allocated to each seizure and be open and transparent in the accounts? Secondly, will each individual seizure, whether it be drug trafficking or confiscation of crime funds, be itemised and available for Members' perusal?

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

A couple of issues. I can see both sides to the argument with Deputy Fox because obviously what you do not want to do is see a guilty person get away. However, at the end of the day one has to prove their guilt, and this is the problem I think Deputy Baudains has; is one guilty until proven innocent rather than the other way around. I think that is the concern one has here and maybe I could ask the Minister or maybe the Attorney General to explain as to why this can be signed as being compliant with human rights. It has a signature saying it was signed on 21st September but we do not know really why it is human rights compliant. The other concern I have is the length of time the money can be kept away or can be denied the accused, and I know it will come on to when we probably discuss on Article 6 but it could be up to 2 years but what about any interest on that. Who will get the interest if indeed the person has not been found to be guilty, in other words is exonerated of the crime. We heard yesterday how no apology is given to the Customs officers. Will he have a case here where no apology is given, and also the person has lost the interest on whatever capital sum has been taken away from them? I think that is a very important issue we ought to ensure we know the answer to before I will vote for it.

The Greffier of the States (in the Chair):

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

3.1.8 Senator W. Kinnard:

I will do the best I can but I may have to ask the Attorney General for some assistance as my Assistant Minister was going to be doing this this afternoon. Deputy Le Hérissier and others have raised issues but the important point I think I need to make, Sir, is that we already make cash seizures under existing legislation. The problem we have is trying to work out which bit of legislation we should be using and we have been doing that since 1988 when we first had the ability to do that under the Drug Trafficking Offences (Jersey) Law. So what this Law is designed to do is to get the Police officer out of the problem of having to decide under which law he is going to make the seizure, because if he makes the wrong judgment call then later on down the line the offence cannot be prosecuted. So that is really what we are doing. We are widening it but we have been doing it since 1988. There are a range of careful steps that have to be done. Of course, no Police officer is going to do this on a whim as has been explained by our Deputy who was an officer in a former life. There has to be reasonable suspicion and that of course has to be substantiated. Then the Attorney General has to be convinced, and the court has to be convinced. So there are a number of interjections, if you like, in the process to ensure that this thing does not happen lightly, and as I say, we have had experience of doing this under the 2 pieces of existing legislation that allow us to do that. Deputy Baudains is not in favour of the legislation. He says he was concerned about what sum. You know, should we be fixing a sum. Is it £100,000, is it £10,000, or whatever. I am sure that the Attorney General may have more to say on this but it seems to me, Sir, that it would be very difficult to decide what the sum should be, because it may well be that only a small amount of cash that might be found, and then seized, could lead on to finding a larger amount but you would need to seize that smaller amount at the moment you are there and presented with it. So I do not think it is possible to be able to pull out a figure from the air and set it, if you like, in the legislation. Deputy Lewis asks if a person was found to be innocent or the case was dropped against them, would the cash be returned with interest, and yes, that is the case. I think that was also asked by Deputy Martin. Deputy Ferguson said she would like to see how the fund would be set up and also

Senator Perchard made a similar comment, and wanting to see the conditions of the fund in the Law. I think, because the fund has not yet been set up and the details have not been worked out that it is not in the Law but I am not sure. The Attorney General will perhaps have more to say on that because I know he has been in discussions with the C.&A.G. (Comptroller and Auditor General) as to how this should be set up. So perhaps he could field that one for me, I would be grateful. Deputy Fox supports the proposition for which I am grateful. I think he is probably very aware of the difficulties that Police officers can face in this particular situation. Senator Perchard also asked whether the particular case costs attributable to each particular case would be allocated under each heading. That is what we are trying to get away from, because the problem we have at the moment is having to prosecute the offence of the cash seizure ability under a particular law, and that is what this particular piece of legislation is trying to avoid. So, we would no longer, under this Cash Seizure (Jersey) Law be in a position where we would be able to attribute it under the Drug Trafficking Offences or Drug Terrorism Law in the actual accounts. I have not explained that very well I realise but I think the Attorney General may, I hope, be able to assist me further.

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

If I could just expand on the Minister's comments a little. Perhaps I could ask Members to look at Article 2 of the draft Law which deals with the meaning of "tainted cash". Under Article 2(1) is the definition: " 'tainted cash' is cash that is tainted property; " 'tainted property' is property that is - (a) used in, or intended to be used in, unlawful conduct; or (b) obtained in the course of, from the proceeds of, or in connection with unlawful conduct." The structure of the legislation is that if the Police come across cash which they believe may be tainted cash they can seize it provisionally. An order authorising detention of that cash for longer than 48 hours is made by the Bailiff, if he thinks fit, and then the terms of forfeiture of it are, and these are the important ones perhaps, in Article 9, in particular Article 9(1): "It is the Attorney General who makes the application to the court for an order that the cash be forfeited and the court under Article 9(2) shall make an order unless the person against whom the order would be made, satisfies the court that the cash is not tainted cash." So the process there is that it is always open to the person who has had the cash in his possession to come to court and if there is a reasonable reason for having that cash in his possession, and not quietly earning interest in the bank account, then there is absolutely no reason why one would expect the court to make the order forfeiting the cash. The opportunities are there for the person to justify to the court that the cash is not connected with criminal conduct in one form or another. This is a real problem. The Minister described a hypothetical position but it was in fact an actual position that the Police found a very large sum of money, in cash, in the back of a car, and there was no obvious reason why that large - we are now talking about tens of thousands of pounds - sum of cash should be there, and yet there was no obvious basis upon which it could be seized at that time. There has been power to seize cash at the borders since 1988 as the Minister has explained. But this draft Law allows for the seizure of cash internally as well as at the borders, and what is more, when one comes across a large sum of cash it may not be possible to say whether it represents the proceeds of drug trafficking, or whether it represents the proceeds of crime of some other kind. It could be some sort of fraud, I suppose it could be tax evasion, it could be the proceeds of any sort of criminal offence, and the reason that this Law is structured in the way it is, is that one cannot expect the authorities to have to prove the crime which results in that cash being found because it may be that the cash is the only clue which the authorities have, and yet there is a very real suspicion that if there is that large sum of cash available it must, absent some explanation from the person who is the owner of it, represent the proceeds of crime. It is not so very difficult, is it, to ask the owner of the cash to say: "Yes, I have got £100,000 in cash in my boot because..." and if there is a reasonable answer they will be able to come up with it. I was just looking at my wallet while the Minister was speaking, I see I have £96 in it. **[Members: Oh!]** Is that a reasonable amount to have, or not, I do not know but I would say to the court if it were taken off me: "I always carry that sort of sum on me." So, just in case I am caught I thought I would get that excuse in early. It really is a question of what is reasonable, and the ability in Article 9(2) for the

person to come up to the court, bearing in mind that decision would be taken by the Bailiff and 2 Jurats, and say: "I have a perfectly good explanation for having this cash in my possession" and then the forfeiture order will not be made. I remind Members, particularly in relation to the Deputy of St. Martin's questions about human rights compliance, that these provisions are being introduced in order to comply with recommendations which the International Monetary Fund will want to see are being complied with. The question will be, is it a proportionate interference, in human rights terms, with somebody's right to property; and the answer to that appears to me to be, in principle, it can be. So the legislation is perfectly appropriate, you can give that a resounding yes. On any individual case it may be that it would not be proportionate to reach that conclusion and, of course, the court is required in an individual case to act in a human rights compliant way, and that really just gives justice to Article 9(2) of the draft legislation. Deputy Lewis asked whether or not the person whose money it was, or was claiming it, would get interest back. I think the answer to that is yes. Article 8(3) of the draft Law makes it plain that an application can be made to the Bailiff for a release of the cash which has been detained and the application would clearly include the interest which had been earned on the cash in the meantime. Senator Perchard asked about accounting for funds: would the court and case costs be allocated to each seizure individually? I think the answer to that is no but perhaps I can deal with that in the context of Deputy Ferguson's questions about the use of special funds. Article 9(5) provides that any cash that is forfeited under a forfeiture order shall be paid into a special fund within the meaning of the Public Finances Law designated by an order made by the Minister for Treasury and Resources. As the Minister for Home Affairs has explained, the intention is that the Minister for Treasury and Resources will be asked to designate the Civil Asset Recovery Fund which will be set up if the States so approve, under the Draft Civil Asset Recovery International Co-operation Law which Members are going to be asked to consider in a moment. The reason that the drafting is in that form is really to get around the problem that the 2 pieces of legislation are coming before the States at the same time. We have not yet created the Civil Asset Forfeiture Fund, which is coming under the next piece of legislation but it does not seem sensible to create 2 extra special funds. Now, what we cannot easily do is allocate monies from this Crime Cash Seizure Law to either the drug fund or the proceeds of crime fund under the Drug Trafficking legislation or the Proceeds of Crime legislation because we do not want to have to prove what the criminal offence was in order to seize the cash. That takes us back to the same problem we had earlier that I was explaining, that when the Police find a lot of cash in the hands of the person concerned, the £100,000 in the boot, they will not necessarily have any evidence as to what it relates to. So, it would be very inconvenient to have to prove whether it was a drug trafficking offence or whether it was a proceeds of crime offence. So, it is against that analysis that it was thought we would have to create a separate fund. But the same is true of the Civil Asset Recovery Fund where you might get an order from outside the Island where we will not necessarily know what the criminal conduct was, and so the thinking that went behind this forfeiture of seized cash provision in Article 9(5) was that it would all go into the one fund designated, in the case of this legislation, by the Minister for Treasury and Resources. But the fund that is described in detail in the International Co-operation Law and those provisions do set out in detail that there are a number of expenses which can be met from this fund; discharging any obligations under an asset sharing agreement, paying the Viscount back any expenses he incurs in administering the fund, meeting the expenses reasonably incurred by the Minister in meeting the fund, meeting expenses reasonably incurred by the Attorney General - which I was very pleased to see in there and I hope Members will agree, in dealing with this particular matter. Then at the end, having met those various expenses, which might well include court and case costs generally, I say that to Senator Perchard, at the end of that and at the end of each financial year, the money is then remitted into the Consolidated Fund. That is the mechanism by which, I may say to the Chairman of the Public Accounts Committee, we deal with the concerns which the Comptroller and Auditor General had expressed in his most recent report. But in saying that I fully recognise that there may come a time when there will be a much wider debate about the use of the special funds. Unfortunately we needed to get this legislation in place at a time when we did not quite know what the political

decisions would be in relation to special funds, and that is why they have been drafted as they are. There is absolutely no reason why, if there is a wider political debate about the special funds, which may well come in the future, then of course that will encompass this particular fund which we are talking about now. I hope that has helped.

The Deputy of St. Martin: (*)

I am sorry, if I could just press the Attorney General, not on the human rights compliance you will be pleased to know but it is just the connection between Article 6(b) and Article 9(2). I apologise, I did not hear the Minister but I did ask what provision was there for the payment of interest if in fact the money was then detained for over 2 years or up to 2 years, and also really sorting out the difference. If indeed, and we know that people have a right to silence, and quite often it could be perceived that someone is being quite or silent simply because they do not want to say anything that may incriminate them, and I think that is a good point. But in this particular case, if indeed we call the person a suspect who has £100,000 in the back of the car and is then arrested and remains silent and does not wish to explain because he may well say: "I am claiming my right to silence." Does that mean that person, if he remains silent for 2 years, gets the money back, or will the money be forfeited because that person chose to say nothing?

The Attorney General:

I am not sure whether the question was addressed to me or the Minister. I think it was probably addressed to me. In answer to the last part of the question, if the person remains silent then the likelihood is that he or she will not have persuaded the court that the money is not tainted cash for the purposes of Article 9(2). So the Attorney would be making an application for an order that the cash be forfeited. The person who remains silent will not have persuaded the court that it is not tainted cash and so the probability is that he or she has not lost his right to silence, will not be prosecuted for a criminal offence but will lose the cash, and that will be the choice of the person in question. The provision of interest I thought I had covered in relation to Deputy Lewis' question. I think the answer is that the application to the court under Article 8(3) for the release of the funds would include the release of interest.

The Bailiff:

Members can take a standing vote. Those in favour of adopting the principles. Appel? Very well, I ask any Member in the precinct who wishes to vote on this matter 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: 29

CONTRE: 0

ABSTAIN: 0

Senator F.H. Walker

Senator W. Kinnard

Senator P.F.C. Ozouf

Senator T.J. Le Main

Senator J.L. Perchard

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 R.G. Le Hérisier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S.C. Ferguson (B)
Deputy of St. Ouen
Deputy J.A. Hilton (H)
Deputy G.W.J. de Faye (H)
Deputy D.W. Mezbourian (L)
Deputy S.S.P.A. Power (B)
Deputy K.C. Lewis (S)
Deputy I.J. Gorst (C)
Deputy of St. Mary

The Bailiff:

Now, the Chairman of the relevant Scrutiny Panel is Deputy Mezbourian. Do you wish to scrutinise the legislation?

3.2 Deputy D.W. Mezbourian (Chairman of the Education and Home Affairs Scrutiny Panel):

No, thank you, Sir.

The Bailiff:

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

3.3 Senator W. Kinnard:

I am very grateful for his earlier comments and I think the Attorney General gave a very good exposition of the Articles. So, I think I will try my luck and propose them *en bloc*, Sir.

The Bailiff:

Very well. Articles 1 to 21 of the Bill are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of the articles of the Bill?

3.3.1 Deputy J. Gallichan:

Just a very brief question. I understand entirely the rationale behind this and appreciate it. The only thing that I was concerned with was Article 3 dealing with searches for cash. I just wonder if the Minister could explain to me how much of a step beyond the current provisions of existing legislation this article represents. In other words, are there circumstances when searches without prior authorisation can be conducted at the moment?

The Bailiff:

I call upon the Minister to reply.

3.3.2 Senator W. Kinnard:

Perhaps I could call upon the Attorney General to answer that one. I am afraid my Assistant Minister was supposed to do these for me this afternoon so I am having to rely rather more on the Attorney General than ordinarily would be the case and I am very grateful to him.

The Attorney General:

No, Sir, other than the searches at the borders, which I was describing earlier, this is basically new material.

The Bailiff:

I put the articles. Those Members in favour of adopting them, kindly show. Those against. The Articles are adopted and you move the Bill in Third Reading? **[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 Civil Asset Recovery (International Co-operation) (Jersey) Law 200- (P.135/2007)

The Bailiff:

We come to the Draft Civil Asset Recovery (International Co-operation) (Jersey) Law 200- and I ask the Greffier to read the principles of the Bill.

The Greffier of the States:

Draft Civil Asset Recovery (International Co-operation) (Jersey) Law 200-. A law to enable Jersey to co-operate with other countries in external civil asset recovery proceedings and investigations, and for related purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

4.1 Senator W. Kinnard (The Minister for Home Affairs):

Before I begin I think I should explain to Members that this piece of work is in 2 parts and this part refers, Sir, to the international co-operation so it does not involve any matter of civil asset recovery domestically, it is about assisting civil asset authorities abroad. Civil asset forfeiture is a civil action brought by the States seeking a court ruling that particular property held by the individual represents the proceeds of criminal conduct and should therefore be forfeited to the States. Civil forfeiture schemes currently operate in a number of jurisdictions around the world including England and Wales, Scotland, Northern Ireland, the Republic of Ireland, Switzerland, Italy, the U.S.A., Australia, South Africa and various Canadian provinces. It is considered that organised crime heads use their resources to keep themselves distant from the crimes that they are controlling, and to mask the criminal origin of their assets so that those assets in fact appear legitimate. This has made it increasingly difficult to carry out successful criminal investigations leading to the

prosecution and conviction of such individuals, with the result that finances derived from crime can be perceived to be out of the reach of law and remain available to be used to finance further crime. In order to deprive criminals of their ill-gotten gains, a number of jurisdictions have introduced legislative schemes providing for the forfeiture of proceeds of crime before their civil courts using the civil standard of proof. This means that those jurisdictions do not need to attain a criminal conviction in order to have the proceeds forfeited but instead that civil asset recovery authorities have to prove on the balance of probabilities that the assets in question represent the proceeds of crime or unlawful conduct. Under the International Monetary Fund Assessment in 2008 Jersey will be assessed against the recommendations as we know of the Financial Action Task Force, and this includes a provision under recommendation 3 that, and I quote: "Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation to the extent that such a requirement is consistent with the principles of their domestic law." The Civil Asset Recovery Working Group was tasked with giving consideration to civil forfeiture measures and recommended that civil asset recovery should be, as I have mentioned before, approached in 2 phases. This draft Law is designed to address the first phase, the introduction of civil asset recovery, by providing for the enforcement of external civil asset recovery orders in Jersey. The second phase of the programme has law drafting time set aside in the 2008 programme. This draft Law will achieve the aim under the criminal justice policy of investigating ways of expanding powers in relation to civil asset forfeiture with the aim of introducing by 2008 legislation to assist other jurisdictions to recover such assets. This also fulfils the States' Strategic Plan 2006-2011 which provides for the introduction of powers to assist other jurisdictions pursuing civil confiscation of criminal proceeds by 2008. Without these powers the door would be open to criminals who are seeking to escape the effect of civil asset forfeiture orders abroad, to do so and to do so by putting their ill-gotten gains in Jersey. Jersey has been unable to provide evidence to external civil asset recovery agencies under Article 5 of the Criminal Justice International Co-operation (Jersey) Law 2001 and this has meant that occasionally it has not been possible to assist the Assets Recoveries Agency in England and Wales, the Criminal Assets Bureau in Ireland, and the United States Department of Justice. The draft Law enables the Attorney General to provide assistance to jurisdictions operating a civil forfeiture scheme in order to allow them to secure evidence for use in their civil investigations or proceedings. Once civil forfeiture proceedings have taken place in that jurisdiction, and a civil asset forfeiture order is made there, that order may then be registered by the Royal Court in Jersey and the money recovered by an application to the Royal Court by the Attorney General. It is envisaged that where money is likely to be recovered in Jersey under the provisions of the draft Law, the Attorney General may enter into an agreement to share the proceeds, of any assets recovered, with the jurisdiction requesting assistance. It has been agreed with the Minister for Treasury and Resources that the money forfeited under this Law will go into a new special fund, which we talked about earlier, the Civil Asset Recovery Fund to be established under the Civil Asset Recovery (International Co-operation) (Jersey) Law. Sir, I propose the principles of the Law.

The Bailiff:

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

4.1.1 Deputy R.G. Le Hérissier:

I wonder if the Minister could explain to us what happens if the country seeking such an order is a country whose reputation, for example in terms of corruption, is dubious. I do not see anything in the law which amounts to a vetting of applicants, so to speak. What is the procedure in vetting applicants, or do we simply judge each case on its merits? Secondly if, for example, the suspicion is that the money that has arrived in Jersey is as a result - for example - of political corruption, is

there clarity as to whether it is only money that fits a crime that can be committed in this jurisdiction, it is only that kind of money or those kind of resources where we can seek forfeiture?

4.1.2 Deputy G.W.J. de Faye:

Both in respect of the legislation we have just passed, the Draft Crime (Transnational Organized Crime) (Jersey) Law but I think perhaps it would be more specifically to do with civil asset recovery, I have harboured a level of concern. While clearly having taken a limited amount of expert advice, both this type of legislation is bringing the Island in line with accepted professional practice and understood international regulatory guidelines, and notwithstanding that it is also reasonably well known that quite often criminals seeking to safeguard their illicit profits may pass either cash or proceeds or property to relatives, friends, wives, *et cetera*. As we moved on to civil asset debt recovery and given that the Minister for Home Affairs spoke specifically about aspects of property in this area, I do retain this concern of how the legislation may impact on the genuinely innocent parties who might be involved. While the phrase goes: “No smoke without fire” there is in fact no reason why a partner to an international criminal may be entirely innocent of their partner’s activities. Indeed there may be dependents in any particular relationship, and clearly if the impact of this Law is that suddenly out of the blue, because of the behaviour of a partner in a family or relationship is exposed in some way, entirely innocent people could find themselves thrown into quite desperate straits. Everything that they have relied on for their existence would either be tainted proceeds or potentially forfeited property. So, without troubling the Minister for Home Affairs who, I understand, is unlikely to be briefed for a question like this. If I might ask the Attorney General if he could guide me and Members to whereabouts in the legislation there is a level of protection for innocent parties caught up in the international proceeds of crime, or rather in this case, civil asset recovery following that type of incident. Or if there is nothing specifically in the law, how would it be dealt with within our jurisdiction?

The Attorney General:

I wonder if it would be convenient to deal with both those questions. In relation to Deputy de Faye's question, the process is set out in Article 10 where it deals with the recovery of property. If an external civil asset recovery order has been registered, the court may, on the application of the Attorney General, order that property be dealt with, managed, realised by the Viscount, and so on. Then under Article 10(2) it says: “The Royal Court shall not exercise the powers conferred by paragraph (1) in respect of any property unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.” So in the circumstances to which the Deputy refers where there may be the partner of a person who has been subject to the civil asset forfeiture order abroad, who is the genuine owner and innocently the owner of the assets in Jersey. That person would be able to come to the court and make representations as to why the order ought not to be made. Dealing with the questions raised by Deputy Le Hérissier, the second of his questions was: “Is it only conduct which would amount to a crime in this jurisdiction which could give rise to forfeiture.” The answer to that is no. It could be a crime under the foreign country’s laws. One gets to that by looking at the definition of unlawful conduct which is in Article 1(1): “Unlawful conduct means the commission of an offence against a law of a country or territory including Jersey” but it does not necessarily mean that it must include Jersey. So the question which he put was: “What if there is a dubious country which makes an application.” The answer to that comes at a number of levels. The first is that the Attorney General has discretion as to whether or not to make an application to the court for an order to be made. The second is that persons who might be affected by the making of such an order have the opportunity, as I have just explained to Deputy de Faye, to come to the court and make representations as to why the order should not be made. Thirdly, the court has discretion as to whether it is going to make the order. So that, if you like, is the level of protection in the case of a dubious country. Perhaps I could add this; it is sometimes quite difficult to talk about what is or what is not a dubious country. The United Nations Convention Against Corruption has been ratified by a number of countries. The

very first country to ratify it was Kenya, and Kenya is regarded by some as having a problem with corruption, and indeed, my understanding is that it is because the relevant Kenyan officials recognised that there was a problem with corruption that they were so anxious to see that the convention was indeed ratified on behalf of Kenya, and that Kenya was making a public statement that it was against corruption. So, while of course it might be true that if you have a country which falls into the category, I do not know which countries the Deputy would put into the category of being dubious, but while theoretically it might be true that one could have a country which, on the face of it had some internal problems, it might be precisely those countries which one would wish to help by giving effect to an order made in those countries in order to return assets which have been effectively stolen from those countries by corrupt activity of their officials or politicians. This Island has been reasonably successful so far in returning to some countries, which may or may not fall into the dubious category of the Deputy of St. Saviour, some of the assets which have been purloined, and I think that has been a satisfactory way of going about business.

Deputy R.G. Le Hérisier:

Just a point for clarification, there could arise, as is often the case because often when transferrals of government occur in certain countries, the current lot have milked the system and then the new lot then see it as their entitlement, so to speak, to milk the system. Could there not be a case, perhaps *in extremis*, where the current lot were, in a sense, trying to get their revenge on the previous lot by pursuing orders and that would make for a very sensitive situation.

The Attorney General:

Yes, theoretically, these things are possible and indeed there were lengthy debates about just this problem when the U.N. Convention Against Corruption was being negotiated by different member countries, and certainly in relation to one matter which is on hand in my department at the moment. I am aware of one major country which is anxious to set down conditions for the return of assets, which might be forfeited in Jersey, to the country from which they have been corruptly obtained. So these things are particularly difficult and they have to be handled with sensitivity. The structure of this legislation is to trust the Law Officers and the court to deal with that matter appropriately.

Deputy G.W.J. de Faye:

I am very grateful to the Attorney General's direction and reassuring explanations and I have nothing further to add.

The Bailiff:

Thank you very much. Deputy Lewis.

4.1.3 Deputy K.C. Lewis:

I think the Attorney General has more or less answered my question. It was similar to Deputy Le Hérisier's. In signing this agreement, are we opening ourselves to claims from every country or is it just countries that are co-signatories of this agreement as outlined by the Minister?

4.1.4 Deputy P.N. Troy:

Looking at how the monies will be applied on page 7, and this probably applies equally to the previous item that we discussed, the forfeit of cash. I notice that of any surplus funds, after paying off various expenses involved in obtaining any asset or even any cash on the previous items, go into the Consolidated Fund to be used then, I presume, in the general budgets of the States of Jersey. I was thinking perhaps that maybe for the government to profit from crime is perhaps possibly not the best solution and I wondered whether if any of these funds could be earmarked for charitable causes perhaps. So that if we did have any surplus, 50 per cent could perhaps be passed to crime enforcement and 50 per cent to charitable causes, rather than this Government to benefit from crime.

4.1.5 Deputy G.C.L. Baudains:

I have similar concerns with this as I did with the previous proposition and some others too. If I may dwell on the latter, I am sure Members are aware of my concern of agreements that we have with other countries because I think at times, and this has been mentioned by a couple of previous speakers, that I think we do in fact delude ourselves if we assume that other countries have the same level - the same standard - of justice that we enjoy. The Royal Court indeed may well, as the Attorney General has told us, decide but of course it will be on the evidence it has been supplied by those other countries, where in some cases I have noticed that corruption and incompetence can be quite common, and some Members may be surprised by some of the countries that that includes. I notice with some concern that this legislation in places is based not on conviction but on the balance of probabilities, and this, in my estimation, compounds the fear that I have on this particular aspect. Other concerns I have are I notice that it is considered necessary to include provisions to enable evidence sharing with external civil asset recovery agencies. I am not quite sure how secure that evidence may be when we see the United Kingdom cannot keep basic data secure, and as I said when I started speaking, that this Law I believe, like the previous one, includes a reversal of the main principle - the main pillar - of British justice where a person is innocent until proven guilty. For instance, I am concerned at the bottom of page 4, for example, is a good example where it only has to be a possibility that the money is used for money laundering or terrorist activities and the owner of the cash has 6 months to prove it was not the case. After that period the cash is forfeited. Not maybe but is. I am concerned about this, and as with the previous proposition I most probably will not be supporting it.

4.1.6 Deputy J.B. Fox:

I would just like to say that I support this as well, and it was never more apparent of the necessity for legislation such as this than when we were in Abuja, in Nigeria, at the Commonwealth Parliamentary Conference, and Senator Le Main was able to announce that £50 million of recovered assets was being returned to the Nigerian Government. The rapturous applause that was received by the 600 or so Commonwealth delegates was enormous and, yes, there is always a question where does the money go once you put it back but if you go to a place like Abuja there is such a willingness to try and maintain their democracy as opposed to dictatorships. You see buildings that are skeletons with scaffolding that has been up probably for about 15 years, where someone had given the money to build the building and someone had pocketed it and taken it out of the country. Without the support of Islands and countries such as ours, into providing the safeguards and the laws to prevent people siphoning-off their country's assets, it is extremely valuable and therefore, it is extremely important that we play our part and therefore I support this civil assets proposition.

The Bailiff:

I call upon the Minister to reply.

4.1.7 Senator W. Kinnard:

Once again, I am grateful to Deputy Fox for his support. Deputy Lewis asked whether this facility for assisting jurisdictions under this Law would be open to all and sundry. Well, the Law is open to those countries which currently operate a civil asset forfeiture scheme but that is not to say that it is not going to be widened as more and more countries perhaps introduce those schemes. In my opening speech I gave a long list of those. It is not exhaustive but clearly it can widen through time. Deputy Troy asked how the monies would be applied and whether or not it could be applied to charities. Again, with this fund, at the end of the year any money that is retained in the fund will be transferred to the Consolidated Fund and will form part of the States' budgetary process for the following year. So, from that point of view it is really not my call to decide, I think, how that is going to be used but the Civil Asset Recovery Fund, what will happen is it will be used to discharge, of course, the various obligations that we have under the asset sharing agreement.

Paying also the expenses of the Viscount and the expenses of the Attorney General and the Minister in administering it, and any of what is left can be sent of course to the Consolidated Fund. I do not know whether the Attorney General might be able to add to that because he has been dealing, I know, with this sort of matter. Deputy Baudains we already know has concerns about other jurisdictions, he has made that quite clear, and he has also made it quite clear in the previous debate about his concerns on the reverse burden of proof. I do not think we are ever going to shift him from that so I imagine he will vote against the proposition. I am not sure I picked up all of the points. I have done my best but I am sure the Attorney General will be able to assist me. **[Aside]** I just apologise but I am not as briefed on this as I would like to be.

The Bailiff:

I put the principles of the Bill. Those Members in favour of adopting them, kindly show. Those against. The principles are... **[Appel requested]** I beg your pardon, Deputy, I did not hear. I am so sorry. Well, we will ask any Member in the precinct who wishes to vote on this matter to return to his or her seat. I ask the Greffier to open the voting which is for against the principles of the Bill.

POUR: 32

CONTRE: 2

ABSTAIN: 0

Senator F.H. Walker

Deputy R.C. Duhamel (S)

Senator W. Kinnard

Deputy G.C.L. Baudains (C)

Senator P.F. Routier

Senator P.F.C. Ozouf

Senator T.J. Le Main

Connétable of St. Ouen

Connétable of St. Mary

Connétable of St. Clement

Connétable of St. Helier

Connétable of St. Lawrence

Connétable of Grouville

Connétable of St. Brelade

Connétable of St. Martin

Connétable of St. Saviour

Deputy of St. Martin

Deputy P.N. Troy (B)

Deputy C.J. Scott Warren (S)

Deputy R.G. Le Hérisier (S)

Deputy J.B. Fox (H)

Deputy J.A. Martin (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 D.W. Mezbourian (L)

Deputy of Trinity

Deputy S.S.P.A. Power (B)

Deputy A.J.D. Maclean (H)

Deputy K.C. Lewis (S)

Deputy I.J. Gorst (C)

Deputy of St. Mary

The Bailiff:

Deputy Mezbourian, do you wish to scrutinise the legislation?

4.2 Deputy D.W. Mezbourian (Chairman of the Education and Home Affairs Scrutiny Panel):

No thank you, Sir.

The Bailiff:

Minister, how do you wish to proceed?

4.3 Senator W. Kinnard:

I will proceed *en bloc*, Sir.

The Bailiff:

Yes, you propose Articles 1 to 18 of the Bill *en bloc*. They are seconded. **[Seconded]** Does any Member wish to speak on any of the articles?

4.3.1 Deputy J.A. Hilton of St. Helier:

Yes please, Sir. Just to say that I think the suggestion that Deputy Troy made was a very, very good one. I happened to glance across the Chamber to the Deputy of Trinity who mouthed “town park” at me **[Laughter]** and I thought: “Yes, what an excellent idea” and I would look across to the Council of Ministers, I do not know how much money is in the Civil Asset Recovery Fund at the present time but I would just request that they would seriously consider using any funds available to put towards a public park for the people of Jersey. What better use of the money.

Senator W. Kinnard:

I think I have a few projects ahead of that one. [Laughter]

The Bailiff:

I call on the Minister to respond.

4.3.2 Senator W. Kinnard:

As I said, I think I have a few projects, not least of all the prison, ahead of that but I mean, obviously I think that is a matter for much later down the line so I maintain the Law.

The Bailiff:

I put the Articles. Those Members in favour of adopting them, kindly show. Those against. The Articles are adopted. Do you move the Bill in Third Reading?

Senator W. Kinnard:

I do, Sir, thank you.

The Bailiff:

Seconded. [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.

5. Draft Marriage and Civil Status (Amendment) (Jersey) Law 200- (P.120/2007)

The Bailiff:

We come next to the Draft Marriage and Civil Status (Amendment) (Jersey) Law and I ask the Greffier to read the principles of the Bill.

The Greffier of the States:

Draft Marriage and Civil Status (Amendment) (Jersey) Law 200-. A Law to amend the Marriage and Civil Status (Jersey) Law 2001. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

5.1 Senator W. Kinnard (The Minister for Home Affairs):

Following a ruling in 2005 by the European Court of Human Rights under Article 12 which states: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercise of this right", the United Kingdom Government accepts the judgment against them in a case involving the proposed marriage between a father-in-law and daughter-in-law. Under the existing U.K. law such a marriage would be impossible unless both former spouses were deceased but this has now been amended by the Marriage Act 1949 Remedial Order from 1st March 2007." The same restriction exists under Jersey law, and the U.K. Government has since removed its incompatibility by statutory instrument, as I have just described, which has had the effect of removing that current prohibition on marriages between former parents-in-law and children-in-law. The proposed amendment to the Marriage and Civil Status (Jersey) Law 2001 would effect a similar change in our law thus bringing it into line with the European Convention of Human Rights. The amendment does not promote an alteration in the permissions for marriages between parents-in-law and children-in-law but rather acts to remove the requirement for both existing spouses to be deceased. So, perhaps we could just examine that comment a little more closely. Would the rejection - if Members were minded to reject it - of the amendment before us today, result in fewer relationships between former in-laws? In considering the complexity of the relationships outlined in the case in point, one can see why it might have been felt necessary to enact legislation to prohibit unions which would lead to such situations. But the reality is that the

prohibition on marrying former in-laws does not prevent individuals from forming such couple relationships and cohabiting without marriage. There is no criminal law to prevent such an extra-marital sexual relationship between the couple. As such, the European Court felt that the ban on marriage in these circumstances could not reasonably be upheld. Does the current law prohibit marriages between former in-laws in all cases? With regard to other relatives, the law currently allows certain step-relatives to marry, and courtesy of King Henry VIII you can marry a cousin, although having her beheaded nowadays is somewhat frowned upon. As has been highlighted the law already allows marriages between former in-laws to take place following the death of their respective spouses. It has also been possible for such marriages to take place in the United Kingdom, in individual cases, by a personal act of parliament, and several such acts have passed, although I believe there have been no applications since 1987. Furthermore, the European Court of Human Rights noted that a report by a group appointed by the Archbishop of Canterbury had concluded that there was no justification for the ban, which was in any event not absolute in the light of the availability of sanction through parliament which could be obtained without any detailed investigation of the personal circumstances of the parties or the propriety of their marriage. The decision of the court was unanimous that there had been a violation of Article 12. The U.K. Joint Committee on Human Rights scrutinised the issue and stated that in view of the circumstances it did not find it necessary to issue a call for evidence from outside organisations and individuals. The committee gave its support to the Government's proposals to remedy the incompatibility. The Scottish Executive was the first to change its law to allow marriage between former in-laws if their spouses had been divorced or had died. Northern Ireland and now England and Wales have made the necessary change. The amendment today is necessary as it is clear that the prohibition in Article 5 of our 2001 law cannot be supportable on grounds of either logic or necessity. It is likely, Sir, that the court in Jersey would have no choice other than to make a finding of incompatibility with Article 12 following the precedent that has been set by this case. Failure to adopt the amendment will not prevent, as I have said, Sir, former in-laws from co-habiting outside matrimony. Others could travel to another jurisdiction, the U.K., to marry where there is now no such prohibition. Society, Sir, for good or ill, has become more tolerant of relationships outside marriage and it is clear that a restriction on marriage, rather than on the relationship itself, is arbitrary. Criminal law does not prevent an extra-marital sexual relationship between such couples. I fully understand, Sir, the unease that might be felt by some people at the complexities that can sometimes occur in family life today. It is my wish, Sir, to uphold marriage. It is precisely because I want to uphold marriage that I believe that this change should happen. The amendment would allow the very few couples, and we do not know of any at the moment that it would be likely to affect - anyway, of what we are aware - but it would allow them to solemnise their relationship in circumstances where their former spouses are either divorced or deceased. Marriages between blood relations, of course, remain unlawful. This Law does not change that. So I propose the principles.

The Bailiff:

The principles of the Bill are proposed and seconded? **[Seconded]** Any Member wish to speak on the principles? I put the principles of the Bill. Those Members in favour of adopting it?

Deputy I.J. Gorst of St. Clement:

May I call for the appel, please?

The Bailiff:

Yes. Can I ask any Member who wishes to vote on principles 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: 4

ABSTAIN: 1

Senator F.H. Walker	Deputy P.N. Troy (B)	Deputy of St. Mary
Senator W. Kinnard	Deputy of Grouville	
Senator T.A. Le Sueur	Deputy of Trinity	
Senator P.F. Routier	Deputy I.J. Gorst (C)	
Senator M.E. Vibert		
Senator P.F.C. Ozouf		
Senator T.J. Le Main		
Senator J.L. Perchard		
Connétable of St. Ouen		
Connétable of St. Mary		
Connétable of St. Clement		
Connétable of St. Helier		
Connétable of St. Lawrence		
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 Hérisier (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy S.C. Ferguson (B)		
Deputy P.J.D. Ryan (H)		
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 S. Pitman (H)

Deputy A.J.D. Maclean (H)

The Bailiff:

Minister, you wish to propose the 6 articles *en bloc*?

Senator W. Kinnard:

I do, Sir.

The Bailiff:

They are seconded? **[Seconded]** Any Member wish to speak on any of the articles? I put the articles. Those Members in favour of adopting that? I beg your pardon, Deputy Mezbourian, I am so sorry; I did not ask whether you wished to scrutinise the Bill?

5.2 Deputy D.W. Mezbourian (Chairman of the Education and Home Affairs Scrutiny Panel):

No thank you, Sir.

The Bailiff:

No Member wishes to speak on the articles? I put the articles. Those Members in favour of adopting them kindly show? Those against? They are adopted. You move the Bill in Third Reading, Minister?

Deputy D.W. Mezbourian:

I do so, Sir, thank you.

The Bailiff:

Seconded? **[Seconded]** 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.

6. Draft Loi (1939) sur les honoraires des Avocats et des Écrivains (Repeal) (Jersey) Law 200- (P.126/2007)

The Bailiff:

We come next to the Draft Loi (1939) sur les honoraires Avocats, *et cetera*. I ask the Greffier to read the principles of the Bill.

The Greffier of the States:

Draft Loi (1939) sur les honoraires des Avocats et des Écrivains (Repeal) (Jersey) Law 200-. A Law to repeal the Loi (1939) sur les honoraires des Avocats et des Écrivains. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

Senator F.H. Walker (The Chief Minister):

Having not attended a French primary school, and as I cannot even pronounce the Law, I would like to ask that my Assistant Minister, the Constable of St. Ouen, should take this item as rapporteur.

6.1 Connétable K.P. Vibert of St. Ouen (Assistant to the Chief Minister - rapporteur):

If this projet de Loi is adopted it will repeal the 1939 Loi, which both you and the Greffier so ably described to the House, Sir. That Loi empowered the superior number of the Royal Court to fix a tariff of fees that advocates and solicitors were entitled to charge for their professional services. Article 1 of the 1939 Loi provided for a statutory basis for conveyancing scale fees and the enactment of the Competition Law in 2005 saw an end to that process. The tariff of fees that had been fixed on the last occasion by the Royal Court in 1954 was revoked in its entirety by the Royal Court in 2006. Article 2 of the 1939 Loi required all actions for the recovery of fees by advocates and solicitors to be brought in the Royal Court. However, today any actions for the recovery of fees concerning services rendered in proceedings conducted before the Magistrate's Court or Petty Debts Court falls within the jurisdiction of the Petty Debts Court. The result is that only fees encountered before the Royal Court can be brought before that body. There is no purpose to be served by the continuation of this process. Article 3 of the 1939 Loi was merely the Article of citation which will automatically fall away with the repeal of the law as a whole. The 1939 Loi is not applicable and I propose this Law in order to repeal it.

The Bailiff:

Are the principles seconded? [**Seconded**] Any Member wish to speak on the principles of the Bill?

6.1.1 Deputy R.G. Le Hérisier:

I wondered first, Sir, if the rapporteur could explain the slight delay in bringing this forward? Secondly, Sir, is our understanding that if you have proceedings in front of the Magistrates or the Petty Debts Court and there is a dispute about fees, these are the courts to which you bring that dispute? I did not quite catch that point. Is that part of the point of this new repeal?

The Connétable of St. Ouen:

Could I maybe just ask the Deputy to repeat the question just to make sure that I heard it correctly, Sir? [**Laughter**]

Deputy R.G. Le Hérisier:

A very good political skill there, I may say. Firstly, Sir, has there been a delay in bringing this forward - there appears to have been - and if so, why? Secondly, if there is a dispute about fees, am I right in saying that if there is a dispute about fees in respect of the Magistrate and the Petty Debts Court, that dispute is handled in front of those particular courts or by those particular courts?

6.1.2 The Connétable of St. Ouen:

I cannot comment on any particular delay which has led to this projet coming today. I do not believe there was any particular rush in getting this through. It has not caused any particular problems. It is my understanding that all debts incurred from now on will be heard by the Petty Debts Court. I maintain the proposition, Sir.

The Bailiff:

I put the principles. Those Members in favour of adopting them kindly show? Those against? The principles are adopted. Scrutiny? Deputy Ryan?

6.2 Deputy P.J.D. Ryan of St. Helier (Chairman of the Corporate Services Scrutiny Panel):

No, thank you, Sir.

The Bailiff:

No Scrutiny. Do you wish to move the Articles of the Bill *en bloc*?

The Connétable of St. Ouen:

I do, Sir.

The Bailiff:

They are proposed and seconded? **[Seconded]** Does any Member wish to speak on either of the articles of the Bill? I put the articles. Those Members in favour of adopting them kindly show? Those against? The articles are adopted. You move the Bill in Third Reading?

The Connétable of St. Ouen:

I do, Sir.

The Bailiff:

Seconded? **[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.

7. Draft Electricity Link with France (Protection of Submarine Cable) (Jersey) 200-(P.142/2007)

The Bailiff:

We come next to the Draft Electricity Link with France (Protection of Submarine Cable) (Jersey) Regulations in the name of the Minister for Economic Development. I ask the Greffier to read the principles of the Regulations.

The Greffier of the States:

Draft Electricity Link with France (Protection of Submarine Cable) (Jersey) Regulations 200-. The States, in pursuance of the Order in Council of the 14th April 1884, have made the following Regulations.

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

Can I ask Deputy Maclean, the Assistant Minister for Economic Development, to be rapporteur for this one and the next Bill?

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

These Regulations are required to give a degree of legal protection to the undersea cables that now supply almost all of Jersey's electricity. They prohibit fishing or anchoring in the vicinity of the cables as part of the enforcement and advisory regime. The exclusion area remains marked clearly on all relevant charts. The Regulations are triennial and therefore if they are to be maintained require being put before the States every 3 years. The existing Regulations expire on 13th December 2007. The Regulations continue an established regime and there are no new resources required.

The Bailiff:

The principles are proposed and seconded? **[Seconded]** Doe any Member wish to speak on the principles of the regulations?

7.1.1 Deputy S.C. Ferguson:

I am just curious, Sir, as to how you know which fishing boat has broken the cable?

7.1.2 Deputy K.C. Lewis:

This is a good bit of legislation, Sir, a good bit of housekeeping, especially as I believe we have just lost a telecoms cable through similar circumstances. This obviously only applies to Jersey's territorial waters. Can the Assistant Minister confirm there is equivalent legislation either in operation or in the pipeline - no pun intended - in our sister island of Guernsey and in France?

7.1.3 Senator L. Norman:

Just briefly, I note, Sir - and I understand that there is no protection for the cable between Jersey and Guernsey - do I understand (and I think I am correct) that should any damage occur to the cable between Jersey and Guernsey, Jersey will continue to receive its power from France but Guernsey would be cut off? Now that Jersey's fishing boats are operating in those waters, perhaps there might be a way of bringing Senator Ozouf's counterpart to the table to talk about fishing management in Guernsey waters. **[Laughter]**

7.1.4 Deputy P.N. Troy:

I would imagine, Sir, that in answer to the previous question, I would imagine that any ship that got through this electricity link and caused damage to it would probably fry, Sir, in the electricity so that you would end up with fried fish and chips. **[Laughter]**

7.1.5 Senator P.F.C. Ozouf:

If I could just assist Senator Norman? He is absolutely right about the situation concerning the Jersey to Guernsey cable. He is also quite correct to say that that northern-bound telecoms cables are not covered by provisions; it is only this particular cable that is covered. I have had some discussions with the Fisheries Department, which now falls within Economic Development, about further coverage or protection of the cable. However, it is a very difficult issue and it is one that is resisted by the fishing industry. However, what I can say is that it is something that is under consideration or under review, but he is absolutely right to point out, of course, that Jersey is protected and Guernsey is not. I also have to say I am not sure that either my Assistant Minister or myself know the answer to the French side of the cable. I think there is some protection and perhaps we will have to come back with the detail of that.

The Bailiff:

I call upon the Minister to reply.

7.1.6 Deputy A.J.H. Maclean:

With regard to Deputy Ferguson's question, I think that was the only one that perhaps has not been swept up in the answer that Senator Ozouf just gave. Effectively, the regime is self-regulating. The Regulations are effectively a deterrent in their own right. There have been, in fact, no prosecutions to date, but it is there for an important reason and it is essential, in our view, that we maintain it, Sir. I think the comments from Deputy Troy regarding fishy incidents of frying fish and what have you, the least said the better about that. I would move quickly for the Regulations, Sir.

The Bailiff:

I put the principles of the Regulations. Those Members in favour of adopting them kindly show? Those against? The principles are adopted. Do you wish to move for Scrutiny?

Connétable M.K. Jackson of St. Brelade (member of the Economic Affairs Scrutiny Panel):

If I may answer on behalf of the Panel, Sir, I would think not.

The Bailiff:

Very well. Assistant Minister, you move the Regulations 1-5 *en bloc*? They are seconded? **[Seconded]** Does any Member wish to speak on any of the Regulations? I put the Regulations. Members in favour of adopting them kindly show? Those against? The Regulations are adopted in the Second Reading. Do you move the Regulations in Third Reading, Assistant Minister? Seconded? **[Seconded]** Does any Member wish to speak? I put the Regulations in Third Reading. Those Members in favour of adopting them kindly show? Those against? They are adopted in Third Reading.

8. Draft Community Provisions (Ship and Port Facility - Security) (Amendment) (Jersey) Regulations 200- (P.144/2007)

The Bailiff:

We come next to a Draft Community Provisions (Ship and Port Facility - Security) (Amendment) (Jersey) Regulations in the name of the Minister for Economic Development. I ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Community Provisions (Ship and Port Facility - Security) (Amendment) (Jersey) Regulations 200-. The States, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996 and Article 49(1)(e) of the Shipping (Jersey) Law 2002 and having regard to Regulation (E.C.) No.725 of the European Parliament and Council of 31st March 2004 on enhancing ship and port security, have made the following Regulations.

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

This is a very minor amendment to current Regulations that came into force in July 2004. These regulations form a vital part of managing security at Island ports and on ships in Jersey waters. It seeks to clarify the terminology concerning the reasoning where a person may wish to object to an enforcement notice. The amendment redrafts regulation 22(b) to be more readable and less capable of being misconstrued.

The Bailiff:

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

8.1.1 The Connétable of St. Brelade:

If I may, I fully understand the reasoning for this, but I would just ask the Assistant Minister to confirm with the gate arrangements we have around the harbours, what dictates when they should close?

The Bailiff:

I call upon the Minister to reply.

8.1.2 Deputy A.J.H. Maclean:

As far as the security arrangements around the harbour to comply with these Regulations, notices are posted and these clearly define the times when security arrangements in terms of closing and opening and so on and so forth. I think the Constable hopefully will be able to find those on the notices themselves.

The Bailiff:

I put the principles of the Regulations. Those Members in favour of adopting them kindly show? Those against? They are adopted. Deputy Southern, Chairman of the Scrutiny Panel, do you wish to scrutinise?

8.2 Deputy G.P. Southern (Chairman of the Economic Development Scrutiny Panel):

No thank you, Sir.

The Bailiff:

Assistant Minister, do you propose the Regulations *en bloc*?

Deputy A.J.H. Maclean:

Yes, Sir.

The Bailiff:

Now proposed and seconded? **[Seconded]** Any Member wish to speak on the Regulations? I put the Regulations. Those Members in favour of adopting them kindly show? Those against? They are adopted in Second Reading. Do you move the Regulations in Third Reading, Assistant Minister. Seconded? **[Seconded]** Does any Member wish to speak? I put the Regulations. Those Members in favour of adopting them kindly show? Those against? They are adopted in Third Reading.

9. Health Insurance Exemption Cards: free bus travel and Active cards 200- (P.145/2007)

The Bailiff:

We come to Projet 145, Health Insurance Exemption cards: free bus travel and Active cards in the name of the Health, Social Security and Housing Scrutiny Panel. I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion (a) to agree that new arrangements should be put in place following the introduction of the new income support scheme to enable those persons who are currently holders of Health Insurance Exemption cards to continue to be able to access (i) free bus travel; and (ii) free Active cards and free access to the fitness referral scheme; and (b) to request the Minister for Transport and Technical Services (in respect of (a)(i)) and the Minister for Education, Sport and Culture (in respect of (a)(ii)), in conjunction with the Ministers for Social Security and Health and Social Services, to bring forward proposals to ensure that appropriate arrangements are put in place to enable this provision of services at no cost to continue.

9.1 Deputy J.A. Martin of St. Helier (Vice-Chairman of the Health, Social Security and Housing Scrutiny Panel - rapporteur):

The Chairman, Sir, is out of the Island. I am not sure if it is on States' business; he had to fly out this afternoon and I do not think it was because he voted the wrong way - his speech on G.S.T.. He has asked me if I could nominate myself to be rapporteur **[Laughter]** as I am Vice-Chairman and I was going to be rapporteur, but he would obviously have done that if he had been in the Island.

The Bailiff:

Nobody is going to oppose that, Deputy, I do not think.

Deputy J.A. Martin:

Thank you very much. Yes, this is just, I think, some tidying up on P.90. It is a stand alone proposition that had to be lodged for the 6 weeks. In P.90 we agreed that we would have a single integrated means-tested benefit system. The fourth bullet point was the health insurance system to

be amended to target more help to individuals and thereby allow more flexibility in the delivery of benefits. Just to give you a brief history, in 1998 the then Defence Committee wanted free bus travel for old-age pensioners and the F. and E. (Finance and Economics) Committee at the time were against it. It went to the States and it was won 45 votes for - I cannot see any against - so I presume the Committee who were against it even voted for it. Their objection was that it should be targeted to those on the then Health Insurance Scheme, H.I.E. (Health Insurance Exemption) cards, because it would have been more social and it would target the people in need. As I say, this did not happen at the time, but the bus company who got a good subsidy at the time, £230,500 for 1,700 people, then offered the scheme to the Defence Committee at no extra cost to cover those people on H.I.E. and this was accepted in 1998 or early 1999. These people, the people on very low incomes, mainly single parents, have always had this extra benefit. Why I have brought this - and if you would like to turn to the proposition - the Social Security Minister has told us on page 4, he told our Panel, and he makes it quite clear on page 4: "These schemes, free bus and Active cards, are not schemes of the Social Security Department but are schemes of the Transport and Technical Services and Education and Sports Departments respectively and my department is working with officers of those departments to provide whatever information they require to enable them to target access to any schemes they may wish to have supersede their existing schemes. There has never been any intention to include these schemes within the income support scheme just as they are not within the current H.I.E. scheme." I have had comments from Education, who do support the first part of my proposition, which is (a)(i), and that only applies to 50 people, so I can see why the Minister for Education, Sport and Culture is supportive of that. The Minister for Transport and Technical Services unfortunately feels he cannot support it. I have a lot of sympathy for both the Ministers; my problem is that from March last year the Minister for Transport and Technical Services was trying to talk to Social Security, but as I have just read out, their stance was they were never going to include these schemes. In the letter from the Minister for Transport and Technical Services to the Controller for Social Security the Minister asked: "I would be grateful for your thoughts on these matters. T.T.S. (Transport and Technical Services) were reminded to write to all H.I.E. cardholders once the implementation date of L.I.S. (Low Income Scheme) is firm advising them that after a certain date their card will not entitle them to free travel. This will inevitably cause a negative reaction and will impact on both our departments. The date does not have to coincide with L.I.S. commencement as it could be seen to be a transitional arrangement. But whatever the date is, the States will be seen to be withdrawing a current benefit." They will not be seen to withdrawing a current benefit; whoever is doing it is taking away a current benefit. How many people are we talking about on the buses? At the moment we have 327 people who are currently accessing bus passes through their H.I.E. schemes. As I have already said, I also have an e-mail from the Social Security Department saying when they give out Active cards they have no control over the use of them and they do not provide H.I.E. recipients with any specific information about services provided. For example, they do not tell them: "If you go down to the bus station you will get free travel." Obviously, this must come by word of mouth. This is what I am told by Social Security. As I say, Sir, I do not really want to go on because, I mean, we have just found the Ministers for Treasury and Resources and for Social Security between them £3.9 million for the middle-income earners to protect them. The people I am talking about are on the very lowest income. The Active cards, I have got figures to what it is to join as a family. If you pay direct debit you can join for £36 a month or £370 annually. An old-age pensioner annual fee is £240, but they need to pay by direct debit if they are not going to pay the annual fee. A day out swimming with a couple of children, to get there on the bus that they will then have to pay for, you are again talking about £15, and that is from town to Les Quennevais, which is now Education's only swimming pool. Given that the Ministers for Education, Sport and Culture and for Health and Social Services, on health grounds, want to make sure that our young are fit, they are going to do everything they can to conquer children with obesity or adults even with obesity. It does go to follow that unfortunately, and probably even more after our decision this morning, people on very low incomes buy quick, convenient foods and they are not always healthy. That needs education as

well. What I am asking for is this scheme to carry on. Deputy de Faye seems to think that I am asking the wrong thing because I have got: "No costs to continue." My "no costs to continue" is to the client. I am sure there will be a cost to either Social Security, Education or Health and even maybe Transport. Personally, I do think it is housekeeping. I think it was totally remiss of Social Security, given months of trying to be spoken to by 2 Ministers to get these into the scheme or to take responsibility to say... well, obviously they did take responsibility and say: "These have nothing to do with us." Over the years they have become schemes of T.T.S. and schemes of Health and Education. As I say, Sir, I think it is wrong. I repeat that the people we are talking about are mainly single parents. People who get H.I.E. cards have to be on a very low income and we will be taking the benefit away from 327 cardholders. Just a quick other consideration on this, while I also feel that it is very relevant at the moment, and it may be not this scheme, but I want the 4 Ministers to get through there and come back with a scheme. Because in Deputy de Faye's letter to the Controller of Social Security, he also states: "As you are aware, the States effectively subsidised H.I.E. cards. The subsidy was originally introduced to provide the head of household with free travel to and from work and when looking for work. It has spread a bit now and provides free travel for adults in the household." What I would suggest, Sir, as well, we have moved from an in-work benefit scheme and, at the same time, taken any form of free transport to the very low income - well, they are no income now - who need to go out to look for work, attend interviews, to attend interviews (*) social security away from them. Now, the Minister for Transport and Technical Services will argue, because he has argued in his comments, that there is an element in Social Security, I do not know how much, I have tried to see how much in the component - the adult component or the child component - for travel. But, as I have stated in my report, it is exactly the same amount for people looking for work or people with children under 5 who do not have to work, and people over 65. Obviously there is an extra expense. The Chief Minister told me that this was going to be... I do not know, I had read different comments from him in the coffee room, and he said that this has been accepted and I think his words were: "This is a no-brainer" and it was going to be accepted, so I will sit down and I will listen and I hope that between the Ministers for Treasury and Resources and for Social Security, finding all the money and dishing it all out, that they could find a little bit of money to keep these schemes that are going and come forward with a better scheme that targets it to the right people. Unfortunately, Sir, if I cannot get that commitment it will have to be the Health and Social Services Scrutiny Panel that comes forward with that, and I do not think the 4 Ministers should find themselves in a position like that. I maintain the proposition and will answer any questions.

The Bailiff:

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

9.1.1 Deputy G.W.J. de Faye:

There are a number of issues to deal with here but first of all may I say, as we are in a public realm, that it had been previously reported in the media it was the intention of my department to phase-out bus passes in general. That was a piece of factual misreporting. I will not reveal which particular local media organisation it was, but Members may care to follow my eyes. [**Laughter**] That is not the case. My department is wholly in favour of bus passes and I think as Members will understand from reading my comments, my essential issue here is it is not a question of will we recognise and maintain the use of bus passes, it really does boil down to the question of who is paying for them. If I can disabuse Members very early on, it is one thing to read the phrase "free bus travel" but there really is, in the same way that there is no such thing as a free lunch, there is no such thing as free bus travel. Someone, somewhere in the system, is paying for it. That, I think, Deputy Martin is right in saying, is in fact a matter of housekeeping and probably one that can be dealt with in due course. So I will not dwell on that at great length. I had, along with the other prime suspects listed in this proposition - my fellow Ministers - had hoped to accept this proposition and obviously save us all an amount of time and go away and sort it out. In a sense, I think we are all prepared to do

that, but I do need to bring Members attention to what we, as Ministers, felt was a potential fundamental flaw within the wording of the proposition, and that is, it said: "A scheme to enable those persons who are currently holders of Health Insurance Exemption cards." Now, the difficulty with that, of course, as I am sure Members will now see very clearly, is that our discussions, as Ministers on a joint basis, were essentially tied around presumably whoever it is today, when the proposition is either accepted or voted through, who today is currently a holder of H.I.E. (Health Insurance Exemption) cards. It is not even clear whether we would be able to accept new H.I.E. holders next week, next month or over the next several months until income support comes in. So we have a concern about that potentially restrictive element within this proposition. To that extent I would still say, and I did e-mail following discussions with the Council of Ministers last week, to suggest to Deputy Martin she may care - and I know this means that she is having to put her trust in 4 Ministers to sort this out, which may be not her favourite option, but she may care - still to withdraw her proposition to allow us to get round this particular, I think, catch-all phrase within the proposition. I should advise her that, in fact, for example, my talks with Health and Social Services is going extremely well. The Assistant Minister and myself are concerned in that respect, particularly with a small group of people in the Island who need to travel, need to travel on buses, but have difficulty in handling cash for a variety of reasons. Now I am extremely sympathetic to that position, as is the Assistant Minister for Health and Social Services. Our officers have been talking to each other and we think we can find a way forward there. In fact, what we are doing, as a result of these discussions, in a sense, is expanding the system beyond H.I.E. We are looking on a wider perspective at the moment and I think that I would encourage that. Indeed, my understanding is that the Minister for Education, Sport and Culture may well get up after me and say that he is considering going beyond the current 50 referrals that are listed. I do want to say that we are not taking a negative position to this; the Council of Ministers and the Ministers directly involved want to improve the issue. It is though worth reflecting on how things have come about. It may be that, and may I emphasise there is no threat whatsoever to concessionary passes that are given out to the old age pensioners, no threat whatsoever: it is not under consideration. But that group of concessionary passes features interestingly in the historical development of how concessionary fares developed in the bus system. It came as a result, going back some 20 to 25 years when the company functioning at the time announced that it was struggling to make profits and was going to have to withdraw services. As a result the States stepped-in with a very considerable level of funding, over £200,000, and in order that this was not perceived to be a direct subsidy to a private company, and clearly that the States can be seen to be getting something for its money, it was at the time, and this was in fact the time when concessionary travel for the elderly was introduced. This is not something that has been here with us from time immemorial as some ancient tradition. It has been with us for about 20 to 25 years. Interestingly, it was introduced originally to allow O.A.P.s (old age pensioners) to travel free on buses after 9.15 a.m. when the peak time rush had concluded. Since then, that has been extended. H.I.E. has been added to the O.A.P. situation and the passes are effective, as it were, all day in the system. I have no immediate problem with this other than to say that quite obviously where the bus service is operating free passes it means that we are foregoing a fare. Now, that does not mean necessarily that we are losing money but it does mean that we are not getting money in. So that thereby impacts on my department's ability either to keep fares low or to extend the services. As I say, there is no such thing as free travel. There is an impact somewhere or another. As I say, the position I wish to make clear, whichever way Deputy Martin or the Assembly wishes to handle this particular debate, is that I do think we need a little bit of housekeeping here. I think that we can improve how bus passes operate, for those who need them in this particular welfare concept, but I do need to say 2 things, I think. First of all, I think it is inappropriate that Transport and Technical Services should operate in a welfare capacity. I accept that to a large extent my forerunner - the Public Services Committee - initiated these schemes, and they were initiated for very specific reasons. In fact, go further back it was the Defence Committee who initiated the schemes. Now that we are in different times I do not think it is right that Transport and Technical Services should be seen as the funder. We do not have the ability to assess

what travel people need. We are not in a position to interview people and find out their job seeking requirements, their family travel requirements, and so on. We should be seen as the service provider. I would like to be in a position where I can discuss, as has been suggested by Deputy Martin, with my fellow Ministers as to how these fundings and propositions should be put forward. But I do say, secondly here, that the bottom line to me is a very simple one. If, in a welfare benefit situation a person is receiving a travel component within their welfare payment I do not think it is right that my department should provide free travel concessions in addition to someone receiving a travel component in welfare. It strikes me that that is not quite right. However, with those things laid down I simply wish to say to the House, I think we can take this further forward as Ministers but we can probably take it a good deal further forward if we are not constrained by simply applying the wording of the proposition which says: "Limits any future benefits to those who are currently holders of a Health Insurance Exemption card" and therefore I am sure that other Ministers will want to speak but I would suggest that Deputy Martin retains her option to withdraw this proposition and allow us to come back to her with a set of proposals she can consider at a future time.

Senator P.F. Routier:

Could I just have a clarification from the Minister about whether in the meantime he will maintain the existing provision for H.I.E.?

Deputy G.W.J. de Faye:

Yes, Sir, I thought I had made it reasonably clear in the comments, my department will continue to recognise all existing bus passes until such time as their validity is discontinued.

9.1.2 Deputy C.J. Scott Warren:

In my opinion, this proposition highlights another glaring gap and I believe that we need another rabbit to be pulled out of the Minister for Treasury and Resources' hat. We certainly, Sir, need some joined-up discussions and some joined-up action.

9.1.3 Connétable D.J. Murphy of Grouville:

When I first read the proposition and the comments I thought to myself: "Well, this is ridiculous, why has this come to the States?" This is something that should have been sorted out inter-departmentally by negotiation and coming to a conclusion and coming to this House with a solution and not with a problem. Why do they not just follow on Deputy de Faye's suggestion, the Minister, now, get their heads together, get around a table, withdraw it and come back with the answer.

The Bailiff:

Constable, there is another procedural way of dealing with that matter if you wish to deal with it in another way.

The Connétable of Grouville:

Can I propose that we move on to the next item? Sir, in view of the fact that it has not been seconded I wonder if I could ask for it to be referred back? Is that the way forward, do you think?

Deputy J.A. Martin:

Is the Constable clear who is bringing this proposition? It is not the Ministers. If they had come forward with a proposition we would not be in this position.

The Bailiff:

Constable, I have to be clear which proposition you are seeking to move. If you are seeking to refer the matter back to the Scrutiny Panel then I need to know upon what basis you are seeking to refer it back. I do not think that this is an appropriate matter for a reference back, Constable, because Standing Order 83 provides: "That a Member of the States may propose without notice that a

proposition be referred back in order (a) further information relating to the proposition can be provided to the States, or (b) any ambiguity or inconsistency in the information relating to the proposition which has already been provided to the States be clarified.” It does not seem to me, from what you have said, that either of those considerations applies. You wanted to move the proposition that the States move to the next item on the Order Paper, that is another matter but it is a matter for you.

The Connétable of Grouville:

I shall propose that then, Sir, that we move on to the next item.

The Bailiff:

Do you seek to move that the States move to the next item on the Order Paper?

The Connétable of Grouville:

I do.

The Bailiff:

For the reasons that you have given?

The Connétable of Grouville:

Yes, Sir.

The Bailiff:

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

The Connétable of Grouville:

Good, I was beginning to feel like the Deputy of St. Martin. **[Laughter]**

The Bailiff:

I have a premonition about this, but I accept the proposition and I will therefore put the matter to the Assembly.

Deputy J.A. Martin:

Can we have the appel please, Sir?

The Bailiff:

I ask the Greffier to open the voting which is for or against the proposition of the Constable of Grouville that Members move to the next item on the Order Paper.

POUR: 11

CONTRE: 29

ABSTAIN: 0

Senator L. Norman

Senator P.F. Routier

Senator T.A. Le Sueur

Senator M.E. Vibert

Senator P.F.C. Ozouf

Senator B.E. Shenton

Senator F.E. Cohen

Connétable of St. Ouen

Senator J.L. Perchard

Connétable of St. Clement

Connétable of St. Mary

Connétable of St. Martin

Connétable of St. Lawrence

Connétable of St. Saviour

Connétable of Grouville	Deputy R.C. Duhamel (S)
Connétable of St. Brelade	Deputy of St. Martin
Connétable of St. John	Deputy G.C.L. Baudains (C)
Deputy P.N. Troy (B)	Deputy C.J. Scott Warren (S)
	Deputy R.G. Le Hérisssier (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 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 of Trinity
	Deputy S.S.P.A. Power (B)
	Deputy S. Pitman (H)
	Deputy I.J. Gorst (C)
	Deputy of St. Mary

The Bailiff:

The debate therefore continues.

Deputy G.C.L. Baudains:

Point of order, Sir, or clarification from yourself. It does seem to me that the problem occurs around the word “currently”. Would it be in order for the Deputy to seek to remove that word, an amendment from the floor, is that possible?

The Bailiff:

I have not been asked by the Deputy that she wants to do that, Deputy, and I do not think it is open to another Member to seek to amend the proposition on the hoof in that way.

Deputy G.C.L. Baudains:

I was merely asking whether it was possible, Sir.

The Bailiff:

If the Deputy asks me I shall consider it but she has not done yet.

9.1.4 Deputy J.A. Hilton:

I am grateful for Deputy Martin bringing this to the attention of the House. I must say I am really rather disappointed that this proposition was lodged a good 6 weeks ago and the Ministers concerned have not seen fit to sit down and get this matter sorted out. I am really... well, it does not appear that the matter has been sorted out. I just wanted to bring to the House's attention a group of people that this will affect very greatly, and that is the residents of Les Amis and their homes. I am talking around 90 to 100 people who make good use of these bus passes. They need these bus passes to access the different activities that they attend during the day. We have 27 people who access Le Geyt full-time, and I understand some of them use those bus passes as well. I am just very, very disappointed that this proposition needs to be brought and that these people's needs are not being looked after. I think it is shameful, that is all I have got to say.

9.1.5 Senator M.E. Vibert:

I do not mind being criticised when I have not done something, it is a bit much to be criticised when you have done something. We have got in place a system to continue to ensure that those people in need will continue to get free health referral and free Active Cards, as we should have.

Deputy J.A. Hilton

I was not criticising the Minister for Education, Sport and Culture directly, I accept that he is going to continue with his Active Cards. It was more the situation around the bus passes.

Senator M.E. Vibert:

Perhaps I can tactfully remind Deputy Martin, who is rapporteur for this, that a decision to continue and to make sure that people in need continue to get this concession was made when she was member of my Education, Sport and Culture Committee, in one of our annual plans; in fact in 2 of our annual plans. So we have been aware of it for a considerable amount of time and we have been waiting for the details of the income support system to be worked out so that we could go back to Social Security and sort out a new system for us to be able to continue making this provision. I am not as agitated as my fellow Minister about the wording: "currently holders of Health Insurance Exemption card to continue to be able to access" and so on because I think I know what Deputy Martin means and I am sure Deputy Martin would not object if I withdrew an Active Card from someone who currently had H.I.E. and won the Christmas lottery. If they come out of H.I.E. obviously, and in future because people's circumstances can change, they would not necessarily continue to have a free Active Card for ever and a day. But we are very, very keen to ensure that anyone who cannot access health referral and exercise use for financial means and need to do so for health reasons will continue to do so. I am reviewing the cap we have had of 50 cards. I want to be able to extend it to cover all those who need it for health reasons, and are referred to us by Social Security, and they have agreed to work with us in this way. As far as I am concerned it was always going to happen. There is a bit of a concern about the wording but I am pretty sure I know the sentiment behind it; it is a sentiment I concur with - it is a sentiment I have always concurred with. We intend to continue to the scheme, to improve it and ensure that we offer our facilities to those who have got health problems who need it, Sir.

9.1.6 Deputy G.P. Southern:

I really do not understand what is going on here, and why people are objecting. It seems to me a very straightforward proposition - it could be because I helped him draft it - but it is very straightforward. The first part says, whatever you do although H.I.E. finishes - it does not exist come 26th January - that people currently have one of those cards and have benefited from these additional benefits, do not remove those benefits. The first one says, whatever you do, do not remove benefits from people who already have those benefits and have an H.I.E. card. Even though, come 26th January, H.I.E. will no longer exist in law and no new cards will ever be issued. That is fine. The second one says, and here the Minister for Transport and Technical Services starts to cave-in and say, we should be paying for it. Where in there does it say Transport and Technical Services should be paying for it? They currently, effectively, subsidise it by not charging; that is accepted. But it does not say here: "continue the arrangements." It says: "Bring forward proposals to ensure that appropriate arrangements" and that could be expanding the scheme for Active Cards and fitness referral scheme - bingo, well done, the Minister for Education, Sport and Culture - and to provide appropriate free bus travel at no cost to the travellers - it does not say at no cost to T.T.S. (Transport and Technical Services) - appropriate arrangements. Now that might mean expansion, it might mean deciding on a scheme whereby Social Security in conjunction with T.T.S. work out who that is appropriate for so that they replace the scheme.

Deputy G.W.J. de Faye:

If Deputy Southern could give way a moment, because I think what he says is helpful. It is quite true to say that the difficulty is currently the words: "Currently holders of Health Insurance Exemption" because I understand what I heard, if I heard Deputy Southern correctly, he accepts that this will mean restricting this to those people who currently hold H.I.E. and he understands that as of when income support starts that there will be no future holders of the H.I.E. benefit. Now, if that is the position, and that is also Deputy Martin's position, then I would be able to shift my stance and say I am happy to accept this straightaway.

Deputy G.P. Southern:

I think we are almost there then, Sir. That is 2 on board, we have only got 2 and it need only take a few more words as in: "Yes, we accept that as well." The Minister for Health and Social Services and the Minister for Education, Sport and Culture are already on board. If Social Security say: "Yes, we will work on it and we are working on it" it will be sold. Two more short phrases and we could be done and we could be on to the next item.

9.1.7 Senator P.F. Routier:

Firstly, may I say that I thank Deputy Hilton - I am afraid she is not here - for highlighting the issues with regard to people with learning disabilities. We have been working on that with my fellow Ministers to ensure that we do have an appropriate mechanism for people to get on to buses without having to use cash. That is being worked on right now. I am obviously very prepared, as we are working on it right now to ensure that there is appropriate access to buses, and we have the assurance from the Minister for Education, Sport and Culture that Active Cards will be available to those people in need. We know that H.I.E. will not exist in the future. What we have got to ensure is that we have in place appropriate systems for access to those services for those who are in need, and that is what we will be working towards. I give that assurance.

The Bailiff:

It is a matter for Members but all the Ministers appear to have given the assurance that the proposer seeks, do Members really wish to continue the debate? May I call upon the proposer to reply?

9.1.8 Deputy J.A. Martin:

I am thankful that we have had this debate... no, I am not thankful we have had this debate. It is like Deputy Hilton said, I lodged this 6 weeks ago and it was getting 4 Ministers round the table and it has now had to come to this House but it is asking them to bring back... We have heard

today different things, what they are doing and what the Minister for Transport and Technical Services is prepared to do. I have not been hearing this. I had an e-mail 2 days ago from Deputy de Faye asking me if I was prepared to withdraw and today I have been asked to put my faith in the 4 Ministers. It has not come to that. They have accepted that there is a gaping hole here. Of course I accept that it is going to be current holders as the scheme will phase-out, but I do not want the ones that are currently, and a lot of these are very vulnerable people to not have the benefit taken away from them, but a new, a better-targeted... How many times have we heard this “targeted” word and a scheme and I would have liked to supersede my proposition, Sir, these Ministers are under the umbrella of one Minister, obviously I will presume Social Security because it is very delicate, sensitive information that is held at Social Security who will know whether people have got some sort of disability and their means, and if they need to spend extra money on travel going to work. I thank everybody who has spoken. I ask for the appel, Sir.

The Bailiff:

I ask any Member who wishes to vote who is in the precinct to return to his or her seat. May I ask the Greffier to open the voting which is for or against the proposition of the Health, Social Security and Housing Scrutiny Panel.

POUR: 41

CONTRE: 0

ABSTAIN: 0

Senator L. Norman

Senator F.H. Walker

Senator T.A. Le Sueur

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 St. Lawrence

Connétable of Grouville

Connétable of St. Brelade

Connétable of St. Martin

Connétable of St. John

Connétable of St. Saviour

Deputy R.C. Duhamel (S)

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Deputy G.C.L. Baudains (C)
Deputy P.N. Troy (B)
Deputy C.J. Scott Warren (S)
Deputy R.G. Le Hérisssier (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 of Trinity
Deputy S.S.P.A. Power (B)
Deputy S. Pitman (H)
Deputy K.C. Lewis (S)
Deputy I.J. Gorst (C)
Deputy of St. Mary

10. Draft Public Library (Jersey) Regulations 200- (P.149/2007)

The Bailiff:

We come next to Projet 146 - Draft Public Library (Jersey) Regulations - in the name of the Minister for Education, Sport and Culture. I ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Public Library (Jersey) Regulations 200-. The States, in pursuance of Loi (1836) sur la bibliothèque publique, have made the following Regulations.

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

May I ask that the Deputy of Grouville, my Assistant Minister with responsibility for culture, which includes the library, acts as rapporteur please?

10.1 Deputy C.F. Labey (Assistant Minister for Education, Sport and Culture - rapporteur):

In view of the time I will try and be brief. There are 3 main aims in bringing these draft Regulations forward. They are to describe the level of service that should be provided for all those living, working or studying in Jersey; to simplify the day-to-day library rules and operational procedures and improve efficiency with which these can be amended; and to remove red tape and therefore hopefully reduce the workload of States Members and law draftsmen. This will be achieved by allowing the Chief Librarian to create a Code of Practice. I would like to move the preamble.

The Bailiff:

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

10.1.1 Deputy R.G. Le Hérisier:

I rise to speak on the most exciting piece of legislation of the day. I notice, Sir, in the Regulations, although I know we are not specifically discussing it, but there is reference to all sorts of possible charges. Could the rapporteur, Sir, refer to the fact whether there is going to be a move, for example, imminently to charging for the use of computers?

The Bailiff:

I call upon the Assistant Minister to reply.

10.1.2 Deputy C.F. Labey:

I am not aware that there is going to be an imminent proposal to charge for the use of computers. At the moment users have free access to the internet, but obviously it is something that will be possibly brought forward as and when, but there are no plans at the moment, Sir.

The Bailiff:

I put the principles of the Regulations. Those Members in favour of adopting them kindly show. Those against. They are adopted. Education and Home Affairs Scrutiny Panel, do you wish to scrutinise?

10.2 Deputy D.W. Mezbourian (Chairman of the Education and Home Affairs Scrutiny Panel):

No, thank you, Sir, we have already given consideration to them.

The Bailiff:

Do you wish to move the Regulations *en bloc*?

10.2 Deputy C.F. Labey:

Yes, please, I do. I will just go through. Regulation 2 charges the Minister with the general responsibility and charge for providing a library service to those who, as I have said, live, work or study in Jersey, and improving on that service. Regulation 3 sets out some considerations that the Minister should bear in mind such as to stocks, advice and service. Together these 2 Regulations enhance the duty of the Minister to provide a comprehensive and efficient service that is promoted and developed with the needs of the users in mind and following best professional practice. Regulations 4, 5 and 6 deal with the appointment of the Chief Librarian, the staff and the delegation of functions. Regulation 7 is the application and allocation of funds within the library service. Regulation 8 allows the Minister to set the opening hours and states the library is to offer free

access to its public premises during hours of opening and basic service of lending books and other printed matter. It goes on to identify areas of service that may be chargeable, such as meeting rooms, special events and other facilities. Regulations 9 to 14 deal with the lending and codes of borrowing. It allows the Chief Librarian to adopt a Code of Practice containing rules about the running of the library, the conduct of the public on library premises, the administration of loans and fees and charges. These Regulations will give the Chief Librarian the responsibility to manage the operational procedures in the library and will save the Law Draftsman time and the time of this Assembly. Previously it was necessary to bring amendments to the Regulations, such as fines rising by 2 pence to the States before they could be made. The Code of Practice will be discussed and agreed between the Minister and the Chief Librarian beforehand. I am not quite sure what I say now, do I move the articles?

The Bailiff:

You have moved the articles. Yes, I think you can just sit down now. **[Laughter]** Are the articles seconded? **[Seconded]** Does any Member wish to speak on any of the articles of the Regulations?

10.2.1 Deputy R.G. Le Hérissier:

I remember the famous issue of Les Quennevais; does this set of Regulations embody the power for the Minister or the Chief Librarian doing anything, as it is defined, to open or close libraries like Les Quennevais or the mobile library?

The Bailiff:

I call upon the Assistant Minister to reply.

10.2.2 Deputy C.F. Labey:

The Chief Librarian obviously has a budget allocated for the library service and I would not have thought the powers go as far as enabling her to close a branch library, but obviously such matters would have to be discussed with the Minister and it is a resource issue.

The Bailiff:

I put the Regulations in Second Reading. Those Members in favour of adopting them, kindly show. Those against. They are adopted. Do you move the Regulations in Third Reading?

Deputy C.F. Labey:

Yes, I do, Sir.

The Bailiff:

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.

11. Draft Places of Refreshment (Jersey) Law 200- (P.148/2007):

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

I would like to seek leave to defer consideration until 2 weeks' time. I have some further matters to discuss with the Connétables, after some representations that I have received from Deputy Fox, so if I may withdraw this for today's sitting and put it in 2 weeks' time.

The Bailiff:

Very well, Projet 148 is deferred.

12. Draft Amendment (No. 7) of the Standing Orders of the States of Jersey (P.151/2007):

The Bailiff:

We come next to Projet 151, Draft Amendment (No. 7) of the Standing Orders of the States of Jersey. I ask the Greffier to read the long title.

The Greffier of the States:

Draft Amendment (No. 7) of the Standing Orders of the States of Jersey. The States in pursuance of Article 48 of the States of Jersey Law 2005 have made the following amendments to Standing Orders.

12.1 Deputy S.C. Ferguson (President of the Chairmen's Committee):

Are you sitting comfortably? Then I will begin. The original draft of Standing Orders read that: "The Chairmen's Committee shall appoint one of their number to be President and one of their number to be Vice-President." Whatever the machinery of government said, the role of the President is more that of a co-ordinator than an executive. Standing Orders say that the Chairmen's Committee will act as a co-ordinating body, it will oversee the prioritisation and allocation of resources, it will keep under review, it will co-ordinate, it will co-ordinate with the Council of Ministers, it will prepare, keep under review; it is not an executive body and the role of the President is not an executive role. It is not a role whereby the President can dictate the reviews undertaken by Panels. It is a position for the co-ordination of the work done by Scrutiny Panels. It operates by consensus. It is therefore wholly sensible that the President of this motley crew should be elected by its members. We are aware that by making this change it would be possible for the President to be one of the independent members. I see no problem in this. Anyone who is on the Chairmen's Committee will be a participant in Scrutiny and therefore involved in the process. There are occasions, in fact, when an independent referee might well be preferable. The other main role of the Committee is to oversee the allocation of resources, the Panels are extremely careful in husbanding their resources and no assertion of the Committee's authority has been required. While we may test the patience of our accounting officer on occasions, there has been considerable lateral thinking by the Panels in the manner of presentation of Scrutiny or in engaging the public, none of which has been expensive. There are those in this Assembly who would criticise Scrutiny for not having ironed-out all the snags in the shadow stage. I would remind them that in the shadow scrutiny stage we were still in the old committee format. We have therefore had to develop the role of Scrutiny at the same time as performing effective Scrutiny. We are aware that other reforms may well flow from the Machinery of Government review and we will be considering these in due course. This proposition is a small step in the reforms. I would therefore ask Members to support this proposition.

The Bailiff:

Do you move all the amendments of the Standing Orders *en bloc*?

Deputy S.C. Ferguson:

Yes, please, Sir.

The Bailiff:

The amendments for Standing Orders are therefore proposed. Are they seconded? **[Seconded]** Does any Member wish to speak on these amendments to Standing Orders?

12.1.2 The Deputy of St. Martin:

I am a bit disappointed and surprised by the President's comments. The Chief Minister is elected by the States and in the past the President of the Chairmen's Committee has been elected by the States and I think it gives those positions much more credence and status by the fact it has the confidence of the House behind it. What is being proposed here... I ought to say, of course, if a Minister has to be dismissed, or the Chief Minister has to be dismissed or elected again, it is the

House that makes that decision and I think it is a very important one. What is being proposed here is that, as the President has said, that we could have a situation where a President is elected by as few as 4 or 5 people, because that is all that will be on the Committee, and likewise can be removed by such a small number of people. Again, if the position of Scrutiny itself is to have any credence in the States it is better that it has that support from the House. Also what it is doing is it is contradicting its means of how it is going to elect 2 Members on to the Committee because - I get confused with panels and committees - but if indeed when it comes to electing 2 non-chairmen it has got to be elected by the Members of the House. So it seems to be having a twisting or having a contradiction in terms. I think it is even more important, if indeed, as we have had recently, where it is seen to remove or seek leave to remove a President because of a vote of confidence, that that President has the opportunity to discuss his or reasons why he or she should not be dismissed, and again that is being tried, so to speak, by the whole Assembly. For that to happen with just 4 or 5 people I do not think it is really democratic; it is certainly not fair. What Scrutiny should be about is being open and above board and, again, allowing people the proper channels of addressing their concerns. Finally, the report says that it is going to be in power to elect or remove within this number, which will in turn see the situation greatly improved. I do not believe it will and I will ask Members not to agree with this because I think we are looking internally; we should be looking outwardly, and making sure that the House has a say who is the President of this very important Committee.

12.1.3 Deputy G.P. Southern:

In response, I suppose, to the Deputy of St. Martin, the House maintains control over the Executive. It maintains the say in who leads up a Scrutiny Panel, who leads P.A.C. (Public Accounts Committee), it also maintains control over who else is seconded on to the Chairmen's Committee. The Chairmen's Committee quite correctly, as the President says, is led in a co-ordinating role. The people who can best decide if they are being effective and are being effectively led and co-ordinated is that particular Committee. That is where the decision and the choice should lie. Members will remember that we have already removed one President and what we had to do effectively was to wash all our dirty linen in public, quite unnecessarily, because the people who worked with that particular President decided, after some time, that they were not working effectively and the best solution was to be co-ordinated by somebody else with a different set of skills, whether or not that is working better or not is not to say. It is up to the Committee itself to decide who it wants to lead it and to co-ordinate it, and it is a very simple matter, and what it would do is avoid the public debacle that happened recently. It seems to me that this is, for once - and I hesitate to use it, because it is often misused, - a piece of commonsense.

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

I would tend to disagree with the previous speaker and agree with the Deputy of St. Martin. I do not think this amendment does very much at all, to tell you the truth, other than to demote the standing of the Chairmen's Committee and, indeed, the person who is its President. That said, Members will understand from reading the Standing Orders that there was not exactly a great amount of standing accorded to the role of the President of the Chairmen's Committee in the first place, but I think this takes whatever was there, in people's minds, and effectively removes it. I think it will be detrimental to the whole process of Scrutiny, by in large, and I think on that basis I cannot support it.

12.1.5 Deputy P.J.D. Ryan:

Members ought to be aware that I dissented from this decision to bring this change to Standing Orders, and I will explain why. In my view it increases the risk of political polarisation and it increases the risk also of opposition politics through Scrutiny, so I will not be supporting it.

12.1.6 Deputy P.V.F. Le Claire:

Given the hour and given the gravity of the issues at stake, I wonder what sense there is really in taking on board this at this stage. It is a bit like looking at whether or not we should have the P.P.C. (Privileges and Procedures Committee) elected from among their own members and what worries me and has worried me this afternoon about this, is that not only do I not support it - because I am very wary of the motives for it, although I have no deep evidence of things in practice - I have a gut feeling about it. It worries me when I hear Deputy Southern speak of something as a simple matter, because whenever looked at correctly a simple matter is anything ever but a simple matter. I believe this has a lot more to do than what we are seeing today, Sir. I propose we move on to the next item.

The Bailiff:

Is that proposition seconded? **[Seconded]** I put the proposition. Those Members in favour -- appel? **[Appel requested]** I ask the Greffier to open the voting.

POUR: 15

CONTRE: 25

ABSTAIN: 0

Connétable of St. Mary	Senator L. Norman
Connétable of St. Helier	Senator F.H. Walker
Connétable of St. Lawrence	Senator T.A. Le Sueur
Connétable of Grouville	Senator P.F. Routier
Connétable of St. Martin	Senator M.E. Vibert
Connétable of St. John	Senator P.F.C. Ozouf
Deputy R.C. Duhamel (S)	Senator J.L. Perchard
Deputy of St. Martin	Connétable of St. Ouen
Deputy G.C.L. Baudains (C)	Connétable of St. Clement
Deputy J.B. Fox (H)	Connétable of St. Brelade
Deputy P.J.D. Ryan (H)	Connétable of St. Saviour
Deputy of St. Peter	Deputy P.N. Troy (B)
Deputy P.V.F. Le Claire (H)	Deputy R.G. Le Hérissier (S)
Deputy J.A.N. Le Fondré (L)	Deputy G.P. Southern (H)
Deputy I.J. Gorst (C)	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 D.W. Mezbourian (L)

Deputy of Trinity

Deputy S.S.P.A. Power (B)

Deputy S. Pitman (H)

Deputy K.C. Lewis (S)

Deputy of St. Mary

The Bailiff:

The debate continues. Does any other Member wish to address the Assembly?

12.1.7 Senator J.L. Perchard:

Just very briefly; it is clear since the formation of the Chairmen's Committee, Sir, that there has been, to put it mildly, a power struggle among the Chairs that make up that Committee. One or 2 of the Chairmen are notoriously difficult to work with on a committee, and **[Laughter]** I think this is a short fix solution that we are being asked to put into the Standing Orders of the States of Jersey to suit a few people that do not get on in this term. The Chairmen's Committee is quite able to function in the future with different people making up its membership. This is a short fix to suit characters on this Committee today, and I think it is a sign of weakness that the Chairmen's Committee have brought in, effectively, a proposition to rotate the Chair so that they can all have a go, and it will devalue the credentials and the importance of that Committee, and I suggest we just get to a vote as quickly as possible and throw out this daft proposition.

12.1.8 Deputy J.B. Fox:

I cannot support this on one simple reason, is that we are supposed to be in an era of openness and transparency and this does not go with that formula.

12.1.9 Deputy S. Power:

I will not be supporting this proposition for one simple reason; it would be far more comfortable with 27 votes at least for the President of the Chairmen's Committee than a vote between 4 and 7.

12.1.10 Deputy G.W.J. de Faye:

I hesitate to intrude upon Scrutiny's private grief. **[Laughter]** But I have to say the temptation is far too great and far too... and indeed proving far too entertaining. I think this is a thoroughly excellent idea. **[Laughter]** I found the previous debacle entirely embarrassing for myself and probably for all the people involved, and I think as Scrutiny develops in its own unique and inimitable way, they have hit upon a useful and flexible tool that will keep everybody on the Chairmen's Panel well occupied with internal politics and not poking their nose into departmental business. **[Laughter]** So I urge the House to support this proposition. **[Laughter]**

The Bailiff:

No one is going to follow that, so I call upon the proposer to reply.

12.1.11 Deputy S.C. Ferguson:

What can I say? **[Laughter]** In reply to the Deputy of St. Martin, the Chief Minister is in an executive position. The confidence of the House is demonstrated in electing the individuals as Panel Chairmen. The Panel Chairmen are the most important part of the Chairmen's Committee. Your choice, your votes, come in the way you select the Chairmen of the Scrutiny Panels. The Deputy also talked about the independent Members, they will be elected by the House in its

entirety. I would remind him that meetings of the Chairmen’s Committee are public, so he is welcome to come and join us. Deputy Duhamel has a problem with it demoting the standing of the Chairmen’s Committee, well I think standing is demonstrated by the calibre of the person in the position. I am not necessarily talking about myself here but, no, the standing is something you earn. It is not something that is given to you. But the really important positions are those of the Chairmen of the Scrutiny Panels who are elected by the whole States. Deputy Ryan worries about political polarisations, but the Scrutiny Chairmen are elected by the House. If you do not like somebody’s politics do not elect him or her or them, and the same reply to Deputy Le Claire. Senator Perchard is worried about it being a short fix and rotating Chairmen, well we have not yet. I mean I have not yet been threatened with it but... no, I think, we have achieved stability and our Committee meetings are public. I would thank Deputy de Faye for his words, and I really cannot reply to those. I ask Members to support the proposition.

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 proposed amendments to Standing Orders.

POUR: 15

Senator F.H. Walker
 Senator W. Kinnard
 Connétable of St. Clement
 Connétable of St. Brelade
 Connétable of St. Saviour
 Deputy G.C.L. Baudains (C)
 Deputy C.J. Scott Warren (S)
 Deputy R.G. Le Hérisier (S)
 Deputy G.P. Southern (H)
 Deputy S.C. Ferguson (B)
 Deputy of St. Ouen
 Deputy G.W.J. de Faye (H)
 Deputy D.W. Mezbourian (L)
 Deputy S. Pitman (H)
 Deputy of St. Mary

CONTRE: 25

Senator L. Norman
 Senator T.A. Le Sueur
 Senator P.F.C. Ozouf
 Senator J.L. Perchard
 Connétable of St. Ouen
 Connétable of St. Mary
 Connétable of St. Helier
 Connétable of St. Lawrence
 Connétable of Grouville
 Connétable of St. Martin
 Connétable of St. John
 Deputy R.C. Duhamel (S)
 Deputy of St. Martin
 Deputy P.N. Troy (B)
 Deputy J.B. Fox (H)
 Deputy P.J.D. Ryan (H)
 Deputy of Grouville
 Deputy of St. Peter

ABSTAIN: 2

Senator P.F. Routier
 Senator M.E. Vibert

Deputy J.A. Hilton (H)

Deputy P.V.F. Le Claire (H)

Deputy J.A.N. Le Fondré (L)

Deputy of Trinity

Deputy S.S.P.A. Power (B)

Deputy K.C. Lewis (S)

Deputy I.J. Gorst (C)

13. Draft States of Jersey (Implementation) (Jersey) Regulations 200- (P.152/2007)

The Bailiff:

We come now to Projet 152 - States of Jersey (Implementation) (Jersey) Regulations - and I ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft States of Jersey (Implementation) (Jersey) Regulations 200-. The States, in pursuance of Article 51(b) of the States of Jersey Law 2005, have made the following Regulations.

Senator F.H. Walker (The Chief Minister):

Could I again ask the Connétable of St. Ouen acts as rapporteur for this item?

13.1 The Connétable of St. Ouen (Assistant to the Chief Minister):

Firstly, may I apologise to the House that this proposition is unlikely to be quite as entertaining as the last one. These Regulations amend the Employment Relations (Jersey) Law 2007 in order to substitute references to Committees with references to Ministers. In this particular case the function that would otherwise have been discharged by the then Employment and Social Security Committee are to be discharged by the Minister for Social Security. This needs to be adopted so that this Law, which had been registered in the Royal Court on 5th January this year, can achieve full status as a written law of Jersey, and I so propose.

The Bailiff:

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

13.1.1 Deputy R.G. Le Hérissier:

Just a quick question. I wonder, Sir, if the rapporteur could explain why this somehow missed the vast chunk of laws that we put through in order to bring about full Ministerial government? Is there any sort of sinister reason why it was delayed and has anything occurred to change what was the situation when Ministerial government went through, and what the situation is now? In other words, is the law, in its essential provisions, exactly the same?

The Bailiff:

I call upon the Assistant Minister to reply.

13.1.2 The Connétable of St. Ouen:

That will teach me to take Deputy Le Hérissier back home in the evenings. **[Laughter]** I would refer the Deputy, Sir, to the written question which was put to the Minister for Social Security by

Deputy Southern on 10th October 2006, and the answer contained within it. That answer contains the answer to the question he has raised. [Laughter]

Deputy R.G. Le Hérisier:

Given the rapporteur's commitment to open this, could he read the essence... [Interruption]

Deputy G.P. Southern:

It is nice to know those questions do go to a purpose.

The Bailiff:

I put the principles of the Regulations, those Members in favour of adopting them kindly show, those against. They are adopted. Do you move the Regulations *en bloc*?

The Connétable of St. Ouen.

I do, Sir.

The Bailiff:

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

Senator J.L. Perchard:

Just briefly, Sir, I just hope that Members will recognise that employment is no longer in the title and that I notice in the last few weeks a paper has been written that has been 'Minister for Employment and Social Security.' I just ask Members to remember it is just Minister for Social Security now.

The Bailiff:

I put the Regulations in Second Reading. Deputy Ryan, I am sorry, I omitted to ask you whether you wish to scrutinise.

13.2 Deputy P.J.D. Ryan (Chairman of the Corporate Services Scrutiny Panel):

No, thank you, Sir.

The Bailiff:

I put the Regulations in Second Reading. Those Members in favour of adopting them kindly show. Those against. They are adopted. Do you move the Regulations in Third Reading?

The Connétable of St. Ouen.

I do, sir.

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.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

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

I would like to propose the arrangement of public business outlined under M in the pink sheets with the change of one item - P.168 - so that the Draft Health and Safety at Work (Asbestos - Licensing) is moved from 15th January to 29th January. There are then 3 items to add which were lodged subsequently to the printing of this item, and that is P.177 - the Inquiry by Mr. Andrew Williamson: removal of administrative involvement of the Chief Minister's Department - which is now listed for

4th December; P.176 - which is the Funding for the Pandemic Flu - which is on 15th January; and P.179 - the Draft Employment Minimum Wages - which is listed for 29th January. I understand that the Minister for Treasury and Resources will ask for 2 items to be reallocated.

The Bailiff:

You are also asking that P.148 which was not dealt with today be dealt with on 4th December? The Draft Places of Refreshment (Jersey) Regulations which was deferred.

14.1 Senator T.A. Le Sueur:

The Chairman of P.P.C. has certainly indicated correctly. Projet 172 is down for 15th January, and that is to do with Regulations of wire transfers. This is a relatively insignificant item, this Regulation is under a Law we passed earlier this year which enables bank transfers to be made. The reason I am asking for it to be dealt with on 4th December is that there is need for these Regulations to be passed in parallel with Guernsey and the U.K. before 15th December, in order that the U.K. may give a commitment to the E.U. (European Union) that all the Islands are fully compliant. Unless we pass those Regulations by 4th December we would be unable to do that and therefore the U.K. would be unable to give that commitment. That would put us at odds with the rest of the U.K. and the offshore Islands in respect of banking transactions which are crucial to the Island, and I therefore ask the forbearance of the House to debate these Regulations notwithstanding they will have been lodged just slightly less than the full 6 weeks. That is the first proposition, Sir. Shall I propose them both together? The second proposition I would like to debate on 4th December is that of the pandemic flu funding. That is for a spending proposal for the 2007 spending arrangements, and it will be totally unsuitable for a 2007 spending proposal to be dealt with in 2008 when that year would no longer be available, so unless we debate pandemic flu on 4th December, frankly, Sir, I do not see any point in debating it at all, so I would ask that that item also be debated on 4th December, and I ask both of those 2 to be put on to that date.

The Bailiff:

Are Members content to accept the proposal of the Treasury Minister to reduce the lodging period for those 2 propositions and to debate them on 4th December? Very well. Members are otherwise content with the order. That concludes the matters on the Order Paper. The States stand adjourned until 4th December.

ADJOURNMENT