

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 17th APRIL 2007

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

QUESTIONS

1. Written Questions

1.1 SENATOR B.E. SHENTON OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE DESIGNATION OF SITES OF SPECIAL INTEREST:

Question

Would the Minister advise members whether the various Planning restrictions placed by the Planning and Environment Department, particularly those relating to properties designated as Sites of Special Interest such as the Le Seelleur offices and workshop in Oxford Road, are human rights compliant?

Answer

1. The Minister for Planning and Environment is required under Article 51 of the Planning and Building (Jersey) Law 2002 (“the Planning Law”) to maintain a List of Sites of Special Interest. The List must include each building or place that the Minister is satisfied has public importance by reason of -
 - (a) its special zoological, ecological, botanical or geological interest; or
 - (b) the special archaeological, architectural, artistic, historical, scientific or traditional interest that attaches to the building or place.
2. The Minister is also empowered under Article 53 of the Planning Law to include a building or place provisionally in the List of Sites of Special Interest.
3. The effect of including a building or place on the List is to restrict certain operations and activities that may be undertaken or carried on in relation to that building or place. The restrictions are as follows:
 - No operation or change of use which adversely affects the special interest of the site may be undertaken or made without the Minister’s permission (which may be given subject to conditions).
 - The following activities (unless any of them is specified as a permitted activity in the entry on the List relating to the site) may only be carried on with the Minister’s permission, namely -
 - (i) the use or operation of a device designed or adapted to detect or locate metal or minerals in the ground;
 - (ii) an activity which might injure or deface the site or a part of the site; or
 - (iii) certain specialised activities in relation to a site having a special interest which is zoological, ecological, botanical or geological.
4. Self-evidently, the inclusion of a building or place on the List of Sites of Special Interest operates to curtail the peaceful enjoyment by the person having possession of it. Article 1 of Protocol No. 1 to the European Convention on Human Rights is therefore engaged. It provides that -

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

5. According to the case law of the European Court of Human Rights¹, this provision comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.
6. In relation, therefore, to the Senator’s question, whilst the inclusion of a building or place on the List of Sites of Special Interest does indeed interfere with the right of an owner or occupier to the quiet enjoyment of his or her possessions, Article 1 of Protocol No. 1 allows the state to interfere with that right by imposing controls on the use of property ‘in accordance with the general interest’.
7. However, any interference must be shown to strike a fair balance between the rights of the owner or occupier and the general interest. This has been interpreted by the European Court of Human Rights as meaning that the interference must serve a legitimate aim, must not be arbitrary and must be rationally related and proportionate to the aim.

Legitimate aim

8. The provisions of the Planning Law requiring the Minister to maintain a List of Sites of Special Interest are designed to secure the fulfilment of Jersey’s international obligations under -
 - (a) the Council of Europe Convention for the Protection of the Architectural Heritage of Europe (Granada, 1985 – “the Granada Convention”); and
 - (b) the European Convention on the Protection of the Archaeological Heritage (revised) (Valetta, 16.I 1992).
9. Jersey is a party to both Conventions. The Granada Convention is of particular significance in the context of Sites of Special Interest. It defines the architectural heritage very broadly (article 1), to include places of ‘conspicuous historical, archaeological, artistic, scientific, social or technical interest’, comprising ‘monuments’ (buildings including fixtures and fittings, and structures), ‘groups of urban or rural buildings’, and ‘sites’ that are partially built on. Of particular importance to planning are the Convention’s requirements for -
 - inventories for protection the of architectural heritage and records of threats to it (article 2)

¹ See *Sporrong and Lönnroth -v- Sweden* [1982] EHRR 35

- measures for statutory protection of the architectural heritage (article 3)
 - the control of threats to monuments buildings and sites (article 4)
 - provisions to prevent removal or part removal of buildings except under special controls for their relocation (article 5)
 - the public funding fiscal measures and encouragement of private initiatives to maintain the architectural heritage (article 6)
 - general enhancement of the environment surrounding protected monuments (article 7)
 - research and to take special account of historic conservation in anti-pollution policies (article 8)
 - enforcement measures to control and where appropriate reverse infringements of conservation policy (article 9)
 - conservation, promotion and enhancement of the architectural heritage as an essential town and country planning objective and a major feature of cultural, environmental and planning policies and development control; promote restoration and maintenance of the architectural heritage, foster appropriate use and traditional craftsmanship (article 10)
 - use of protected properties in the light of the needs of contemporary life and adaptation when appropriate of old buildings for new uses (article 11)
 - balancing public access with architectural conservation (article 12)
 - effective co-operation at all levels between conservation, cultural, environmental and planning activities (article 13)
 - appropriate machinery for the supply of information, consultation and co-operation between the State, the regional and local authorities, cultural institutions and associations, and the public; and to foster the development of sponsorship and of non-profit-making associations working in this field (article 14)
 - public policies for disseminating information and fostering increased awareness and education and demonstrating the role of architectural heritage in wider culture (article 15)
 - promotion of training in craft skills (article 16).
10. The case of *Beyeler -v- Italy* (Application 3320/96, 5th January 2000, ECHR) makes it clear that ‘the general interest’ includes environmental and planning control and protection of heritage property.
11. The Granada Convention puts beyond any doubt listed building control as a matter within the general interest.

Interference must not be arbitrary/ must be rationally related and proportionate to the aim

12. Article 52 of the Planning Law requires the Minister to give at least 28 days notice of an intention to include a building or place on the List of Sites of Special Interest. The Minister

must take into account any representations made to him. In the case of No 1 Oxford Road (Le Seelleur offices and workshop) to which the Senator refers, no such representations were received in response to the service of the Minister's Notice of Intention to include the building in the List of Sites of Special Interest.

13. In determining whether to include a building or place on the List, the Minister must, as already mentioned, be satisfied that the building or place has public importance by reason of, amongst other things, the special archaeological, architectural, artistic, historical, scientific or traditional interest that attaches to the building or place. In respect of each Site of Special Interest, the Minister must specify the relevant special interest. The Minister has included No 1 Oxford Road (Le Seelleur offices and workshop) in the List of Sites of Special Interest on the basis of its architectural and historical interest.
14. In particular, and with specific regard to the case of No 1 Oxford Road (Le Seelleur offices and workshop) to which the Senator refers, account was taken of the fact that the workshops date back to 1845 (with later alterations) and are a relatively rare survival of an historical industrial building on the edge of the Town Centre. The recommendation to retain the workshops on the Historic Buildings Register was made having taken into consideration that the workshops retain their historic form with only minor alterations. The buildings are of unusual construction with a mixture of granite and brick with timber boarded up floors containing extensive glazing. The interior of the building is unusual for its large open plan areas at first floor level supported by a mixture of structural cross walls and closely spaced piers at ground floor level. There are internal details of interest, such as heavily joisted flooring and brick piers formed with rounded corners. The open nature of the workshops with walls of glazing and natural light contribute significantly to the distinctive character and special interest of the building.
15. There is one further aspect of human rights compliance which is relevant to the Senator's question. That aspect relates to the rule of law.
16. When Ministers make decisions affecting the rights of individuals, they must do so in accordance with the law. This is reflected in the requirement in Article 1 of Protocol No. 1 that any deprivation of possessions be '*subject to the conditions provided for by law*' and, furthermore, Article 6(1) of the European Convention on Human Rights stipulates that –

"In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
17. What this means, in the context of a decision by the Minister to include a building or place on the List of Sites of Special Interest, is that the legality of what the Minister does must be subject to review by an independent and impartial tribunal.
18. In this respect, Article 118 of the Planning Law provides that a person aggrieved by the decision of the Minister may, within 28 days of being notified of it, appeal to the Royal Court which may confirm the decision of the Minister or order the Minister to remove the building or place from the List
19. The Minister must comply with any such order.

Conclusion

20. The following statement was made when the draft Planning and Building (Jersey) Law 200-[P50/2001] was lodged *au Greffe*:

In the view of the Planning and Environment Committee the provisions of the Draft Planning and Building (Jersey) Law 200- are compatible with the Convention Rights.

21. In my view the Law in its enacted form is likewise compatible with Convention rights as have been the procedures in relation to the designation of the Sites of Special Interest to which the Senator makes reference.

1.2 SENATOR B.E. SHENTON OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE AMOUNT RAISED IN 2006 THROUGH THE INCREASE IN ÎMPOTS DUTY ON BEER:

Question

Would the Minister advise members of the amount raised in 2006 through the increase in Impôts duty on beer?

Answer

The amount raised in 2006 through the increase in Impôts duty on beer was £702,051.

The following additional information may also be of benefit to the Senator and other members:

In 2006 the total revenue yield from Impôts duty on beer was £5,086,874. This figure includes £315,553 additional revenue resulting from an amendment by Senator Vibert to the original budget proposals. Using the 2006 consumption figures the revenue yield would have been £4,384,823 at 2005 Impôts duty rates

The original proposals for the 2006 budget included a 3.6% increase in Impôts duty for all alcoholic beverages. Senator Vibert proposed an amendment to raise an extra £300,000 to be used for television licences for the elderly by an additional increase of the duty on beer.

Following States debate this proposal was agreed but with the additional increase to only apply to beer produced by large breweries. For the purposes of Impôts duty a large brewery is defined as one that produces in excess of 200,000 hectolitres (20 million litres) of beer per year.

The increase in the rate of duty for beer produced by large breweries was agreed at 10.7% with a 3.6% increase in the rate of duty for beer produced by small breweries.

1.3 SENATOR B.E. SHENTON OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE TOTAL COST OF THE PROVISION OF FREE TELEVISION LICENCES FOR THE ELDERLY IN 2006:

Question

Would the Minister advise members of the total cost of the provision of free television licences for the elderly in 2006?

Answer

The 2006 expenditure for TV licences was £187,204, this is made up of benefit of £176,156 and administration and overhead costs of £11,048.

As Members will be aware this benefit was introduced in 2006. The 2006 costs were lower than provided for as take up by those who bought their licence in the first months of 2006 was relatively low. Applications only built up during the year as pensioners renewed their licence on the due date. Expenditure for a full year in 2007 will be higher, with the increased take-up.

1.4 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING CHANGES TO GRANT AID TO THE DAIRY AND AGRICULTURAL INDUSTRIES:

Question

The document “2008 Business Plan: provisional cash limits – impacts on departments” shows a number of proposed changes for the dairy and agricultural industries.

- (a) Would the Minister inform members in detail what the “Business re-engineering” cut of £500,000 (35%) in grant aid to dairy and agriculture proposed for 2008 will mean?
- (b) Would he state what the impact of the further Fundamental Spending Review reduction of 5 per cent industry support to dairy and agriculture will be?
- (c) What overall impact will such a cut, of the order of 16 per cent in one year, will have on farmers? Will the Minister advise what impact this cut will have on both the department’s commitment to the McQueen Strategy for recovery of the Dairy Industry and to the Policy “Growing the Rural Economy”?
- (d) Will the Minister advise members why he has decided to reduce support for the Dairy and Agricultural industry by around 38 per cent from £4.5 million in 2007 to £2.8 million by 2010? Would the Minister clarify how this supports the Strategic Plan aim of ‘growing diversity in the economy’?

Answer

The question refers to a document that shows draft reallocations that are only indicative of how the Department might respond to funding allocations in 2008. The department is currently preparing the final 2008 budget which will be provided by the end of May. The department is considering options that will both achieve the 2% economic growth target and deliver our long standing commitments as set out in the Rural Economy Strategy.

The Rural Economy Strategy was agreed by the States in 2005. It changed the nature of support for the agricultural industries within a plan that anticipated a reducing budget. It is wholly consistent with the Economic Growth Plan as any budget reallocation will be judged and determined by the need to help businesses within the rural sector to move towards more productive and higher value operations. This will enable the industry to achieve the same or greater outputs with less government intervention - using help such as the Rural Initiative Scheme or elements of the Enterprise and Business Development Strategy. At the same time the need to underpin the rural economy with appropriate support is delivered, for example, by the new Single Area Payment.

There has already been a positive response in the rural economy with business adapting to changing markets, diversifying and showing enterprise. This is reflected in the strong take-up of the Rural Initiative Scheme and also ultimately by the 2.3% real growth in GVA in Agriculture in 2005.

By focussing on grant aid the question fails to recognise the integrated nature of business support that exists within economic development. Rural businesses, including agriculture, can now also take advantage of elements of the Enterprise and Business Development Strategy such as the Jersey Export Development Initiative, the Inward Investment Initiative and Business Advice services. The Enterprise and Business Development Strategy is designed to help achieve business creation and growth and increase, for example, international trade development within the rural sector.

1.5 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING TAX REVENUES IN 2006, FUTURE REVENUE EXPENDITURE ALLOCATIONS AND THE IMPACT OF REDUCTIONS IN REVENUE EXPENDITURE:

Question

- (a) Would the Minister inform members of the reasons for the £21 million “windfall” increase in tax revenues between provisional and revised budget figures for 2006 for each revenue stream? Will he further state whether this “windfall” is predicted to continue into the years 2007 – 2011 and, if so, explain why?
- (b) Would the Minister inform members why the revised inflation and pay assumptions show that both the Retail Price Index (RPI) and Public Sector Pay awards for 2008 and 2009 will decrease when the introduction of a 3 per cent Goods and Services Tax will have an impact on the spending of all Islanders? Would the Minister advise members whether the impact on the RPI of the introduction of GST will affect the March 2009 RPI figure and, if so, state whether this has been taken into account in the assumptions given that that figure is traditionally used in pay negotiations?
- (c) Would the Minister inform members whether the additional £1 million “funding from balances” indicated in his presentation (relating to the 2008 Business Plan) regarding 2007 spending pressures and the £2.5m “funding from departments” will be divided on a pro rata basis between departments and, if not, on what basis?
- (d) In the light of the “windfall” from tax revenues highlighted in (a), does a further £2.5 million cut in departmental budgets for the current year remain appropriate?
- (e) Would the Minister undertake to inform members in detail what each department’s reduction in spending, as a result of the £2.5 m cut will mean for the delivery of services in 2007, and further, would he place these service reductions in the context of the type and size of reductions that have already taken place, whether by efficiency savings or otherwise, in 2005 and 2006?

Answer

- (a) The reasons for the £21 million “windfall” income between provisional outturn and revised budget figures for 2006 are as follows:

Income Tax (£12 million) – There has been significant improvement in the tax revenues from International Business Companies and a small increase on the forecast for employee earnings. There is a reasonable expectation that the improvement will be maintained for International Business Companies.

Impôts (£3 million) – There was a general increase on forecasts but £2 million of the £3 million increase is due to an accounting adjustment, accruing for importations which previously would have been accounted for in the following year. The £2m is therefore a one-off.

Stamp Duty (£4 million) – This has exceeded forecasts but does include a number of significant transactions that might suggest the level of increase may not be repeated at quite the same level. House prices continue to increase which naturally increases the yield.

Other Income (£2 million) – This is made up of a number of small increases, including more income tax surcharges and penalties than forecast despite the introduction of the new Income Tax Instalment System (ITIS).

- (b) The “all items” RPI is likely, for one year, to be affected by the introduction of GST. However the purpose of the tax is to take money out of the economy, and that will have a deflationary effect. I could not agree to the principle of putting these funds back into public sector pay awards or other public expenditure, partly because this would negate the purpose of introducing GST, but also because it would cancel the deflationary effect. I have considered this initial impact on RPI when making the inflation assumptions underpinning our forecasts. I am committed to establishing a clear message, ahead of the implementation of GST, to all other employers such that pay awards are not artificially inflated. This will be a part of the revised inflation strategy.
- (c) The additional £1 million funding from balances and the £2.5 million funding from departments will be allocated on a pro rata basis between departments in relation to their total staffing costs.
- (d) Throughout pay negotiations departments have been informed that they would need to absorb any pay increases in excess of the budgeted sums. The Council of Ministers has already agreed to propose the allocation of £1 million from balances to ameliorate the impact of the additional cost on departments. Given the significant pressures in 2007 on the costs of supplementation and benefits I believe it is wholly appropriate that we continue to be rigorous and prudent to ensure that we are not in danger of living beyond our means in the future, or adding unnecessarily to inflationary pressures.
- (e) How departments choose to allocate absorption of the additional £2.5 million between their activities is a matter for them. I cannot say whether a particular department will need to make service cuts, or do things differently, or delay certain activities, but in terms of context the £2.5 million bears comparison with the £20 million of efficiency savings already being delivered over the current five year period.

1.6 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING CHANGES IN SUPPORT TO THE TOURISM INDUSTRY:

Question

The document “2008 Business Plan: provisional cash limits – impacts on departments” shows a number of proposed changes for the tourism industry.

- (a) Would the Minister inform members in detail what the “Business re-engineering” cut of £500,000 in grant aid to tourism proposed for 2008, referred to on page 26 of the document “2008 Business Plan: provisional cash limits – impacts on departments”, will mean?
- (b) Will he also advise what impact the further Fundamental Spending Review reduction and efficiency savings cut of £230,000 support to the tourism industry will have?
- (c) What overall impact will such a cut, of the order of 12 per cent in one year, have on the Tourism industry?
- (d) Will the Minister advise members why he has decided to reduce support for the Tourism industry by around 30 per cent from £5.9 million in 2007 to £4.1million by 2010? Would the Minister clarify how this supports the Strategic Plan aim of ‘growing diversity in the economy’?

Answer

The question refers to a document that shows draft reallocations that are only indicative of how the Department might respond to funding allocations in 2008. The department is currently preparing the final 2008 budget which will be provided by the end of May. The department is considering options that will both achieve the 2% economic growth target and deliver our long standing commitments.

In the past, the principal expenditure within the Tourism budget has been directed at marketing, p.r. and the provision of events. However the Tourism industry is undergoing an unprecedented level of change with more focus on higher spending shorter stay visitors, a trend wholly consistent with the recent Locum Report. This has led to the development of partnership arrangements with the industry which is encouraging a significantly increased level of joint marketing activity. The move to the new office building in September of this year should also facilitate increased commercial activity and specifically more retail sales, the profits of which are reinvested in marketing activities.

There is a significant level of diversity within the tourism industry which is consistent with the overall aims of the strategic plan.

Investment within the sector includes the support through the Tourism Development Fund which continues to help fund projects which are of strategic importance to the Island and for example support for the newly opened Heathrow route, which will support the tourism industry as well as business and the local population. The department is not only continuing to fully support the industry but is investing in the future by identifying and backing projects which have strong future potential. As with any existing sector the Economic Development Department is encouraging new and existing businesses to take full advantage of our new enterprise and business development products and services. If the tourism industry seizes this opportunity it will not only benefit individual businesses but also deliver greater economic benefit from the investment of public Funds. It should be remembered that the Economic Development Department is charged under the Public Finances (Jersey) Law with delivering best value from within its long term fixed cash limits.

1.7 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE REALLOCATION OF FINANCIAL SUPPORT TO HIGH VALUE INDUSTRIES AND THE FINANCE INDUSTRY:

Question

- (a) Will the Minister advise members to which “high value” industries he will be transferring some £1.5 million of funding from Tourism and agricultural support in order to diversify the economy in line with the Strategic objectives?
- (b) Will the Minister state whether the transfer of £750,000 of Tourism and Agricultural support funding into Finance Industry support over the 3-year period 2008 – 2010 will increase diversification of the economy and reduce the Island’s dependence on that industry?
- (c) Will the Minister set out the impact such “business re-engineering” is expected to have on the demand for high skilled “licensed” or J-category employees in the period 2007 – 2010?

Answer

- (a) The States of Jersey agreed policy framework for sustainable economic growth is published within the Strategic Plan 2005-2010. This, coupled with the Economic Growth Plan, set a target of 2% real economic growth across all sectors. In addition, it must be delivered within the agreed constraint in growth in the working population of 1% averaged over the period of the Plan and not result in the introduction of inflation above target. This presents significant challenges. The financial services sector will continue to be a key element of Jersey’s long term economic prosperity and the States will support growth in its products and services offered from the Island. However, in addition, a key to economic success and social stability lies in the diversity of our economic base and the industries represented in the Island.

As Minister for Economic Development, I am charged with developing strategies that will deliver our over-arching aim of economic growth, with sustainable inflation, coupled with economic diversification and the creation of jobs. This will not be an easy task and will take time to deliver. The agreed 2% economic growth could, in all probability, be achieved within the finance and related industries alone. However, the growth target will be measured across all sectors and analysed accordingly. My Department will, in its drive for economic growth, remain within the agreed States of Jersey Migration Policy of a maximum of 1% growth of the working population averaged over the life of the growth plan.

To assist in achieving these targets an Enterprise and Business Development Strategy has been developed, the aim of which is to stimulate business start-ups, support growth within new and existing organisations and encourage diversity across all sectors of the economy. This is a bold and ambitious strategy that will deliver diversification and restructuring in the economy. It will be funded by rigorous prioritisation of expenditure within the existing Economic Development budget, supplemented by additional funds awarded to the Department. The result will be a new range of products and services being promoted coupled with a new Business Development Centre for all business enquiries. This new approach to business development will aim to attract high value, low footprint business to Jersey. For example, businesses that currently trade with and manage intellectual property could, if encouraged to operate in Jersey, create a new industry within our existing economy creating new and exciting new job opportunities for our workforce.

The Enterprise and Business Development Strategy was launched in October 2006 and is already proving highly successful. It includes a portfolio of new demand-led initiatives, a new approach to inward investment and the opening of a new Business Development Centre that will provide a customer facing support service. The Strategy will be implemented over the next few years with its products and services, such as the new approach to inward investment, being phased in during 2008.

The annual cost of delivering all the services within the Enterprise and Business Strategy in 2008 will require additional funding of £1.5 million.

- (b) My answer to the first part of your question identifies the importance of the growth of the Finance Industry in meeting our overall targets for economic growth whilst remaining within the agreed constraint in growth in the working population of 1% averaged over the next 5 years. Recent statistics have demonstrated the success of this strategy to date with buoyant growth in government receipts from this sector, growth in predominantly locally qualified employment and the growth in optimism within the finance industry of the prospects for the coming years.

However, the market for international financial services is increasingly competitive and complex and it is necessary to have sufficient resources focused on identifying international trends and market opportunities as well as detailed opportunities to obtain competitive advantage. All of our competitors, and our Crown Dependency competitors in particular, are regularly announcing regulatory, legislative and international marketing initiatives in order to steal an advantage over our industry. We need to remain vigilant and responsive but also proactive.

The "Finance Industry" is already increasingly diversified and one of the strengths of Jersey's Finance Industry is its high level of adaptability and professionalism across a wide range of businesses. The additional funds are required to maintain and where possible improve this position. Specifically, the funds are being used to ensure Jersey Finance Limited, the representative trade body for the Finance Industry, is able to operate effectively and to support and represent the growing complexity and diversity of the Island's Finance Industry. We are seeking to continue to diversify Finance Industry revenues across many fronts including product and service offerings, market access, and inward investment. This will allow us to benefit from new areas of growth. Flows of business are often "controlled" by key individuals in other jurisdictions, but these are ever changing and it is important to build relationships with new individuals, firms and jurisdictions at the strategic level, to complement the more targeted activities of individual firms. Many other jurisdictions employ full time representative offices in key jurisdictions such as the City of London.

The allocation is therefore a measured response to these demands and increases total spend in 2008 on the Finance Industry (which generates 50% of Island GVA) to c. £1.15m, compared to the £11.9m spend on the other sectors.

- (c) The aim for the whole island should be to move and develop further into the most highly skilled, productive, small island state economy in the world. An island where all can profit and share from the proceeds of growth in terms of jobs, salaries and well funded front line services.

The Housing Law and Regulation of Undertakings and Development Law have a very clear and strong preference toward the employment of local people, and provide a high degree of protection by allowing non-local or 'j' employment only where a local person is not available. In this way, numbers are very strictly controlled, and only granted in the best interests of the Island, having regard to the need to balance economic growth with demand on resources, in particular housing.

This policy has resulted in 84% of the workforce being locally qualified, and restricted 'j' category numbers to 3% of the workforce. As at December 2006 the total workforce was 51,780 (6,560 public sector) of which 900 were private sector j cats and 710 public sector j cats. (Source Stats unit taken from manpower returns.) This diligence will continue, with developments in productivity and skills very much coming from the existing local workforce and no substantive change in the current position, whereby the significant and vast majority of the workforce are local.

At the same time, as the economy develops, and productivity improves, some small shifts are likely, with marginal increases in 'js' at the expense of lower skilled non-locals. This is important because 'j' posts, often senior managerial or highly technical posts, go hand in hand with productive internal investment and skills transfers to local employees, and to that extent, are a positive indicator of a buoyant and developing economy and local workforce. The extent of any such changes should be kept in strict context however, as they have been extremely small, and will remain so.

Between 2001 – 2006 ‘j’ employees increased from 2% to 3% of the private sector workforce, while non-local employees decreased from 14% to 13% of the private sector workforce. Over the same period, local employee numbers have remained consistent at 84% of the private sector workforce, and this is expected to continue over the coming years.

The position will continue to be carefully managed within the context of the Economic Growth Plan, 1% average annual working population growth over the life of the Strategic Plan, and the need to balance economic growth with demand on resources.

Overall there is a careful balance between growing the economy (with corresponding small numbers of Js and non qualified persons needed) and the stated aim to tightly control (to the extent we are able to) the working population. One lesson from the past is clear: Jersey closed for business would be as disastrous for the island in the early 21st century as it was in the latter part of the 20th century.

2. Oral Questions

2.1 Deputy D.W. Mezbourian of St. Lawrence of the Minister for Planning and Environment regarding enforcement of conditions attached to planning consents:

Will the Minister advise Members what steps his department takes to ensure compliance with conditions attached to planning consents, and would he further state how often in the last 5 years formal action by way of the service of an enforcement notice has been taken following a breach of conditions?

Senator F.E. Cohen (The Minister for Planning and Environment):

The Planning Department monitors conditions in 3 ways. First, the case officer for the application will visit the site during construction to check that the development is in line with the permission granted. Secondly, the site will be visited probably on several occasions by building control surveyors, who will also address any deviance from the approved plans. Thirdly, we will respond to requests from neighbours and members of the public where it appears that conditions are not being adhered to. Planning conditions are made known to those who commented on the application, and our enforcement is made much more effective by their continued vigilance. In the vast majority of these cases, formal enforcement action is not required, this is because the developer will either alter the work to comply with the permit or he will seek approval for the amendment. Enforcement notices are only necessary and are only justifiable if the request to alter the work is subsequently denied and the developer refuses to go back to the original approval. These cases are rare. A total of 49 enforcement notices were served against unauthorised developments between 2001 and 2005. Of these, 35 related to cases where works had been carried out without any permission at all and 14 related to cases which did not comply with the planning permit, either through a breach of conditions or a failure to adhere to the approved plans.

2.1.1 Deputy D.W. Mezbourian:

Will the Minister advise how many enforcement officers he has within his Department, and whether he considers the resources that are applied to this are sufficient?

Senator F.E. Cohen:

We have 2 enforcement officers, they are both excellent officers but they are significantly overworked. We are under-resourced; we could do with more enforcement officers, more planning officers, more development control officers and more building control officers, but I am afraid we have to make do with what we have. The system could be significantly improved, and in relation to a particular significant application of which many Members have an interest, I will be developing a far better system to ensure the conditions are properly implemented.

2.1.2 Connétable G.W. Fisher of St. Lawrence:

As a follow-on to the question, and the particular site that the Minister mentioned, we are told that there will be something like 60 conditions attached. It is extremely important that we do ensure that those conditions are adhered to and that the conditions are properly policed and enforced, and listening to the Minister's reply I can only assume that he is going to try to do that. Does he feel confident he can, in fact, police and enforce all 60 of those conditions?

Senator F.E. Cohen:

The number 60 was an approximate number, so I had better make that clear for a start. The particular application - being the Bel Royal site - is a very complicated application. The conditions are equally complex, and it is absolutely essential that we put in place a mechanism to ensure that each and every one of those conditions is properly implemented before the houses are sold or occupied, and I will be seeking to put in place an appropriate mechanism. I will take personal charge of the implementation of that mechanism, and I will also undertake to consult with the Connétable before I finalise the mechanism.

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

Has the Minister considered incorporating the Australian approach to planning whereby building control and planning are brought forward together thus alleviating some of the problems that he may be encountering in his enforcement department?

Senator F.E. Cohen:

I think that this system, with which I am quite familiar, would not be particularly applicable to Jersey, particularly as we have such an under-resourced department and it will require such significant change. I think in the long term it may be a relevant aspiration, but in the short term it would be undeliverable.

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

The Minister referred to approximately 60 conditions, I think it was, on the Goose Green Marsh development. Could he confirm that at the time of the email he circulated to all States Members that those conditions were still being drafted and had therefore not been finalised? And could he also confirm whether those conditions are still in the process of being drafted?

Senator F.E. Cohen:

I can confirm that the conditions are still being drafted. I can also confirm that I will be taking advice from the Law Officers on a number of the conditions, and I have not finalised my view on one or 2 conditions.

2.1.5 Deputy C.H. Egré of St. Peter:

Would the Minister confirm that in a development close to Goose Green Marsh - namely the L'ermitage development - that there were certain conditions that were enforced on the developer which were not in fact adhered to? Would he make sure that these are reviewed and, in the case of the other development, to ensure that public have the confidence in the current system, that any changes in conditions will be notified to the public and will be enforced very highly and the very use of it?

Senator F.E. Cohen:

I can, and I would also add that I am certainly not claiming that in the past that the department has always been successful in imposing the implementation of permit conditions, but I can assure the House again that in relation to the Bel Royal site that I will personally take charge of this issue.

2.1.6 Deputy D.W. Mezbourian:

I regard it as highly unsatisfactory that we have to rely on the general public to give assistance to the Planning Department by making sure that conditions on planning consents are enforced, and as we know the public are not able to venture on to many sites. Therefore, we do have to rely on the 2 enforcement officers that the Minister has referred to, and he has told the House that he is looking at this issue as one to be addressed. I would like to ask the Minister to advise us which priority he is giving this within his department?

Senator F.E. Cohen:

I am not entirely sure what the Deputy is getting at, but if it is in relation to the Bel Royal development, my proposal in relation to that would be that we develop some form of mechanism where before the development is either signed-off or before the houses are allowed to be sold, that all the conditions are properly examined and tested to make sure that they have been complied with. As far as relying on the public is concerned, I agree it is not a satisfactory situation to rely on the public, but we do not entirely rely on the public. However, objectors do tend to have a particular interest in developments against which they have objected, and they do tend to keep a pretty vigilant eye on them, so it is a 3-pronged approach I would say.

2.2 Deputy G.P. Southern of St. Helier of The Chief Minister regarding the 2007 pay offer to States' employees:

Would the Chief Minister inform Members when, and by whom, the decision was taken to set the 2007 pay offer to States' employees at the level of R.P.I. (Retail Price Index) and when this offer was notified to States' employees and to Ministers?

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

Decisions on pay awards are made by the States Employment Board under the Employment of States of Jersey Employees (Jersey) Law 2005. The decision to offer the public sector pay groups an award based on the Retail Price Index as at March 2007 for the pay year 2007/2008 as part of a 2-year agreement was made by the States Employment Board on 25th January 2007, after consultation with the Council of Ministers. It was made as part of the continuing negotiations and confirmed to the Transport and General Workers' Union on Thursday, 1st January 2007. It was communicated progressively thereafter as part of the negotiations with other public sector pay groups.

2.2.1 Deputy G.P. Southern:

Could the Chief Minister inform Members at which meeting of the Council of Ministers was the pay offer discussed?

Senator F.H. Walker:

I have not got that date, but it would have been the first meeting after the States Employment Board's meeting earlier in January, but I think the point of the question is, "Was there consultation with the Council of Ministers?" The answer is, "Yes".

2.2.2 Deputy G.P. Southern:

Did that consultation take place at a meeting of the Council of Ministers?

Senator F.H. Walker:

Yes, it did.

2.3 Deputy S. Pitman of St. Helier of the Minister for Transport and Technical Services regarding plans to amend the relevant speed limits Order in respect of Le Rue de Mont Séjour, St. Helier:

May I withdraw this question, as the Minister has endeavoured to answer this through written correspondence?

The Bailiff:

Very well, question 3 is withdrawn.

2.4 Deputy K.C. Lewis of St. Saviour of the Minister for Planning and Environment regarding the prevention of unsightly fly posting on vacant buildings:

What action, if any, is the Minister taking to stop unsightly fly posting on vacant buildings in the Island?

Senator F.E. Cohen (The Minister for Planning and Environment):

Fly posting is illegal under the Planning and Building (Jersey) Law 2002, and is subject to enforcement action. Article 78 and 79 set out powers to enforce removal or obliteration of illegal advertisements and fines can be imposed on offenders. However, as it is recognised in other jurisdictions, it can be extremely difficult in practice to identify the individuals responsible for organising or undertaking fly posting. It should be recognised that prosecution is a lengthy and potentially expensive process and it is not always feasible or appropriate. The enforcement team, as I have said earlier, is very small and this area of enforcement needs to be weighed and prioritised against many other issues. I am happy to inform the House that entirely by coincidence I have been actively involved for some time in discussions with Mr. Anthony Lewis of the *Jersey Evening Post*, and Mr. Mike Waddington of Naish Waddington Architects, with a view to designing a number of free-standing structures for the town. The purpose would be to actively encourage fly posting on these structures while discouraging it elsewhere. These discussions are at an early stage and I would be very happy to invite the Deputy to join me in establishing this proposal.

2.4.1 Deputy D.W. Mezbourian:

Does the Minister rely in these cases on the public to advise his department when these notices are posted unauthorised?

Senator F.E. Cohen:

I am not really sure of the answer to that. I would imagine that fly posting enforcement is not something that is highly prioritised, and I am certainly not aware of any prosecution myself, but I will certainly look into how information has been delivered to the department or whether the department goes out to try and identify fly posting.

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

Appreciating the Minister's difficulties in enforcing such items, has he had any consultation with the Parish of St. Helier and with the Roads Committee, or any other department within the Parish, because they too are particularly concerned with the amount of fly posting, and I wondered if the Minister would take on board to seek consultation with the Parish - indeed with Chamber of Commerce and I.O.D. (Institute of Directors) and any other - because the effect on St. Helier is getting worse. If one looks at the fly posting concerned there are a minimal set number of establishments that are affected who are obviously concentrated on having these posters distributed, and I am sure they would be able to identify very quickly who is responsible and maybe action could be taken in that way. Would the Minister take that on board and see if we cannot progress this further?

Senator F.E. Cohen:

Yes, I most certainly will, and just to clarify, it is the intention to actively involve the Connétable and the Parish in the proposals to develop structures that encourage fly posting and discourage them elsewhere in the town.

2.5 Deputy F.J. Hill of St. Martin of the Minister for Transport and Technical Services regarding the effective date for the Road Traffic (Amendment No. 4) (Jersey) Law 200-:

Would the Minister inform Members when the Road Traffic (Amendment No. 4) (Jersey) Law 200- approved on 26th September 2006 under P.88/2006 was submitted to Privy Council, and when it is anticipated that the amendment will take effect?

Deputy G.W.J. de Faye of St. Helier (The Minister for Transport and Technical Services):

The Law was submitted to the Privy Council on 28th September 2006, that is 2 days after the States approved it. As the Deputy is well aware the time normally taken for approval by Privy Council is about 6 months, but depending on the workload this can be less and it can be more. Clearly in this case it is more. But I am aware that the Attorney General has recently inquired as to whether this item will be considered at the next session, which is scheduled for 2nd May; and I understand that it will be. The amendment will therefore take effect 7 days after it is registered in the Royal Court following the Privy Council approval.

2.6 Deputy P.V.F. Le Claire of St. Helier of the Minister for Health and Social Services regarding time off in lieu of paid overtime for nurses:

Has the Minister yet investigated the issue I raised in questions in the Assembly on 27th March 2007 about whether nurses are having to take time off in lieu instead of receiving paid overtime, and if so, would he provide details of the position for Members please?

Senator S. Syvret (The Minister for Health and Social Services):

Nurses and midwives are paid overtime when their hours of work are in excess of 37.5 per week. These rates currently stand at time and a half for Monday to Saturday and double time for Sundays and bank holidays. Part-time workers will receive plain time for additional hours up to 37.5 per week; hours in excess of 37.5 per week are paid at normal overtime rates. This is in keeping with the States of Jersey Nurses and Midwives Joint Executive Terms and Conditions handbook. There is a requirement that any overtime is approved by the senior nurse on duty, and once approved there is no restriction on offering overtime rates when the need arises based on fluctuating service demand. As a flexible and supportive employer there may be occasions where nurses and midwives would prefer to take that time in lieu for extra hours worked instead of the money, as it may suit her personal situation better.

2.6.1 Deputy P.V.F. Le Claire:

Given that I did explain to the Minister in my previous question that it was reported to me that nurses were unwillingly working - well, not unwillingly; they were working willingly, but they were being forced to work longer hours and then being made to take time off in lieu. What I am trying to say to the Minister is there has been an incidence of staff reporting that to me. Given the answer that he has just given us he sets out quite clearly the structure that operates within the Health Service, but he does not identify the fact that there is and have been occasions - and nor has he identified if it is to his knowledge - that nurses are, not to their preference, working longer hours than they wish to and then being forced to take time off in lieu rather than being paid the overtime. Would the Minister not undertake to investigate with the nurses themselves to see whether or not, aside from the policy he stated this morning, there are incidents occurring?

Senator S. Syvret:

Again, the Deputy is correct; this is the same assertion he made last time. And I have examined the matter and I would have to ask him, through you, Sir, to produce the evidence that he relies upon in making that assertion, because the terms and conditions are absolutely plain; no nurse is required to take time off in lieu instead of paid for overtime they have worked. And if any such incident has occurred it is not in keeping with the terms and conditions, and I would ask, Sir, the Deputy to produce the evidence to me and I will certainly look into it.

Deputy P.V.F. Le Claire:

I will be happy to produce that in private to the Minister for Health, Sir, rather than naming the individual in the public forum.

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

I wonder if I could ask the Minister, as a percentage of overtime worked, to what extent is the Health Service currently using bank nurses as opposed to using nurses currently in employment performing overtime?

Senator S. Syvret:

In terms of bank nurses; we have more registered nurses now working on the bank than ever before and more health care assistants. The total complement of nurses, including day surgery and new postings, is approximately 29 short of the total number we would wish to have. Therefore we are using bank and agency nurses to some extent, but we have had an improvement in recruiting nurses recently because of conditions in the United Kingdom, so that factor is reducing.

2.6.3 Deputy G.P. Southern:

Would the Minister agree to bring figures to the House showing the comparisons between 2005 and 2006 of the rates at which bank and agency nurses are employed, and also the amounts of overtime done and T.O.I.L. (time off in lieu) taken?

Senator S. Syvret:

Certainly, I am happy to do that, and I do not think the figures would reveal anything that would come as a surprise to us. We know that there has been a shortage of nurses for a variety of reasons, and there will have been significant amounts of overtime worked in the years 2005 and 2006, and a significant amount of use of bank and agency staff, but I am happy to ask for the precise figures to be produced.

2.6.4 The Connétable of St. Lawrence:

Will the Minister confirm that it is the case that agency nurses are brought in when existing staff nurses are very happy to work overtime but are not asked to do so?

Senator S. Syvret:

Well, I am not aware of that because bringing in agency staff is expensive and it is preferable to us to employ regular staff, but the Connétable has to understand that there are clinical governance restrictions in some cases on the amount of hours that nurses can work without taking sufficient periods of time off work. These are clearly established clinical governance requirements for patient safety and it may be that nurses are being required to take that time off according to the standards that are necessary.

2.6.5 Deputy R.G. Le Hérisier:

Approximately 15 months ago when there were nurse protests about the implementation of the Job Families Agreement we were assured by the Health Minister and the Chief Minister that this was but a blip and that the Job Families Agreement was well on-track. Would the Health Minister

confirm that the Job Families Agreement is indeed, as he said 15 months ago, well on-track and it is indeed contributing to an uplifting of morale among the nursing staff?

Senator S. Syvret:

Times change; it is said a week is a long time in politics and 15 months is a very long time. I would have to say that I think time has demonstrated there to be some issues and some flaws of the Job Families Agreement which we are co-operatively and constructively working with the staff at the moment to resolve and those discussions are ongoing.

2.6.6 Deputy R.G. Le Hérissier:

Could the Minister identify those issues because on the one hand we were sold a project which was apparently going to bring a labour relations paradise; we now find it is the cause of major problems?

Senator S. Syvret:

The Job Families Agreement itself is a very, very substantial and complex document and I could not stand here without notice and give a precise description of each of the details that may have been problematic in the policy. I have said that there are some issues, some problems that have been identified and we are working co-operatively with staff to resolve those.

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

There was also, with regard to this, meant to be a programme of assessing the utilisation of agency and bank staff and making it more efficient. I do begin to wonder whether that is achieving any results. Would the Minister care to comment?

Senator S. Syvret:

As I have explained in the Assembly on previous occasions, the degree to which we use such staff is often not within our control. We have things like maternity leave, sickness among staff, the complete inability in some cases - certainly in the last couple of years - to recruit the nursing specialisms has forced our hand. We have had no choice other than to use agency and bank staff in those cases, especially agency staff within those specialisms that are very, very difficult to recruit.

2.6.8 Deputy K.C. Lewis:

Further to Deputy Le Hérissier and Deputy Le Claire's comments, I too have had phone calls from nurses very late at night in tears stating that they cannot cope anymore. As was stated previously, we were informed this was a blip that happened 15 months ago. Can the Minister assure Members that this is well and truly solved? I can understand the pressures of not wanting to use bank staff for the reasons of economy, but can the Minister assure us that this has come to an end?

Senator S. Syvret:

I am not quite sure that the Deputy identified in his question what should have come to an end. If he is saying that staff are being compelled to take time off in lieu instead of being paid for overtime they work then I can assure you that I am not aware that that has occurred. If it has occurred it is not compatible with the terms and conditions of employment and if the Deputy, as indeed any other Member, has evidence of those kinds of issues please bring the evidence to my attention and I will happily investigate.

Deputy K.C. Lewis:

It is regarding the Job Families Agreement I am referring to. Most of the people that have contacted me for obvious reasons do not wish to be identified, but I am sure the Minister can source the information from his end.

Senator S. Syvret:

I thank the Deputy for that clarification. As I have said in answer to a previous question, there are problems and issues that we have identified and recognised with the Job Families Agreement and we are working co-operatively with the staff to iron-out those problems and move forward in a constructive and positive way.

2.7. Deputy G.P. Southern of the Chief Minister regarding under-lying assumptions in respect of the Retail Price Index and pay settlements:

Would the Chief Minister inform Members of the assumptions which underlie the predictions for the Retail Prices Index and consequent pay settlements as set out in the presentation on the Draft Annual Business Plan for the years 2008 to 2010?

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

The Annual Business Plan will be finalised by the Council of Ministers in June and lodged with the States in July for debate and decision in September. I have formally asked each Scrutiny Panel to undertake a review of the cash limits and the underlying assumptions, but that of course is for the Panels to decide for themselves. I have been sharing the Council of Ministers' thinking with the Corporate Services Scrutiny Panel since January and they have been taking a keen interest in our proposals. I expect that they will want to look very hard at our inflation assumptions and I will participate fully in any review they undertake. Inflation is notoriously very hard to predict, particularly given the impact of changes in the U.K. base rate. However, we have produced assumptions for R.P.I. as at March each year and our assumptions are 4.5 per cent in 2007, 3.5 per cent in 2008, 3 per cent in 2009, and 2.5 per cent thereafter. These assumptions are based on maintaining as much pressure as possible on underlying inflation, which we continue to hold at or near our target level of 2.5 per cent and they allow for current interest rates. The underlying assumption is that G.S.T. (Goods and Services Tax) will have a one-year impact from introduction, but that consumer and competition pressures will significantly lessen the impact on prices, and hence any addition to the index. Our targets are challenging and they will not be easy to meet, but that has to be our aim.

2.7.1 Deputy G.P. Southern:

Does the Chief Minister agree with his Treasury and Resources Minister that the all-items R.P.I. is likely for one year to be affected by the introduction of G.S.T., and further does he agree that such an effect will take place in March 2009 if the G.S.T. is introduced in April 2008, and further that in line with his advisers - the Crown Agents - on G.S.T., this impact is likely to be around a minimum of 2.4 per cent on the expenditure of all workers on the Island, and does he not agree then that his figure for March 2009 of 3 per cent is woefully inadequate?

Senator F.H. Walker:

I do not. The Deputy is right in saying that G.S.T. will have an upward impact on inflation for the first 12 months following its introduction; yes, of course. He is not correct in saying that that effect is likely to be 2.4 per cent. What he is doing is quoting the Crown Agent's view that if all items are uplifted in price by 3 per cent then the effect could be as high as 2.4 per cent. There is already clear evidence that that would not be the case and that a number of retailers will not be introducing the rate of G.S.T., or at least the full rate of G.S.T., into their sales prices. And there is... I see the Deputy is surprised that there is evidence which I will gladly share with him at another time. And certainly it is also not the case that it would have an impact on all workers, and of course there is protection due for the low paid which the States are due to debate in the not too distant future. Thereafter, of course, after the first year G.S.T. will have a downward impact on inflation.

2.7.2 Deputy R.G. Le Hérisier:

Would the Chief Minister identify to what extent he has taken the increasing rise in the price of property and rentals into account in fixing these rates, given everyone thought this issue had been tamed, but in fact we are now faced with a very red hot property market. How has he taken this particular development into account?

Senator F.H. Walker:

The major impact caused by house prices in Jersey is the effect of the base rate of the U.K. The contribution to the December 2006 round of the R.P.I. of house purchase costs was 1.5 percentage points, of which one per cent was caused by the increase in base rate. I mentioned in my first answer that our forecasts are based on a continuation of current base rates, the latest predictions suggest there may be a small 0.25 per cent increase sometime within the next few months, followed in the slightly longer term within the period of the question by decreases. So, we have taken the house price scenario into account, and I should mention that despite the buoyancy of the housing market house price increases are still below both the rate of inflation and average earnings.

2.7.3 Deputy R.G. Le Hérissier:

Could I therefore infer from the Minister's answer that he is very happy with the supply and demand situation and they are, from his point of view, entirely in balance?

Senator F.H. Walker:

No, I am not. And of course if we want to see dramatic further increases in house prices then we would continue to have a shortage of supply, and it is essential if we are going to keep inflation under control that we balance supply with demand. That is very much in the planning of the Council of Ministers and, particularly, the Housing Minister at this time.

2.7.4 Senator B.E. Shenton:

The Chief Minister has stated that Deputy Southern's assertion that 2.4 per cent increase in 2009 is incorrect. Could the Chief Minister state what his assumption of the effect of G.S.T. will be in the 2009 figure?

Senator F.H. Walker:

I cannot give a precise figure because we do not know what the precise figure is. What I said was that 2.4 per cent would only become a reality if all retailers passed on the full 3 per cent on all articles they are selling, and that will not be the case.

2.7.5 Deputy G.P. Southern:

Can I seek first of all a point of clarification? In his answer the Minister appeared to suggest that R.P.I. in 2007 would be 4.5 per cent. His figures are 4 per cent, was that just a slip? Secondly, I thank him for offering to show me the evidence that retailers and others will not raise their prices by 3 per cent when suffering from G.S.T., but will he share that evidence with the House?

Senator F.H. Walker:

I have received information in confidence from a number of retailers, and I said I would share that with the Deputy and share it with the Deputy I will. Sir, I think what we need here is to avoid self-fulfilling prophecies. What we do not want are Members of this House effectively almost encouraging retailers to pass on the full rate of G.S.T. We all need to work together to keep the price increases as low as possible and to keep the R.P.I. as low as possible. We all need to pull together in that respect and we should be avoiding self-fulfilling prophecies.

2.7.6 Deputy G.P. Southern:

Will the Chief Minister confirm the slip of the tongue rather than his new estimate of 4.5 per cent for R.P.I. in 2007?

Senator F.H. Walker:

Yes, I will. The Deputy is correct in that respect; it is 4 per cent.

2.7.7 Deputy G.P. Southern:

And will the Minister agree that in addition to talking up inflation that we must avoid at all costs wishing that things will work out fine?

Senator F.H. Walker:

We do not wish, we set challenging targets and then work as hard as we can to meet them, and that is what I invite the Deputy to join us in doing.

2.7.8 Deputy G.P. Southern:

Does the Chief Minister have any evidence that he is prepared to make public that G.S.T. will not be passed on?

Senator F.H. Walker:

Let me be clear, I did not say G.S.T. will not be passed on, I said G.S.T. will not be passed on in full on all items sold. And I will research the evidence I have to see what is possible for me at this stage to put into the public domain.

2.8. Deputy J.A.N. Le Fondré of the Minister for Transport and Technical Services regarding the re-opening of road works on recently improved roads:

Given the significant work presently being performed in improving Route de la Haule and the related disruption, would the Minister confirm whether the department will be ensuring that the road is not dug up for a considerable period of time after the completion of that work, and what, if any, is the maximum period of enforcement and what powers can the department use to ensure that this is enforced?

Deputy G.W.J. de Faye (The Minister for Transport and Technical Services):

Transport and Technical Services Department and the Parish's power to prevent the breaking-up of a recently resurfaced road by a utility company is currently provided for by the Public Utilities Road Works (Jersey) Law 1963. The Law allows a 12-month post-resurfacing embargo to be imposed by the Highway Authority subject to a number of constraints. However, there is a corollary in the sense that the embargo does not apply to emergency works carried out by utility companies and should a utility company apply to the Highway Authority to consent to break a road up under the embargo, consent should not be unreasonably withheld. The T.T.S. (Transport and Technical Services Department) believes the current embargo period of 12 months gives insufficient protection to its roads, in particular key traffic routes. Therefore, in line with developments in other jurisdictions, T.T.S. is seeking to bring legislation before the States next year to enable the post-resurfacing embargo period to be increased to 3 years and its administration to be made more effective. However, despite current limitations and its powers, the Transport and Technical Services Department is actively seeking to achieve an effective minimum embargo period of 3 years to its current capital resurfacing programme, including La Route de la Haule. This will be achieved in 2 ways; first through the voluntary support of utility companies where it is generally recognised that the proposed law changes will have public and political support, particularly in respect of high profile projects. Therefore when the department indicated to companies our intention to apply a 3-year embargo that proposal was not challenged in respect of all current projects. Secondly, we are developing better co-ordination. The current steady State funding has allowed the department to develop a long-term resurfacing programme extending up to 2009, which is being issued to all utilities companies, and this programme has been developed with

their full consultation to ensure that all planned utility and Transport and Technical Services Department works involving excavations are completed prior to any resurfacing.

2.8.1 Deputy J.A.N. Le Fondré:

The first thing that springs to mind is, is the Law only applicable to utility companies? And the original question I was proposing to ask as a supplementary was; is the main cause of the degradation of roads due to trenching by utility companies or is it, for example, commercial developers, or are there any other main reasons? But what I would personally like to know; is the Law only enforceable against utility companies and if somebody else comes along and wants to dig it up you have no powers?

Deputy G.W.J. de Faye:

Sorry, I am only in the position to inform the Deputy that the information I have is that the Law applies to what are called statutory undertakers. I think that does restrict it to utility companies. I could not give him a clear indication as to, in effect, who causes the most trenching works because there are obviously a whole variety of situations where trenching works are carried out.

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

I wonder if the Minister could advise us as to whether utility companies having dug up the roads and damaged them, do they have to then fund the resurfacing of those roads?

Deputy G.W.J. de Faye:

Yes, they do.

2.8.3 Deputy R.G. Le Hérisier:

What number of complaints has the Minister, or his department, had as to improper remediation of roads once utility works have been undertaken, and what is the attitude of his department towards these kinds of complaints?

Deputy G.W.J. de Faye:

I have had no such complaints put to me since I have been in the role of Minister, however the department keeps a watching brief on all resurfacing works carried out either by utility companies or by ourselves and the quality of the work is monitored.

2.8.4 Connétable T.J. du Feu of St. Peter:

While we are on the roading question at Route de la Haule, everyone is aware of the programme of arrangements which has had to be put in place to enable that work to take place. There has been one or 2 little hiccups along the way, but bearing in mind on the balance of the whole exercise I would like to say a very big thank you and appreciation to the Minister and his team for the way and manner which they have carried out the actual duties, and also the way that they have expressed concern with all the residents and kept them informed every step of the way. It is all very well to hear the constant criticism but I think when credit is deserved it should be accorded.

Deputy G.W.J. de Faye:

I am very grateful to the Connétable of St. Peter for his very kind remarks and I will certainly extend his comments to those people involved directly in getting the project co-ordinated. I would simply say that one of the reasons that things do appear to be going smoothly is that now, following changes made earlier in my period of administration, a number of things have occurred. One is that we now push out the road works signage much further than was previously undertaken, and we also carry out very detailed and comprehensive analysis of the road traffic management arrangements. I am very pleased to understand that things are going well and are appreciated. Obviously I am also indebted to the Connétable for the assistance we have had from the Parish and his Honorary Police

as well as the other Parishes involved in this road works. However, it is not over yet, so touch wood.

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

Notwithstanding what the Constable of St. Peter has just said, and with which I entirely concur I have to say, in view of the proposed development of Bel Royal and the proposed pumping station in the car park on the other side of the road, would the Minister confirm that the newly resurfaced road will have to be opened up to achieve this?

Deputy G.W.J. de Faye:

I anticipated this question when I saw the original question from Deputy Le Fondré and all I can say is that a chill ran down my spine when I first looked at it, but on making inquiries I am informed that a drain effectively already exists as a conduit under the road so that with respect to any future pumping arrangements that may or may not take place with regard to the Goose Green development my understanding is that the road will not have to be interfered with.

2.9 Deputy K.C. Lewis of the Minister for Treasury and Resources regarding action to be taken against shops and businesses charging the equivalent of V.A.T. on top of G.S.T:

With the introduction of the G.S.T. does the Minister have any plans, in consultation with the Minister for Economic Development if necessary, to take action against shops and businesses charging the equivalent of U.K. V.A.T. (Value Added Tax) on top of G.S.T?

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

In any market economy shops and businesses charge prices which are influenced mainly by competition and by what customers are prepared to pay. V.A.T. is the U.K. tax, which is not payable on goods and services supplied in Jersey. Suppliers can, however, charge what they consider the market will tolerate and a number of retailers do charge the equivalent of V.A.T. (Value Added Tax) inclusive prices. I think the main action that the States can take in this respect is firstly to have policies that encourage rather than restrict competition and, secondly, for consumers to be provided with information to assist in making informed decisions. The *Jersey Evening Post* and the Consumer Council, for example, should be congratulated on their campaigns to encourage retailers who do charge lower prices than their U.K. counterparts to highlight this in their shop windows. It is my personal opinion that much of the so-called V.A.T. inclusive pricing in Jersey is a result of U.K. chains' reluctance to alter pre-priced tickets. My belief is that these retailers will be more likely to absorb the 3 per cent G.S.T. (Goods and Services Tax) if they are required to charge G.S.T. inclusive prices rather than if they add 3 per cent at the till even on top of those tickets, but that is a matter we will be debating shortly. In conclusion, Sir, I understand that the Minister for Economic Development is, in fact, considering a Price Marking Law and hopes to bring that Law and Regulations to the States later this year.

2.9.1 Deputy K.C. Lewis:

Further to that, Sir, I too congratulate my colleague, Deputy Breckon, for his good work with the Consumer Council but I consider the Consumer Council to be a safety net with policy coming from Ministers. Only yesterday I received an email from a constituent complaining that V.A.T. had been removed from one particular item but then this item had been widely advertised as a promotion, which is completely unfair. Does the Minister not agree?

Senator T.A. Le Sueur:

I think, Sir, if shops charge a price which is higher than the customer should be paying it is up to the customer to vote with their feet. Unless we have a situation where we try to control every

single price charged by every shop I think the only effective solution is to encourage greater competition and greater awareness.

2.9.2 Deputy G.P. Southern:

Does the Minister not agree that the time for encouragement and awareness is past and the time for action is present? Can he give more details of the Price Marking Law he understands the Economic Development Minister to be considering?

Senator T.A. Le Sueur:

No, Sir, it would be wrong of me to pre-judge or even pre-empt what the Economic Development Minister may wish to bring but I am sure what he wants to do is to promote legislation which is in the interests of the consumer.

2.9.3 Deputy G.P. Southern:

Supplementary, if I may, Sir; the Minister carefully avoided answering my question. What action is he prepared to take to ensure that V.A.T. is not foisted on inhabitants of Jersey?

Senator T.A. Le Sueur:

Any business that issues an invoice which purports to charge V.A.T. or G.S.T. at other than the 3 per cent set down by the Law will be in breach of the Goods and Services Tax Law once the Law is passed. But if a shop chooses to charge a price which reflects a V.A.T. equivalent that is something which no legislation can deal with effectively, Sir, in the present situation.

2.9.4 Deputy A. Breckon of St. Saviour:

I wonder if the Minister is aware of any terms under the Regulation of Undertakings Law that could be applied to ensure that U.K. retailers do charge different prices?

Senator T.A. Le Sueur:

I am not aware of any Regulations, Sir, and I shall be surprised if there were.

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

Does the Minister not agree that the theory of consumer choice in realistic terms is more open to the rich than to the poor and it may be that there is a moral imperative on those who could well afford to pay a price equivalent to U.K. V.A.T. plus G.S.T. to help force down prices by their consumer choice thus protecting the poor?

Senator T.A. Le Sueur:

The Dean makes a very good point there. But I think it is going to depend very much on the type of goods being offered for sale and the element of choice that there is in existence. One can have all the best intentions in the world but if a customer has only one place in which to shop they are forced to pay the price at that shop. If there are many shops around and the customers generally, rich or poor, all indicate that they are not prepared to pay over the odds for their goods then retailers, sooner or later, will get that message.

2.9.6 Deputy G.P. Southern:

Again, the Minister draws a fine distinction between a payment of V.A.T. in the Island and prices equivalent to the payment of V.A.T. on the Island. Does he not consider that charging prices equivalent to V.A.T., given that V.A.T. is not paid on exports into the Island, amounts to fraud and will he either bring a Law to outlaw this practice or support his Economic Development Minister in so bringing such a Law.

Senator T.A. Le Sueur:

The price which a shop chooses to charge may well be inflated above the normal rate if it believes it can exert a higher profit margin. Unless we legislate to dictate what the profit margin of any shop would be; trying to regulate that price is not feasible. I would point out to the Deputy that if V.A.T. inclusive or pseudo-V.A.T. prices are being charged that revenue does not go to the Chancellor of the Exchequer in the U.K. or to the tax man here, it goes to the shopkeeper himself. It is that shopkeeper who is making that profit. If the customer is prepared to pay 60 per cent profit margin rather than 30 per cent profit margin that is up to the customer.

Deputy G.P. Southern:

The Minister has again avoided answering the question. Will he act on behalf of the consumer to protect Jersey customers this year?

Senator T.A. Le Sueur:

I will work with the Minister for Economic Development in producing Price Marking Regulations which I believe are suitable to achieve as much as we can of what the Deputy is trying to achieve.

2.10 Deputy P.V.F. Le Claire of the Minister for Transport and Technical Services regarding alternatives to the compost operation at La Collette:

What progress, if any, has been made in identifying partnerships and alternative locations for the compost operation at La Collette?

Deputy G.W.J. de Faye (The Minister for Transport and Technical Services):

I can confirm that 11 organisations or individuals have submitted expressions of interest in response to the public notice that went out and 18 potential sites were put forward within those expressions of interest. I can also confirm that the sites proposed include some which may be suitable for public reception and some which may be suitable for waste treatment. A site evaluation process is currently underway to review all of the potential sites against the expression of interest criteria. All the sites that pass this initial evaluation screening will then be considered against a more detailed set of selection criteria during May. The results of the site evaluation are expected in June. However realistic, despite such an optimistic timescale, the earliest time that we can expect to see a replacement compost facility operational is likely to be early in 2009. I am, of course, aware of and share the Deputy's concerns in relation to the inconvenience caused by the occasional odour problems being experienced by the public due to the current La Collette green waste operations. I can assure the public that the La Collette site is being managed to minimise their inconvenience but the site must remain an essential component of our waste management operations until a replacement can be provided.

2.10.1 Deputy P.V.F. Le Claire:

Some people may believe that there is concern about the Minister's actions, Sir; on the contrary I would like to applaud the Minister and his department for these recent initiatives which do go to the heart of the matter which is seeking to save the States an enormous potential amount of expenditure and set that into a saving that can be managed within the heart of the Island. In congratulating the Minister and his department in these recent initiatives can I take it then that there is now an underlining belief that the compost operation at La Collette will be eventually moved away from that area into the countryside and thereby saving us the millions of pounds that were projected in continuing to operate down there?

Deputy G.W.J. de Faye:

I thank the Deputy very much for his kind remarks, Sir, but I would not want to get his hopes up too early. Yes, we are looking at alternative sites and I can say that the department is very grateful for the personal input of Deputy Le Claire and also the co-operation we have had from the

Environment Scrutiny Panel. But at this stage I cannot give any final determination on where precisely the composting facility will be sited.

2.10.2 Deputy J.B. Fox:

The Minister in his answer refers to a site, although I appreciate he is still going through the merits of the various proposals that have been brought forward. Is the thinking at this time that in fact a site can be identified or will there be more than one site that might be necessary to fulfil an alternative operation to La Collette?

Deputy G.W.J. de Faye:

If there is a divergence of view between the department and the Environment Scrutiny Panel working with Deputy Le Claire it would be on the number of what might be described as industrial composting facilities that would be appropriate for the Island to run. The department is currently of the view that we should have one central composting facility of an enclosed variety, however we do agree and are grateful for the suggestion from the Environment Scrutiny Panel and Deputy Le Claire for the idea of a number of sites which would be used for reception facilities. This would be a much more convenient way for the public and those people who are professional contractors to get rid of their green waste without having to go all the way to a particular located central facility wherever that facility may be located.

2.10.3 Deputy P.V.F. Le Claire:

Recently the media was reporting upon a farmer who was operating his own composting operation which was deemed to be a planning issue and therefore was being advised by the Planning Department. I wonder if the Minister and his department have approached that farmer in respect of the desire on his behalf to compost his own material for his own use and whether or not an approach could be... because this certainly was not one of the ones that we visited when we went to go and find people. I just wonder whether or not that individual has been contacted by the Minister or his department, if he knows which one I am speaking about. I do not want to mention his name.

Deputy G.W.J. de Faye:

I regret that I know no more about this particular matter other than what I have gleaned from the local media. I understand this is essentially a matter for Planning. I believe it could well be a change of use with respect to that field and the situation is somewhat dictated by the recent designation of a Site of Special Interest on the site. To what extent the Transport and Technical Services Department be consulted on this matter I do not know at this stage but I will certainly look into it.

2.10.4 Deputy P.V.F. Le Claire:

The issue, Sir, is that I am wondering whether or not there might be an opportunity for the department and the farmer to maybe look at providing another reception area or another facility perhaps.

Deputy G.W.J. de Faye:

There may indeed be an opportunity available, Sir, but I think my own understanding of this issue is this is very much a private matter and it relates to land that itself is linked to a family that is in, effectively, a horticultural business therefore I am not entirely sure how appropriate it is to interfere in that particular procedure.

3. Questions to Ministers without Notice - Minister for Planning and Environment:

3.1 The Connétable of St. Lawrence:

I see on the Order Paper that the Minister for Planning and Environment is down to make a statement under item K on the Goose Green site, I understand that it is possible the Minister will not be making such a statement. Would he please confirm whether or not he will be making a statement and if he is not going to make that statement would he explain why?

Senator F.E. Cohen (The Minister for Planning and Environment):

I will not be making the statement. Yesterday evening I received a communication from the developer of the Bel Royal site that raised issues that I had not previously considered. I decided that those issues require me to take legal advice from the Law Officers and I have instructed my department to obtain that advice this morning. Literally within 5 minutes of receiving the communication last night I did forward it on to the relevant Parish politicians, including the Connétable, so he was informed, albeit in confidence, that I would not be making the statement today.

3.1.1 The Connétable of St. Lawrence:

Could I ask a further question of the Minister? Is it true that the fact that the statement was going to be made in the House today was released to the developer and does he think that is appropriate that statements that are supposed to be made to the Members of this House should be released to other parties before they are released to the Members of this House?

Senator F.E. Cohen:

I personally rather casually authorised yesterday the release of the statement to the developer; in this case I do think it was appropriate, particularly on reflection. It contained in it a suggestion of, I think what would probably be considered a compromise, and it was really a question of whether the developer was prepared to accept not pursuing alternative courses of action against the department or whether they would be prepared to give me some latitude. I think it is important that Members understand that I have approved the application for 102 houses at Goose Green and that is a fact, it is approved. What we are now dealing with is the conditions that are attached to the consent when the consent is sent out and I dealt with how I propose to deal with that earlier in relation to Deputy Mezbourian's question.

3.2 Senator B.E. Shenton:

When planning and building control fees were introduced 10 years ago it was on the basis that the funds raised would be used for environmental purposes. Is the Minister confident that his department has adhered to this requirement and if so will he produce the facts demonstrating that planning fees have been used for environmental purposes as intended?

Senator F.E. Cohen:

Firstly, I did not know that and I suppose the answer is; it depends what you mean by environmental purposes. The purpose of the Planning Department is to protect the built environment. I think in terms of protecting the countryside a relatively good job has been done. I do not believe that in terms of presenting the Island with buildings from which the Islanders derive pride and inspiration that the department has a particularly wonderful record but it is something that we are presently seeking to improve.

3.3 Deputy K.C. Lewis:

Further to plans to redevelop the Waterfront Esplanade car park area and of course the town park, will the Minister in consultation with other States' departments insist that adequate parking is provided elsewhere before any plans are approved?

Senator F.E. Cohen:

I am not sure that I can give an undertaking as to the timing but I can assure the Members that we are taking a holistic view of the parking requirements in the town, and this is being very carefully

assessed and Members who have had the opportunity of studying the EDAW report will see just how seriously we are taking this.

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

Can the Minister provide Members with an update regarding the introduction of limited third party appeals, including whether the department has so far received any requests for appeals from third parties?

Senator F.E. Cohen:

The system is in place. The officer is in position and so far, as far as I am aware, we have not been advised of any third party appeals.

3.5 Deputy A. Breckon:

I wonder if I could ask the Minister if he believes that the new hotel on the Waterfront adds to the Island's architectural merits and built heritage?

Senator F.E. Cohen:

I think, Sir, I had better be a little careful how I answer this question. I do not believe that this is a building from which anyone is likely to derive pride or inspiration. That does not mean it is necessarily the fault of the developer or the developer's architect. It may be that there could be all sorts of circumstances that have led to that. I can assure you that similar buildings will not happen under the direction of Sir Michael Hopkins.

3.6 Deputy G.P. Southern:

In the light of answers to Deputy Mezbourian suggesting that compliance with conditions attached to planning consents is somewhat haphazard will the Minister state when he will come to the House with measures appropriate to strengthen his powers to ensure that such compliance takes place?

Senator F.E. Cohen:

I think the problem is not that we do not have the mechanism to enforce. The problem is that we do not have the resources to enforce. I am intending to come to the House later in the year with a proposal to significantly increase commercial planning application fees and I have instructed my department to make sure that when we do come forward with this that it is a comprehensive mechanism to ensure that we deliver within the department everything that our customers - because applicants are customers, they pay a fee - and Islanders who we represent expect out of the Planning Department and I want the whole lot all thrown into one pool and that will include adequate measures to ensure that consents are properly monitored and that conditions are properly imposed. But I can do a quick fix in relation to issues like Goose Green.

3.7 Deputy D.W. Mezbourian:

Members of the public are able to obtain from the Planning Department copies of location plans which identify areas within the Island and show buildings in those areas. What guarantee can the Minister give that such plans are accurate?

Senator F.E. Cohen:

I think I am correct in saying that if you obtain a Digimap image from the department it is a 2006 Digimap image because there was a fly past in 2006. So I would assume that if you obtain an image from the department providing the building was in position in 2006 you will see it. I presume that if it has been constructed between the time of the fly past and now you will not see it.

3.7.1 Deputy D.W. Mezbourian:

Supplementary, if I may. I did ask whether the Minister was able to give a guarantee that such plans are accurate and I would like to have an answer on that?

Senator F.E. Cohen:

Sorry, Sir, I did not get to the heart of the question. I cannot give a guarantee. All I can do is to say that the department does its best to ensure that the plans are up-to-date but progressively from the time of the fly past the image you get will be progressively less and less up-to-date. So the more regularly we can fund fly pasts the more accurate they are going to be, but no I cannot give a guarantee.

3.8 Senator L. Norman:

Some time ago the Minister received an application for a housing development near the old holiday village at Plémont. Can the Minister say when that application will be determined and whether that will be before or after the Council of Ministers come forward with their preferred option for the future of the Plémont headland?

Senator F.E. Cohen:

The Plémont application will be determined as soon as is practical. I have only recently asked the officer concerned to write to the applicant's agent reminding them of certain information that they have not supplied. Sir, I am afraid we are really, at the moment, waiting on them and there is one issue which may be considered by some to be minor, but I regard it as quite important, and that is the future of the Puffin colony. There is an important Puffin colony and I have asked for a clear report that will outline the effects of any development on the Puffin colony and I am awaiting that as well.

3.8.1 Senator L. Norman:

The Minister did not answer the part where I asked whether the determination of the application will be made before or after the Council of Ministers come forward with their preferred option for the future of the Plémont headland.

Senator F.E. Cohen:

Sorry, Sir, it is not entirely in my control but I think the determination is likely to be before.

3.9 Deputy J.B. Fox:

Last week I had the pleasure of going over Norman Foster's Millau Bridge - which is an icon bridge - and I have never heard so many Frenchmen praise an Englishman in my life. I was wondering if he could indicate when Sir Michael Hopkins will be able to introduce to us an icon building that we too could be proud of on the Waterfront?

Senator F.E. Cohen:

You are shortly to see the first of Michael Hopkins' proposal, which is the new plans for the Weighbridge, which includes a proposal for a National Gallery and the current proposal is that that National Gallery will be designed by Sir Michael Hopkins. So the answer is very soon.

3.10 The Connétable of St. Lawrence:

We have discussed earlier this morning the importance of conditions on developments and in relation to Goose Green Marsh we have heard that there are going to be something like 60 conditions imposed. It is important to my mind that if conditions are imposed that they are properly policed and enforced. I am somewhat concerned that in the message that the Minister received last night from the developer, I believe, that in view of the fact that the Minister has made a statement already that he has effectively determined the application in favour in relation to Goose Green Marsh but that conditions are still in draft, and he has confirmed again this morning that they are still in draft, I am concerned that the developer in the message said to the Minister: "I have to advise that if the consent is not issued immediately we will have no choice but to take legal proceedings against you." Does the Minister think that is an unreasonable approach?

Senator F.E. Cohen:

No, I am afraid I do not. I think that the developer is probably desperately frustrated. I think the developer is very well aware that the application for 129 houses that I refused had an unequivocal officer recommendation for approval. I had knocked that down to 102 which is as low as I believe I was practically able to deliver. I have engaged with the developer in requiring them to significantly improve the design of the houses and to introduce some local relevance. They have responded to all my requests and I think they are probably pretty frustrated. I think we just have to keep a balance of all these issues and accept that we are going to impose stringent conditions and that we have to work out a mechanism to ensure that those conditions are properly satisfied and I have given my undertaking that I will do just that.

3.11 Deputy I.J. Gorst:

I hate to be a bore or be seen to be flogging a dead horse but in light of the Minister's comments this morning regarding the hotel on the Waterfront and the to-ing and fro-ing which led to its current design, is he not now prepared to admit that this would not have occurred under the Australian system whereby the planning and the building control would have been dealt with together?

Senator F.E. Cohen:

My knowledge of the process that led to the present Radisson Hotel on the Waterfront is pretty scant but my understanding is that the issues that led to the design solution we presently see would not have been resolved by the Deputy's suggestion of combining the 2 processes. It was simply that in order to deliver the yield that the developer wanted they required a building that is higher than the present and the Committee of the day reduced the size of the building. It was a dumbing-down exercise, as I understand it.

3.12 Deputy J.A.N. Le Fondré:

Does the Minister feel that the department has been under perhaps unsuitable pressure from the developer to improve the scheme at Goose Green Marsh and, secondly, to approve the scheme before third party appeals came in, which obviously the original commitment on 1st January this year only came in about 2 weeks ago?

Senator F.E. Cohen:

No, Sir. I have done my best to keep the St. Lawrence politicians apprised of every move I was going to make in confidence ahead of the move. The Deputy is very well aware of the position in which I found myself. I simply was not able to manipulate the timing of the decision around third party appeals. It would have been ideal to have manipulated the timing, to have effectively passed the decision over to a time after third party appeals were implemented, taken the weight off my shoulders and I could have sat back saying: "Well, if you do not like it go for a third party appeal." I simply was not able to do that. There is a planning process within which an applicant has a reasonable expectation of having their application determined promptly and they do not expect the politician involved to manipulate his or her decision around political issues, and that would have been a political issue had I chosen to do so. So, yes, it would have been...

The Bailiff:

Sorry, that expires your time. We come to the second question period of the Chief Minister. I invite questions of the Chief Minister.

4. Questions to Ministers without Notice - The Chief Minister:

4.1 The Deputy of St. Martin:

At a recent meeting with the Privileges and Procedures Committee with regard to the Ministerial government reform it is recorded that the Chief Minister gave Ministerial government a glowing first yearly report but said there were problems with Scrutiny saying that some Members were pursuing an opposition agenda. Would the Chief Minister give examples where some Members are pursuing an opposition agenda? Also, given the difficulties encountered by both States Members and Scrutiny Officers in successfully getting Scrutiny off the ground would the Chief Minister agree that it was time that he gave due credit to the good work being done in general to Scrutiny.

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

Yes, Sir, and gladly. In fact, I made that point in the meeting that I had with the review group and my comments were abridged in the *J.E.P.*. I made it abundantly clear that I thought there were some aspects of Scrutiny and some Panels within Scrutiny who were and are doing a first class job. Sadly, that part of what I said was not reported in the *J.E.P.* I assume it is... well, I know it is on the transcript so there we have it. But I have made in the past and I continue to make criticisms of some Scrutiny Panels. I was not specific in the evidence I gave to the review group about that but I have to say I think at least 2 of the reports produced by one of the Scrutiny Panels and the accompanying remarks issued in press release forms by its Chairman are clear evidence that that particular Panel on those particular issues was not working on the premise of being evidence-based and it basically reached their conclusions before they began their study.

4.1.1 The Deputy of St. Martin:

Could I press the Chief Minister to inform the House of those 2 reports which he did not agree with?

Senator F.H. Walker:

I do not think I will do that. I think the House is well aware of all the reports it has received and the House can reach its own conclusions.

4.2 Deputy R.G. Le Hérisier:

Fifteen months ago, Sir, the Chief Minister supported the Health Minister when issues were raised, reference the Job Families Agreement with nurses. We were told it was a blip, it was a heavy hand on a tiller and that things would return to normal and go on to greater and greater perfection, so to speak. Would he accept that this judgment was misplaced and that there are serious problems there and that they need to be addressed urgently?

Senator F.H. Walker:

I think everyone associated with the new structure, both from the employee side of things and the employer side of things, was very optimistic about what it promised and very optimistic about the timescale in which it could be delivered. Sadly, I think everyone involved with that has been disappointed that it has become more contentious than it had appeared to be and it has certainly taken far longer to implement than I think anyone imagined it would. But I agree with the thrust of the Deputy, it does need and is getting very considerable attention, both from the employee representative side and from the employer and I called a meeting a couple of months ago with employee representatives at which this was one of the major items of discussion and I am satisfied that the appropriate action has been taken. But it is complex and it cannot be forced on anyone. It has to be introduced by agreement and that is taking a considerable length of time.

4.2.1 Deputy R.G. Le Hérisier:

I wonder, Sir, if the Chief Minister, while it is not in his specific domain, as I said he was very supportive of the project. Here was a project intended to deal with the particular needs of a professional group who were very difficult to recruit and keep and retain group and yet the project and its objectives have seriously gone off the rails. Would the Chief Minister tell this House, Sir, what went wrong and what has been done to put it right?

Senator F.H. Walker:

I cannot give full details of what went wrong. It was a combination of things where it proved, once the agreements have been agreed it proved impossible to agree on how it should be implemented. That has arisen in a number of contexts; job grading is one and there are others. But the Deputy again is right, there were very high hopes at the time that this would introduce a much better structure, would aid recruitment at senior levels particularly, and that has been a problem. The good news, however, is that recruitment issues within the nursing profession in Jersey - recruitment problems - have eased very considerably in recent months compared to a year ago and that is a very positive position.

4.3 Deputy G.P. Southern:

Will the Chief Minister undertake to inform himself what the impact of the £2.5 million additional cuts required to pay for the 2007 pay rise have on particular departments and will he commit himself to bring this information to the House?

Senator F.H. Walker:

No, Sir, I will not. The Ministers concerned have accepted the position. The Ministers concerned have made their own provisions and we should recall that this is a one-off only, this is not an ongoing requirement. This is a requirement in the year 2007 only and I know full well that the Ministers would not have accepted that position was it likely to result in significant and serious cutbacks to the level of service we offer the public.

4.3.1 Deputy G.P. Southern:

Does the Chief Minister accept that it is perfectly acceptable for me to ask each of his 9 Ministers what impact that additional £2.5 million has?

Senator F.H. Walker:

If the Deputy wishes, by all means.

4.4 Senator L. Norman:

A few moments ago the Planning Minister told us that he is likely to determine the planning application for the houses at Plémont before the Council of Ministers come forward with their preferred option on the future of the Plémont headland. If that application is in the affirmative will that way of doing things not put the States at a huge disadvantage in any future negotiations?

Senator F.H. Walker:

We do not believe so. The fact is that a planning application is in process. A planning application has been submitted and the Law requiring that application to be decided upon kicks-in and it is necessary for the planning decision to be made so that the Council of Ministers are aware of its impact before we can take any final decisions on the final outcome of the headland. We have, of course, discussed this with the Planning Minister and others and we remain optimistic that a solution which will be widely accepted can be found.

4.4.1 Senator L. Norman:

Do I understand from that, Sir, that the Council of Ministers has decided not to come forward with their preferred option for the future of the headland until the Planning Minister has determined the application? In other words, everything is on hold until the application is determined?

Senator F.H. Walker:

Yes, Sir.

4.5 Deputy K.C. Lewis:

Further to reports that the U.K. has one of the worst drinking problems in Europe with a fifth of children aged 11 to 15 drinking at least once a week, does the Chief Minister think that raising the legal drinking age to 21 may be part of the answer?

Senator F.H. Walker:

That is not something I am qualified to answer at all. That is very much for the medical professionals and the Law Officers, I think, and others. What I can say is that (a) I am hugely impressed with the approach being taken by the Health Minister and his team which will shortly be published in the new directions policy which does concentrate on alcohol abuse as one of its main priorities. I am also delighted by the recent results of the survey among school children which show very clearly that serious drinking among school children is falling and falling sharply. So the policies in Jersey are having an impact and of course we need to build upon that further.

4.5.1 Deputy K.C. Lewis:

This is something that in the past I have approached the Minister for Economic Development and the Minister for Home Affairs that we do have a situation where we are having older teens buying drink for younger teens and that this may be... I think we have failed the youth to some extent and this may be an important way forward. Does the Minister not agree?

Senator F.H. Walker:

Again, it is not something that I have any personal experience of, nor do I feel qualified to give an answer. I think the Deputy would better direct his question in this context to the professionals.

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

Can the Chief Minister tell the House what maximum size population he would personally support for Jersey in order to achieve economic growth?

Senator F.H. Walker:

The States in their last debate on migration quite deliberately did not set a population ceiling. They agreed a migration policy, that is the policy I am obliged and required to follow, that is the policy I am following. There is no question of a ceiling and I am most certainly not prepared to put a figure on it at this stage or probably at any stage.

4.7 Deputy R.G. Le Hérisier:

Notwithstanding the excellent initiatives and vision laid out in the St. Helier Regeneration Plan, would the Chief Minister acknowledge - and the Waterfront must serve as the example of recent history - would he not acknowledge there is a real danger that unless there is genuine consultation and different kinds of consultation this will hit the kind of cynicism and resistance which has bogged down the Waterfront plan until very recently?

Senator F.H. Walker:

I think there are a number of underlying issues there. First of all I endorse the comments made earlier by the Planning Minister. It has to be said that the architecture on the Waterfront has not exactly set many people on fire. However, we should not forget the point that the Waterfront is a highly popular and very well used facility, mainly by young people. So far as the consultation process is concerned, the Waterfront must be one of the most consulted upon issues in Jersey in recent years but I am particularly pleased with the work being undertaken under the leadership of W.E.B. (Waterfront Enterprise Board) and, indeed, the Planning Minister and others on, for example, the sinking of the road and the Hopkins' proposals generally. What we need to do now is ensure that we deliver a regenerated St. Helier only with high quality architecture having been fully consulted upon. I have every confidence that the steering group and the Planning Minister will ensure that that is exactly what takes place.

4.7.1 Deputy R.G. Le Hérissier:

I wonder if I can follow-up. Could the Minister say specifically how the consultation and the involvement of the public and of this House will be different so that the mistakes we made with the Waterfront will not be repeated?

Senator F.H. Walker:

The mistakes the Deputy refers to were not on the back of the consultation process, they were frankly on the back of architects' designs and planning decisions of the day. That had little to do with public consultation. The public, as I have said, have been widely consulted. The Deputy attended the presentation - and I am grateful to him for doing so - on Monday (yesterday morning) and he is well aware that there is a major series of consultation events that are taking place. There are exhibitions, there are walkabout tours, there will be leaflets, there will be every opportunity for the public to respond. Of course it is up to the task force to take on board the public's comments. It will not be possible to meet all the public's ambitions because many of them, as always, will be contradictory. But the public will be listened to and will have, I emphasise, every possible opportunity to contribute to what is undoubtedly the biggest opportunity for the town - for St. Helier - that we have seen in at least one generation.

4.8 Deputy J.B. Fox:

The EDAW report that was published yesterday - I think it was - will be displayed or details of it will be displayed at the Town Hall and the comments that you have just been making about the Waterfront also link into the improvement of our Island and our capital especially. I was just wondering if it would not be possible to support the Constable of St. Helier through the Chief Minister's Office or the Council of Ministers, to have permanent public displays on the changing face of St. Helier with its plans, *et cetera*, so the public have one known place that they can just walk in and publicly - just like an art gallery...

The Bailiff:

Deputy, the question is becoming so long that the Minister is going to be unable to reply.

Deputy J.B. Fox:

Sorry, Sir, I will leave it at that.

Senator F.H. Walker:

Excellent idea, Sir, and I will discuss it with the Connétable. First class idea. I think that is what he has in mind anyway but I agree we should strive to put before the public.

The Bailiff:

That concludes the second question period without notice. I have no notice of any personal statements under J. Under K, Matters of Official Responsibility there is a notice of a statement by the Minister for Education, Sport and Culture.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

5. The Minister for Education, Sport and Culture regarding the future of Fort Regent

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

As Members know, the future of Fort Regent has been the source of much debate in recent years. The former Education, Sport and Culture Committee decided that a conservation statement should be prepared setting out the architectural, cultural and historical significance of the site so that this could be taken into account when formulating any plans for development. The statement has now been completed and will be made available to groups who are considering Fort Regent's future. In addition, copies will be sent to all of the organisations that were consulted as well as being sent to the States Greffe, the library and placed on the States' website. I am also arranging, Sir, for copies of the conservation statement to be placed in the States Members' room later this morning and if

any Member wishes a personal copy this will be provided by my department. Because this statement is in fact more of a book I have not had all the copies printed-up but if any Member wants a copy please get in touch. Thank you.

The Bailiff:

Does any Member wish to question the Minister on his Statement?

5.1.1 Deputy R.G. Le Hérissier:

Fort Regent was obviously a major focus of the St. Helier regeneration plan. Would the Minister state whether the conservation plan and its aspirations fit in with the St. Helier regeneration plan. Secondly, Sir, would he identify the financial implications of the conservation statement and where the money will be coming from.

Senator M.E. Vibert:

The plans for the regeneration of St. Helier by EDAW were informed by the conservation statement and the statement was prepared for us - I cannot remember the exact cost, it was not a great cost. If the Deputy wishes me to inform him I will find out because it was commissioned some time ago but took some time to come to fruition in that it took time to get permission for the photographs used to be published. It is very valuable and I would recommend it for those people interested in Jersey's history; an excellent read, particularly giving the history of the Fort right up to date.

5.1.2 Deputy R.G. Le Hérissier:

Sorry, Sir, I may not have made myself clear. I did not mean the cost of the report itself, I mean the cost, for example, of any work that is necessary in order that the Fort remains a very pukka heritage building.

Senator M.E. Vibert:

There are a number of recommendations made in the conservation statement, Sir, which will be taken into consideration with any development plans. The conservation statement is what it says on the tin. It is to inform any possible future development of the Fort and to ensure that it is maintained as a heritage site, and that is taken into consideration when looking how it should be used in future.

5.1.3 Deputy S.C. Ferguson:

To follow-up Deputy Le Hérissier; considering that the ongoing maintenance fund was utilised in the completion of the Mont Orgueil works where is the money coming from for this sort of conservation?

Senator M.E. Vibert:

The Fort Regent money was not raided for the Mont Orgueil works, the Fort Regent upkeep is part of the E.S.C.'s (Education, Sport and Culture) portfolio of properties which have now been handed to Property Holdings and we have a regular maintenance works which we carry out on the Fort.

Deputy S.C. Ferguson:

I am sorry, Sir, I should perhaps have made it clear. It was the Jersey Heritage ongoing maintenance fund. I am sorry, I did not appreciate that Fort Regent was not part of Jersey Heritage's remit.

The Bailiff:

We come next to a statement to be made by the Chairman of the Privileges and Procedures Committee.

6. The Chairman of the Privileges and Procedures Committee regarding the arrangement of Public Business in the Assembly

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

At its meeting last week the P.P.C. (Privileges and Procedures Committee) discussed the way in which arrangements are made to deal with public business in the Assembly when consideration of the items listed for debate is not concluded by 5.30 p.m. on any particular day. P.P.C. recognises that Members are, of course, free to take a view on the appropriate manner in which to proceed on each occasion but the Committee feels strongly that there are 2 important principles that should be borne in mind. First, the schedule of States' meeting for the year issued several months in advance now sets out a very clear programme of 2 possible continuation days for each States' meeting so that Members know which days to keep free of other commitments in their diaries. Secondly, Standing Orders provide that the States should normally adjourn by 5.30 p.m. unless the States decide to do otherwise. P.P.C. notes that there have been a number of occasions in recent months where Members have decided to carry on much later than 5.30 p.m. rather than come back on a scheduled continuation day. P.P.C.'s view is that this is not a satisfactory way in which to deal with outstanding business. Many Members have Parish, family or other commitments in the evening and need to make plans on the basis that the work of the Assembly will conclude by 5.30 p.m. or shortly afterwards. If the Assembly decides to sit late in the evening it is often the case that a number of Members with other unavoidable commitments simply have to leave and they are therefore unable to participate in debates and votes. Although P.P.C. recognises that Members must give due priority to attendance in the Chamber it is, in the Committee's view, unreasonable to expect Members to be available into the evening on any day for which there is a scheduled continuation day. P.P.C. therefore hopes that the Members will bear these considerations in mind when this situation arises in the future. As decisions on these issues are taken by a majority vote it would be easy for the minority who have family and other commitments to be prejudiced if Members vote to sit late rather than come back on a day that should already be set aside for States' business in their diary.

The Bailiff:

Does any Member wish to ask a question of the Chairman? Very well, that completes matters under K.

PUBLIC BUSINESS

7. Draft Goods and Services Tax (Jersey) Law 200- (P.37/2007)

The Bailiff:

We come to Public Business and I understand the Minister for Treasury and Resources wishes to make a request of the Assembly.

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

In fact I wanted to make 2 requests to the Assembly. The first, as the Order Paper says, is that we take the Goods and Services Tax Law as the first item of business on today's agenda, partly because of the importance of this Law and the need to get it in place as soon as possible. But also because the Attorney General will be out of the Island later this week and I suspect there may be questions which Members may want to ask of him. I think it is appropriate that he should be in the Chamber to deal with that. However, Sir, I also, while I am on my feet, have to request that the fourth amendment which I lodged last week should be considered today also. The Public Finances Law allows me the privilege of lodging amendments within the 14 day period normally reserved for ordinary States Members but it gives States Members the chance, if they so wish, not to debate those amendments until the 14 days have elapsed. I did circulate Members by email last weekend

asking if they had any concerns because I was anxious that the debate should not be deferred in respect of these amendments which - although some people may want to discuss them - I think are fully understandable. I therefore, Sir, make 2 requests. Firstly, that we debate the Law as the first item of business and we debate all the amendments today in addition.

The Bailiff:

Are Members content to agree that the G.S.T. debate should be taken first and that the fourth amendment should also be debated? Very well. Those requests are granted by the Assembly and we move then to consider Projet 37 - the Draft Goods and Services Tax (Jersey) Law 200-. I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

The Draft Goods and Services Tax (Jersey) Law 200-; a Law for an indirect tax on goods and services. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

7.1 Senator T.A. Le Sueur:

The debate on the Draft Goods and Services Tax Law represents another milestone along the road towards implementation of G.S.T. in Jersey. This journey commenced back in 2004 with the adoption by the States of Projet 106 agreeing to a move to the Zero/Ten corporate tax regime; and with Projet 44 of 2005 agreeing to an overall fiscal strategy for dealing with the consequences of moving to Zero/Ten. Those Members who were in the House at the time may recall that some people suggested that I was being premature in raising this issue so early. They may recall my views that we would need every week of the time available between then and 2008 if we were to deliver the strategy in an orderly and managed way. Here we are now in April 2007 and we now have before us the primary Law dealing with the implementation of G.S.T. There is still a long way to go before the tax can be implemented with a need for subsequent Regulations and administrative infrastructure, education in claiming for business and States' departments and no doubt a whole range of last minute issues and problems. Nonetheless we have come a long way in these last 3 years and in drafting this Law we have spent a whole year undertaking a consultation and communications exercise in order to achieve what we believe is the best possible form of legislation appropriate to our local needs and conditions. The Law before us today has been through several stages of development and while I am confident that it is entirely fit for purpose there is no doubt that we are entering new legal territory here and I am sure that in the light of future experience we can improve it further. There may even be scope to make improvements today. We have before us 3 sets of amendments to the draft legislation. One from myself, one from Deputy Breckon and one from the Corporate Services Scrutiny Panel. I would like to take the opportunity particularly to thank the Corporate Services Scrutiny Sub-Panel for the interest they have shown in this Law and the constructive and collaborative approach which we both adopted in order to achieve this and also the quality of their technical input. As Members know, my G.S.T. director has had years of experience in many jurisdictions including attendance before U.K. select Committees and he has stated publicly that the procedures of this Scrutiny Panel are better and more robust than he has encountered anywhere else. At a time when Scrutiny does not always receive the best of publicity I thought that was worth sharing with Members. That does not mean, however, that I will be accepting all of Scrutiny's amendments. **[Laughter]** I shall deal with each of the amendments in due course, including my own, when we come to debate the individual parts of the Law. At this stage I shall confine my comments to the general principles of the Law. I said earlier that the aim was to present a Law suitable for Jersey. Clearly we have looked at and learned from the legislation in other jurisdictions. In particular, we have tended to look at the approach taken by some of the Antipodean territories - that is the Far East - which have introduced G.S.T. or V.A.T. more recently than some of the original European countries. Although the general principles may not vary very much from one jurisdiction to another we have tried wherever

possible to keep the Law simple and, wherever possible, to deal with day-to-day activities by way of Regulations. What is before us today therefore represents what, in my view, is an essential framework within which the Law can operate. Later this year there will be the need for one or more sets of Regulations which will go into the detailed operation of the Law and it is at that stage that more of the details should become clearer. I have said that the draft Law underpins fiscal framework similar to many jurisdictions elsewhere, and I was therefore a little bit surprised to be alerted to a possible difficulty which seemed to be unique to Channel Islands and which arises out of a possible interpretation of Protocol 3 of the Treaty of Accession. Although I was aware that we needed to be careful about complying with the terms of Protocol 3 I did believe that the Law as drafted was fully compliant. Nonetheless this was such a fundamental issue that once the Law had been drafted it was felt prudent to obtain an independent view that the Law was fit for purpose. It was therefore a matter of some concern when the Attorney General advised me that there could be a problem of incompatibility. A great deal of work was done by him and his advisers and my advisers in addressing these concerns and I am pleased to say that the present draft has done so. While of course nearly anything can be correctively argued if someone decided to do so, I do not now expect any problems to arise. A strong case can be made for the proposition that the draft Law will not if enacted contravene any prohibition on charges having effect to customer's duties by providing levying of taxation on imports to the Island, even though circumstances might arise where some domestically produced goods would not be subject to the tax. While these investigations may have delayed the implementation of this Law by 2 or 3 months I am more than satisfied that we have established beyond all reasonable doubt that this Law is fit for purpose and I therefore anticipate that its passage through the Privy Council can be achieved with the minimum of delay. If I now turn to the structure of the draft Law, Members will see it is made up of 18 parts and 9 supporting schedules. This perhaps does not immediately give the impression of a very simple Law but I can assure Members that G.S.T. or V.A.T. laws in other jurisdictions are considerably longer and more complex. However, as I said before, there will also be supporting Regulations and I cannot say at this stage just how detailed they may need to be. Hopefully we can maintain our principle of keeping the legislation as brief as possible, as understandable as possible, and ensure that it is fully fit for purpose. As I say, I shall deal with the different parts of the Law in more detail once we have dealt with the principles of the Law. Within the Law there is something like 40 references to Regulations and I think this is indicative not so much of the potential complexity of the Regulations as much as the need to keep the Law confined to essentials. What the Law does is to give power to make these Regulations but it does not mean that all of them will need to be introduced. To the extent that some of those Regulations will definitely be needed prior to the implementation of G.S.T. they are being worked on, and as soon as this draft Law is approved by the House a consultation document can be issued straightaway for discussion and Scrutiny. It may well be that we lodge those Regulations in stages depending on their relevance and their degree of importance. This will give those businesses which will be subject to G.S.T. the detail they need in order to begin to plan their operations. However, even in advance of the Regulations being lodged and debated we have already started a programme of advice, education and consultancy for any businesses which are interested and I am encouraged by the news that the take-up of this advice is already quite significant. I attended a presentation earlier this month at the Chamber of Commerce at which something like 200 people attended and so popular is it that they are having a re-run next month. There is certainly the need from businesses to make sure that they are aware in as much time as possible of the requirements for G.S.T. and Members will have seen a letter from the Chamber of Commerce over the weekend requesting that they give sufficient time to ensure that they are fully up to speed. I am committed to doing that and I have told them and I have repeated to this House that I would not want to implement G.S.T. for a period of 12 months from now in order that all those details can be fully ironed-out and that everyone can be fully satisfied and understand the implications. Nonetheless, it is important that we get the Law passed today and that we do not delay its implementation because Members are quite aware of the revenue consequences of doing that. Coming back to the Law itself, it sets out the nature of the tax, details

of the registration process, sets out various definitions and also sets out a framework of compliance and enforcement. Among other things it puts into law the principles which the States has already agreed which is the rate of tax being 3 per cent, it means to vary the rate of tax after the 3-year initial period, the registration threshold of £300,000 and the goods and services to which the tax will apply. In respect of that last item I should perhaps add that since the last debate on G.S.T. last autumn I have now varied my proposals in order to give more favourable treatment to healthcare service and products and set out my proposals in respect of registered charities. Conversely, following comments at the time of the last debate I have now varied the scope of G.S.T. in respect of building works to limit relief to construction of new residential dwelling accommodation and provided that other repairs and maintenance will be liable for G.S.T. at the standard rate. Sir, I think that gives Members sufficient background to the draft Law and I therefore propose the Law in principle.

The Bailiff:

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

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

The first thing I would like to say is that my Panel remains fully committed to the principle of G.S.T. and fully supportive of its implementation as soon as possible. Just a few comments to add to what the Treasury Minister has said. First of all, charities. The provisions in the Law are indeed very welcome and I have to say that we have, or we will have, a G.S.T. treatment for charities that is among the most generous of all jurisdictions studied by my Panel and I think that is to be applauded. There are one or 2 caveats, I think the Minister is aware of them. My Panel has recommended that the designation of charitable status and a review of those entities that are currently classed as charities takes place and I think that that is something that the Minister generally has accepted. The second caveat applies to commercial activities that currently charities are carrying out, things like charity shops and events and clearly they do compete with some areas of the private sector. If the designation of charitable status... and there is a review carried out of those charities, then I think that in the future those problems - the commerciality of activities of charities - will be kept under control and I do not particularly perceive that there would be a problem in the future. But it is an area that we need to keep an eye on. One of the welcome side-effects of the Minister's treatment for charities is, in fact, in the area of education and it is true that many fee paying schools are in fact charities so they will similarly benefit from the treatment of charities but, again, a couple of caveats. What about those schools that in fact are not charities, and I would urge the Minister for Education, Sport and Culture to look at that one together with the Treasury Minister fairly rapidly. Similarly another caveat, and again this is talked about in our report, and that caveat is the early years' strategy and childcare provision. There is urgent work needed there; there is Scrutiny work that is required and there is also work from the Council of Ministers in this area and we would urge that that work is carried out urgently. As to the zero-rating of extensions, improvements, maintenance and repair, or rather should I say, the no zero-rating of those items as opposed to the zero-rating of the supply of new housing units - new, as the law stands - we do have one small caveat. We do welcome it, we think it is a very sensible move and is an equitable move and the Treasury Minister has shown balance on this one; but we do have one small amendment and I will not talk anymore about it, we will talk about the amendment a little bit later on. Turning to the question of the delays to the implementation of the Law and the legal issues involved. I have to say that my Panel remains disappointed. I have to say that quite clearly. As the Minister says, after all we started this journey way back in 2004. Surely this could have come to light earlier. It is also somewhat surprising that the financial forecasts from the Minister and the Council of Ministers generally have only recently been updated - and I mean in the last month or so - when it was quite clear that the delay and the loss of the revenue... it was quite clear that that was going to be there before Christmas, would be my view. Why did we not have the

financial forecasts updated sooner? So we are disappointed also on that one. I will not go into the question at this point of the 3-year commitment on the 3 per cent. We have an amendment on that so I will reserve my comments until that point. A few other minor ones that spring to mind. My Panel has carried out a certain amount of research with regard to special schemes, for example, the treatment of used cars and what are commonly known as margin schemes. We do have fairly conclusive evidence that there will be a significant loss of revenue if the Minister does not bring in at the Regulations stage a used car margin scheme. So we would urge him to look at that one quite carefully. Financial services: it should be borne in mind by the Assembly, by Members, that the Zero/Ten tax regime substantially reduces the tax burden of most financial institutions and it was because of that, that during the public consultation stage it was quite clear that the public expected something like £5 million to £10 million worth of revenue still to be collected from the financial services sector. Members may have noticed that there is very little on the financial services sector in our report that we published 2 weeks ago. The reason for that is that we had always intended to report in detail in Part 3 of our review and at that point the details of the Regulations would be known and therefore we would carry out further research and seek evidence during that process. So I give due notice to the Assembly to expect another, I am afraid, boring Part 3 to the G.S.T. report when the Regulations are out and we will deal with financial services in some detail at that time. I notice that the Treasury and Resources Amendment 4 which probably is not particularly contentious will come up later - we will talk about that at the time - but there is something that is quite a lot more contentious and that is the proposed removing of Articles 61, 62 and 65 from the Law and this deals with the partial exemption scheme for the financial services industry. Again, I will save my comments until that comes up. I note the Treasury Minister's commitment as regards the Commissioners that he will make sure that the Commissioners are bolstered, their numbers are increased, to cope with any increases in the early years of the implementation of G.S.T. We are worried that they will get swamped. We have expressed those views to the Minister and I hope, and I believe, that he has taken that concern on board. The import *de minimis*, this famous anywhere between £100 and £500 import *de minimis* that hit the press. We would just like to make a comment that we believe that the needs of local businesses with regard to off-Island competition is also highly significant. At least as significant to the cost of collection of small amounts of G.S.T. We are concerned and we think it is a legitimate concern of local businesses that the decision will be made purely on the costs of collection and the revenue implications. It is, we believe, a little more complicated than that and we would ask the Minister to bear that in mind when he makes his decision. The question of point of sale or inclusive pricing: well, we have an amendment from Deputy Breckon on that. Again I will save the majority of my comments - if we get to that point - except to say that we were at one stage intending to amend these articles ourselves but it was pointed out to us that in fact the States under the current draft will have complete control over the detail of inclusive or exclusive pricing when the Regulations are debated in a few months' time. We know that Deputy Breckon's amendment is well-intentioned but we are finding it difficult to see how his amendment adds materially, shall we say, to the ability of the States to control this aspect of the operation of the G.S.T. through Regulations. We believe that the Treasury Minister always intended to do that in any case in the current draft. But we will wait for the debate and vote accordingly. The Constable of Grouville highlighted one particular point that was missed in the G.S.T. Law and I do not see that the Treasury Minister has, as yet, addressed it. That is the anomaly to do with the way that the Law zero-rates residential accommodation but standard rates holiday lets and there is an anomaly there to do with the time - and I am sure the Constable will explain more if necessary - to do with the time spans where the difference between the zero and the 3 per cent rating comes in. I would hope that the Treasury Minister has not omitted or, shall we say, left that one but we have not heard anything from him and we would ask him to respond to that. So, Sir, clearly I am going to conclude my comments on the principles now. There are a number of amendments that are proposed by my Panel and I will save further comment until each is debated, but suffice to say, once again - and to emphasise the point - we very much appreciated the full co-operation of the Minister and his team at the Treasury and, in particular, the Director of

G.S.T. while carrying out the review, and to acknowledge once again the help of our technical adviser and officers. We remain fully supportive generally of the introduction of G.S.T. as early as possible in 2008.

7.3 Deputy A. Breckon:

When the Treasury Minister spoke he talked about another milestone, I think in reference to the fiscal policy. I would suggest it is a big millstone. He outlined in his few words some of the complications that were going to occur; the red tape and the bureaucracy. When you think of everything from the purchasing of a daily newspaper, this thing is going to be an absolute nightmare. You can understand therefore why people are not overjoyed about and I must say I have never supported this and I still do not believe we have looked at every method in the fiscal measures we have got of raising revenue. Not long ago the Treasury Minister did an effective consultation exercise to boat owners. What he asked them is: "Do you think I should raise the impôt on motor fuel?" and I think from memory there was 104 responses and 103 of them said: "Of course you should not." Had we done a similar exercise with the public on G.S.T. I think it would have overwhelmed that result but of course we never did. What we did instead - or what the Minister did - he did a road show where the Indians were headed-off at the pass and opposition and things and people were given some comfort in that this will not be complicated, this will be easy to understand, and whatever else. I would seriously ask Members to ask themselves: "Where are we now?" I think this is an own-goal for Jersey because it is not just internally, it is how the outside world will look at us. We will not have to go very far across the water to say somebody else is not doing this. You have got companies that trade in both islands, they are going to have to have different price structures and reorganise themselves. There is a cost to that and somebody has to pay for that, and this will not come from the revenue that has been raised, it will come from businesses that will pass it on to their customers. What we could end up with is a double whammy here where we have U.K. prices plus. Again, that message will go out and I think the damage will filter through and indeed as would happen with competition, our competitors will seize on that as an opportunity to fly their own flag and say how wonderful they are, even if they are not. The question then that Members might ask themselves is: "Why do we not charge taxes to people who can afford to pay it?" We did have a fiscal review group - a fiscal strategy group - that seems to have fizzled-out. What I am really concerned about is what has not been put on the agenda here and why these things were not considered along with this and this was not perhaps the sole option for raising revenue as implications for staffing and it filters through people's everyday lives, and I would ask Members to bear that in mind. I personally, Sir, am not convinced that all the options have been considered for other fiscal measures. It is very convenient to tax consumption even at a basic level, and what we are proposing today, Sir, is very, very inclusive. It will hit those on low income and it will hit them hard. There will be people who will not benefit from Income Support, they will not get any assistance and many of those would be low to middle incomes. They will be paying extra taxes through Goods and Services Tax. I said, Sir, that I have never supported this in the various measures when it has come to this House and I still do not. I am not convinced it is the right measure and I am not convinced we have looked at all the options. Voting against may be a protest but I do intend to take that measure, Sir, and I will be voting against the preamble on this Law.

7.4 Deputy C.J. Scott Warren:

While I have accepted that a Goods and Services Tax is necessary in order to contribute towards the expected black hole, I remain very concerned about the present cost in Jersey for essential items; food and children's clothes being just 2 examples when compared with England and our neighbouring France. I am pleased that some exemptions have been achieved prior to this debate today and I must, Sir, declare a non-pecuniary interest as Chairman of a local charity. Three per cent is not expected to remain the permanent long-term rate and I would therefore urge the Minister

to again consider zero-rating more essential items and further areas within education prior to any future increase in the rate of G.S.T.

7.5 Deputy J.B. Fox:

G.S.T. is one of those subjects that none of us like and none of us want to make decisions on because they affect everybody across the board but the alternatives we have been looking at will not bring in the £45 million that will be required. Everybody wants to bring in exceptions to the rules, the danger of that is that if we have exceptions for everything the price goes up and it makes it a lot easier for future States' politicians to increase their revenues by £45,000 for every 3 per cent increase and it will soon leap up to figures of 17.5 per cent, *et cetera*. The problem with starting any new taxes like we are doing at the moment is the anomalies that will inevitably come up, and today we are going to be looking at this question of charges that some people will introduce as above. Clearly in the past we have seen this when impôt duties have been put on to tax on goods like alcohol and tobacco only to see the prices raised even higher by retailers and others on top of that which was put on by government. This is the fear that I have on this particular thing and I will be looking very carefully and be listening very hard to the Minister and others to this question of the best safeguards that we can have in position to ensure that we are not going to be double- or trebled-taxed in one form or other through direct or indirect... i.e. goods are being charged already at U.K. V.A.T. prices and there will be another 3 per cent added, *et cetera*. There will also be the anomalies where if you are receiving private education and you are a charity organisation you will have a difference between those and other fee paying and these sort of anomalies will need to be addressed and looked at in the interests of natural justice. I do not plan to speak further on this subject at this moment in time but reserve the right when the various amendments and other sections are discussed in more detail.

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

I want to first of all refer to an email exchange I have had with the Chief Minister about Goods and Services Tax; I do not believe he marked his email to me as confidential but I am sure he will jump up and say so if he did. I was in receipt recently of an email from a member of the public about the amendment shortly to be debated about where G.S.T. is applied and I sent a brief reply to the member of the public saying that I will be opposing the introduction of Goods and Services Tax, and I had the following message from the Chief Minister: "I cannot believe that after all the debates and all the alternatives and the endorsement of the States on 3 occasions that you are going to oppose G.S.T. at this stage." It goes on to say: "Please do not fulfil my fears, this is a little more than a posture for the media." Well, I thought that given that my original intention had simply been to vote against G.S.T. on grounds that I have already laid out in the States and which are there on Hansard to be read, but given that those had slipped the Chief Minister's mind I thought I should probably just remind Members why I will be voting against G.S.T. today as a matter of principle. I go back to 25th October 2005, the debate on P.44. I know one is not supposed to repeat what Members have already said in the Chamber, whether that extends to what Members have previously said in the Chamber I am not sure, but certainly Hansard records that I said on that day on the debate on the exemptions to G.S.T. that were proposed that I felt that the ground had been pulled from under my feet. What I said was that the fiscal strategy had received my support when it came to the States and I had overcome my concerns about the effect of G.S.T. on local people, on traders and so on, and that had happened in a particular meeting in the Members' Room of the Société Jérsiase. I was very impressed by the plans that were presented to States Members then about the cuts in public spending that were being proposed and the making of the States more efficient and effective before any new taxes were proposed. I quote from what I said last time: "Members can appreciate I hope how duped - deceived - I felt when as soon as they took office the Council of Ministers announced that the money was going to be reinvested in services, and I believe that a lot of members of the public feel the same way." I repeated these concerns when we debated the amendment last year of the Scrutiny Panel to the Strategic Plan, it was a long debate - I have

printed it out and waded through some of it - but I repeated those comments then a year later. It does seem to me for that reason that there is no surprise here in my position. I have maintained a consistent position over the introduction of G.S.T. and I do not believe that members of the public - and of course this position has been echoed recently by letters received from the Chamber of Commerce - I do not believe that members of the public feel that the States have done enough to tackle public expenditure, particularly payroll costs, before introducing a new tax. Interestingly, we had another meeting in the same room, the Société Jérsiase Members' Room quite recently, a presentation from the Council of the Ministers and the question was raised again: "What about the group that was looking into public expenditure? What about the 'Public First' campaign that was so helpfully promoted by the *Jersey Evening Post*?" The Assistant Minister leading that campaign said something like: "We do not anticipate any significant savings." So that was not particularly reassuring either. I think the last reference I want to make, and again this is to the debate I have referred to in June, Senator Walker said in December 2006 on the subject of G.S.T: "I fully support the principle of G.S.T. but I will only, as I have always said, support its introduction if I am convinced that the new Income Support Scheme also approved by the States adequately protects the poorest in our society from increased prices. I would want this to be a major and unalterable policy for my Council of Ministers and I have to say, Sir, whether or not Members share my belief about the size of public expenditure, whether it can be reduced or not, there must be many Members who have concerns about whether the income support scheme is adequate in its present stage to protect the less well-off." I know that concern about the adequacy of the scheme is shared by many, if not all, of my colleagues on the Constable benches. We simply do not know enough about the scheme. We do not know enough about the amount of money available for the scheme, we do not know enough about whether the forms that members of the public are currently struggling to complete, whether those forms are going to work. So, I have real worries (a) about whether the States have done enough to demonstrate savings in public expenditure, and (b) whether the income support scheme is going to be adequate to protect the less well off. For those reasons I shall be opposing the Goods and Services Tax.

7.7 Senator S. Syvret:

Members will be very familiar with my views on G.S.T. I will be supporting the passage of the Law today, notwithstanding my deep dissatisfaction with some aspects of it. I made my views clear and attempted on 3 occasions in this Assembly to get exemptions built into the Goods and Services Tax so that it did not apply to essential, unavoidable and societally important items. I failed largely in those 3 attempts, although on the third occasion finally the Treasury Minister did concede that there would be a fairly broad exemption for medical and social care purposes and I thank him for incorporating that. I was obviously tempted to seek to amend the Law to try and get all of the range of exemptions I originally sought put back in but I took the view that this Assembly has already debated that issue at some length towards the end of last year and I really did not see any great mileage in it or being a particularly useful exercise in this Assembly's time. I would say though that I think a great mistake has been made by this Assembly and by the Treasury in not having that full range of essential exemptions. My reason for having that view is that I believe, and frankly so does everyone else I have spoken to in the real world, that the rate of G.S.T. will have to go up in the coming years, once the 3-year promise of a fixed rate of 3 per cent expires the rate will have to increase. All kinds of economic pressures, taxation pressures, strategic pressures are going to exist on the Island, from external sources, external threats; and also we have the need to raise revenue to fund the essential services that the community expects. I listened with interest to the speech of the Constable of St. Helier. It is very easy of course to attack States' expenditure but when you look at the figures the vast majority of States' expenditure is on education, health, housing and social security by miles. Far and away those are the key areas of States' expenditure. Now, perhaps the Constable of St. Helier will want to go to the electorate and say: "I am going to cut tens of millions of pounds off your education budget and investment or off your health budget and investment" but somehow I do not think so. It is very easy just to stand up and say: "Well, it is

just an article of faith, is it not? It is just a fact that the States must be wasting tens and tens and tens of millions of pounds each year.” While I am sure there is always room for efficiency and improvement I do not believe that the wastage people imagine is there. Rather, what we face is a structural issue about the nature of the public service that the community has grown to expect and the fact that it is unavoidably very expensive to deliver. I think we just have to face up to that reality and then wrestle with all that flows from it. As I said, there are risks to our economy, to our revenue streams; external risks, internal demands, all kinds of issues and for that reason I am absolutely confident that the rate of G.S.T. will have to be increased. It seems to me that the Treasury, by refusing to exempt those essential items which I attempted to get carried, have effectively made a rod for their own back. When inevitably the day arises when the rate of G.S.T. has to become 5, 8, 10, or 15 per cent, are we going to charge that rate on food, domestic energy consumption, school fees, things of that nature? I do not believe we are and I do not believe we would. So, sooner or later we are going to have to design, put in place and implement all of the administrative structures required to either have exemptions or differing rates of G.S.T. I believe it is an inevitability and I invite Members to mark my words. Comparisons are made with what we propose here of costs with the New Zealand system but there are a number of serious issues which arise from the New Zealand system, not least the immense additional cost burden it put upon the living costs of ordinary people, contrary to claims that were made for it prior to its introduction and also the vast difference in essentials such as food prices and the general cost of living in jurisdictions like New Zealand compared to that which we face in Jersey, which must be among the most expensive - possibly the most expensive - on the face of the planet. So, Sir, I will support this today with great reluctance. I believe that such is the true real world nature of the States having to have a revenue stream, having to have income to be able to fund things like education, health and so on, we have to find and we have to introduce the physical mechanisms that will replace that lost revenue. So, I am afraid there is no going back now realistically as far as the Goods and Services Tax is concerned. I just wish we had accepted the inevitability of a rise a long time ago and had agreed that we were going to make provision within the G.S.T. to exempt those essentials so that people were not so unfairly crushed by the cost burden it will bring in.

7.8 Senator P.F. Routier:

I would just like to say a few words about, obviously, the income support system after the Constable of St. Helier has just made a few comments. I would like to just remind Members that this House and this House alone will be the ones who will set the Regulations and the rates which will be put on to income support. They will be put in place before G.S.T. comes into place so this House will have the opportunity to make those decisions, so they will need to be sure and comfortable that the rates that are given to income support and the budget that is available for income support is sufficient to meet the concerns. I just make that plain statement of fact of what will happen and will leave my comment at that, Sir.

7.9 Deputy G.P. Southern:

It is interesting to hear the contributions so far and I suppose we stand here today, those people opposed in principle to Goods and Services Tax as a regressive and damaging tax. I suppose we are standing if not in the Last Chance Saloon, perhaps in the Penultimate Chance Saloon to register our disapproval of G.S.T. I suppose the last chance is when it comes for an Appointed Day Act you could vote again then and say: “Hold it.” But nonetheless the contributions already made today have reminded us of what this tax is about. Certainly despite the assurances it is not a simple tax; 117 pages, 104 Articles not including the schedules, 40 references to Regulations in the pipeline. Not simple at all, and all this administered by a mere 10 - we are told, to date - additional staff. Watch out for that number increasing. The Constable of St. Helier talked about his reservations in the context of public spending but did refer to income support not being in place, which it is supposed to be, in order to, I believe, put our hand on our hearts and vote for this measure today. I think we should already have seen and had plenty of time to digest what income support will do

and whether indeed it will sufficiently protect those at the bottom end from the effects of this regressive tax. The fact is, and it is not a fact as outlined by the Minister of Social Security, that this House will get to set the rate. The facts are that the overall pot, the size of the pot, has been decided. We will get the chance to move a little bit of money from one pot, to protect one set of people, to another pot to protect another set of people as we choose, depending upon what our favourite, or least favourite, people are that we wish to protect or not. The fact is that we have no guarantees at this stage that income support will do the job it says it will do and protect those who will be worst hit by this. I am disappointed to hear Senator Syvret, as it were, throw in his cards. He has given up the opposition to this form of tax and is reasonably content to go along with an amended form of this tax without the exemptions he fought so often, long and hard for. I would urge him not to give up and to vote, in principle on this principle, against this regressive tax because certainly I will be joining Deputy Breckon in doing exactly that. Now we are told that there are no alternatives and that we have taken a decision in principle ages ago. We always take decisions in principle and then we meet the harsh reality later on. We are told that again we have the 3-year guarantee of 3 per cent. May I remind people that my understanding of the 3-year guarantee is that provided the black hole is as big as we think it is going to be, it will be 3 per cent. If for any reason whatsoever it gets bigger than that, deeper than that and darker than that, then of course the Treasury and Resources Minister, as he must, reserves the right to tweak the rate, as he sees fit. So, the 3-year guarantee is not in place absolutely but only provisionally. So, what of the size of the black hole? What are we talking about? We are talking about imposing G.S.T., a new form and additional form of taxation. Interestingly probably the only jurisdiction in the world that has brought in a form of V.A.T. has brought in a consumption tax and not taken away another tax somewhere else to sweeten the pill. So, unique; congratulations to the Treasury and Resources Minister, indeed to the Council of Ministers, for a unique first in the history of taxation because that is what we are going to do.

Senator S. Syvret:

On a point of correction I think the Deputy is mistaken. We have taken away tax on corporations.

Deputy G.P. Southern:

May I remind the Minister that corporations do not elect politicians, it is people who elect politicians and the people's pockets that will be paying the £45 million.

Senator S. Syvret:

That is rather the point I was making, Sir.

Deputy G.P. Southern:

Always constructive. So, let us refer. What are we doing? Why are we imposing this tax in order to raise £45 million contribution from electors' pockets to the black hole? Only 3 weeks ago we were told in the 2008 Business Plan we have discovered additional tax revenues to the tune of some £21 million rising to £27 million in 2011. Even at this late stage I would ask Members to think: "Well, hang on, we are trying to raise £45 million, we have a £20 million windfall that has just arrived in the back pocket, we are trying to raise £20-something million, is it not beyond the wit of the Treasury and Resources Minister to discover a mechanism that is not regressive, that is not harmful, that is not damaging to our economy and to individuals to raise a mere £20-something million. It is not. The fact is that having decided way back that we were going for G.S.T. come hell or high water, the Treasury and Resources Minister simply has not examined properly any of the possible alternatives fully and properly at all. This is a predetermined outcome that was set in stone years ago. If he could not raise £20 million something by another mechanism without regressive measures, then quite frankly he is not doing his job properly. So, perhaps the penultimate chance to register objection to this fundamentally bad form of taxation before it is too late. From now on we can fiddle with it, we can play with it, we can amend it a bit but G.S.T. will

look like G.S.T. whatever we do with it in the future. A chance to vote against G.S.T. and to show your principles that all of us who object to G.S.T. as regressive and harmful and I shall be voting against the principle of this Law.

7.10 Senator M.E. Vibert:

I was hoping today we would not again get into debating the principle of whether we need G.S.T. or not as we have done that. We did it and we did look at the alternatives that were put forward and this States Assembly rejected all those alternatives. Deputy Southern and others who want to show their election credentials by voting against G.S.T. seem to be clutching at any straws as reason to put off the introduction. None of us want to introduce a new tax but the responsible ones among us in this Assembly realise the necessity of doing so and the need to act responsibly as States Members to secure the future economic wellbeing of this Island and in that the future wellbeing of all the people in this Island. What we must not do is reject G.S.T., which we have already said we will introduce, and leave a black hole in the States' finances. If we do not fill that black hole - and it is no good relying on a wish list as Deputy Southern would that we will suddenly find the money somewhere - if we do not fill that black hole in the States' finances, how are we going to continue to operate and pay for our hospitals and schools and the benefits we provide for the people of the Island? The States have rejected all other ways of raising tax to meet the shortfall that we are facing. We have already had that debate about the principle of introducing G.S.T. We are re-running that debate it seems for some without any alternatives this time. So, reject the G.S.T. Law today, they say, and hope the future will take care of itself. That would be irresponsible. We would be left with nothing to replace the tax revenues that we are losing with the necessary move to the Zero/Ten tax regime to maintain the competitiveness of our finance industry, an industry which is and still will be after that move to Zero/Ten, the major contributor to our economy, the major contributor to providing the funds we need to run our social services. I urge Members to remember what we have decided before, to accept that unfortunately there is no alternative to G.S.T. and to approve the preamble and get on with debating the aspects of the Law that we can discuss.

7.11 Senator B.E. Shenton:

I will be brief. Without the exemptions for food and books and newspapers I, like some other speakers, cannot agree with the principles of this Law. Often Ministers have mentioned New Zealand as a tax model that should be followed; however the New Zealand reforms are associated with increased inequality in market incomes and there can be no doubt that the low income households were worse off. I do not - unlike the Ministers - have full confidence in the income support system and I would have preferred to see the actual facts and figures in place before having this debate today. The claim that a worthwhile G.S.T. must have few or no exemptions is untrue and this is shown in practice in most European countries where food is exempted or taxed at a lower rate. The introduction of this tax on food is going to be highly regressive, particularly in view of the certainty that financial services and overseas holidays and other luxuries will be exempted. Expenditure per person on food, excluding restaurant meals scarcely varies with household incomes. G.S.T. in this format is effectively a poll tax and I would expect Members who gave commitment at election time to oppose the tax to honour their election commitments. Members of the public will remember next year when they are up for re-election what commitments they made and certainly I will remind them at election time. **[Members: Oh!]** There are a few sighs here and certainly the Ministers around here think it is disgusting that they should have stand up to what they said at election time. Thirdly, contrary to what Senator Vibert says, introducing G.S.T. is in fact the soft option because it means difficult decisions regarding government expenditure do not have to be taken. Tax and spend is the mantra of this government, tax and spend and I will not be supporting this Law.

7.12 Senator L. Norman:

I really was not going to say anything but I have been spurred on by Senator Vibert when he tried to deny us the right to debate the principles of this Law. We do have that right because it was a bad tax idea when it was first conceived and it is still a bad tax today. In fact Senator Vibert thought it was a bad tax, a bad regressive tax during the 2002 Senatorial elections where we shared a platform as did every successful candidate in that Senatorial election and 5 of those successful candidates are now Ministers and have now decided to support this bad regressive tax. One who was also successful is not a Minister and will be sticking by his principles. There are, as Deputy Southern said, alternatives. I did suggest to the Treasury some time ago a turnover tax for example but I detected a total lack of will to do something different than happens in other places. Having said that I think there is an inevitability that this is going to be supported but I will vote against it and on that basis I know that my conscience will be clear.

7.13 Deputy J.J. Huet of St. Helier:

We have heard this before, I did not intend to speak at all here but I have had a couple of thoughts this morning and what I would like to know is each time we have discussed this I am sure that we have mentioned this land tax: that where a piece of land is worth £25,000 gets passed for building and it is suddenly worth £8 million and time and time again I am sure that we have been told it is being looked into to see how part of this could be taxed and yet I still do not remember having any replies. Maybe I have missed something. Maybe it is somewhere and I have not seen or heard of it, but I would like a confirmation as to exactly what has happened to it because we have been bringing this up for the last 5 years and surely it does not take 5 years to get around to this. So, maybe when the summing-up comes, maybe it is included and maybe it has been allowed and maybe it is in the process of coming along and we are going to get pleasantly surprised next week, but this is a promise that we have been promised and it does not seem to have materialised.

7.14 Deputy S. Power of St. Brelade:

I would just like to talk very briefly about my own experience. I was not in this Assembly in July 2005 when this was approved and I think over 25 per cent of Members of the Assembly today were not in the Assembly when this was approved in July 2005, so I inherited this tax and I opposed it in 2005 in the media by writing letters, by being active and I stated my opposition to this in the election for Deputies at the end of 2005 and I have not changed. I think Senator Norman referred to it as an odious tax. I would agree with that. I think it is a tax on the little people. It is a tax on those who are on limited incomes and no matter how you argue the case, those who are on £20,000, £30,000, or £40,000 a year do not eat much more food than those who are on £100,000, £200,000, £300,000 a year and I think that it is a tax that affects those on lower to middle incomes more than those on high incomes. I look on page 4 of the draft Law and there is a reference there that the manpower implications are 10 people will be employed at a figure on or about £1 million. Those people that will collect the £45 million would be well-insulated from this tax. They will not have to worry whether it is an extra 3 per cent on their food. This tax, in my personal opinion, is going to take money out of the economy. It is going to take money out of the Island economy with online bookings, personal imports, online sales, and white van man. We are going to have white van man increasing his entrepreneurial skills by bringing stuff in from the U.K. and the continent. It would be very difficult for movements of goods to be monitored at the harbour when the stats. come in. We have already seen last week that Customs and Immigration are having manpower issues, so I think a lot of the aspects of this tax are not thought out. So, based on what I said in 2005 and what I have said briefly last year in this Assembly in 2006, I will be opposing G.S.T.

7.15 Senator F.H. Walker:

I apologise for the rather unconventional way of attracting your attention but I do seem to be in a black hole of my own in the corner here. Sir, as other speakers have said we have been here before and we have been here before on 3 different occasions. We have had any number of debates, any number of amendments proposing alternative forms of taxation and/or proposing exemptions and

the House has on every single occasion made it very clear what its wishes are, that the G.S.T. is the least bad of the tax alternatives facing us. Nobody is jumping up and down with joy about introducing a new tax but the House has said emphatically on 3 occasions that the G.S.T. is the best way forward. The House has also emphatically rejected more exemptions to the tax and has given a very clear message to the Treasury and Resources Minister and his team to get on with the job and come back with this Law today. So, I too am more than a bit surprised to hear so many Members opposing the principle. The Treasury and Resources Minister is working to the instructions the Members of this House have given him in coming forward with G.S.T. Now, if Members do not like particular aspects of the Law of course we can deal with that during the debate on the Articles and the debate on the amendments, but to oppose and suggest yet again that we should go back to alternatives when all those alternatives have been thoroughly researched, have been thoroughly investigated and have been resoundingly rejected by this House seems to me to be a rather strange way of proceeding forward. In fact it is not proceeding forward, it is going rapidly backwards and I will come back to that at the end of my speech. I will address some of the points made during the debate. I will not be summing-up. That is the job of the Treasury and Resources Minister. There seems to me to be a number of points that have been made during the debate. G.S.T. will be harmful to our economy. It will play into the hands of our competitors. There are concerns about income support and there are concerns about the level of States' expenditure. Taking the order in which they arose, the economy first. I am very interested in the comments made by Deputy Breckon that G.S.T. will be a millstone around our neck and will be playing into the hands of our competitors and I do wonder how on earth every other community, including for example the Isle of Man whose economic growth in recent years has been spectacular, have managed to cope with indirect taxation - not G.S.T. it is true, but very similar indirect taxation - VAT at 17.5 per cent and not the 3 per cent that is being proposed here. How have they coped, if it is such a millstone around the economic neck? The suggestion of course is that Guernsey in particular will take advantage of the Jersey position. Well, let us not forget that Guernsey have not yet come out and said what their measures are to fill the black hole. They have said what some of them are because they have a similar in proportion black hole to that that we have in Jersey, so what are they doing? They are putting in a huge increase in payroll tax. There is no free lunch here. Now, I know members of our finance industry who are rubbing their hands with glee at the competitive advantage that gives them. So, it works both ways. I would also say that the economy in Jersey is growing currently at a rate we have not seen for many, many years in the full and confident expectation that G.S.T. is going to come in, in 2008. Everyone has been aware of that... I cannot say with certainty, but certainly with high probability for a number or many, many months and yet the investment in Jersey is at current record levels. Does that suggest a lack of confidence? Does that suggest that business is going to flow out of the Island? No, it suggests exactly the reverse. I can tell the Deputies, Sir, and Members of this House that I was in Guernsey for part of the Easter weekend and the Deputy has previously referred to the number of empty shops in St. Helier. Well, if he is worried about the number of empty shops in St. Helier he should take the same walk that I took around St. Peter Port on Easter Monday because I estimate they have close to 3 times the number of empty shops in Guernsey than we do in Jersey. So, do not please suggest to the House that Guernsey or anyone else has a competitive advantage because of this position because the reality simply is not borne out by the facts. So, we heard from the Constable of St. Helier about his view that the Council of Ministers has broken promises; is not saving money to the extent that it promised and of course he is not right. The Council of Ministers - and the States have approved it - is saving the £20 million per annum that we signed up to in principally central areas. What we are also doing though is reinvesting - yes, I will agree with him on that word - that money in the essential services: health, education, social security and housing. Now, is he really, as Senator Syvret suggested he would not and I agree with Senator Syvret, going to stand up in front of the electorate and say: "I propose a reduction in the pupil/teacher ratio. I propose that health no longer offers these services or these drugs. I propose that we reduce pensions or benefits." Of course he is not, and nor is anyone else I should not think in this House. But that is where the

money is going and that is exactly where Members of this House have said they want it to go and where the public wants it and indeed needs it to go. Any suggestion that it is possible to achieve £45 million a year in savings, thereby rendering G.S.T. unnecessary, is pure, pure pie in the sky fantasy. It cannot possibly be done and it is very interesting that the *Jersey Evening Post* initiative which the speaker referred to earlier, has come to nothing because there was nothing seriously material, in that long list of suggestions that was either workable or would have made much of a difference. The Chamber of Commerce make an awful lot of noise, but where are the specific suggestions from them as to where we can reduce our expenditure? To my knowledge we have not had any. Certainly I am not aware of them at all. I know the Assistant Ministers - or some Assistant Ministers - are working and working hard on trying to identify where real savings may be made and I genuinely do wish them every success. I hope they are successful but they will not stand up and claim that they can achieve £45 million worth of success - at least not as far as I am aware - and I do not believe they will stand up and suggest that savings cuts can be made which would eliminate the need for G.S.T. As Senator Syvret said it is very easy to stand up and talk about making cuts, it is far, far, far more difficult to say: "That is where I think we should cut States' expenditure" and I still await the recommendations and the ideas of the Constable, the Chamber of Commerce and indeed anyone else in that respect. It is good cheap shot stuff but is never, in my experience, followed-up. The other major concern that was raised was income support and I refer back to the speech made by Senator Routier. There is a promise before this House that G.S.T. will not come in before this House has (a) approved and (b) ensured that income support is implemented. There is an absolute promise and of course Deputy Southern unwittingly unlocked the key to that. There will be an Appointed Day Act for G.S.T. and I would suggest that if Members are not satisfied at that point that income support is both adequate and being implemented in time that they will not approve the G.S.T. Appointed Day Act. That is entirely within the grasp of Members and concerns at this point about income support at absolutely no reason whatsoever to oppose the principle of G.S.T. It is entirely within Members' hands. I know the Treasury and Resources Minister would not dream of reneging on the promise he made that G.S.T. would not come in until income support was implemented, nor would I, and I do not believe any Member of this House would allow that to happen. I repeat; concerns about income support should be aired in the income support debate. They are not a reason for voting down the G.S.T. Law. Deputy Southern: I will just talk about one thing that he mentioned. He said: "We have had a windfall of £20 million; hallelujah, we no longer need G.S.T." Well, he has not done his homework very well at all because if he looks at the forecast, and he has looked at the forecast very thoroughly, he will see that even after the £45million that G.S.T. will generate we still have a deficit to overcome. So, if you follow his view, do not get that £45 million and the Treasury finds £20 million from somewhere, we will have an even bigger deficit to look after or to address in the long term, which means either G.S.T. as a higher rate for sure, which is hopefully at this moment avoidable for quite some time. Certainly absolutely avoidable for 3 years or we will raise the rates of income tax or we will raise other taxes, and/or we will have a payroll tax or whatever. It will hurt; any delay in the introduction of G.S.T. will have painful knock-on consequences, which this House will simply not want to face up to and I suggest it should not. There is absolutely no need for us to put ourselves in that position. Senator Shenton who said we are a tax and spend States; is this the same Senator Shenton that constantly proposes increases in expenditure? Is this the same Senator? Goodness me, he reminds me of his father. **[Laughter]**. Exactly the same point. Spend more, tax less and never, ever, ever join the 2 up. That is basically what the Senator is saying. Sir, a vote against this Law today will achieve what? What will it do? It will go against the frequently stated wishes and instructions of this House. It will put the whole of our financial position into total jeopardy, total confusion. It will mean that the Treasury and Resources Minister will have to come back with increases to the rate of income tax, or reductions in benefits, or reductions in exemptions, or a very painful and damaging payroll tax; a combination of one or more of those things. So, what will it achieve? It will achieve chaos and it will result in a total loss of confidence in this Government. As I said earlier the economy of Jersey is thriving. It is thriving in the full

knowledge of what the tax, the fiscal strategy of this House is. Change that strategy now and offer the community total uncertainty and you would have to have the honesty to say to them: "We do not know how we are going to fill the black hole. We just do not know. We are going back to square one." It would blow confidence right out of the water, put the reputation of this House absolutely beyond redemption and do long, long lasting damage to Jersey. So, Sir, I urge Members, no matter what their concerns may be about individual aspects of the Law; those can and will be dealt with during the debate on the Articles. I urge Members not to go back on their own decisions, not to put the clock back, not to introduce a state of chaos into our fiscal structure and to the Island generally and vote very much in support of this Law.

7.16 Deputy S.C. Ferguson:

Unlike the various whited sepulchres I have heard around the House, I did support this tax as against the alternatives - even during the elections - but I also support Deputy Huet's comments about the development land tax which I would like to see. I do however concur with the view of the Chamber of Commerce that it ill behoves this House - the whole House, including Senator Shenton, and the Executive - to ignore the question of government expenditure; the useful little services and benefits that we keep thinking of without questioning where we are going to get the money from. Members will have read, and if they have not, they should, the Comptroller and Auditor General's note on net relevant expenditure. The P.A.C. (Public Accounts Committee) will be commenting on this. Just because the economy is buoyant it is not the time to relax on efficiencies and economies. It is precisely the time to pursue these. In fact, it should be an ongoing process of any business or government. The comment in the Strategic Plan that it was difficult to see that any other efficiencies could be achieved. I am sorry, if you have ever been in business, efficiencies and economies are an ongoing part of running a business but the P.A.C. will continue to report on this. To return to G.S.T., frankly it is a great deal more even-handed than many of the options. It is far better to get a little bit from a lot of people than a lot from just one section of the community. At 3 per cent, providing that we keep it at that sort of level, and if we bring expenditure under control we can, I will continue to support this tax.

7.17 The Deputy of St. John:

I would just like to take this opportunity of correcting something Deputy Power was suggesting. Incidentally, regarding Customs there is support allocated by the Treasury for funding administration and customs issues. That is covered under the strategy. I do not quite know what makes Jersey so different when all around us our near neighbours have similar taxes and of course much higher income tax and much lower wages. I accept that this is a regressive tax and I, as others, will be looking very carefully as to how the income support scheme works and if it does not work I for one will be shouting very loudly together with other Members to make sure that it does. Many, myself included, would like to see exemptions on essential items but you cannot have it both ways. You cannot have a low rate and exemptions. I do not believe you can anyway. Furthermore, we have a very small team working on this. It is a complex tax, even without exemptions. If we make it even more complicated we would never get it in, it would cost a huge amount of administration time and effort to do so. We need to keep it simple, get it in, get it working and in the future if it has to go up - as many Members have said it may well have to - then we look at the exemptions as Senator Syvret is suggesting and I think that is essential if it is to remain as unregressive as possible even though we will accept it is a regressive tax. Deputy Power talked about taking money out of the economy but I think maybe he was using the wrong term there because he is quite right, it does take money out of the economy for quite good reasons. It helps inflation. I know many Members have problems getting their head around that and many members of the public too but after the first year it will assist us in taking money out of the economy and keeping inflation at a reasonable level. I was in the Isle of Man a couple of weeks ago and I can assure Members, as the Chief Minister has already mentioned, that the economy there is booming and they have, as the Chief Minister mentioned, 17.5 per cent V.A.T. and only this week we were

almost looking enviously at this tax because they are of course filling their coffers with it at the moment, albeit may be reduced shortly. We looked enviously at that quite recently. We are far too reliant on direct income tax. It is vital that we diversify our tax base and G.S.T. helps us do this. I would urge Members to vote in favour of this Law and ensure that the public demands, which are for high quality essential services, are maintained for the benefit of all. I would suggest that we perhaps put this debate to bed. It has been had many times and we need to move on, get this tax in place, and ensure that the public benefits and those that are most vulnerable are fully protected by the income support scheme. Thank you, Sir.

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

The Assembly will adjourn until 2.15 pm.

LUNCHEON ADJOURNMENT

PUBLIC BUSINESS (...continued)

The Bailiff:

The Greffier reminds me that we are not quorate and perhaps a call could be put out to Members in the precinct to return to their seats. The debate continues on the principles of the Draft Goods and Services Tax (Jersey) Law. Does any other Member wish to speak before I call upon the Minister to reply? Very well. I call upon the Minister to reply to the debate.

7.18 Senator T.A. Le Sueur:

I hope the numbers in the Chamber at present are not a reflection of the importance with which Members consider today's debate because it is surely a milestone in legislation. I am grateful to all of those who expressed their opinion. I must say at the end of the discussion on the principles I have a sense of *déjà vu*; that much of the argument we have had this morning I have heard on some previous occasion, at least once and probably 2 or 3 times. Nonetheless I accept that Members have the right to re-express them but I want to be more positive and really build on the comments on the first speaker, Deputy Ryan, the Chairman of the Corporate Services Scrutiny Sub-Panel looking at this. He points out that I have certainly taken on board some of the comments that they have made and I am also listening and will act on some of the other recommendations in their review. For example, he speaks about charities and the need to look at the description of allowances of charitable status and reviewing existing charities and that I think is something which does need to be taken up in the course of the next 12 months. He talks about education, fee paying schools and early years' provision, and yes, I have already begun talks with the Minister for Education, Sport and Culture on that very topic. I think he feels that the financial forecast should have been updated sooner; that may be, but until I had a firmer date of when that was going to come in we just stayed where we were, but that is not really a detail in respect of this Law. Certainly if anyone wanted to discuss with me the idea of matters like the margin scheme for the used car trade, yes, I am quite prepared to discuss that when we come to look at the Regulations. Financial Services is a section to read in itself and that again you will need to look at in more detail with the Regulations and in context with the amendments I shall be proposing later on in this debate. I agree that the Commissioners of Appeal will need to be strengthened and fully trained in their enlarged role. The effect of the minimum level; yes, as a result of the Scrutiny Panel's comments we are looking at the economic impact on local businesses to see if we can get a better handle on that one before fixing the rate. As for the shelf pricing issue, that I am sure will be discussed at a longer period later on when we come to debate the Articles. Finally, the residential

properties and the zero-rating of that against holiday lets is also a matter that we need to review in conjunction with the comments of the Panel and amendment to that schedule. So, I too appreciate the good working relationship we have had with the Panel and I think it emphasises that there has been a thorough constructive review in dealing with the way that this Law is to be implemented. We have had various speakers who for one reason or another maintain their existing opposition to Goods and Services Tax. I would simply remind them that no positive alternative has been forthcoming and appears likely to be forthcoming and that the fiscal deficit would not go away no matter how much we might wish it to. Deputy Fox was concerned with problems over anomalies and to make sure we do not get double taxation. Yes, that is a very clear point and I think the Law is clear on that one. Several Members are concerned about the impact on Goods and Services Tax should the rate of tax rise and for all Members, Goods and Services Tax is there for one purpose and one purpose only. It is there at the present time to deal with the fiscal shortfall caused by the move to Zero/Ten. The figure of £80 million to £100 million black hole which we said we would put right for a variety of reasons and one of those was to raise £45 million from Goods and Services Tax. If Members decide that they wanted to use that tax for other purposes, that is not part of the existing fiscal strategy. The existing fiscal strategy deals simply and solely with the move to Zero/Ten and the consequences of it. Other comments we have had about the States not demonstrating sufficient motivation to saving money and delivering further savings but I think those who have argued that case have not really come up with any feasible suggestion of where anything like £45 million or even £5 million could come from and without that it is really not a feasible argument. As to comments about income support, here I can only reiterate what the Chief Minister says. I have given a commitment that G.S.T. would not be introduced until such time as the income support system has been debated and approved by this House. So, although we may pass this Law today, and I hope we will, we still have to pass the Appointed Day Act and that will not be presented to this House until the income support scheme has been debated and is up and running, so Members do have a safeguard. For people who are generally entrenched in their views I am gratified by the comments of Senator Syvret who remains entrenched in his views but nevertheless accepts the inevitable, that G.S.T. has to come in and I am pleased that we have been able to reach agreement with him on the issue of medical supplies. As he says, realistically there is no going back. Deputy Southern, I think, and maybe other people feel that this tax was marketed as a simple tax and feels that with 104 Articles you cannot call it a simple tax. The Income Tax Law has far more than 104 Articles but in comparison to income tax laws in most jurisdictions in the world it is a simple tax. The G.S.T. Law we have before us may contain 104 Articles, but in relation to a law anywhere else in the world this is a relatively simple tax and I regret that with the best will in the world and with the best desire to keep as much as I can in Regulations we cannot get the tax to any fewer than that number of Articles. Having said that I might be prepared to withdraw a couple of them. Deputy Southern is disappointed that Senator Syvret appears to be now supporting me. I think that the Senator is being realistic and I want to come back to this because I think Members as a whole need to be realistic about the purpose of today's debate. It is not about the principle of G.S.T; it is about the detail of legislation to implement G.S.T. I would remind Members that G.S.T. is there to deal with the Zero/Ten problem, the move to harmonising our corporate tax structure. That was first identified back in 2003. We had a policy in 2004 and the detail with G.S.T. in 2005. In 2006 we consulted the draft Law and now in 2007 - 4 years later - we finally have the draft Law. We have spent 4 years discussing it, tossing it backwards and forwards before coming up with a solution. In that 4 years we have discussed alternatives and rejected every one of them. Now is not the time to even consider any alternative. For one thing we would not have time to implement it and, secondly, we have discussed it before and all the other alternatives are less satisfactory. That brings me to Deputy Huet and Deputy Ferguson who question the land tax and, yes, that is very much a live issue. It is part of the environmental tax review currently being carried out, but as I said at the time of the fiscal strategy, that tax is there to change behaviour and maybe raise a few million pounds. It is not going to raise the £45 million that we are talking about on a year-by-year basis, nor is the present budget surplus for 2006. Now,

to my mind, Members, what we see every year are forecasts; forecasts of income and forecasts of spending and forecasts do change and in this case our forecast of inflation has risen, as a result of which the forecast for expenditure has risen and correspondingly the forecast for income has risen. So, we should not be too surprised if the income forecast is higher than predicted. For those who have looked at the financial forecast for the next few years will see that expenditure has also risen as well. This surplus we have in 2006 is not the panacea for all evils. It is not the solution to the Zero/Ten problem. It is not an excuse, a straw to clutch at, in order to defer G.S.T. I appreciate the comments of Senator Vibert who urges us to act responsibly and I think that is an important message that we have to take back. We cannot reject G.S.T. and do nothing, otherwise we would be in a complete pickle. We have to do something and G.S.T., we have decided time and time again, is the best solution. So, to those Members who have reservations about this bit or that bit, maybe a shelf enterprise or something like that, I would say to them the time to express those reservations is when we debate that particular Article. The principle of G.S.T. is adopted. The principle needs to be delivered. I think Senator Shenton's comments on tax and spend have been addressed by Senator Walker and I thank Senator Walker for his general comments of support. I know other speakers have also made their points and if I do not refer to them all by name it is because very often the point they made has also been made by other people. I do not want to compare Jersey with Guernsey or the Isle of Man or anywhere else. I want a tax law which is correct for Jersey but equally I am convinced that Jersey with a G.S.T. of 3 per cent remains and will be an even more competitive jurisdiction. As the Chief Minister has indicated the fact that there is so much economic confidence, the fact there is so much investment in the Island, knowing that 3 per cent is coming, is perhaps indicative of people who put their money where their mouth is, who believe that the G.S.T. will be appreciable. So, I think the message I wanted to give to the House today is that we need, above all, to deliver certainty. We deliver certainty to the business community. They want to know where they stand so that in the next 12 months they and we can plan together to bring in G.S.T. in a proper way. I urge Members today to approve the principle of this Law, principles which will then look at individual Articles in more detail but the principle of bringing the Law surely is one which we have discussed time and time again and come to the inevitable conclusion. To those Members who feel they have a duty to the electorate I would simply make this comment; the electorate expects us to act responsibly. They expect us, yes, to live up to our election manifestos but they expect us to act responsibly and to bury our heads in the sand and say: "Well, G.S.T. might go away, or we can do something else" is not acting responsibly. So, for those Members who might be inclined to put their protest flag up and say: "Why stick by G.S.T.?" I would just raise the question to those Members: do you think that is acting responsibly? I believe that the responsible action to take today is to approve the principle to this Law, Sir, which I now propose and ask for the appel.

The Bailiff:

I ask all Members in the precinct who wish to vote to return to their seats. I ask the Greffier to open the voting, which is for or against the principles of the Bill.

POUR: 33	CONTRE: 10	ABSTAIN: 0
Senator S. Syvret	Senator L. Norman	
Senator F.H. Walker	Senator B.E. Shenton	
Senator W. Kinnard	Connétable of St. Helier	
Senator T.A. Le Sueur	Deputy A. Breckon (S)	
Senator P.F. Routier	Deputy G.P. Southern (H)	

Senator M.E. Vibert	Deputy J.A. Hilton (H)		
Senator T.J. Le Main	Deputy D.W. Mezbourian (L)		
Senator F.E. Cohen	Deputy S.S.P.A. Power (B)		
Connétable of St. Ouen	Deputy S. Pitman (H)		
Connétable of St. Peter	Deputy K.C. Lewis (S)		
Connétable of St. Clement			
Connétable of Trinity			
Connétable of St. Lawrence			
Connétable of Grouville			
Connétable of St. Brelade			
Connétable of St. Martin			
Connétable of St. John			
Deputy J.J. Huet (H)			
Deputy of St. Martin			
Deputy C.J. Scott Warren (S)			
Deputy R.G. Le Hérissier (S)			
Deputy J.B. Fox (H)			
Deputy S.C. Ferguson (B)			
Deputy of St. Ouen			
Deputy P.J.D. Ryan (H)			
Deputy of Grouville			
Deputy G.W.J. de Faye (H)			
Deputy J.A.N. Le Fondré (L)			
Deputy of Trinity			
Deputy A.J.D. Maclean (H)			
Deputy of St. John			
Deputy I.J. Gorst (C)			

Deputy of St. Mary			
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The Bailiff:

Chairman of the Scrutiny Panel: first of all do you wish to scrutinise the Bill?

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

Thank you, Sir, I think we have already spent enough time on it.

The Bailiff:

Very well. We therefore can proceed to debate the Articles of the Bill. Minister, do you wish to proceed by parts, is that convenient? May I then ask you to propose Articles 1 to 6, Part 1 of the Bill.

7.19 Senator T.A. Le Sueur:

Part 1 of the draft Law deals with interpretation, the definitions and so on and it is a fairly standard introduction to the Law but it is important that these definitions are clearly understood and defined so that there is no doubt about the interpretation of subsequent parts of the Law. So, I propose Part 1 of the Law.

The Bailiff:

Part one is proposed. Articles 1 to 5. **[Seconded]** Does any Member wish to speak on any of those Articles? I put the Articles. Those Members in favour of adopting them kindly show. Those against? The Articles are adopted.

7.20 Senator T.A. Le Sueur:

I propose Articles 6 and 7. It is really to define the extent or liability of Goods and Services Tax.

The Bailiff:

Articles 6 and 7 are proposed. **[Seconded]** Does any Member wish to speak on either of those Articles? I put Articles 6 and 7. Those Members in favour of adopting them kindly show. Those against? The Articles are adopted.

7.21 Senator T.A. Le Sueur:

Article 8 is a fundamental part of the Law and it contains 2 important pieces; firstly, the rate of tax shall be at 3 per cent and, secondly, that it shall not be changed for 3 years after the Law comes into force. So, I propose Article 8.

The Bailiff:

I am sorry, Minister, but I should ask you also to propose Schedule 3. Article 8 and Schedule 3 are proposed. **[Seconded]** There is an amendment to Article 8 in the name of the Corporate Services Scrutiny Panel and I ask the Greffier to read that amendment.

The Deputy Greffier of the States:

In paragraph (4), for the words “the third anniversary of the day on which paragraph (1) comes into force” substitute the words “31st December 2010.”

7.21.1 Deputy P.J.D. Ryan:

First of all, perhaps I can just remind Members that there is a re-issue of our amendments that should have been on their desks this morning and although any slight changes do not specifically apply to this particular amendment that we are going to discuss now there are other later amendments that are slightly different and I would ask Members to please throw away the old issue which unfortunately was printed on a previous draft and was an error within the Greffe,

unfortunately; but the later version is the correct one and contains a few extra places. So, if I could just remind Members to destroy the old one and just refer to the re-issue this morning. Thank you. So, the 3-year rule. Well, the States decided that once the principle of the new Zero/Ten corporate taxation structure was agreed we would need G.S.T. as part of the fiscal strategy to fill the lion's share of the loss of tax as a result - the black hole, so to speak, or to be strictly and technically correct the fiscal deficit. There is however, as we have learned this morning, a delay of between 3 and 6 months after January 2008 - the original plan date - for G.S.T. to come into effect, if the States pass the Law without our amendment today, but unfortunately there is no similar delay to the fiscal deficit that will be created when we move to Zero/Ten. There will be no similar delay there. This will mean a loss in planned tax revenue for 2008 of between - by our estimate - £12 million and £20 million, depending upon exactly when the G.S.T. Law eventually comes in on the Appointed Day Act. As the Law stands, we believe that the earliest practical date for any increase to the rate is via the next possible budget debate following the expiry of the 3-year rule, that is December 2011, which would then mean that a different rate could be proposed by the Treasury Minister to take effect in the 2012 fiscal year. These dates are important because for every year that G.S.T. operates at a particular rate you are talking about at least a difference of £45 million in States' revenues, or it could be considerably more. Our amendment would mean that if necessary the States could debate a general increase in the rate in December 2010 which means that in practical terms that is one year earlier than would otherwise be the case and it was originally intended that were a general rate change increase be needed it could possibly be debated at that time. So, we are amending back to the original position before the delays to the start of G.S.T. and that is important. Now, if you had told me 5 years ago that I would be in favour of G.S.T. at all, let alone making provision for rate increases, I would have questioned your sanity; but that was before, like many other Members, I fully understood the need for Zero/Ten in the first place and then the inevitable consequences as a result and the fiscal strategy that we have. So, that is the first point I would like to make. As the Chief Minister has said it is the least worst option that we face. The Treasury has just found an extra £20 million-odd in tax revenue this last year and this we are assured will continue every year. The Chief Minister is right to be optimistic about this in the context that optimism is good for confidence but that optimism, Sir, needs to be tinged with a certain amount of caution. Indeed I note just now that Senator Le Sueur a few moments ago stated that the excess over the original forecast cannot be seen as a "general panacea". Those are his words, not mine and indeed I think they are very wise words. Let us look at a few other facets toward this. The world economy at the moment is riding high and in the food chain of world economies Jersey lies at the very absolute pinnacle. It is therefore not surprising that we are seeing large increases in our tax income as a result of increased profits primarily at the moment from the finance sector. Indeed, if we were not at the moment seeing those increases then that would give us real cause for serious concern. However, it is worth noting at the same time that Singapore, a jurisdiction also at the same pinnacle, is about to increase their current G.S.T. rate of 5 per cent to 7 per cent in July 2007 to - and I quote - "fund social programmes". I leave Members to form their own conclusions on this and if Members are interested I can circulate the history of G.S.T. rates in Singapore from 1994, at their conception at 3 per cent going up in 2002 and 2003 so that they are now 5 per cent and going up in 2007 to 7 per cent. If Members would like that I have copies in the tea room. Incidentally, in Singapore those rises to G.S.T. rates are coupled with a reduction to 17.5 per cent of their corporate tax rate from 20 per cent. So, even after the changes now made to our forecasts through these fortuitous revenues that I was talking about a moment ago, we will still see from the forecasts in our opinion a structural deficit opening up after 2010, albeit a smaller one perhaps and only a fool would take our income at the peak of the economic growth cycle, or in the peak of world economic activity, and assume that this will be the norm into the future. What we should of course now be doing is budgeting for services in addition to those required to cover the loss of revenue from Zero/Ten in order to supplement the Stabilisation Fund while we can. We need to be making hay while the sun shines. Nobody can say, for example, when the next economic downturn will be but most pundits will go on record as saying there will eventually be

that downturn. That is why we need to be having a very serious debate at this early point, precipitated as it happens by the advent of G.S.T. and the medium term sustainability of the general rate at 3 per cent. I make no apologies for questioning the sustainability of the 3 per cent rate. What leads me to this conclusion? At Corporate Services we see trends. One of the main trends we continue to see is the propensity of the States to find new ways to spend public money and the difficulty of preserving things like the £20 million efficiency savings and converting that into reduced spending, while at the same time recognising the ongoing increasing spending pressures of frontline core services that the community needs and expects. And I have not even got around to talking about the interest rate rise trend over which we have no control currently and what that will do to inflation and therefore inevitably the rising costs of the States' wage bill, even without any new spending initiatives or the fact that recovery of lost corporation tax on local companies - through the soon to come look-through provisions for Zero/Ten - is likely to be much more difficult than anticipated by the Treasury. All of these things are also there on the horizon. They are gathering. The storm clouds are there. So, although this amendment is to the G.S.T. Law, which is the domain of the Treasury and Resources Minister, the debate that I hope this amendment will bring should involve all of the other Ministers and particularly those that control the vast bulk of State spending: health, education, social security, home affairs, housing. In moving our proposed amendment nevertheless may I say that I would be the first in the queue to congratulate a future Treasury Minister if in 5 years time, by some conjuring trick, we still have a 3 per cent rate of G.S.T. but the question is, if in 3 years the situation really does warrant a rate rise, what is more damaging, having a smaller rise sooner with a better chance of keeping to it, or delaying longer than is wise and having to increase the rates to a higher level than might otherwise be the case? Sir, simple prudence decrees that we should keep our options open in the interests of the whole community and we should do this at 31st December 2010 as was always originally intended. Thank you.

The Bailiff:

Is the amendment seconded? [**Seconded**] The amendment is open for debate.

7.21.2 Senator T.A. Le Sueur:

May I begin with an apology for Members. I had made some comments on both the Panel's amendments and Deputy Breckon's amendments last week. Unfortunately they were not printed in time and were only on Members' desks this morning and I apologise for that. I also have to apologise to the Public Affairs Scrutiny Sub-Panel that my comments were made on their original proposition. Having seen their amended proposition I am now unable to accept 2 of the amendments which I had previously been prepared to. We will come to them in due course because I am not prepared to accept this one either. I am not prepared to accept it personally for 2 reasons. The first reason is that I gave a commitment when I introduced G.S.T. a couple of years ago that I would keep the rate fixed for 3 years if we had no change in the exemptions and although we have had one change in the exemptions so far as health is concerned and we have had another one in terms of property maintenance, but the financial effect is neutral, so I am happy to maintain my pledge that G.S.T. would stay for 3 years, and indeed I would be failing my duty if I were to accept an amendment which invited me to renege on my pledge. I am not going to do that but even were I minded to, I wonder what sort of message that would give to the public. It is a message not that we are keeping our spending under control, but look let us try and raise the tax level as soon as we can so that perhaps we can spend more. If that is the message which we wanted to get across to the public we would soon see not just public confidence, but business confidence dwindle rapidly. I suggest that what we need to demonstrate is our determination to keep spending under control, to keep the G.S.T. rate at 3 per cent and not to get side-tracked into issues like this, however appealing they might appear to be. The Deputy suggests we should keep our options open. On the contrary. I believe that we should stay firmly to our strategy of containing public spending, having balanced

budgets, as we will have over the coming 5 years, and on that basis, Sir, I urge Members to reject this amendment.

7.21.3 Senator S. Syvret:

I am going to be supporting this amendment. I do so with reluctance because I never favoured the introduction of Goods and Services Tax or any form of sales tax at this stage as an initial reaction to the taxation of fiscal pressures that the Island faces. It was always my view that the costs of living in Jersey was already so astronomically high that before going to a consumption tax we had a duty via the States, via the Competition Regulatory Authority and others, to bring down the rate of inflation and bring down the cost of living in the Island first before introducing a sales tax. But having said that I have never objected to a sales tax as a matter of principle. They do form a legitimate and common part of taxation structures in most jurisdictions in the world. Having got into the position that we find ourselves today, as I said earlier this morning, there is no going back on G.S.T. in my view in all practicality. Were we to, for example, as some people argued this morning, park it and try and thwart it today, we would be left with a £45 million black hole in 2008 with nothing yet to fill it. But I do worry that the projections that have been made may not be as robust as we would like and I share many of the concerns expressed by the Chairman of the Scrutiny Panel. I have always been of the view and have never made any secret of the fact that the rate of G.S.T. is going to rise. We are going to raise the rate of G.S.T. and it seems to me that we ought to be able to give ourselves the flexibility to do so within the original timeframe which is simply that which is being proposed by the Scrutiny Panel and I say this to the Assembly because I think it is important to understand the practical realities of funding and having a reliable income stream for the Island's key services - education, health, social security and housing - as these consume the great majority of the Island's taxation revenue. Home Affairs as well was mentioned earlier. I think we make a rod for our own backs if we put ourselves in a position where we cannot raise the relevant revenue that we need to keep core services going if things do not turn out to be quite so rosy as we imagine a few years down the road. Now, I am sure that the majority of Members will be thinking this is utter rubbish and will be wanting to jump up and down and dismiss the concept of the rate of this tax having to be increased in the short scale 3 years as opposed to the long scale 3 years but just think of the position we could find ourselves in. Many Members of this Assembly are very quick to campaign on behalf of this or that public service provision, this or that expenditure, the quality of our health care, education services, all kinds of other investments. Where is that money going to come from if things get difficult? While it might be easy to sit here today and dismiss the concept of the need to meet the kind of expenditure that the States is engaged in at the moment, just look further down the road and ask yourselves this: how many Members would be prepared to see *de facto* costs in health services, in education services, in housing or social security? I think when you get to that point and you face the reality of that, I really do not think most Members of this Assembly would like what they saw when they looked over the precipice. So, Sir, I have always been of the view that we would have to raise the rate of G.S.T. We are going to sooner or later and it seems to me entirely more prudent that we stick to the short timeframe 3-year provision, as is proposed by the Scrutiny Panel rather than the change that may occur through the Law as drafted.

7.21.4 Deputy R.G. Le Hérisier:

There are 2 disjointed points; one in reference to Senator Syvret's point. I cannot understand that view of the economy. Most economies are fairly dynamic things and if the kind of gloom and doom scenario comes to pass that the Senator is referring to, I can assure him it will not ring fence G.S.T. as a solid, predictable and safe source of revenue. It will bring down the whole edifice with it because basically we will be facing a very unstable economic situation. So, the whole notion that one part can somehow be preserved while other parts collapse around us I find utterly inconceivable and an incredibly simplistic view of economics. The second point I would make, Sir, in opposing this amendment, but yet having sympathy with the movers of the amendment, is I am

afraid the public out there simply do not believe that we have... and I have raised this time and time again and we are continually spurned when we did raise it, but we are all used to being spurned so let it all carry on, and I notice that Deputy Reed put this point on the airwaves on Sunday. It is this whole issue; they do not think we are taking reform of the structure properly. They really think there is a smoke and mirror act going on with the so-called £20 million efficiency savings and I really think we have to come across without... and I am in no way countenancing a slash and burn approach to this, but it simply does not come across as a serious proposition to a lot of members of the public, I am afraid. But having said that, Sir, I adamantly support the Finance Minister in his particular comment.

7.21.5 Deputy G.P. Southern:

Yes, Sir, put quite simply, the Treasury and Resources Minister, for once, is absolutely correct and has my 100 per cent support. [Laughter]

7.21.6 Senator M.E. Vibert:

As my department is the second biggest spender in the States and quite rightly so, because it is such an important department - Education - people may think I would wish to support being able to put up G.S.T. as soon as possible because I do think the budget, in certain areas, needs augmenting but I am not in support of this. I believe when the States previously supported the principle of G.S.T., the States did so including the undertaking given by the Treasury Minister that there would be no increase in G.S.T. for at least 3 years. In my view, the States as a whole has given that undertaking to the public and it will be wrong to renege on it, particularly when our Treasury Minister - who is not known for a cavalier attitude but for being very cautious - believes it is quite possible to do so. I believe we made a promise and we should keep it.

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

I remember when we first discussed G.S.T., I thought that we would be raising more than £45 million through our 3 per cent because the Isle of Man, with a smaller population than ourselves, with a smaller business base than ourselves, were pulling in about £12.5 million per one per cent of G.S.T. I think we are going to bring in more than £15 million per one per cent and I think that there will not be any reason to raise it over that 3 per cent point for a considerable time. Deputy Ryan, in his speech, said that G.S.T. could raise more than the £45 million and he concurs with me perhaps in that regard. In fact, I would be prepared to say that it might raise £50 million or more and if it does not raise £50 million, I would be prepared to eat my hat 3 years from now. I might have to go out and buy one but, certainly, I think that this in our size economy - our vibrant economy that we have - we are going to raise a considerable sum of money from this G.S.T. and I think there is no need to look at bringing in changes before the 3-year period.

7.21.8 Deputy K.C. Lewis:

I will be supporting the Minister in this. Everybody knew that Goods and Service Tax was coming but, as has been pointed out, we did promise the people of Jersey that it will be fixed for a term of 3 years. If we start messing around with it at this stage the people of Jersey will presume, quite rightly, that we are moving the goal posts already and it will lose confidence. I believe we have given our word and the 3 years must be maintained. Thank you, Sir.

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

I will certainly not be supporting the amendments to the Corporate Services Panel and I would like to remind them of a number of facts. We are indeed bringing in G.S.T. early - before it is required - and that was always the intention, that we did ensure that our finances were in place and in a healthy situation prior to the full effects of Zero/Ten. I cannot understand the view that Corporate Services believes that on one hand they are or seem to support the saving and reducing and maintaining expenditure at certain levels and yet almost acknowledging the fact that do not worry if it all goes wrong you just up the G.S.T. I am very sorry but that is the wrong attitude we should be

taking. I would also like to point out to various Ministers and States Members that indeed not 12 months ago - or approximately 12 months ago - all departments signed up to various limits of expenditure and basically we were told then that they could easily and were able to live within those budget forecasts. So why do we hear now, not 12 months later, that all of a sudden by the way that is not the case? I am sorry but Ministers have a responsibility and departments have a responsibility to manage their affairs within the budgets that are set as by this Assembly and there is expectation, not only from States Members but the general public, that the departments and Ministers do exactly that. For this reason, I think that it is wrong for States Members to even promote the idea that 3 years down the road we will be reviewing the G.S.T. rate. I would much prefer to see it at 5 or 10 however, I must admit I am pleased and acknowledge the Treasury Minister's efforts to ensure that the G.S.T. rate will at least start and remain at 3 per cent for 3 years. Thank you.

7.21.10 Senator P.F. Routier:

Just very briefly, the previous speaker was I think trying to give the impression that it was Ministers who were perhaps asking for the rate to be increased at an earlier date than what was being forecast. All Ministers have been working very hard to ensure that their budgets are contained within the forecasts which have been produced by the Treasury Minister so I would not want the public or any Members to think that there are any Ministers who are behind the wish to bring forward an increase in G.S.T. at an earlier date. It is solely the Scrutiny Panel recommendation amendment which has been brought forward. I do not believe there is any Minister - other than we have heard from the Health Minister - but the majority of Ministers are fully behind the Treasury Minister in trying to contain costs.

Senator S. Syvret:

Could I just clarify my position? I am not supporting the amendment because I am seeking increased expenditure for my department. My department, certainly under my control, has always lived within its means and delivered balanced budgets. It is not increased expenditure that is worrying me; it is decreased income, decreased revenue that may occur. That is the problem.

The Bailiff:

I call upon the Chairman to reply.

7.21.11 Deputy P.J.D. Ryan:

Well, I am absolutely delighted by this debate. I have counted so far, other than Senator Syvret who I think did get the point and did understand what I was trying to say, I think that what we have is everybody committing to controlled expenditure and I hand that to the Minister for Treasury and Resources. So, Sir, I do not intend to say too much more. **[Laughter]** The whole point of this debate - of this amendment - was to precipitate exactly the kind of debate that we have had and I thank Members for their contributions. I am absolutely delighted that everybody is now fully committed to containing expenditure and I just hope that, in 3 years' time, if income levels have reduced, that I am not standing here and saying: "I told you so." So, Sir, I close the debate. Thank you.

The Bailiff:

Is there any Member in the precinct who wishes to vote on the amendment, please return to his or her seat. I ask the Greffier to open the voting, which is for or against the amendment of the Scrutiny Panel.

POUR: 5		CONTRE: 42		ABSTAIN: 0
Senator S. Syvret		Senator L. Norman		

Connétable of Trinity	Senator F.H. Walker		
Connétable of Grouville	Senator W. Kinnard		
Connétable of St. Brelade	Senator T.A. Le Sueur		
Deputy P.J.D. Ryan (H)	Senator P.F. Routier		
	Senator M.E. Vibert		
	Senator T.J. Le Main		
	Senator B.E. Shenton		
	Senator F.E. Cohen		
	Connétable of St. Ouen		
	Connétable of St. Mary		
	Connétable of St. Peter		
	Connétable of St. Clement		
	Connétable of St. Helier		
	Connétable of St. Lawrence		
	Connétable of St. Martin		
	Connétable of St. John		
	Deputy R.C. Duhamel (S)		
	Deputy A. Breckon (S)		
	Deputy J.J. Huet (H)		
	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 G.P. Southern (H)		
	Deputy S.C. Ferguson (B)		
	Deputy of St. Ouen		

	Deputy of Grouville		
	Deputy J.A. Hilton (H)		
	Deputy G.W.J. de Faye (H)		
	Deputy P.V.F. Le Claire (H)		
	Deputy J.A.N. Le Fondré (L)		
	Deputy D.W. Mezbourian (L)		
	Deputy of Trinity		
	Deputy S.S.P.A. Power (B)		
	Deputy S. Pitman (H)		
	Deputy A.J.D. Maclean (H)		
	Deputy K.C. Lewis (S)		
	Deputy of St. John		
	Deputy I.J. Gorst (C)		
	Deputy of St. Mary		

The Bailiff:

The debate returns to Article 8 and the Schedule. Does any Member wish to speak? In which case, I call upon the Minister to reply.

Senator T.A. Le Sueur:

Nothing to add, Sir. I move the Article.

The Bailiff:

Very well, I put Article 8 and Schedule 3. Those Members in favour of adopting them, kindly show. Those against. They are adopted and we come to Part 3.

7.22 Senator T.A. Le Sueur:

Part 3 does not seem to have any amendments, so I present that as a whole. Part 3 deals with the details and requirements of registration of suppliers. It allows for and defines the role of representatives and it fixes the registration threshold at a figure of £300,000. That is in accordance with the principles that we adopted when we first discussed the Goods and Services Tax Law so I propose Part 3.

The Bailiff:

Minister, you are proposing Part 3 and Schedule 1, I think?

Senator T.A. Le Sueur:

Part 12 has an amendment to it in relation to Schedule 1. I think I will present Schedule 1, as it does not directly affect the amendment so I am happy to do that.

The Bailiff:

Very well, so you move Schedule 1, as amended by your own amendment and Part 3 which is Articles 9 to 17. They are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of those Articles or on Schedule 1 as amended by the Minister's own amendment? If Members are hunting for the Minister's amendment to Schedule 1, they will find it at the bottom of the Minister's list of amendments - page 74, Schedule 1, paragraph one - but that is the amendment which the Minister has brought to Schedule 1 which is now before the Assembly.

7.22.1 Deputy P.J.D. Ryan:

Yes, just for the sake of clarity, Sir, if it helps Members, the particular amendment that the Minister has brought in here clarifies that there was a possible problem that we highlighted as Corporate Services whereby it was not absolutely clear that what is now to be known as an I.S.E. (International Services Entity) could register for G.S.T. and reclaim input for G.S.T. so it is a clarification point. It is a little technical but that is what this is about. Thank you, Sir.

The Bailiff:

Does any other Member wish to speak?

7.22.2 Deputy G.P. Southern:

Yes, Sir, just to comment on Schedule 1; liability if you are registered. The limit of £300,000 is in fact among the highest, I believe, in the world and I believe will probably be the subject of a reduction in probably a short order of time and I wonder whether any such reduction, when it is contemplated, has to be brought to the House? Will that be by Regulation or otherwise, to amend the £300,000?

7.22.3 Deputy P.N. Troy:

In Schedule 1 it talks of bodies corporate and groups and I think I want to highlight really the fact that I feel that it is very sensible that the Minister has looked at the whole concept of groups that are operating within Jersey and the way in which they will provide combined G.S.T. returns, I think it is a very sensible measure. Does he have any additional comments rather than what is in the Regulations there about the way in which corporate bodies will be treated?

7.22.4 Senator T.A. Le Sueur:

I thank the Chairman of the Corporate Services Scrutiny Sub-Panel for his confirmation that this meets their approval and in fact reflects some of their original concerns. Deputy Southern questions whether the £300,000 threshold will need to be changed. I have no reason to believe that it does need to be changed. If anything, perhaps the passage of time, as with many taxes, will make the level likely to rise rather than fall but that remains to be seen in the future. As with the 3-year rule, I intend to maintain that £300,000 unless I am advised to the contrary. As far as the treatment of companies and groups of companies is concerned, we are trying to ensure that group relief is available for all companies within a certain group and that will in due course be part of the legislation. So I propose Part 3 and Schedule 1.

Deputy G.P. Southern:

May I just seek clarification? I did ask whether the £300,000 could be amended and, if so, how, by Regulations or otherwise? Could the Minister clarify for us?

Senator T.A. Le Sueur:

I was looking at the Law, Sir, and I cannot see anywhere in the Law where it can be changed. I think it may have to come back to this House as a change to primary Law.

The Bailiff:

Let us look at Article 100 to 102(f).

Senator T.A. Le Sueur:

I appreciate your guidance and refer Deputy Southern and other Members to Article 102 which we will come on to in due course.

The Bailiff:

Very well, I put Part 3 and Schedule 1. Those Members in favour of adopting them, kindly show. Those against the Articles and Schedule? The Articles and Schedule are adopted. On to Part 4.

7.23 Senator T.A. Le Sueur:

Part 4 deals with the treatment of the public sector and arranges for the States to be regarded as one body for the purposes of G.S.T. rather than having any transactions between different departments or non-statutory bodies. It also extends that treatment to the inclusion of the Parishes where they are relevant. I think that will probably occur primarily in St. Helier and St. Brelade where they may have residential care homes, although with the new arrangements they may still be outside that. But it gives the Parishes that flexibility if they require it. So, Part 4 deals with the public sector and I propose Articles 18, 19 and 20.

The Bailiff:

Articles 18, 19 and 20 are proposed and amended. Does any Member wish to speak on any of those Articles?

7.23.1 Deputy R.G. Le Hérisier:

Thank you, Sir. I think this issue comes up and is discussed by the Scrutiny Panel in terms of charities engaging in commercial activities. If there were to be a case where a States' department or a Parish were essentially taking part in commercial or quasi-commercial activity which could put the private sector at a disadvantage, how would this be dealt with under this particular Law? Thank you, Sir.

7.23.2 Deputy J.B. Fox:

Carrying on from that, just the clarification with the additional services that the Post Office are providing in Broad Street, that might be part of an answer that the Minister could include within that section.

7.23.3 Senator T.A. Le Sueur:

Certainly. As far as Jersey Post is concerned, that is a limited company. Although it is owned by the States, it is not part of the States' organisation so I do not believe that Jersey Post would be relevant in that context. As far as other trading activities that the States engage in, it strikes me that would primarily relate to matters like the Harbours and Airport Department. In that situation the Regulations in Article 20 do give power to prescribe certain treatment in certain cases and so I think the Deputy will have to wait for the Regulations in order to see how they are dealt with. I propose Articles 18 to 20.

The Bailiff:

I put the Articles. Those Members in favour of adopting them, kindly show. Those against. Articles 18 to 20 are adopted. We come to Part 5.

7.24 Senator T.A. Le Sueur:

I was going to push my luck, Sir, and propose parts 5, 6 and 7 on the basis that they deal with supply, the place of supply and the time of supply and Schedule 2 also forms part of that set of proposals. So, Part 5 deals with the meaning of supply in a single Article; Part 6 deals with the place of supply and deals with the situation of supplies and goods coming from outside the Island; and time of supply, which appears to be a fairly straightforward situation, defines when supply

occurs in a particular case. It is really fairly technical legislation there and I propose those 3 parts of the Law and the Schedule.

The Bailiff:

Articles 21 to 29 and Schedule 2 are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of those Articles or the Schedule?

7.24.1 Deputy R.G. Le Hérisier:

I think we are all fairly confused. I wonder, Sir, if the Treasury Minister could confirm that this covers matters supplied by internet suppliers, for example? Could he explain 23(2): the supply of goods involves their removal from Jersey. They should be treated as supplied in Jersey. That seems an existential kind of issue which is taxing us. Thank you, Sir.

7.24.2 Senator T.A. Le Sueur:

Right, as far as the second point about the removal of goods from Jersey, I think that is a legal technicality of the belt and braces variety loved by law draftsmen. It may have some esoteric consequences. I think it is just there because the situation could conceivably arise. It may well be, for example, for goods being exported and re-imported. The farmer who sends his potatoes off to the U.K. and they come back to Jersey. I have no idea how likely that is going to be but that is one possibility. As far as the supply of goods on the internet is concerned, it is really a question of where the goods are consumed and if they are consumed or bought for use in Jersey, then it is Jersey consumption. The place of supply defines that consumption will take place in Jersey and the fact that they may have been supplied from a shop in the U.K. does not mean that they will be outside the scope of G.S.T.

Deputy R.G. Le Hérisier:

I wonder, Sir, if the Attorney General might wish to help in further clarifying 23(2)? **[Laughter]**

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

Article 23(2) applies the same treatment to goods which are produced locally, whether they are consumed locally or exported. That is important for the purposes of Protocol 3, apart from anything else. So, the supply of goods to somebody outside the Island will still lead to a charge of G.S.T. On the internet point, if you order goods over the internet and they are delivered into Jersey from outside, although they are not supplied in Jersey they will be caught on importation, subject to the threshold arrangements which are to be established.

Deputy G.P. Southern:

May I pursue the Attorney General a little more? It seems to me, in my simple layman's view of what he just said, we were talking about export of goods being subject to G.S.T. Does that not mean that we are treating financial services goods exported differently to ordinary goods in some way and that seems to me to be unequal treatment, if that were the case. How are we dealing with F.S.I. (Financial Services Industry) products? Are they exempt or zero-rated? Is that how we get round it?

H.M. Attorney General:

Protocol 3 deals with trade in goods and not trade in services.

The Bailiff:

I put Articles 21 to 29 and Schedule 2. Those Members in favour of adopting them, kindly show. Those against. The Articles and Schedule are adopted. Part 8, Minister?

7.25 Senator T.A. Le Sueur:

Part 8 applies to services outside of Jersey as opposed to goods. Just one single Article there Sir, and I am happy to propose the Article and try to answer any questions.

The Bailiff:

Very well, Article 30 is proposed and seconded? **[Seconded]** Does any Member wish to speak?

7.25.1 Deputy S.C. Ferguson:

I wonder if the Minister could just clarify something for me. If you are, for instance, a travel agent and you are providing a customer with a voucher for a hotel in some other country you will collect a commission on that which is presumably subject to G.S.T. If the customer pays for the hotel before they go are they subject to G.S.T? Would the agent be subject to G.S.T. on the amount that is paid by the client? If the client pays for the hotel on the voucher is the G.S.T. on the voucher going to include the cost of the hotel which includes V.A.T. in the country at which the service is provided? There does seem to be a certain amount of confusion in the industry and I think there is confusion in my mind about it too.

The Bailiff:

Does any other Member wish to speak on Article 30? I call upon the Minister to reply.

7.25.2 Senator T.A. Le Sueur:

Yes, Sir, I suspect the Deputy may need to refer to Schedule 6 on zero-rating of services rather than this particular Article for clarification. Schedule 6 deals with those items which are zero-rated and among the items of zero-rating, I am pretty sure although I have not found it yet, in transport and travel activities. I think, probably, Article 5(2) of Schedule 6 will deal with her concerns. You see we have got the hotel accounts and ancillary transport activities.

The Bailiff:

Very well. I put Article 30. Those Members in favour of adopting it, kindly show. Those against. Article 30 is adopted. Articles 31 and 32 are subject to an amendment by Deputy Breckon but then also, I think, consequential to Article 94 and I just wonder whether we might leave over Articles 31 and 32 until the Assembly has dealt with the amendment to Article 94?

7.26 Senator T.A. Le Sueur:

I would prefer to deal with Articles 31 and 32 after Article 94 and I think Deputy Breckon feels the same way, so I am happy to accede to that request.

The Bailiff:

Very well. Well, we will defer consideration of Articles 31 and 32 and Deputy Breckon's amendments thereto. So, we come on to Part 10, Articles 33 to 47. There is an amendment but do you want to move the whole part, Minister?

7.27 Senator T.A. Le Sueur:

I will move the whole of Part 10, Sir and I give notice that I am prepared to accept the amendment of the Corporate Services Scrutiny Panel to Article 41. On that basis, Sir, this part of the Law deals with the payment of G.S.T. and really allows the mechanics of it. The offsetting of input taxes against output taxes so, in other words it means that it is not a question of tax on tax; you set off the tax you pay against the tax you charge. It provides for tax returns and G.S.T. invoices and the details to be shown on that invoice. It also allows for the treatment of personal consumption or use and legislates for the repayment and recovery of tax. On that basis, I propose Part 10 and again will try to answer any questions.

The Bailiff:

Very well. Articles 33 to 47 are proposed and seconded? **[Seconded]** There is an amendment in the name of the Corporate Services Scrutiny Panel and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Page 43, Article 41(a), in paragraph one, delete sub-paragraph (d) and re-number remaining paragraphs accordingly; (b) in paragraph 2 for the words: “as specified by general direction under this Article” substitute the words: “as prescribed by Regulations”; (c) in paragraph 3, for the words: “as the Comptroller specifies by direction for the person or by general direction” substitute the words: “as are prescribed by Regulations”.

7.27.1 Deputy P.J.D. Ryan:

Thank you, Sir. This is a fairly simple amendment in essence. Well, at least the essence is simple because much of Article 41 deals with the Comptroller’s powers of discretion over the procedures he requires businesses to follow to operate and account for the tax collected and also the tax collection process. However, there are some sections of this Article, and I am very pleased to hear that the Minister agrees with us, that are much more fundamental and give the Comptroller powers that, potentially, could turn businesses from collectors of tax for the government into the taxed and ultimately inhibiting the ability of a business to reclaim the tax paid out by them to other registered businesses on their purchases. We believe that it is and we have believed that it is more appropriate for the States to retain control over the basics of the concept of a G.S.T. by retaining the power to prescribe through Regulations, the limited circumstances whereby a company would not be able to reclaim the tax charged to them by others. This amendment therefore moves those particular sections from primary Law to the Regulations that we will be able to debate later on in the year. Thank you, Sir.

The Bailiff:

Is the amendment seconded? **[Seconded]** The amendment is open for debate and the Minister has given notice that he accepts it. Does any other Member wish to speak? I put the amendment. Those Members in favour of adopting it, kindly show. Those against. The amendment is adopted. We return to Part 10 as amended. Does any Member wish to speak?

7.27.2 Deputy J.G. Reed:

Yes, Sir, I am not sure if it is the right time to raise it but one of the main issues that has been brought to my attention by a relatively small family businesses is the onus in bureaucracy and office work and administration that this implementation of G.S.T. can bring. Could I ask for assurances from the Minister that indeed what the Law is describing here and what is proposed, or will be proposed in Regulations will ensure a simple and less time consuming administration as possible?

The Bailiff:

I call upon the Minister to reply.

7.27.3 Senator T.A. Le Sueur:

Yes, Sir, I appreciate the concerns of the Deputy of St. Ouen and his potential constituents and I think that is one of the reasons why I tried to set the registration threshold as high as possible, that the majority of small businesses will not be liable to register, will not have to keep G.S.T. records, but large businesses do. If, on the other hand, that small business that he is talking about wishes to register, then the Tax Office and the Director of G.S.T. is prepared to give advisory visits and help those small businesses if they so choose. But, as I say, the majority of those businesses would be exempt in any case by virtue of being below the registration threshold. That being the case, Sir, I propose Part 10.

The Bailiff:

Part 10, Articles 33 to 47, therefore before the Assembly. Those Members in favour of adopting them, kindly show. Those against? Those Articles are adopted. We come to Part 11.

Senator T.A. Le Sueur:

Yes, Sir, in fact, before we do Part 11, I forgot to look at my crib sheet earlier and when I proposed Part 9, I should have proposed Schedule 4 at the same time.

The Bailiff:

We will leave that over to deal with Articles 31 and 32.

7.28 Senator T.A. Le Sueur:

My apologies. I am ahead of myself. Right, Part 11, which I think does include Schedules 5 and 6, allows for exemptions and zero-ratings. Now this is an area where there has obviously been some considerable discussion and we had debates last autumn and following which we have had the changes in respect of health matters, charities and the treatment of property repairs and maintenance. I think the current situation reflects the majority of those concerns and Members seem to be happy with the treatment, particularly of thoroughfares so I am happy to propose Part 11, Articles 48 to 56 and Schedules 5 and 6 but acknowledge that there is an amendment to this on one of these matters, from the Scrutiny Sub-Panel.

The Bailiff:

Are those Articles and Schedules proposed and seconded? **[Seconded]** There is an amendment, the Minister said, to Article 51 by the Scrutiny Panel and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Page 47, Article 51(a); in paragraph one, for sub-paragraph (a), substitute the following sub-paragraph: “(a) The person (1) is constructing or has constructed a dwelling or (2) is converting or has converted a building to a dwelling lawfully and otherwise than in the course of or furtherance of any business; (b) in paragraph 2(a) delete the word: “conversion”.

7.28.1 Deputy P.J.D. Ryan:

Thank you, Sir. First of all, I should just explain the essence of this amendment which is that we felt that the question of existing non-domestic use buildings - which could probably be described as conversions of an existing non-domestic unit - were being caught within the Law unintentionally perhaps by the Minister. We felt that conversions should also be zero-rated under certain circumstances. This is not a question of converting an existing house to make it a bigger house; this is maybe converting a barn that has not been used for any other purpose in the past to a dwelling. The danger was that if we did not have that there was a chance that it would lead to certain distortions in the marketplace in that a builder or a private owner would almost encourage an old barn to fall down where its basic structure was quite reasonable; that it would be “encouraged” to fall down because then when they built a new one it would be zero-rated, whereas if they converted the original building to a habitable unit it would be standard-rated. So there was a slight anomaly, should we say, and we felt that this should be changed. May I say that it was not our intention... if you look at the Minister’s comments on our amendment, it points to an inequity between D.I.Y. (Do It Yourself) people and normal developers with this amendment. That was never our intention and I think the Minister has conceded and has agreed - I seek his confirmation - that if the States decide to approve this movement of conversions into the zero-rated area under certain circumstances, probably tied to the creation of a new housing unit through the Housing Law as part of it, that he will make or undertake to make the necessary changes to the other Schedule to keep the equity in place that needs to be there. So I propose and I move the amendment.

The Bailiff:

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

7.28.2 Senator T.A. Le Sueur:

Yes, Sir, I can appreciate the sentiment behind this amendment but I am reluctant to accept it simply because I think it opens up a degree of confusion and uncertainty. We have, at the moment, a very clear situation that the construction of new dwellings is zero-rated and the repairs and maintenance of properties is taxed at the standard rate. What this amendment will do, I think, is to bring in a level of uncertainty. The Deputy, in his proposal, suggests that converting a barn to a dwelling house would be a good example which we could allow but he would not want to have a house converted into a bigger house. My concern is if you can convert a barn into a dwelling can you convert your garage into a dwelling? Can you then start being esoteric and saying that any new property conversion or slight change will qualify for zero-rating? I think if we were to do that we would have to be more specific and I would have suggested to the Deputy or the Panel that it might be better to link this sort of thing to the construction of an additional unit of accommodation as defined in the Housing Law. If there was a clear benefit to the public in having an additional unit of accommodation, which I can see there could well be a good case for zero-rating it, I would not be opposed to that. But I think in the present form where it is just so widely drawn as to pick up any particular conversion that you might like to argue is a new dwelling will, if nothing else, produce plenty of work for the Commissioners of Appeal to deal with when it comes to appeals. So I am sympathetic with the motives of the Deputy but I cannot really accept the amendment in the way it is worded. I do concede, however, that if the House feels otherwise I have undertaken to him that I will make the necessary amendments in due course to Schedule 6.2(4).

7.28.3 Deputy P.V.F. Le Claire:

Years ago there was an over-creation of office accommodation in Jersey and the Chief Minister, at the time, said that if the developers are going to speculate in their area which was not being filled at the time and they catch a cold then let them look out. Now in a situation where we are moving our town from the central position to the Waterfront... and there were suggestions - and I am not against them because I have been one of the ones who said we should be doing it - of converting unused office spaces into accommodation as they do in many other jurisdictions. I think the issue that has just been raised by the Treasury Minister in relation to conversions might, in my mind, create some doubt if somebody was to convert an office block - that perhaps they have been using for financial reasons as a part of their business portfolio or part of their pension scheme or something - into accommodation they would basically end up being quite well-stocked landlords from a conversion process without there being any type of benefit financially for that move. I think that those answers, if there are doubts which there are with me at the moment, need to be set out and cleared up by the Treasury Minister in respect of those things. So I think also that I will not be able to support the amendment. I need to see that if office accommodation is going to be changed over and if it is going to be converted into accommodation for people to live in - which is a good thing in many circumstances - I think that there is going to be a windfall for those property developers that sat on those empty offices for years waiting for this to occur. I think, if that does happen, then there should be a subsequent payment to the Treasury for that changeover.

7.28.4 Deputy P.N. Troy:

As a developer, Sir, I was contemplating withdrawing on this section but Deputy Ryan stood up so quickly and then other Members have followed so quickly that I did not get the opportunity but I think I would just like to say to Members that obviously, as a developer, I will abstain on this point, Sir.

7.28.5 Deputy C.J. Scott Warren:

There certainly is an overlap between the terms "conversion" and "improvement". There is an overlap because any conversion can be classed as an improvement. I was originally going to support this amendment but I do understand the Minister's comments regarding the difficulty. But, on the other hand, I do wonder if there could be, in Housing Law regulation, some way to

overcome a conversion as described by the proposer of this amendment. I do think there is extreme difficulty and I therefore cannot support the amendment. Thank you.

The Bailiff:

I call upon the Chairman to reply.

7.28.6 Deputy P.J.D. Ryan:

Thank you, Sir. The Minister talked about the benefit to the public, and I think in order to demonstrate any benefit to the public of including the amendment, as we have drafted, it lies in the whole essence and reason for zero-rating a supply of new housing in the first place and that is there because we want to encourage the building of houses. We want to increase the supply side of the housing market so that we help to keep prices down and that is the reason why we are zero-rating the supply of new build housing units. Our point is quite simply that it is not a huge point and I am quite confident, having spoken to the G.S.T. Director and the Minister, that his undertaking that he will make the necessary changes - he is well aware of what we are trying to do - and we think it is a significant enhancement to the Law and therefore, Sir, I think that it is worth trying to make the effort to include the right kinds of conversions, possibly linked to the creation of a new housing unit, through the Housing Law. I would be very happy and I would venture to suggest that Members should be very happy to leave this in the hands of the Treasury Minister if we pass this amendment and I would maintain the amendment. Thank you, Sir.

The Bailiff:

Appel? Standing vote? May I ask any Member who wishes to vote who is in the precinct to return to his or her seat?

Senator T. A. Le Sueur:

I think I should make it clear, Sir, I did not accept the amendment of the Deputy.

The Bailiff:

Yes and I ask the Greffier to open the voting, which is for or against the amendment of the Scrutiny Panel.

POUR: 9		CONTRE: 33		ABSTAIN: 1
Connétable of St. Mary		Senator L. Norman		Deputy P.N. Troy (B)
Connétable of Trinity		Senator F.H. Walker		
Connétable of Grouville		Senator W. Kinnard		
Connétable of St. Brelade		Senator T.A. Le Sueur		
Connétable of St. John		Senator P.F. Routier		
Deputy G.P. Southern (H)		Senator M.E. Vibert		
Deputy P.J.D. Ryan (H)		Senator T.J. Le Main		
Deputy S. Pitman (H)		Senator B.E. Shenton		
Deputy of St. John		Senator F.E. Cohen		
		Connétable of St. Ouen		

		Connétable of St. Peter		
		Connétable of St. Clement		
		Connétable of St. Helier		
		Connétable of St. Lawrence		
		Connétable of St. Martin		
		Deputy R.C. Duhamel (S)		
		Deputy A. Breckon (S)		
		Deputy J.J. Huet (H)		
		Deputy of St. Martin		
		Deputy C.J. Scott Warren (S)		
		Deputy R.G. Le Hérisier (S)		
		Deputy J.B. Fox (H)		
		Deputy S.C. Ferguson (B)		
		Deputy of St. Ouen		
		Deputy J.A. Hilton (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 K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		
		Deputy of St. Mary		

The Bailiff:

Very well. We come back to Part 11, Schedules 5 and 6. Does any Member wish to speak?

7.28.7 Connétable D.J. Murphy of Grouville:

Yes, and Schedule 6. If I could draw the Members' attention to Article 49, which is supply of dwelling which is basically G.S.T. being levied on rents and in fact there is an anomaly here in that

its rents basically are zero-rated but any agreement, rental agreement or rental licence which is under 3 months does incur the G.S.T. tax. This to us appears an anomaly. We had discussed it with the Minister and we understood that our recommendation that this Article would be amended, but apparently it has not been amended and I wonder if he could give us some assurance that it will be?

The Bailiff:

Does any other Member wish to speak?

7.28.8 Deputy A.E. Pryke of Trinity:

Just a couple of points for clarification, Sir. On Schedule 5 at 4(d) that: "The supply of any service or goods by a person registered under the Healthcare and Registration (Jersey) Law", does that include Family Nursing Services? So does that mean people who are needing dressings, *et cetera*, in their own home will be covered by that? And also, if a person needs a wheelchair as a medical supply will that be covered? On Schedule 6 at 11(b): "A home or other institution providing residential accommodation", does that include nursing homes? Thank you, Sir.

7.28.9 Deputy S. Power:

Thank you, Sir. I would like some clarification on Schedule 6, section 4, page 102, zero-rating of exports. At point one the Schedule says: "The supply of goods shall be zero-rated at the supply." I take it that that means the retail supply of goods such as the airport duty free. Could he clarify that? And then on point 2: "The conditions may include conditions as to the minimum or maximum value of the supply of the goods or to any other matter." Does the Treasury Minister have an indication of the minimum because if there is a duty free shop at the airport, for instance, I would assume that everything in the shop is duty free?

The Bailiff:

No other Member wishes to speak? I call upon the Minister to reply.

7.28.10 Senator T.A. Le Sueur:

Thank you, Sir. Firstly, can I say that I will be looking further with the Corporate Services Scrutiny Panel at how we can improve Schedule 6, both in respect of property conversions and in respect of the matters that the Constable of Grouville raised. I had given the indication to the Corporate Services Scrutiny Panel there was a simple matter of amending Schedule 6. Having discussed this with the G.S.T. Director and the Law Draftsman, it is a matter of amending Schedule 6 but it is not a simple matter. So it is in hand and I am sure that the Panel will keep me on my toes in that respect. The Deputy of Trinity is asking about medical supplies and nursing homes. I can confirm that nursing homes are indeed part of those activities which will be exempt or zero-rated in terms of the medical supplies and supplies of services to the patients. As far as the particular individual medical supplies such as bandages or wheelchairs are concerned, that will depend very much on a case-by-case basis but in general terms they also will be free of G.S.T. I do not want to give a blanket undertaking there because there may be something which falls outside the net but the majority of all those services and goods will indeed now be exempt from G.S.T. On that basis, Sir and with those comments, I maintain whichever part of the Article, Part 11.

Deputy S. Power:

I do not think the Treasury Minister referred to my query on section 4.

Senator T.A. Le Sueur:

I apologise, I did not. As far as the airport, air-side shop is concerned, the sales certainly would be duty free. They may or may not be G.S.T. free. This really depends on whether the consumption of those goods takes place on-Island or off-Island. It may well be that there are moves afoot to allow incoming passengers to purchase those goods and I would not want to have a disparity there

between the G.S.T. treatment of those goods and the goods bought from any other wine merchant in town. That is a matter which we need to discuss with the Economic Affairs Minister or his Assistant. Certainly, we want to encourage the commercial activities at the airport but not to the extent of distorting the market. On those comments I hope that deals with the Deputy's concerns.

The Bailiff:

I put Part 11 and Schedules 5 and 6. Those Members in favour of adopting them, kindly show. Those against? The Articles and Schedules are adopted. We come now to Part 12. Minister, you are not going to move Articles 61, 62 and 65, I understand, but there are a number of amendments to Articles in this part and I wonder if we might break them down slightly perhaps?

7.29 Senator T.A. Le Sueur:

I think we ought to, Sir, yes. The first amendment comes in Article 57 and that changes the word "finance vehicle" to "international services entity" and that occurs in various places in Article 57 and indeed in Article 59 and indeed Article 60. I wondered if I could propose Articles 57 to 60 as amended by my amendments?

The Bailiff:

Very well. Articles 57 to 60, as amended by the Minister's amendments. I wonder if it might be helpful to Members if the Greffier were to read out those amendments to draw Members' attention to them.

The Deputy Greffier of the States:

Page 51, Article 57; (a) in the heading to the Article and in paragraphs one, 2, 3 and 4 for the words "finance vehicle" in each place that they appear substitute the words "international services entity"; (b) in paragraphs 3 and 4 for the words "finance vehicle" substitute the words "international services entities". Article 59; (a) in paragraphs one and 3 for the words "finance vehicle" in each place that they appear substitute the words "international services entity"; (b) in the heading to the Article and in paragraphs one and 3 for the words "finance vehicles" in each place that they appear substitute the words "international services entities". Finally, Article 60, in the heading to the Article and in paragraphs one, 2(b), 3(b) and 4(b), for the words "finance vehicle" substitute the words "international services entity".

The Bailiff:

Right, Greffier, we had better have the first one too, I think, page 51, Part 12, at the top.

The Deputy Greffier of the States:

For the heading, substitute the following heading: "international services entities".

The Bailiff:

Thank you. Minister, do you move those Articles then, as amended? And they are seconded? **[Seconded]** Does any Member wish to speak on any of Articles 57 to 60?

7.29.1 Deputy P.V.F. Le Claire:

I just wondered why it seems to have come so late in the day, this amendment and the call for us to... I might be getting my wires crossed here but I hope not because it is a confusing set of circumstances, but if it is going to create such potential complexity and these are the words within the amendment and if it is going to potentially undermine the simplicity of the scheme why were these issues not identified earlier? Why have they only surfaced recently it seems from this amendment given the complexity and the wide consultation that has been occurring? Why is it that something as significant...

The Bailiff:

Are you talking about the Minister's decision not to move Articles 61, 62 and 65 or are you talking about the amendment to Articles 57 to 60?

Deputy P.V.F. Le Claire:

I was talking about the amendment, Sir.

The Bailiff:

Fine. I beg your pardon. Please carry on.

Deputy P.V.F. Le Claire:

It will not take much to make me lose my place I am afraid, Sir, because I am quite confused about it all and rather than trying to get into the complexity of it because it is, in the Treasury's own words, complex. All I am trying to understand is why did such a complex situation that was so close to undermining the simplicity of the complex/simplistic situation come to us in such a late manner after such consultation could potentially lead to undermine the simplistic system that we are adopting. It just seems to me that there seems to be some eleventh hour discussion with the finance industry whereby millions of pounds are on the line and it does not seem to me that it is evident that a thorough and ongoing set of dialogues have been occurring within the finance industry in all aspects of this simplistic Law, and if there had have been surely they would not be surfacing in an amendment of this nature at this time. If it was a change of a name just for simplicity on the international circuit then one could understand the change of a name but it is not just the change of a name; it is the change of a name in respect of how the banks I believe, from memory, are able to apply their ability to get refunds, *et cetera*, so I would just like to ask, rather than the detail, why did this come so late? Is that not evidence that perhaps there are areas that we needed to have been consulting more strongly with the finance industry and will there be other areas potentially as this beds-in that we will find the same set of circumstances has occurred because it is not an easy thing to understand? It is not an easy thing to understand why it has taken this long for this to appear.

7.29.2 Deputy R.G. Le Hérissier:

I was just going to ask in terms of dealing with this simple complexity - or this complex simplicity - I take it, Sir, the Treasury Minister can assure us that this does not apply to banks who operate in Jersey and who have clients of Jersey people?

7.29.3 Deputy P.J.D. Ryan:

I would seek guidance from you first of all, well, I think I already have that guidance because you questioned Deputy Le Claire on this. If we are speaking purely on the Minister's amendment then we can support the name change to "International Services Entity" without any problem. However, if the debate on the removal of Articles 61, 62 and 65 is also to be had at this point, Sir, then I would like to reserve my position and I have certainly several things to say. Could I have your guidance please as to when we will have that debate?

The Bailiff:

I thought it would probably be more convenient to deal with any reservations of that kind at a later stage, Deputy, when the Minister moves Articles 63 and 64 and succeeding Articles and does not move the 3 Articles which he does not want to move. I think perhaps you could raise your concerns at that stage.

Deputy P.J.D. Ryan:

Okay, Sir, thank you. But suffice to say on the amendment itself we support the name change as amended. Thank you.

7.29.4 Deputy P.N. Troy:

In the report on page 4, Sir, at the bottom it says: “Any such body listed under Part 12 would not be considered a taxable person for G.S.T. purposes.” Can the Minister just confirm that this actual amendment does not change in any way the amount of G.S.T. that would be collected?

The Bailiff:

I call upon the Minister to reply.

7.29.5 Senator T.A. Le Sueur:

I think the change in name from Finance Vehicle to International Services Entity is really a matter of reflecting the reality, as my report says. The fact that this has come at a late stage is, I think, a reflection of the fact that originally much of the treatment of the financial services industry was intended to be done in subsidiary Regulations and it is only at a fairly late stage that it has come into the primary Law. But following discussions we felt it was better to let the Law reflect the reality of the situation that we are dealing with a finance industry here which is primarily outward looking towards international service activities. As far as the banks are concerned, yes indeed banks are international financial service entities and the report in paragraph 3 makes it clear that banks will be eligible for inclusion as an international service entity under the flat-rate scheme. To Deputy Troy; I can confirm that these amendments do not affect in any way the amount of revenue to be obtained from the financial services industry. What it will do is give the industry greater clarity perhaps in the whole section as to their obligations which I remind Members are to generate between £5 million and £10 million a year G.S.T. from their activities. So I, for the moment, Sir, propose Articles 57 to 60 as amended.

The Bailiff:

Very well. I put those Articles. Those Members in favour of adopting them kindly show. Those against? Those Articles are adopted. The Minister is now going to move Articles 63, 64 and 66 to which there are amendments in his own name. I wonder if the Greffier would just read the amendments to Articles 63 and 66.

The Deputy Greffier of the States:

Page 54, Article 63, delete the words “or name” in each place that they appear and page 55, Article 66, delete paragraph (2).

7.30 Senator T.A. Le Sueur:

I feel firstly that my own amendments to Article 63 is, I think, a fairly minor change just to delete the words “or name”. In Article 66 having deleted the word “name” in Article 63, 66(2) becomes irrelevant. So those 2 I think are fairly straightforward. Deputy Ryan has hinted that there is some concern about withdrawing Article 61, 62 and 65. I just draw his attention and that of Members in fact to the second bullet point of Part 3 of my report. The effect of removing 61, 62 and 65 is to withdraw what was a potentially complicated partial refund scheme for banks on the basis that there was a far better way and far simpler way of achieving the same revenue from those institutions but in a different way. So I have made it quite clear to those institutions that I am expecting them to adhere to that requirement of delivering the revenue we are looking for and that we will do that by setting the rates to those institutions and financial service entities which are adequate to bring in the revenue involved. On that basis, Sir, I do not propose to move Article 61, 62 and 65 but I do propose Article 63, 64 and the first part of 66.

The Bailiff:

All those Articles as amended are proposed and seconded? [**Seconded**] Does any Member wish to speak?

7.30.1 Deputy P.J.D. Ryan:

I take no pleasure in standing up today and talking on this but I feel I have to. The Law as originally drafted was consulted upon at length, not only with the financial services industry but with all other parties and stakeholders to ensure fairness and equity for the new tax that has become necessary to fill the hole created by a large reduction in the tax burden of principally the finance sector. Therefore, the proposal to withdraw the partial exemption scheme provisions that were a fundamental part of the means towards collecting the £5 million to £10 million in revenue promised by the Minister certainly do represent a significant change. They do that with 3 working days notice to my Panel and States Members and with no hint of a change from the previously understood position which, might I say, was agreed and fully accepted by the industry to my Panel. Sir, since last January 2007 and long before that - I have not checked my diary - we have been in contact with Jersey Finance seeking meetings to further examine the treatment of the sector for G.S.T. It was explained that the relevant personnel at Jersey Finance were busy people giving of their time in the main without payment. We freely accepted that and agreed by letter with them that because of time constraints and the fact that most of the meat and the devil would be in the Regulations detail, we would leave the treatment of the financial services sector largely alone at this point and both sides would cover the sector properly during the third and final - anyway for now - part of our review when the Regulations came out for consultation in June or July this year. The last communication I had from them was 20th March 2007. Over the last 2 days and on investigation I have discovered that the proposal - and I will rephrase that - the very, very strong proposal to withdraw these provisions has come only in the past 2 weeks and from Jersey Finance themselves while, incidentally, I believe the Treasury Minister was on holiday. I must say, Sir, that I am very, very disappointed with the treatment of my Panel by Jersey Finance over this and by extension that means the treatment of the people of Jersey that have entrusted us with a job of scrutinising the relationship between such bodies that represent the finance industry and the Executive at the Treasury and within the Council of Ministers. I believe their attitude and the treatment of my Panel has bordered on the discourteous. Some would say that the behaviour goes much further than that. Indeed some have said that our treatment at the hands of senior industry leaders is symptomatic of a certain dismissive attitude, not only towards the Scrutiny function but more worryingly they point to a somewhat unhealthy and over-assertive influence on the Executive itself. Sir, the public may see this yet again as deals behind closed doors which is a great shame because I do not believe that anything of the kind is true. Those that know me well realise that I have been in the past and remain one of the industry's staunchest supporters. But perceptions are everything and the industry wonders why sometimes it gets a bad press. Again my investigations yesterday have revealed through a third party - as I have still had no contact from Jersey Finance - that the thinking behind such a move to switch the banking sector G.S.T. contribution from the globally accepted partial exemption model to an industry first and, hopefully, leading flat-rate charge model is thought to give Jersey an edge over certain competitors when it comes to retaining our local banking sector against competitor jurisdictions. Now that may be so but several things spring to mind. An industry first and departure from international norms must surely be fraught with dangers and be carefully considered from all angles. Not least of which will be such things as is this a tax or is it a charge? If it is a tax is it compliant with our international commitments on business taxation? What are the revenue implications if any? I am assured there are none but I cannot support that assertion until I have fully investigated the changes, researched the position in other countries, assessed whether or not to the perceived advantages in lighter admin cost, simpler Law and the marketing of the Island as a finance centre are real and sustainable in the long run, *et cetera*. I would urge the Minister, therefore, in the strongest possible terms to keep the partial exemption scheme - as previously fully agreed by the industry and, what is more, fully tried and tested in every G.S.T. and V.A.T. country in the world - at least for the time being to keep our options open. As the Minister knows I am very loath to call in the Law in the Third Reading and he knows that I believe the delays to the Law have already cost us dearly. However, there is a very important matter of principle at stake here and I will not shrink from doing what I believe is right and in the interests of the public although I will listen carefully to other Member's views through

their speeches and comments before I make a final decision on this. However, if the Minister is prepared to keep Article 61, 62 and 65 at this point as an alternative to the flat-rate system I will make the following pledge. My Panel will urgently engage all parties as swiftly as possible and carry out the third stage G.S.T. review to include a detailed analysis of all of the arguments in favour of extending the flat-rate scheme to the banking sector. Certainly I can see the potential advantages as indicated to me. I would very much like to be able to support the removal of the conventional partial exemption scheme from the Law but I will only do that when I have fully investigated the implications and reported on them evidentially. What is more, I promise to do that in time for the debate on the Regulations. I also undertake that Members, the press and the public will have considerably more than 3 working days to read and absorb its content. In the meantime I can confirm to Members - because I have checked this point yesterday with the Treasury - that there is no reason why staff at the Treasury cannot be working on a draft of the Regulations that will suit any one or both treatments of G.S.T. and the banking sector without significantly causing extra workload. Sir, I think you might by now have gathered that I do not support the removal of Article 61, 62 and 65 from the Law at this stage.

7.30.2 Deputy P.N. Troy:

I think following that speech I would really ask the Minister to give a detailed response as to why he wishes to remove those clauses.

7.30.3 Deputy R.G. Le Hérisier:

I am glad Deputy Ryan spoke because although I did not understand the complexity of the issue I think he has done a very valuable job in drawing attention to it. I did notice, Sir, that the Minister for the Treasury spoke very fast when he did come to that point in saying: "I will be lifting this and I will be seeing how they react before I decide what to do in the future." It struck me that was quite frankly an exercise in creative ambiguity which I was surprised to hear in relation to a Law that seems to be so specific, so precise and where in a way the complexity is - sorry, I will not use the vernacular - but where the complexity is causing a problem to some of us. So I entirely agree, Sir, with the Deputy for St. Helier. I am very worried about this. I do not think it has been well explained and it smacks very much of some kind of deal: "Let us suck it and see". Surely that cannot be the basis upon which a Law of this kind is written.

7.30.4 Deputy P.V.F. Le Claire:

I am a little bit surprised to be honest, Sir. That speech from Deputy Ryan definitely has made me realise that at the very least I have been caught napping in relation to this and I am not certain as to what is going on. Deputy Troy stood up and asked, based upon this speech that Deputy Ryan gave... which was a pretty heavyweight speech in terms of what was said within it. If one reads back on a transcript of this debate I think some of the innuendo there at least has to be called into question as to what was going on and why has this happened in the manner that it has happened given the global context of flat-rate tax and the different jurisdictions that are looking to move to those arrangements. In the normal course of a debate if we continue to stand up and make our observations and the Treasury Minister does not choose to give the explanation that Deputy Troy has requested then the matter will fault at a vote as to whether or not we support the Treasury Minister or whether or not we do not support him. I do not think that is adequate, Sir. Although it is rather procedural I think that maybe there is an issue here about whether or not this should be referred to Scrutiny as under Standing Orders any Member can do. So in that consideration although it can be done in any event we will, at the very least, have an explanation before we come to a vote today on this Article from the Treasury Minister as to why he has given us this position today. So I formally move, Sir, that unless the Treasury Minister is to take up and respond in particular to the concerns that Deputy Ryan has made that we do refer it to Scrutiny. I ask that now before I take my place. I give way to the Treasury Minister before making that proposal.

Senator T.A. Le Sueur:

I think the reasons for withdrawing Article 61, 62 and 65 are set out in my report, perhaps not in as much detail as people would like. It really relates to the potential complexity of the partial refund scheme; complexity which the Chairman of the Corporate Services Scrutiny Sub-Panel himself accepts may be a good reason not to have it. But I do take note of the mood of the House. I think it would be perhaps wiser of me - with your wishes, Sir - having dealt with Article 60, 63, 64 and 66, to come back and propose Article 61, 62 and 65 after all, on the basis that in the intervening period I will work with the Corporate Services Scrutiny Panel and the financial services industry in order to resolve the concerns of that Panel. Should those Articles then be found to be redundant - and I suspect they will be - we can then either amend the Law to delete them or equally have a Law in point of favour which those Articles would not come into force. I think that would probably be a way of dealing with Deputy Ryan's and other Members' concerns in a way which would not affect the passage of this Law, would not hold matters up, but would still allow the Corporate Services Scrutiny Panel to have the sort of inquiry that they would like to undertake. I would suggest to the Deputy though that rather than wait until Regulations are presented in this House we ought to get on with that with all haste and try to get both the Members of the House and the industry aware of our views at an early stage. On that basis, Sir, after we have debated and agreed Article 63, 64 and 66, I would come back - out of sequence I admit - and propose 61, 62 and 65.

Deputy P.V.F. Le Claire:

In continuing to speak, Sir, having listened to the Minister after that very laudable opportunity to move forward in a considered way, is it not now appropriate for the Minister to withdraw the amendments from a procedural perspective?

The Bailiff:

I do not think that any of the amendments that the Minister has proposed are relevant to the point that has been made by Deputy Ryan unless I have misunderstood the position. What the Minister is saying is that he will move or would be prepared to move the 3 Articles which he was not proposing to move in order to meet the point which has been the concerns raised by Deputy Ryan.

Deputy P.V.F. Le Claire:

Yes, Sir, sorry my wrong interpretation of what is going on; a bit confusing. Can I just finish my speech then, Sir - because I did want to hear from the Minister in response to Deputy Ryan's concerns - by saying I am very pleased that the Minister has agreed to consider the measures set out within the Law. But I also urge the Panel that is looking into this to make sure that a full considered briefing is given to States Members on this issue once the conversations have occurred backstage with the Minister because I think there are some concerns - I have some concerns - about the process which has been described albeit there was a confirmation that it was not an underhanded method. It certainly had the innuendo that it was. I think that there needs to be some answers in respect of whether or not we are contributing to the maintenance of a corporate body to promote an industry, with large sums of States and public moneys, that have in this set of circumstances in a very important period of our time in government absolutely failed to inform us on a very relevant issue from a global perspective and from a jurisdictional perspective in relation to the finance industry. I think that is a total failure. So I hope that the Corporate Services Panel and the Treasury Minister can identify what went wrong and set in place procedures that that does not happen again.

7.30.5 Deputy J.B. Fox:

Yes, Sir, I was very concerned to hear what Deputy Ryan has brought to the attention of this House today. I find it, in my humble opinion, very discourteous of a professional body not to provide all the support it can in that that is being asked of it on behalf of a new Ministerial government procedure, i.e. the Corporate Services Panel. I think that I would ask that if the Chief Minister

would consider making representations to the organisations concerned to make sure that the thoughts of this House are passed on as to this dissatisfaction of the lack of co-operation that seems to have occurred in this particular case and to positively ensure that the message goes out that we are all in a very small Island trying to make the best of our economy and resources but we can only achieve that with working together and not have incidents like this having to be reported to the House.

The Bailiff:

Does any other Member wish to speak?

7.30.6 Senator F.H. Walker:

Can I just respond in an overall respect to some of the things that have been said? I think some Members are reading far, far, far too much into what is being proposed here. There seems to be a view that there has been a deliberate discourtesy to the Scrutiny Panel, to this House or whatever. I can assure the House that that is absolutely not the case. What has happened here is that senior figures in the finance industry, predominantly senior people involved with Jersey Finance, have found - and I agree with Deputy Ryan - after many months of scrutiny have found one aspect of the Law which they believe will place Jersey at a competitive disadvantage and they have made those views heard to not only the Treasury Minister but to me. But there is no question of discourtesy. We are bound in a Law of this complexity - as the Treasury Minister himself has said on a number of occasions and said so today - to come up with improvements as we go along. This is a very complex Law. But there are no discourtesies here. There has been no slight as the Chairman of the Scrutiny Panel seems to suggest. I would urgently put it to him that he is over-reacting to the situation. This type of position is inevitable in a Law of this complexity. So I leave it to the Treasury and Resources Minister to decide what to do but I just wanted to make it clear there is absolutely no discourtesy intended. This is a suggested improvement to a very complex Law which would prevent a possible competitive disadvantage occurring to our finance industry; nothing more, nothing less. I really do think the Deputy has misinterpreted what lies behind the amendment.

Deputy P.J.D. Ryan:

Sir, may I respond to that? I have already spoken.

The Bailiff:

You have spoken I am afraid, Deputy, yes. If no other Member wishes to speak I will call upon the Minister to respond.

Deputy P.J.D. Ryan:

May I make a point of clarification then, Sir? **[Laughter]** If I have over-reacted it is out of a sense of utter frustration and it is out of a sense of longer term frustration at the way in which the Scrutiny function seems to be treated by certain people. "Seems", Sir, that is the clarification.

The Bailiff:

That is crystal, crystal, crystal clear. **[Laughter]**

Deputy P.J.D. Ryan:

I would also just like to thank the Treasury Minister for reconsidering his position.

Senator F.H. Walker:

Sir, can I clarify the Deputy's clarification? **[Laughter]**

The Bailiff:

No, I am afraid not, Chief Minister. I now call upon the Minister to reply to this part of the debate.

7.30.7 Senator T.A. Le Sueur:

Just when we thought everything was being clarified I have to advise Members that if I am to propose Articles 61, 62 and 65 as I intend to do then the amendments to Article 63 and 66 should not be pursued at this time. In other words that the whole of Part 12 in respect of 61, 62, 63, 64, 65 and 66 should now be proposed and considered by the Scrutiny Panel as a whole. So I hope that Members will give me leave to withdraw amendments - whichever they are - for Article 63 and 66. May I first seek that leave, Sir?

The Bailiff:

Yes, these are the amendments which seek to delete the words "or name" and delete paragraph (2) of Article 66. So are Members content to allow the Minister to withdraw those amendments? Very well, you have the leave of the Assembly.

Senator T.A. Le Sueur:

I will then now propose Article 61, 62 and...

The Bailiff:

Not quite so fast. **[Laughter]** There is nothing more that you wish to say in response to the Articles that you have proposed on which the Assembly has not yet voted?

Senator T.A. Le Sueur:

No, I do not, Sir.

The Bailiff:

No, very well. Well I put the Articles in unamended form. That is to say Articles 63, 64 and 66. Those Members in favour of adopting them kindly show. Those against? The Articles are adopted. I now call upon the Minister to propose Article 61, 62 and 65.

7.31 Senator T.A. Le Sueur:

Although it is quite possible that these Articles will not be brought into effect, I see no harm in proposing them and having them referred to the Corporate Services Scrutiny Panel in order that the discussions that the Chairman has mentioned can take place in short order. I do believe that the members of Jersey Finance involved in these discussions were not deliberately being obstructive or unhelpful. I am sorry that that impression has been given to the Corporate Services Scrutiny Panel. Can I say on my behalf that I think that over the last 2 years, members of the industry have given tremendous time to helping both in this Law and the Zero/Ten Law in coming up with something which is appropriate to Jersey's needs. I would not want them to get the impression that their efforts are unrecognised. It may well be that is a communications issue in this particular instance. That should not cloud us to the tremendous work and assistance that they have certainly given me and my officers over the past 2 years. Nonetheless their view is that this partial refund scheme is unnecessarily complicated. It will cause confusion and it will cause difficulties. I believe that they are right in their submission and that is why originally I was prepared to withdraw them. However, I am prepared as I have previously indicated that these matters should again be reconsidered by the Scrutiny Panel and I will ensure that the representatives of J.F.L. (Jersey Finance Limited) also play their part in those discussions. I hope as I say that that can take place as soon as possible and that the results of that particular investigation could perhaps be made known by the Corporate Services Scrutiny Panel in a subsequent sub-report before the main report and Regulations. With that in mind, Sir, and with an eye on the clock I propose Article 61, 62 and 65.

The Bailiff:

Those Articles are proposed and seconded? **[Seconded]** Does any Member wish to speak?

7.31.1 Deputy P.J.D. Ryan:

I am extremely grateful to the Minister for proposing those Articles and I am well aware the timescales involved. I am also well aware that there may well need to be some bridges now rebuilt. I for one give that commitment to rebuild those bridges with Jersey Finance as quickly as possible. I used to be a director of Jersey Finance so I well know the organisation. I make that commitment. Hopefully we can look forward to a period of much better communication. I make that commitment.

The Bailiff:

I call upon the Minister to reply.

7.31.2 Senator T.A. Le Sueur:

I am grateful to the Chairman of the Sub-Panel for those views. His Panel and my office and I have had a good working relationship and I am sure that this is no reflection on the relationship that we have. I am sure that we can continue to work together for the benefit of this Law and the benefit of the Island. So I thank the Chairman for his comments and I propose Article 61, 62 and 65.

The Bailiff:

Very well. I put Article 61, 62 and 65

Senator L. Norman:

Can I ask for the appel please, Sir, as Senator Shenton is not here? **[Laughter]**

The Bailiff:

Very well. I ask any Member who wishes to vote to return to the Assembly as soon as may be. I ask the Greffier to open the voting which is for or against Article 61, 62 and 65.

POUR: 40		CONTRE: 0		ABSTAIN: 0
Senator L. Norman				
Senator F.H. Walker				
Senator W. Kinnard				
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator M.E. Vibert				
Senator T.J. Le Main				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Peter				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				

Connétable of St. Lawrence				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Deputy R.C. Duhamel (S)				
Deputy A. Breckon (S)				
Deputy J.J. Huet (H)				
Deputy of St. Martin				
Deputy P.N. Troy (B)				
Deputy C.J. Scott Warren (S)				
Deputy J.B. Fox (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 K.C. Lewis (S)				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

The Bailiff:

We come to Part 13, Article 67 to 70 and Schedule 7.

7.32 Senator T.A. Le Sueur:

Right, back to relative simplicity. Part 13 deals with the administration of G.S.T. and its relationship with the Customs and Excise (Jersey) Law 1999. Clearly there will be times when that department needs to be involved and I appreciate the assistance that I have been given by the officers of that department. I move Article 67 to 70.

The Bailiff:

And schedule 7. Those Articles and Schedule are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of those?

7.32.1 Deputy S. Power:

I have a question on clarification on the cost of the administration, Sir. On page 4 of the report it says that it is estimated that 10 staff will be needed to administer the tax at an approximate cost of a £1 million a year. However, when we move on to page 55, Part 13: administration, section 67, point 2 it says: "The Agent of the Impôts shall provide for G.S.T. on the importation of goods to be charged and payable as customs duty on those goods." Then I want to bring Members' attention to point 69, section 1: "An expression in any provision of the Customs and Excise (Jersey) Law 1999 (to the extent that the provision applies to or in respect of the importation of goods) being an expression that is, or that customs shall include the administration of G.S.T. on the importation of the goods but customs duty, duty chargeable on goods or duty on or in respect of imported goods shall include G.S.T. on the importation." Finally, Sir, in point 2: "The Agent of the Impôts and his or her officers shall be subject to the general control of the Ministry for Treasury and Resources in their discharge of functions in relation to G.S.T." So while it says on page 4 that 10 staff will need to be employed in order to administer the tax at a cost of £1 million, I do not see any reference to the extra costs in the administration of G.S.T. at Customs and Excise. I think, Sir, that the extra costs at Customs and Excise should be reflected as part of the G.S.T. costs. Bearing in mind that in 2006 at the harbour alone there were 94,000 individual freight movements; that is unit freight movements. Most of those were not subject to any kind of taxation. Most of those from 2008 on will be subject to tax. So, Sir, I would ask the Treasury Minister to carefully consider that the true costs of G.S.T. be reflected in the financial and manpower implications.

The Bailiff:

I call upon the Minister to reply.

7.32.2 Senator T.A. Le Sueur:

The estimated costs of £1 million administration includes the cost of administration of staff based both at the Tax Office and at the Customs and Impôts Department and based on a simple G.S.T. Law with a workable *de minimis* limit. Clearly one of the tensions that we have, and has been alluded to by the Chairman of the Corporate Services Scrutiny Panel, is the fact to which those administration costs might have to be balanced against the economic benefit to the Island. That does not affect the wording of the Law which simply requires that for goods coming into the Island the activities will be carried out by officers employed by Customs and Excise Department who will in that respect, and that respect only, be responsible in their discharge of functions to the Treasury and Resources Minister purely for the G.S.T. element of that. So I do not think it is necessarily a question of having large increased staffing. The way in which the administrative arrangements have been produced are relatively simple to administer and can be done, I gather from the Customs staff, with the minimum of extra staff assuming that the system stays simple. So I maintain Article 67 to 70.

The Bailiff:

I put Article 67 to 70 and Schedule 7. Those Members in favour of adopting them kindly show. Those against? The Articles and Schedule are adopted. We come to Part 14, Article 71 to 81.

7.33 Senator T.A. Le Sueur:

Part 14 deals with failure to comply with requirements and penalties for misdemeanours. This is in some ways different from the penalties in relation to income tax because I think it is fair to say that Goods and Services Tax Law has different facets to that involved with income tax. I believe that the penalties which have been discussed with the Attorney General's Department are realistic. I propose them although I understand that there is one amendment from the Scrutiny Panel.

The Bailiff:

Articles 71 to 81?

Senator T.A. Le Sueur:

71 to 81. We are all right on those, yes. So I propose the Part 14.

The Bailiff:

Part 14 is proposed and seconded? **[Seconded]** Does any Member wish to speak on any of those Articles? Well I put the Articles. Those in favour of adoption kindly show. Those against? They are adopted. We come to Part 15, Articles 82 to 83.

7.34 Senator T.A. Le Sueur:

Part 15 is simply dealing with the situation where people either do not pay, pay late or pay too much and it sets out how that will be dealt with either by way of surcharge or by repayment. So I propose Articles 82 and 83.

The Bailiff:

They are seconded? **[Seconded]** Does any Member wish to speak on either of those Articles? I put the Articles. Those Members in favour of adopting them kindly show. Those against? Articles 82 and 83 are adopted. Part 16, 84 to 87.

7.35 Senator T.A. Le Sueur:

Part 16 is an important part of any law and gives people the power to appeal against decisions made by the Tax Department against an assessment of G.S.T. It also deals with the relationship of the appeals process to that which currently exists in respect of the Income Tax Law and in particular the powers of the Commissioners of Income Tax. So I propose Articles 84 to 87.

The Bailiff:

They are seconded? **[Seconded]** Does any Member wish to speak on any of those Articles? I put Articles 84 to 87. Those Members in favour of adopting them kindly show. Those against. They are adopted. Part 17, Articles ... perhaps we had better take them one by one, Minister. Article 88.

7.36 Senator T.A. Le Sueur:

I will deal with Article 88 first of all which deals with the fraudulent evasion of G.S.T. One likes to think that no one would willingly fraudulently evade G.S.T. but we have to allow for that possibility to occur. Should it occur, then appropriate penalties and sanctions need to be imposed. My proposal after discussion with the Attorney General was that the offence should be liable to imprisonment for a term of up to 15 years and a fine. There is an amendment which no doubt we will discuss in a moment which we can talk about and override it. So I propose Article 88, Sir.

The Bailiff:

Article 88 is proposed and seconded? **[Seconded]** Now there is an amendment as the Minister has said and I ask the Greffier to read the amendment in the name of the Scrutiny Panel.

The Deputy Greffier of the States:

Page 67, Article 88: In paragraph (4) for the words “15 years” substitute the words “5 years”.

7.36.1 Deputy P.J.D. Ryan:

The scrutiny of legislation in this kind of detail is not an easy task and it something which we have attempted to do. Particularly our research has taken us to several other jurisdictions and I would refer Members to page 37 of our Scrutiny Report. I am not sure if Members have our report in front of them but on the back page in the appendix there is an international comparison of offences and that details the research that our technical adviser has carried out for us. I would like to make a couple of other more general comments though about this Law in that as a tax law... and this is something I would like to impress upon Members. This is a tax law and normally tax laws do make provisions for taking tax from people and usually the penalties are on the people themselves that do not pay the tax. This Law is slightly different because effectively what it does, or certainly when it comes to the penalties, they are imposed upon the free tax collectors. This Law obliges businesses to act as unpaid tax collectors on behalf of government. That is different in that concept. That is unusual. Therefore, I would like Members to bear that in mind when they think about things like penalties and maximum prison sentences and what have you. We need the co-operation of the business sector to collect this tax for us and act as unpaid tax collectors. I am sure that they will do that. They will obviously have to do that because it is the Law. But please to bear that in mind when we are thinking about penalties. There is one other point. That is, as the Treasury Minister says, these are penalties that are up to 15 years. I am sure other Members or even the Attorney General might point to the fact that this is up to... and the law courts themselves have the ultimate say on how much prison sentence to apply in any particular case. But nevertheless the very fact that we have a maximum sentence in the Law is an indicator to the law courts as to how serious we view a particular crime. If it were not to be the case and if the law courts were to ignore the maximum sentences laid down then for goodness sake why do we have them in the Law at all? So I do not really take that argument. It is right that we scrutinise the sentences and the penalties in exactly the same way as we would do anything else. So I have pointed, Sir, to the research that we have carried out. It is quite clear that 15 years prison sentence in this particular case in Jersey seems to be out of sync, dare I say it, with other jurisdictions. Therefore, we make the amendment. I listen very carefully no doubt to the Attorney General. I seem to be picking fights with several people this afternoon. Maybe I have picked on someone a little bit bigger than me this time but we will see. **[Laughter]**

The Bailiff:

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

H.M. Attorney General:

First of all if I may explain to Members... most Members will be aware but it is just right going over some of the background. What is the prosecution interest? Why am I speaking on this point? What is the prosecution interest in it? It is that the Crown has the obligation to move conclusions before the Royal Court as to what the appropriate sentence should be. Secondly, it is the Attorney General's job to identify which charge is most appropriate to fit the conduct which is under criticism in the court. Now the present position is that there is an offence of common law fraud and if there were a tax fraud I would charge it under the customary law fraud or one of the related charges, all of which under the present law carry liability to a sentence at large up to life imprisonment. There is also an offence under the Income Tax Law which is really not one of fraud at all. It is really one of neglect and wilful default and that carries only a fine. But that falls into a completely different category. If the States create a statutory offence of V.A.T. fraud I would

expect to charge that instead of a customary law fraud. Indeed there might be argument from the defence that it was an abuse of process to charge a customary law fraud when the States have created a statutory offence of V.A.T. fraud. But even if I did charge the customary law fraud which gives rise theoretically to a maximum sentence of life imprisonment, I would expect the court to have regard to the penalties which are set out in this Law because the exposure to the penalty should not depend upon the choice of charge where the conduct really is the same. We are talking at the moment about the maximum penalty. It is reserved by the court for the absolutely worst cases that could possibly exist. As far as I am aware in my practice before the courts I do not think I have come across the worst case that could ever possibly exist because courts do not like to say: "This is the worst case" in case there are some other facts and an even worse case should turn up later on. All other sentences are then fixed by reference to what is the worst case. So if you say that the maximum sentence is 15 years imprisonment then notionally one would expect the court to have regard to conduct which it might think is terribly, terribly bad as being somewhere near the top of the bracket and other conduct would come down. In other words if States Members fix a penalty of 5 years imprisonment instead of 15 years imprisonment, one has to regard that as fixing the sentence for the worst possible offence of V.A.T. fraud and, secondly, that the vast, vast majority of frauds involving V.A.T. will be at commensurately quite low levels. The court has imposed sentences for private sector frauds - frauds by people engaged in financial services businesses for example - where quite a lot of money is involved - I am thinking about sums in excess of £1 million - where the sentences imposed may have been 5, 6, 7 years' imprisonment. Those usually follows a guilty plea by the accused and usually are in circumstances where there is quite a lot of mitigation which the accused puts forward to the court. So one might, if you like, take the view that if there had not been a guilty plea and there had not been other mitigation then the sentence would have been much higher. It would have been in those cases perhaps something like 10, 11, 12 years' imprisonment. So one is looking at, in relation to this offence, and the reason that I came to a sentence of 15 years imprisonment was that it seemed to me to be in keeping with the fact that if I charge for common law fraud it would be a sentence of maximum life imprisonment in keeping with the sort of sentences that might be imposed by the court if the victim were a private sector business and not the people of Jersey. It does seem to me to be odd to contemplate imposing a greater sentence for fraud on a private sector business than it is for a fraud on the whole people of the whole Island of Jersey. That seems to me to be odd. So in those circumstances I took the view that 15 years was the right period. I would like to add this. I agree entirely with the Chairman of the Scrutiny Panel that this is entirely appropriately a matter for Members to consider what is the right sentence. There is absolutely no doubt about that at all. The result of that is that Members will be giving a signal to the courts as to what they think the worst possible conduct might be. What the worst possible conduct might be; it could be a fraud by a major retailer going over a period of 5 or 10 years, deliberately done, which has cost the Island millions of pounds, millions of pounds in G.S.T. That is a fraud that could exist. To say that in those circumstances the worst case should carry a maximum sentence of 5 years' imprisonment seems to me to be much too low but of course it is a matter for Members. The Chairman said that the tax law usually imposes a penalty on people who do not pay the tax and this Law obliges businesses to act as unpaid tax collectors and that Members, the Island, needs the co-operation of the business sector. Well forgive me for saying, but the business sector does not have much option but to co-operate in the context of a Law that is passed by the States. But what we are looking at here is a case where the business sector or a particular businessman - a registered person - has collected the tax, the G.S.T., from the members of the public but does not account for it. So, in fact, that does emphasise how the public as a whole are the victims of such a fraud. The Chairman referred to the research which has been carried out in relation to other jurisdictions. I agree entirely that at first blush the international equivalent offences make a maximum sentence of 15 years surprising. Well, my reaction to that is twofold. First of all is the intellectual response that I have not yet had the opportunity of reviewing all the other jurisdictions which are concerned because they may or may not have other offences or that the structure of the offences may be slightly different. But more to the point I am afraid I rather

take the trenchant view: “So what?” If other jurisdictions have lower sentences then that is a matter for other jurisdictions. If we think this is the right sentence, that is a matter for us. I take into account also that the rate of tax is so low that one wants to have a sentence which can act, as it were, *in terrorem*, which can act as a real deterrent to people who might be breaking the rules. So essentially those are the reasons. It is entirely a matter for Members whether they think the reasons are good enough or not. I leave it with Members now.

Deputy P.V.F. Le Claire:

Could I ask a point of clarification please, Sir, from the Attorney General?

Deputy G.W.J. de Faye:

Can I get mine in first, Sir, as I rose first?

The Bailiff:

You did rise first but I saw Deputy Le Claire first.

Deputy G.W.J. de Faye:

In that case I am happy to...

The Bailiff:

I will come to you directly afterwards, Deputy de Faye.

Deputy P.V.F. Le Claire:

When I raise a point of clarification with the Attorney General, the *J.E.P.* game goes up 10 points I think for me doing so in a debate so people have got 10 points for this today. I wonder, Sir, if the Attorney General might just explain to me please, because I am not certain as to what the actual words: “A person who is guilty of an offence against this Article shall be liable to imprisonment for a term of 15 years and to a fine”... The interpretation by the courts in normal practice means then that shall be up to 15 years but is there not normally or was there not ever normally the wording in such a Law that would have had: “For a term of up to 15 years”? Just as a point of clarification, Sir.

H.M. Attorney General:

The Deputy is quite right. The old drafting style used to be to say a person guilty of an offence is liable for imprisonment for up to a particular term or the court may impose a term up to a maximum particular term. The present drafting style is to use the expression: “Liable to imprisonment”. It is a liability which is up to the court as to whether it imposes that liability or not. It means the same thing. It is a maximum sentence.

Deputy P.V.F. Le Claire:

Just for the purpose of historical record and accuracy, if this is passed at the 15 year level and it is determinable by the court that the 15 years is optional and if it is maximum...?

H.M. Attorney General:

It is a maximum. The court does not have to impose imprisonment at all. The court can impose a fine. It can impose the alternatives to imprisonment which are available through other legislation but it certainly is a maximum.

The Bailiff:

Deputy de Faye is that a question to the Attorney General?

Deputy G.W.J. de Faye:

It is indeed, Sir. In the course of his discourse the Attorney General referred to an instance whereby a company may be effectively defrauding on G.S.T. over a period of time. I was hoping that the Attorney General may be able to give the House some comfort in the sense that is it possible to prosecute a corporate structure even though the wording of the Law appears to be prescriptive that it should be a person? In other words does “person” incorporate not only individuals but also corporate structures?

H.M. Attorney General:

Yes, it does.

The Bailiff:

You cannot send a company to prison of course. You have to impose a very heavy fine.

7.36.2 Deputy J.B. Fox:

This amendment about reducing the proposals, as the Attorney General has just ably described, talks about offences and penalties. I come from a world of preventive policing, preventive penalties, *et cetera*. If you have a preventive deterrent that will in many cases stop somebody from committing an offence in the first place which is what we were all asked about. But if the starting point is so low... and there will be those people that will say: “It is worth taking a chance and having a go at it”, or continuing to abuse or to commit minor fraud or encouraging others to do the same, *et cetera*. But if the penalties are severe - and the Attorney General has already ably described that the courts have the discretion as to whether the penalty should be at the higher end or the lower end - then I see that there is no necessity for reducing the proposed 15 years to 5 years. Having said that, the Attorney General is quite right, it is up for this House to consider what is appropriate. My opinion is that is it appropriate that we consider the preventive angle as well as the penalties? The preventive angle through having a facility for a severer penalty might and does in practice have a deterrent effect on its own and will save a lot of people becoming victims of crime or becoming part involvement in crime or the enforcement of having to implement it through the law enforcement agencies and indeed the legal professions, *et cetera*. So I leave that thought with the House. Thank you.

7.36.3 Deputy P.V.F. Le Claire:

I think the thing about prison and the sentences that the States of Jersey attach to an offence needs to come back to the Assembly at some stage in total and maybe the Home Affairs Minister could look into that because there are some issues about people being able to have their sentences reduced in the U.K., *et cetera*. If these issues are going to be applied on goods that are imported and exported then maybe there might be some application of the Law in relation to offences of people that knowingly were implicit in defrauding the States of Jersey from an outside jurisdiction and whether or not that applies. The cost of keeping somebody in prison is not cheap and we have got prisons full of people that are costing more and more in relation to that, something like £40,000 a year or something to keep somebody in jail. I think that the unfortunate position, getting back to the amendment today, is that ... I think it is wholly disrespectful for the Constable there to be laughing in front of me while I was speaking, ask him to refrain because it is the only contribution he ever makes and it is rather pathetic [**Members: Oh!**] in my view. I think there should be at least a matter of courtesy when people are trying to make a point in regards to a Law which we are implementing into the Island that is going to criminalise an activity and sentence somebody to incarceration, I think it is quite a serious issue. I am of the view, Sir, that there might be an occasion where such a serious fraud has been attributed to the States of Jersey that a 15-year fine as has been pointed out by the Attorney General is appropriate or could be appropriate. So I am not able to go with the 5 as amended by the Panel. I think maybe a halfway house might have been a 10 and perhaps there might be some scope for review of these sorts of issues once Members have had an explanation like that from the Attorney General in respect of how the court derives its

sentencing in relation to these issues. I do not think it is funny, Sir. I am very sorry but it may not be a great contribution, it may not be a great speech, but I think the issue is extremely serious and I think that people in jail and issues of criminalizing situations and imprisoning people are a serious issue in Jersey and I think that a serious issue from a community perspective globally. Just to glibly rush it through as if it is: "Oh, that fixes that, off we go", there is no consideration, this is not good. So I think that I am unable to support the amendments. I am disappointed that once again, in trying to make a contribution which I have tried to help the States make a good decision, that I have been ridiculed and derided as usual. I also would like, as I have suggested, for the Home Affairs Minister or some part of this Assembly to consider whether or not the States need to debate - maybe in committee - the sentencing policies of various offences within the Island because we are better informed today of why the Attorney General has said that 15 years would be suitable in this regard having taken into account some aspects of outside jurisdictional sentencing policies than we would have done on many of the other laws where sentences were considered. I certainly have passed laws with the Assembly where sentences were included in penalties where no such in depth consideration was given because no such amendment was put forward.

7.36.4 Senator W. Kinnard:

Well, of course the House will be given another opportunity to discuss some of the general thrust of sentencing issues that are contained in the Criminal Justice Policy in early course. But I stand to say that I was originally quite alarmed when I read the original draft of the Law because I had not quite caught up with the fact that the drafting style had changed and my experience previously was of the phrase: "a sentence of up to 15 years". When I first read the draft Law and it read as a sentence of 15 years I was, at first, quite concerned about that because I believe that one of the problems that we have seen so much overcrowding in prisons in the United Kingdom is a result of too much statutory setting of sentences. I believe, Sir, that the court is the right place in the circumstances to look at all of the instances of a case and decide what is the appropriate sentence in that particular instance. I do think that the arguments that have been put forward by the Attorney General as to why a sentence of up to 15 years is an appropriate one are certainly very winning arguments because we know that from cases that have not always been successfully prosecuted but cases that certainly we have become aware of, of V.A.T. fraud in other jurisdictions, that it can amount to millions of pounds. It is an extremely serious offence and I think we should not be so naïve as to believe that we in Jersey somehow are not likely to be potentially capable of falling prey to such offences here. So, Sir, having just sort of said that about sentencing policy, I think there are grave difficulties in trying to pick a sentence out of the hat and set it here as the statutory sentence when we do know that the court is the place that can deal with all the degrees of the difficulties of cases. The court will obviously assess the degree to which the defendant is culpable and set a sentence that is appropriate. I have every confidence that the court will deal with this matter in an appropriate way as it deals with other matters appropriately. Therefore, Sir, I certainly would not agree with the amendment and certainly go with the Attorney General's argument on this matter.

7.36.5 Deputy G.W.J. de Faye:

Members will know that I get very concerned when the House decides to debate planning issues. I think I can now envisage something that would be even worse which would be this House would discuss sentencing. I am hereto relieved that that matter is an issue that is well left to the Royal Court. That is why I would speak strongly against these amendments because, at the end of the day, sentencing judgments are for the judiciary and I think that, as proposed, the judiciary is offered a wide range of sentencing options both in setting fines and also a prison sentence that can potentially be a serious one and of course all the options in between are available. So, I think that just on the basis that if you set too low the judiciary can find themselves really in a corner when somebody deserves a long sentence and it is unable to be awarded thanks to the original Law. I think we have to err on the side of the stronger sentencing measures. But, secondly, I would like to address the rather interesting concept put forward by Deputy Ryan, who is indeed right; this

taxation law does apply itself in a slightly different way to other taxation laws. I was intrigued that he introduced this idea of the various business and commercial interests gathering taxation on behalf of the States and that is a sort of quasi reward for doing this work in their own time and at their expense we should perhaps consider reducing the sentences for those of them who got it all completely wrong or who deliberately defrauded the system. It was a most intriguing idea but one, I have to say, that I fall down really at the other side of the coin. Because it seems to me that if you do not have stiff penalties there is a real danger that this income tax collection operation could really fall into extremely serious disrepair when all those involved disregard the penalties as a relatively light touch compared to the blasted nuisance of collecting the stuff or alternatively collecting it and then finding yourself obliged to hand it over to somebody else. So, I think that while it was an interesting idea to propose but, frankly, not one that I think has got any longstanding merit to it. So, on those 2 points, I would be against these amendments.

The Bailiff:

I call upon the Chairman to reply.

7.36.6 Deputy P.J.D. Ryan:

Well, I thank everybody for their contributions, not least the Attorney General. I mean, clearly I am not a lawyer; it is difficult for me to stand here with quite the same authority as our Attorney General which was why we carried out the international research. It is quite clear when you look at the other competing jurisdictions that we appear to be - and the evidence is there - considerably tougher than New Zealand, often pointed to as a good example of G.S.T. law, but more particularly we are considerably tougher than somewhere like Singapore which is generally regarded and has a reputation for having some of the toughest laws and penalties in the world, but we are going to be considerably tougher than them. So we found this set of circumstances and we find it difficult to understand even with what has been explained - and it is understandable that Members would tend to go with the Attorney General, after all that is why we pay him - **[Laughter]** but I would just like to address a few things. It has been put to me that the very heavy sentence that the Attorney General has suggested here for G.S.T. fraud is in response to some very large frauds in the United Kingdom: £1 million plus amounts or more. But I would just like to point out to Members and really try to bring their minds back to the proportionality of the Jersey situation. This is a Law where you do not register as a tax collector until you have a turnover of £300,000 so we are not talking about that many businesses here. The second point I would like to make is that we are only collecting a maximum total per annum of £45 million so if we are talking about a large retailer, which we would have to be for some kind of fraud somewhere near the £1 million, we would have to be talking about one of the, if not the, biggest retailer. I just find it difficult to get my head around the proportionality in the Jersey context of these giant G.S.T. frauds that we have heard about. What is the biggest penalty that a company of that size, the one or 2 of the largest retailers in Jersey? Well, they would be out of business. The shareholders would have lost millions. That, surely, is the biggest penalty, because they could not survive in Jersey if they were caught doing that kind of fraud. Surely the likelihood of that is so remote as to be almost inconceivable. I am not saying we should not, of course, and that will be what the G.S.T. Director and his compliance team will be doing much of the time, making sure that all of the numbers in these large retailers that are going to bring in large sums of money that there is no hanky panky going on. No, I bring us back to the proportionality issue. Senator Kinnard talked about the high levels of penalty that we should impose, but I would also like to remind her that the Treasury themselves, in their original draft, had a sentence of up to 5 years, not 15 years. So their view originally was up to 5 years. Finally, I would just like to leave with a comment on what Deputy de Faye said where he seemed to think that it was really what we should do with penalties in laws is leave it entirely up to the Royal Court. Let us have nothing to do with it. I would simply say to him that if that is the case why on earth have we got this in the Law at all, if that were the case? Clearly we do have it in the Law, clearly it is there for a purpose and it is there to give a steer and a pointer and that is our political

responsibility, I believe. So, I maintain the amendment, Sir. We have carried out the research, we think 5 years is proportionate and I maintain the amendment and ask for the appel.

The Bailiff:

I ask any Member who wishes to vote who is in the precinct to return to his seat and I ask the Greffier to open the voting.

POUR: 9	CONTRE: 36	ABSTAIN: 1
Senator F.H. Walker	Senator S. Syvret	Deputy P.V.F. Le Claire (H)
Connétable of St. Clement	Senator L. Norman	
Connétable of Grouville	Senator W. Kinnard	
Deputy of St. Martin	Senator T.A. Le Sueur	
Deputy R.G. Le Hérisssier (S)	Senator P.F. Routier	
Deputy G.P. Southern (H)	Senator M.E. Vibert	
Deputy P.J.D. Ryan (H)	Senator T.J. Le Main	
Deputy S. Pitman (H)	Senator B.E. Shenton	
Deputy of St. John	Connétable of St. Ouen	
	Connétable of St. Mary	
	Connétable of St. Peter	
	Connétable of St. Helier	
	Connétable of Trinity	
	Connétable of St. Lawrence	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of St. John	
	Deputy R.C. Duhamel (S)	
	Deputy A. Breckon (S)	
	Deputy J.J. Huet (H)	
	Deputy P.N. Troy (B)	
	Deputy C.J. Scott Warren (S)	

	Deputy J.B. Fox (H)		
	Deputy S.C. Ferguson (B)		
	Deputy of St. Ouen		
	Deputy of Grouville		
	Deputy J.A. Hilton (H)		
	Deputy G.W.J. de Faye (H)		
	Deputy J.A.N. Le Fondré (L)		
	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:

Thank you. Well, now we return to Article 88. Does any other Member wish to speak on Article 88 unamended? I call upon the Minister to sum up.

7.36.7 Senator T.A. Le Sueur:

No further comment to add, Sir. I propose the Article.

The Bailiff:

Very well, I put Article 88, those Members in favour of adopting it kindly show, those against, Article 88 is adopted. We come to Article 89.

7.37 Senator T.A. Le Sueur:

Article 89 is sort of one step down: it is when a person provides false information knowingly or recklessly. So there is conscious decision here to provide false information and were that to happen and were the court to find a person guilty then the Law is proposing that they should be liable to a term imprisonment up to 5 years and/or a fine. So, I think the figure of 5 years reflects that it is one step down from the previous Article and I propose Article 89.

The Bailiff:

Proposed and seconded? [**Seconded**] Now there is an amendment in the name of the Scrutiny Panel to Article 89 and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Page 68, Article 89 in paragraph 3 for the words: “imprisonment for a term of 5 years and to a fine” substitute the words: “a fine not exceeding an amount equal to 40 per cent of the G.S.T. that would have been evaded had the offence not been discovered”.

7.37.1 Deputy P.J.D. Ryan:

Once again this is an area where I am sure the Attorney General will be asked by Members to give an explanation and I think that is only right that the Attorney General should do that. We have again identified in our research that it seems to be a heavier sentence than the international norms. New Zealand and the United Kingdom do not have a prison sentence for this kind of offence and therefore we found it a little bit of an anomaly. So I look forward to hearing comments from Members and from the Attorney General.

The Bailiff:

Are the amendments seconded? [**Seconded**]

7.37.2 Deputy C.J. Scott Warren:

I welcome clarification from the Attorney General because my reading of the substitution sentence gives the impression that there is an advantage for the person who is committing this. That amount would appear to be less and I would like some clarification, please.

H.M. Attorney General:

In answer to the Deputy; I think the G.S.T., if there is any due, would still be due, so it would be 140 per cent G.S.T. rather than 40 per cent G.S.T. [**Laughter**] But perhaps, Sir, I can address the substance of the amendment. In this case of Article 89 there is again a fraud. It is someone who is knowingly or recklessly providing somebody - the Comptroller or another person - entitled to the information with false information and knowing it is false; and it has got to be material information. The proposal is that this should carry no prison sentence at all. The approach which I normally take when I review penalties in legislation that is put before the States is that if somebody dishonestly, falsely does something, then there should at least be the option of a custodial sentence. I think that is the right course to adopt and therefore I think that the amendment is wrong in principle. The second thing I would like to say is that it is also out of sync with the offence of obstruction in Article 90 because that carries a prospective sentence of 6 months and that is just somebody obstructing without reasonable excuse and being difficult or awkward and not necessarily fraudulent or dishonest. It seems to me that the dishonesty is something which ought to be punished more severely, so that if the amendment were to be carried it would be quite out of sync. How we came to 5 years is that it has a relationship with the offence in Article 88 which is more serious at 15 years and with the offence in Article 90 which is less serious which carries 6 months. But perhaps worst of all, if I may put it that way, in relation to this amendment, is that I think there is a real risk that the offence is going to be incapable of being sensibly prosecuted. I say that for this reason - it now will have an additional ingredient. The prosecution will not only have to prove that false information has been given but will also have to prove how much G.S.T. was evaded as a result. Now that question - how much G.S.T. has been evaded - is not within the offence at the moment, but if you can only be sentenced to 40 per cent of the G.S.T. which is evaded it means you have to prove how much G.S.T. has been evaded in order to get any sentence imposed at all. There are 2 consequences of that and the first of them is that there may have been no G.S.T. evaded at the time the false information was given in which case you might have an offence but nothing on which you can hang a penalty. The second problem with this is that the amount of information which the prosecution might need to have will not necessarily be easily available. One would need to have access to all the input credits which are allowable against the tax the trader should have accounted for and has not. It is going to become, in some circumstances, a complete nightmare. Now I see that New Zealand arrangements are based on 40 per cent of G.S.T., the U.K. arrangements based on 15 per cent of that, I have not compared the different statutory provisions and maybe the difficulty

that I foresee if this amendment is passed would not apply in those jurisdictions because the language of the statute may be slightly different. I have not had the opportunity, I am afraid, to check that but I have very great reservations about this amendment.

7.37.3 Deputy P.V.F. Le Claire:

It is about the amendment which I am finding, after that contribution by the Attorney General, extremely difficult to support. In regards to the contribution of the Attorney General in respect of this amendment I would like to seek clarification now which will help me make a decision in respect of the amendment, although it is based upon the law before it is amended so is it now the right time, Sir, that I could ask for a clarification from the Attorney General?

The Bailiff:

You might have to clarify your question to me. [Laughter]

Deputy P.V.F. Le Claire:

Right, Sir. Well, it is just it says that the person shall be liable to imprisonment for a term of 5 years. Now we know from my previous question which drew a lot of laughter that the term: “liable to a term of imprisonment of 5 years” means: “up to”. In the new language of the Law Draftsmen I think we have moved away from what I was used to seeing or thought I had seen before where: “and a fine up to a standard scale of number 4” whatever it was and in some circumstances you would see that there would be written into the law: “or an unlimited fine”. So what my question is is in relation to the fines, Sir, and in relation to the fine: is the fine unlimited? Is it set on a scale? Where is that determined? Is it set out within the Law or will it be set out in the Regulations? Also in determining the fine I understand if somebody goes to the Royal Court that they can be facing court charges, *et cetera*, when that final judgment is given by the court of law. What I want to ask is if we take an historical fraud that has been perpetrated by a company or an individual over a number of years and it has been identified that, for example, £1 million has been defrauded from the States of Jersey and the court wants to levy a fine upon that individual to recover that money and to penalise them, is that also within the prosecutor’s ability to take into account what the interest would have been on that money in respect of that fine? Because I noticed earlier, Sir, in the previous Article when it came to somebody that had overpaid G.S.T., although in circumstances you would not want to make them unjustifiably wealthy, there was no mention of whether or not the amounts would be subject to interest calculated upon any point in time.

H.M. Attorney General:

Where the Article says: “term of 5 years and to a fine” that means an unlimited fine. If there were an intention to put a maximum on the fine it would be said to be a fine at level one or level 2 as the case might be. So, there is the potential for an unlimited fine. The question of interest on the money which has been defrauded is not one that is taken into account directly at this point in the context of the fine. There may be provisions elsewhere in the Law, I do not have the answer immediately to hand, which would allow the recovery of interest on outstanding G.S.T., but the interest would not be a factor directly taken into account by the court. Having said that, the court is entitled to take into account when imposing a fine that nobody should profit from their wrongdoing. One would expect the court to do that and, certainly as far as the prosecution is concerned, if we can identify what the profit has been we always try and take that into account in moving our conclusions before the court.

Deputy P.V.F. Le Claire:

I would just like to thank Her Majesty’s Attorney General for that, Sir.

7.37.4 Senator L. Norman:

Just briefly, Sir. It seems to me that the Chairman did not make an enthusiastic case in his initial speech there for his amendment. In fact, as far as I am concerned, he did not make any case

whatsoever for his amendment. Perhaps in his summing-up he could tell us why his Panel believes that a fraudster should not even be at risk of prison in this particular case and did the Panel seek the Attorney General's advice before bringing this amendment? If they did not, why not?

Deputy P.J.D. Ryan:

To Senator Norman I would say this; yes, we did...

The Bailiff:

I beg your pardon, I am sorry, I do not blame her at all, but Deputy Pitman's head is right between [Laughter] my line of sight and your thing. We will hear Deputy Lewis.

7.37.5 Deputy K.C. Lewis:

I will not be supporting the amendment, Sir. I think if there is any criticism of late it is that the judiciary seems to be amazingly lenient, noticing in the paper over the weekend if you steal 16 cars you get just one year's probation. I digress. I remember in the 70s and 80s in the U.K. the gold V.A.T. swindles, so there is potential for serious, serious fraud and we must give the Attorney General plenty of room here because I think it could fall back on us very, very badly. We must give the Attorney General tools to finish the job.

7.37.6 The Deputy of St. John:

I just wonder if the Attorney General could clarify as to why he feels what they currently have in the U.K. and New Zealand and Singapore is, by the sound of it, a poor state of affairs? So why should Jersey be different? What is it that they are doing in the U.K., Singapore and New Zealand that is right? Because presumably they think it is, so why is it that Jersey, in his opinion, should be different?

The Bailiff:

Is that a fair question? I mean, I do not think the Attorney General can answer for the authorities in New Zealand and the U.K.

The Deputy of St. John:

Perhaps not, Sir, but I would have thought that the U.K. - we often take best practice from the U.K., for example, so if it is good for the U.K. why is it not good for Jersey?

H.M. Attorney General:

I find that quite a difficult question to answer. I form my own view and Members will be unsurprised to hear that I do not agree with the United Kingdom on everything. I form my view as to what was the right maximum sentence and particularly took into account the differences between the 3 offences which are set out in Articles 88, 89 and 90 as I have indicated. I am not sure really I can add very much to that. Perhaps though, while I am on my feet, I was going to interject before the Chairman responded to Senator Norman to remind the Senator and the Chairman that the view that Law Officers have taken about inquiries into legal advice is that both the detail of the advice and the fact that it has been sought is not something which really ought to be disclosed because that interferes with the confidentiality of the arrangements between the person seeking the advice and the Law Officers. So, while I understand that it may be politically helpful from time to time to be able to criticise either a Minister or the Chairman of a Scrutiny Panel for either taking or not taking, taking and not listening to, or whatever the case may be, the Law Officers, that is territory into which I think the Assembly should not venture, with respect.

The Bailiff:

Does any other Member wish to speak?

7.37.7 Senator S. Syvret:

Could I just make a point of order in response to that? I think the Attorney General is trying to establish some kind of new precedent here. I could not begin to count the number of times when the fact that legal advice has been taken and listened to or not has been discussed in the Assembly. I grant you that it is not often the detail of that advice may have been discussed, but it seems to me that we are going to be tying our hands in an entirely new way if we cannot even ask the basic question as to whether legal advice has been sought.

The Bailiff:

Does any other Member wish to speak before I call upon the Chairman to respond?

7.37.8 Deputy P.J.D. Ryan:

And the Assembly wonders why Scrutiny Panels fight shy of scrutinising legislation. I would just refer Senator Norman to page 33 of our report, paragraph 150 and 151 where it says: “We sought legal advice on this issue, we understand that the penalties are in the Tax Law, *et cetera*”. Senator, I hope that answers your query. As regards... well, we did seek legal advice and we carried out all of the research, carried in our report exactly the details what...

Senator L. Norman:

Sorry, I do not have the report in front of me, but my question was; was advice sought from the Attorney General and if not why not?

Deputy P.J.D. Ryan:

Yes, it was from the Attorney General so the second part of the question does not apply. It is very difficult and all you can do is do your best as laypeople. You take the advice of the Attorney General. In our particular case we have a technical expert that is a qualified lawyer - sorry, not a qualified lawyer but certainly practises in the area of Tax Law, shall we say? In order to get some evidence we carried out research and there were a number of cases of penalties where we accepted the Attorney General’s point of view but our research quite clearly showed that in these 2 particular areas we seem to be considerably out of synchronisation with other competing jurisdictions and that is the reason that we have brought these 2 amendments. I thank the Attorney General for his explanation. Just to point to one thing to Members, and I think the question was from somewhere - I cannot remember which person it was - asked me why I thought that fraud should not carry a prison sentence. I cannot remember who it was but to that Member I would just simply say that there is, as the Attorney General has already explained, the other alternative that he has in using the normal fraud law. The Attorney General, I am sure, will know what I am talking about. There is an alternative law to use where cases of fraud can be penalised. They do not have to be penalised through this particular Law. So I think that is the answer to that question. Sir, I maintain the amendment. We feel that it is out of synchronisation with other jurisdictions. Jersey will be, on the basis of our evidence, considerably stronger than United Kingdom, Singapore and New Zealand and we are not sure that that is right, so I will maintain the amendment. Can we have the appel?

The Bailiff:

Appel? I invite any Member who is in the precinct who wishes to vote to return to his or her seat and I ask the Greffier to open the voting.

POUR: 4		CONTRE: 41		ABSTAIN: 0
Connétable of St. Clement		Senator S. Syvret		
Connétable of Grouville		Senator L. Norman		
Deputy P.J.D. Ryan (H)		Senator F.H. Walker		

Deputy of St. John		Senator W. Kinnard		
		Senator T.A. Le Sueur		
		Senator P.F. Routier		
		Senator M.E. Vibert		
		Senator T.J. Le Main		
		Senator B.E. Shenton		
		Connétable of St. Ouen		
		Connétable of St. Mary		
		Connétable of St. Peter		
		Connétable of St. Helier		
		Connétable of Trinity		
		Connétable of St. Lawrence		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. John		
		Deputy R.C. Duhamel (S)		
		Deputy A. Breckon (S)		
		Deputy J.J. Huet (H)		
		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 G.P. Southern (H)		
		Deputy S.C. Ferguson (B)		
		Deputy of St. Ouen		
		Deputy of Grouville		

		Deputy J.A. Hilton (H)		
		Deputy G.W.J. de Faye (H)		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy D.W. Mezbourian (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy S. Pitman (H)		
		Deputy A.J.D. Maclean (H)		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		

Deputy P.V.F. Le Claire:

Can I ask a point of order, Sir, because there has been quite an interesting debate, but I think the last contribution there by the Chairman of the Scrutiny Panel suggesting that the Attorney General could prosecute one law under another law, I do not believe that has ever been an applicable situation, is it, Sir? Is it possible you can prosecute one law under another law?

The Bailiff:

We can deal with that privately with the Attorney General at a later stage, Deputy. It is not really a point of order, I think, arising out of the vote.

ADJOURNMENT PROPOSED

Senator M.E. Vibert:

In light of what the President of the P.P.C. (Privileges and Procedures Committee) said this morning, it is now 5.30 p.m. and I would like to propose the adjournment.

The Bailiff:

Do Members agree?

Senator T.A. Le Sueur:

Before we close could we take Article 89 and formally propose it?

The Bailiff:

Yes, very well. Does any Member wish to speak on Article 89? Well, I put Article 89, those Members in favour of adopting it kindly show. Those against, Article 89 is adopted. We will continue with Article 90 tomorrow. The States stand adjourned until 9.30 a.m.

ADJOURNMENT