

STATES OF JERSEY

OFFICIAL REPORT

FRIDAY, 6TH NOVEMBER 2009

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The Roll was called and the Deputy Greffier led the Assembly in Prayer.

1. Oral Questions

The Greffier of the States (in the Chair):

Yesterday afternoon the Deputy Bailiff granted leave to Deputy Southern to ask an urgent oral question. The earliest, under Standing Order 15, this could be asked was this morning and, therefore, I invite the Deputy to ask the question. It is on Members' desks.

1.1 Deputy G.P. Southern of St. Helier of the Minister for Treasury and Resources regarding ...

Following the announcement that Jersey Water is opening negotiations with staff representatives in relation to 20 staff whose jobs are said to be at risk of redundancy would the Minister inform Members what consultation, if any, has taken place between the company and the Minister as representative of the majority shareholder in relation to this matter?

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

I was alerted to the fact that an announcement was going to be made on Tuesday evening although I was not informed of the detail of it. I was informed in parallel with other parties. While I have had discussions with the chairman subsequently, I need to say to the Assembly the company has not consulted any of its shareholders prior to the announcement on what is clearly an operational matter. It would not have been appropriate to do so to consult with one shareholder to the potential disadvantage of others. What I can say is that I require Jersey Water's Board of Directors generally under the responsibilities I have with all States owned companies to provide efficient, effective and affordable services to Island while, of course, requiring an appropriate financial return to the States as shareholder. I also expect that all States owned companies or partly owned companies treat their employees responsibly and fairly. Jersey Water have, I am advised, been involved with J.A.C.S. (Jersey Advisory and Conciliation Service) and commenced a consultation with staff and the union on proposed changes to the company's operating practices. The company is committed, I am advised, to treating its staff fairly and supporting them through the process. The company is committed to exceeding the legal requirements of any arrangements that may be necessary. I have discussed the matter with the chairman and I want to place on record that I have full confidence in the chairman, the board and the company in their actions.

1.1.1 Deputy G.P. Southern:

Given that last year the retiring Chairman was able to say your company generated profits before tax of £4,034,000, an increase of 14 per cent on the previous year, does the Minister consider it is appropriate behaviour for a company owned by the States to be behaving in this way?

Senator P.F.C. Ozouf:

I consider it to be absolutely appropriate for the board of directors of a company to act in the best interests of the shareholders and its consumers. It is clear that the company has identified operational efficiencies, and I would draw the attention of the Deputy to the remarks of the Comptroller and Auditor General in his review of Jersey Heritage Trust that good management does not simply spend money up until the budget that is available.

1.1.2 Deputy S. Pitman of St. Helier:

Only a few weeks ago we heard the Council of Ministers saying that they had not broken any collective bargaining in negotiations with the unions and at 4.00 p.m. on Wednesday the workers of Jersey Water were brought into their office and told that they were going to lose their jobs to private contractors so there was no consultation contrary to what the Minister says. Does he think this is appropriate?

Senator P.F.C. Ozouf:

This should not be, in my view, a political matter. This is an operational matter. I am happy to answer and I am happy to exchange to Members the views that I have had with the chairman. The Deputy is quite wrong in the assertion that there is no consultation going on. An announcement of an intention, a potential intention or a potential decision, to make changes to the company has been made. That is over and above, I understand, the statutory requirements that the company has. They have been a responsible employer. They are consulting with the union and commencing a period of consultation. No final decisions have been made.

1.1.3 Deputy S. Pitman:

Supplementary. Could he explain then what consultation has gone on with the workers?

Senator P.F.C. Ozouf:

I am not an expert or the Assembly's expert on employment law. I understand that the company is abiding by best practice which is over and above the legal entitlement and the legal requirements of the company and they are acting fairly and they are informing their staff at the first available opportunity of potential changes within their organisation and everything I have heard from, seen in correspondence and spoken to the chairman indicates that that is the case and it would be quite wrong for the Deputy to insinuate otherwise.

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

The Minister has spoken this morning with nothing but praise for the company who he has full confidence in the board and the operational conduct of the company. Notwithstanding his adoration for the utility company, what does he feel about the workers who are now being faced with potential redundancy ahead of Christmas at a time that Jersey is in recession along with the rest of the world?

Senator P.F.C. Ozouf:

I have every sympathy with the employees. Every decision of any organisation having to make difficult decisions in the economic environment in which we find ourselves has to deal with their employees sensitively and, if the decisions are followed through after the consultation that there is going to be a change in the way the company operates, the company is committed to working with its employees and finding new jobs for its new employees maybe in other companies. I know also that the services of Social Security, Jersey Enterprise and Economic Development will also find job opportunities for any workers that are losing their particular opportunities in this company. We are not in the state of a massive unemployment in Jersey. There are employment opportunities; just as the sad case of the Woolworths employees who lost their jobs because of changes at Woolworths now have new productive opportunities in new retail operations at New Look. So is the case for any organisation. It would be wrong for the States to send a signal to Jersey Water that they should not be aligning their operations to market demands and appropriate value for money for customers.

1.1.5 Deputy P.V.F. Le Claire:

Nevertheless, does he not consider this timing to be inappropriate? It is just coming up to Christmas time. There is a definite decline in operational and hiring practices at Christmas apart from seasonal type of jobs and if these functions that the water works have been using these workers for are going to continue, is this just not the case of classic outsourcing at an insensitive time, at a time when people are finding it difficult to get meaningful jobs and have meaningful futures?

Senator P.F.C. Ozouf:

There is never a good time in order to make changes to companies. What I think would be wrong is for the company if they have come to a conclusion that they can carry out certain arrangements and operational matters in a different way, in a more efficient way, it would be quite wrong to withhold from their staff the reality of what the company needs to do. It would be quite wrong to come to a

conclusion about a reorganisation, hold that for a period of time, create uncertainty with a potential of a leak in relation to that information and create uncertainty. It is far better for a board to be absolutely clear, to be honest with their employees, to be transparent and to tell them as soon as possible of potential changes. While there is never a right time, I think they are operating quite correctly, if I may say.

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

I did have my light on but I think Deputy Le Claire has maybe beaten me to the punch a bit, but I do not think he has stressed this highly enough, given that the pay freeze was justified to a significant degree on avoiding redundancies, it is not the fact that this is not real redundancies, this is just outsourcing to private enterprise for firms using very cheap labour?

Senator P.F.C. Ozouf:

These are operational matters for the company and I am hesitant in allowing this or permitting this by answering and expressing a view on this becoming a political issue. I have a responsibility to ensure that there are appropriate governance arrangements in place. As clearly the majority shareholder with voting rights at the board, one has opportunities to make decisions of hiring and firing boards and that is the extent to which there should be political involvement. We do not stand as a committee of government and we are certainly not a committee of government to running these organisations. That is why we have independent organisations and they should be run appropriately by their boards.

1.1.7 Deputy T.M. Pitman:

Supplementary. Given all the efforts over economic stimulus, is the Minister aware and can he clarify that this firm is actually foreign owned, it is not even a local firm?

Senator P.F.C. Ozouf:

I have no notice of that and what I can say to the Deputy is that while he wishes to make political points about pay freezes, what he would also wish perhaps to say is the fact that this Assembly has injected £44 million into the economy. A lot of work is going into civil and maintenance constructions, a lot of drain improvements in the States and there are going to be job opportunities as a result of the millions of pounds investment in infrastructure and civil engineering projects.

1.1.8 Deputy P.J. Rondel of St. John:

Will the Minister confirm that there is in excess of 100 staff within that company and also of the proposed 20 redundancies do those redundancies include any early retirements or would any early retirements come over and above the 20 redundancies being spoken of? At the same time, several months ago I had a meeting with the water company and asked them to consider asking the Minister for Treasury and Resources to return the dividend to the company this year so that in fact the company could extend main services out into the countryside. Was that ever discussed with the Minister?

The Greffier of the States (in the Chair):

I do not think the second part is very relevant.

Senator P.F.C. Ozouf:

The Deputy asks a number of questions. I am advised that there are some early retirements that are part of the proposals which are being consulted on. No final decisions have been made. It is important to state that and I can say to the Deputy that I am improving relations and governance arrangements with all the utility companies. I have commissioned only this week some work in relation to governance on all States owned utilities to improve the appropriate communication between the shareholder and the Treasury so that we can be a good co-operative shareholder, so

there is a clear aligning of the objectives of the States of Jersey from a general point of view in the companies concerned.

The Greffier of the States (in the Chair):

We have got 4 Members waiting before we bring this to a conclusion. Senator Breckon.

1.1.9 Senator A. Breckon:

I wonder if the Minister could advise the House on the cost to the States of 20 unemployed people in loss of social security, supplementation, loss of income tax, benefits that might be payable. Could he give an idea of what this would be balanced against any extra dividend we might get from getting rid of these 20 people?

Senator P.F.C. Ozouf:

I am surprised at the sentiment that the Senator expresses. He seems to indicate that in the event that there are people that will be made redundant by this decision, if this decision is made, that these individuals would not be able to find alternative, rewarding productive work. That is exactly the objective of the fiscal stimulus, that is exactly the objective of what social security does and it is proven in the case of the sad redundancy of the Woolworths staff that did manage to find alternative employment and every single effort will be made in order to help any employees that are affected. It is the right approach, it is right for the individuals and it is right for the public purse.

1.1.10 Senator S.C. Ferguson:

Will the Minister confirm that the company will be looking for voluntary redundancies before compulsory redundancies?

Senator P.F.C. Ozouf:

I understand that is correct, in the event that the decision is made.

1.1.11 Deputy D.J. De Sousa of St. Helier:

Can I just ask that the Minister that the company is fully following procedure? Part of J.A.C.S. information on handling of redundancies does say, and I quote: "A redundancy situation generally arises when an employer no longer requires a role to be undertaken." It is our belief that these people could be made redundant and replaced and yet the law states that a redundancy situation should be because the role is no longer required.

Senator P.F.C. Ozouf:

The Deputy, I think, suggests that somehow the company is being inappropriate in the way that it is dealing with its staff and in terms of making some people redundant and then redeploying them. I have to say that I have every confidence, having spoken with the chairman overnight, and I know that the chairman is committed to following, in fact, exceeding best practice in terms of dealing with their staff. They are in consultation. No final decision has been made and the chairman has stated very clearly that if plans do proceed, all staff will be treated fairly, with compensation payments in excess of statutory requirements and support for finding new work.

1.1.12 Deputy D.J. De Sousa:

Supplementary. I will be brief. The Minister has just gone on to explain that redundancies will be good and redundancy payments will follow, but it quite clearly states in the law that redundancy situations generally arise when that position is no longer required. Our belief is that those people could be made redundant and replaced by a company outsourcing.

Senator P.F.C. Ozouf:

The Deputy clearly has a different view than I would about the way in which a company operates. It is absolutely clear that this company will adhere to and exceed all of the minimum statutory

requirements both in the way that any decisions are made in relation to redundancy, if they are made, the way that those processes are made and consulted upon and the company is going to be following and exceeding best practice. To suggest that somehow I think the company is inappropriate and cannot make operational decisions which are in the best interests of consumers and the shareholder I think is wrong. Companies must be able to run their affairs in the appropriate way and with the operational freedom to make the best decisions in relation to their shareholders but their consumers too.

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

That brings me nicely on to my question. We have here a company in which the States is a major shareholder and the Minister has twice now talked about the best interests of its consumers and its shareholders. Does the Minister not agree that the best interests of the company are best served in part also by looking after the best interests of its workforce?

Senator P.F.C. Ozouf:

The workforce is absolutely paramount and a happy, informed, efficient workforce is good for its employees in the longer term, and I did not repeat in the last answer the importance of the employees because I mentioned it frequently in previous answers. I know that the company is committed to looking after its workforce, but I believe that the company also must align its operational requirements to that of an efficient organisation and I hope that the Deputy and the other Deputies that have questioned me on this issue are not suggesting that Jersey Water should somehow be protected and cast in aspic and not able to become efficient and operationally effective. That is no good for staff, it is no good for its employees and it is no good for its shareholders. This is an example of a company that is moving ahead appropriately and has my full confidence.

The Greffier of the States (in the Chair):

Do you wish a final question, Deputy Southern?

1.1.14 Deputy G.P. Southern:

Yes, and I will try and wrap 2 into one. The retiring chairman says that he continues to be impressed by the very positive attitude of our staff and their work throughout the company and: "On behalf of my colleagues on the board, as well as shareholders, I take this opportunity to thank all of them for their continued support and commitment to the company" by sacking them over Christmas apparently. The company also says: "That the company is in regular contact with its majority and controlling shareholder, the States of Jersey. Details of contact with and the views of the States are passed on to the board as necessary." Will the Minister pass on the outright condemnation of this House to the board for such treatment of its workforce which have been so loyal? Is this not a case, since the Minister has been talking to the new chairman, of a new broom taking a step too far?

Senator P.F.C. Ozouf:

No. The Deputy, I think, is attempting to put words in the mouths of the majority of this Assembly. It is I that has to discharge the responsibilities, at the service of the Assembly, of the shareholder and I think the Deputy is wrong to attempt to make an operational matter a political matter. I, of course, will stand accountable and answer any questions that he has and any other Member, but these issues, I have to say, should not be political. They are operational matters and I will continue to engage in the appropriate way with the wholly owned and partly owned entities and I will improve further the governance arrangements with the companies in the review that I have commenced this week.

PUBLIC BUSINESS - resumption

2 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009): second amendment (P.86/2009.Amd (2)) (continued)

The Greffier of the States (in the Chair):

Very well. That brings that matter to a conclusion and the debate will now resume on P.86 Draft Banking Business (Depositors Compensation) (Jersey) Regulation. Members will recall that the Assembly was considering Article 5 and, in particular, the amendment to that article brought by the Economic Affairs Scrutiny Panel in relation to small trading companies. Does any Member wish to speak? Deputy of St. John.

2.1 The Deputy of St. John:

I have one or 2 concerns when it comes to non limited liabilities for small companies where the business holders hold bank accounts in a registered business name. Say, for instance, a café with a small turnover of under £300,000 and there may be 2 or 3 owners and they decide to leave their profits in the bank to grow until the money is required. How would this be covered? I would like that either addressed by the Attorney General Designate if it is at all possible or in summing up by the proposer. Further to this, I must say it is a shame that the proposer of the amendment did not give us and the finance industry a presentation where many of these points could have been teased out because I have one or 2 others. Likewise, what happens to a partnership? Say 2 brothers set up a small plumbing business, shall we call it Rondel Plumbing for ease, and clients of good standing in some cases may pay deposits up front for specific works to be carried out. This money sits in a client account in the bank, the bank goes bust and who loses the money, the client or the plumbing company? As the account is in the name of the 2 persons holding it, or the company called Rondel Plumbing, will this in fact be taken against the money that would be in accounts held by the 2 individual brothers? These things could have been all teased out if we had been given a presentation. Not wanting to kick fellow panels for the good work they have done in reviewing this main proposition, but I have to ask should these amendments also have not been scrutinised by a sub-panel as last evening the Attorney General had to explain the thinking to Members where small limited companies stood? At this moment there are a number of questions still to be teased out by Members and I will listen to the debate before deciding which way I will vote, but those are a couple of concerns that I do have. How have those been covered? I was going through this again yesterday evening, the report, and they do not seem to have been covered in any detail.

2.1.1 Mr. T.J. Le Cocq Q.C., H.M. Attorney General Designate:

I think the question that the Deputy raises related to where there is a registered name held by one or more persons. A registered business name under the Registered Business Names Law simply provides a mechanism where members of the public who go into a shop which has a name which is different from the names of the proprietors of the shop are able to identify who they are transacting with by going to the registry and seeing who owns that registered business name. It does not change the legal status of the individuals carrying out the business and to the extent that they are sole traders or partnerships, they will be treated as sole traders or partnerships within the terms of the law in the way that I explained yesterday.

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

When I read this I felt that I really wanted to support this and to see the Assembly get behind small businesses. Unfortunately I am not able to do so and I will explain why, but first of all I want to say how disappointed I am that the Economic Development Officers did not establish the risk because that is why I cannot support it. I do not know what the risk is to the States if I do support it. I would have thought that there was time using the statistics unit, using the information from Regulation of Undertakings and G.S.T. (Goods and Services Tax) to get some idea of the risk. It is my view that the risk is probably not that great because we are not talking about a £50,000 payout

per company. It could be a risk of up to £50,000 per company, but most small businesses that I know are running very close to the line, if not running on overdraft. So, the risk to the States is probably quite low, but I feel unable to support it because I do not know what the risk is. I spoke at length this morning to David Waugh who is the Chairman of the Small Business Association and they would like to have a similar protection to individuals, but he understands that we could not just write an open cheque basically. If he was taking a risk with his own business he would try and find out what that risk was and to what extent the company were in danger. So, for that reason, I will not be supporting it. There are a number of areas where I think the system could be open to abuse so we need to look at how we could protect them but I give notice now, I am not going to wait a year for the Minister for Economic Development to come back with his review. If he does not sort out the risk and let us know what it is within 2 months, I am going to bring a Private Members Proposition to bring businesses in to line with the others. I give notice on that now.

2.1.3 Connétable L. Norman of St. Clement:

Senator Ferguson yesterday said that she thought this amendment was well meaning or well intentioned. Well, perhaps but I think more importantly, it is totally irresponsible. There may be some merit in the idea of bringing small and medium sized businesses into the scheme, but as many Members have said in this debate the real problem is that it is uncoded and if it is uncoded it creates an unknown liability for the States and for the banks and if we do that, that destroys the credibility, the whole credibility of the scheme. It destroys respect for the scheme particularly by those that it is supposed to be protecting. Of course the more accounts that are eligible for compensation, the more dilution there is of the amount that is available to those who might have to benefit from the scheme at the end of the day. The ministry was accused of not consulting with small and medium sized businesses on this issue. Well, maybe but if we went to a small business or a group of small businesses and said: "Would you like to have your bank deposit protected, no cost to you, no strings attached?" I think I know what the answer might be. Like if we went to natural persons, individuals, and said "Would you like the guarantee limit to be £100,000 or £50,000, no cost to you, no strings attached?" I think I would know what they would say. If we went to an individual and said "Would you like to continue getting all your social security benefits but not pay any contributions?" I think I would know what they would say. So, yes, perhaps guilty of lack of consultation, but the scheme can be coded for natural persons, private individuals, because the banks can tell us how many individual private accounts they have and the average balances in them. They can tell us how many business accounts they have, but what they cannot do with any ease is to tell us how many of them fall into the small and medium sized enterprise as defined by this amendment. They cannot tell us how many are registered for G.S.T. or not. They cannot tell us how many employees they have, not just like that. A heck of a lot more research is needed before we can responsibly bring these enterprises into the compensation scheme and the Minister has already promised that that research will be done before the first review is undertaken. The amendment talks about companies incorporated in Jersey and also it has to be a trading company, but it does not say that that trading has to be done in Jersey. There are many, many companies registered in Jersey which have their shareholders and directors in other jurisdictions. There are many companies incorporated in Jersey which carry out their trading operations in other places. All of these things must be reviewed, must be understood by the States before they enter into commitments, unknown commitments, uncoded commitments like this. As I said, there is much more research to be done. In any event, as I said, including S.M.E. (Small and Medium sized Enterprises) at this stage will dilute the scheme to the detriment of natural persons. A limited cap of £100 million or £65 million, if Scrutiny gets their way, reduces the potential payout and destroys the credibility of the scheme. Despite what was said yesterday about certain activities possibly be illegal by small businesses moving money into the owner's personal accounts, we must not forget that any business which is profitable can declare a dividend quite legally and quite properly and pay it to the individual shareholders. In fact, that would be in the best interests in many ways of the States because that would create a tax liability as well and it is perfectly legal also, as I understand

it, for a company to loan money to shareholders and directors. I do not think there is any difficulty there. As the Constable of Trinity mentioned yesterday, there is also the risk of the double whammy of the small businessman having the business account with the £50,000 guarantee and his personal account with its £50,000 guarantee. Is that fair? Is that reasonable? Maybe, but the research and the understanding has got to be there before we commit ourselves to that. It was Deputy Southern yesterday who said: "Only 4,000 small businesses, it is small beer." 4,000 small businesses, each guaranteed £50,000, £200 million. If that is small beer to Deputy Southern, I would like to have his bank account. That is double the cap, double the maximum that we can pay out. It is not small beer. It is a significant impact on the scheme. It reduces the credibility of the scheme and it reduces the trust that people will have in the scheme. To have any merit, to have the trust and respect, the scheme must be credible. This amendment runs the risk, the very strong risk, of destroying that credibility.

The Greffier of the States (in the Chair):

I am just notifying Members the Usher is distributing a sheet. I know it is good practice for Members to say where the sheet has come from. I do not think this says it, but I understand it is from the Deputy of St. Mary who has asked this be circulated.

The Deputy of St. Mary:

It is from the Scrutiny Panel. It says so on the top.

The Greffier of the States (in the Chair):

Yes. Thank you, yes. From the panel collectively.

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

I believe moving ahead on the depositor compensation scheme is long overdue and I am very pleased that we have it here today. I speak now to particularly pick up a comment of Deputy Higgins yesterday in respect of bankers lobbying Members. Well, I most certainly welcomed that lobbying because if I understand what they were saying, it included the fact that while the Minister for Economic Development and his team did consult with the industry when preparing this proposition that is before us now, these amendments, if I understood the lobbyists correctly, have had no consultation with the industry from the Scrutiny Panel. We heard last night the Deputy of St. Mary emphasise the importance of consultation. Indeed, I was disappointed to see that the Scrutiny Panel's presentation for Members was cancelled. What concerned me then was while I accept the chairman was unable to return to the Island, he has a panel and I would have thought arrangements could have been in hand for another Member to move to the helm in such an event. I trust the proposer of this amendment will respond to these issues in his summing up. Thank you.

2.1.5 Senator B.I. Le Marquand:

I am in the unfortunate position that already this morning 3 of the speakers have substantially stolen or borrowed from me the contents of my speech so if I appear repetitive it will purely be to try and reinforce what they are saying. Deputy Green has taken from me my desire to indicate that I am highly sympathetic towards the aims of the amendment and, indeed, believe strongly that the Minister ought to conduct a review at an earlier date than waiting for 12 months. The Deputy of St. John has taken from me the issue of partnership and he has a very good point here because why would small partnerships be excluded, which they are currently under paragraph A of the draft? There is work that needs to be done here if there is going to be protection ultimately for small businesses in the area of partnerships. There are also, I am afraid, drafting complications and I am afraid the Scrutiny Panel's amendment is in dire need of being scrutinised. I have attempted a minor scrutiny of it myself, of course, and I found a number of problems with the drafting. One of them has already been taken from me by the Connétable of St. Clement this morning who has quite rightly pointed out that although there is, in the definition of small trading company, a reference to incorporation in Jersey and a trading company, there is nothing to indicate that it has to be trading

in Jersey and that is a major defect. I do not know whether it was the intention of the Scrutiny Panel in giving instructions for this that only one of the 2 conditions, 7 or 8, would have to apply, but because condition 7 would kick in in relation to a trading company incorporated in Jersey but trading elsewhere because it would not be liable to register under the Jersey G.S.T. stuff, you could potentially have a vast trading company, something that was not envisaged at all by this. Similarly, of course, you could have that by the second route that it might have a relatively small staff and somehow be trading in a large way. So, there are problems there. There is also the problem raised yesterday by the Connétable of Trinity. The point that he made in relation to individual money being placed through the company in some way so as to gain a double benefit, an individual benefit and also, in a second bite of the cherry, by the company. That is a good point. There is an attempt in the main to deal with that point by paragraph A and the wording in relation to “for the persons’ own benefit other than as a partner in a partnership” but no such wording has been included in relation to the small companies. Neither has it been included incidentally in relation to charities although one assumes that they would not be party to something of that nature. Now, there is a point in which although I agree entirely with the learned advice given by the learned Attorney General Designate, I think that he may have missed the point here because although it is quite correct that if a company were simply to place money in the name of an individual person, that would not fall within A, but if the company were to loan money to an individual ... and the same principle I think applies in the reverse direction in relation to small companies, if an individual were to loan money to the company, then I think that the condition which is currently under A would be met. Perhaps the learned Attorney General Designate might comment on that because it would be for the benefit of the individual albeit if it had been generally loaned and loans between directors, particularly those who are beneficial owners of companies and their company are commonplace and normally take place in any eventuality. So, there is a difficulty there. I may also have discovered a loophole in relation to the wording of paragraph A as it is currently drafted. But unfortunately there are a number of loopholes. I am not going to blame the Scrutiny Panel for the wording of this amendment. They have been rushed, they have been severely rushed. This is a good attempt, but it is not an attempt that I can support because of the drafting failures. I think that what should happen is that this area should be referred back to the Minister and to his colleagues so that they can, as quickly as possible - and hopefully it will not be necessary for Deputy Green to fulfil his promise or threat depending on how you view it - so this whole area could be looked at in more depth. It is more complicated. Finally, on the points in relation to the uncoded issue there is an issue there but frankly that is not an issue that would have troubled me. It is the drafting which troubles me and for that reason, with some regret, I am unable to support this amendment.

2.1.6 Deputy C.F. Labey of Grouville:

I sit on this Scrutiny Panel and I have to say we have various reservations about the scheme as it stands at the moment, but like Deputy Le Claire yesterday and Deputy Jeune this morning - and I have to say the rest of the panel - we are very keen to see this scheme go through, to see it adopted. A scheme go through, not necessarily the one that is being proposed. We would like to see our amendments adopted. But there seems to be a misconception in this Assembly that the Scrutiny Panel have been holding things up because we are doing our job and were given 2 weeks between the lodging time and the debating time to do our job in. Please do not, for one minute, imagine that it is this Scrutiny Panel that has held things up. We have worked tirelessly over the summer months, in the summer recess, to get what we have got together in this report and we have brought forward these amendments. I am disappointed, like other Members, that Senator Maclean estimates about another 12 months before a review is done and before small businesses could be considered. The Scrutiny Panel have had the summer in which to address the entire report. They were aware that we were concerned that small businesses were not covered and why could they not during the same timeframe as we had brought something forward? This Assembly must look at things from probably a more holistic way than just focusing on the very narrow issue, although we have to focus on the very narrow when we come to debate. But this Assembly agreed earlier this year to

prop up our economy to the tune of £41 million with the economic stimulus package. This was done in order to keep our economy alive, to boost it in these uncertain economic times yet the regulations, as they are proposed, are requiring that the banks make good normal depositors but do not have any regard to small business and this, to my mind, is a failing and it is an inconsistency. On the one hand, we are propping up the economy with taxpayers' money and then on the other where banks do business with small businesses, get away scot-free from covering them to the tune of £50,000. I want Members to think about the consistency of what we are doing. What is being proposed in these regulations is to safeguard the deposits for natural persons, which includes foreign investors. These include people who have never set foot in Jersey; they see Jersey probably as a dot on the map. These foreign investors are covered by the banks and, as the scheme has proposed, taxpayers' money as well, yet the small local shop and local business is not. It is a shame, to my mind, that the Chamber of Commerce Small Business Section could not come up with a more constructive definition for a small business because when they were asked what that definition was at a Scrutiny Panel hearing they said: "That is the million dollar question." Likewise, the Economic Development Department, when they were asked to define a small business they cannot, they have not, yet they give out grants and loans to small businesses. So it has fallen upon the Scrutiny Panel to define what a small business is, again, in the very pressurised timeframe we had to do this report and, at the same time, define a small business. Our definition may not be perfect but we feel it addresses ... everyone knows what it addresses. For the benefit of Senator Perchard who obviously had not read the amendment properly, it is for those businesses that do not pay G.S.T. and employ less than 5 people. I am not going to speak at length really because to my mind this is a very easy choice, do we want small businesses covered? For those people who are worried about what are the implications, what are the percentages, what are the amounts; the amounts that are being circulated should be with Members now but for the benefit of those listening on radio, the compensation payable by the scheme as proposed is about £9.25 billion but to include small businesses it would increase the scheme by £220 million. All huge figures but, relatively speaking, not that huge; 0.7 per cent. If a group of small businesses are not covered, if a bank fails through no fault of their own, this would have quite an impact on our economy and an impact not only with the business and the High Street and everything else but it would also have an impact to taxpayers when employees then have to go and seek low income support. So this is quite a simple proposition, do we want to cover small businesses to the tune of £50,000 just as natural persons are, which include foreign investors?

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

I would like to talk to the amendment in 2 ways, one in the broader context of, in my view, why we should not support this or any of the changes, and I have to say that the argument is very similar on all of the amendments, then in a bit more detailed way specifically on the phraseology of the proposed amendment that we are discussing now. Deputy Higgins stated yesterday that the world has changed and I am so glad that he has said so because sometimes I feel that people just do not recognise that the world has changed in the last 12 months, and at least we can agree on something as our starting point for this debate. This is not about a marketing ploy which is, in my view, the rather hollow expression that was utilised yesterday by one of the members of the Scrutiny Panel, but it is right to talk about our competitive position, which is different. Our competitive position re the banking industry. I would like to remind Members of the recent letter from the Jersey Financial Services Commission which was sent to all of us and among other things the Director General stated the following: "I can confirm that in the past 3 months the commission has been officially notified of the withdrawal of 4 banking institutions from the Jersey banking sector. The reason behind the withdrawal is in every case group rationalisation. In addition, there are a possible 2 further institutions where similar considerations may move from the theoretical to the actual in the next 12 to 18 months. I would suggest that all parties need to consider what further effect any measures may have on what is already a relatively unsettled sector of the Jersey financial services economy." That is not particularly good news. The point of that quote is that we have been saying

for quite some time that there is a risk to getting this scheme wrong. The biggest risk lies in increasing the cost to the banks of doing business in Jersey which is significantly out of kilter with, for example, Guernsey and the Isle of Man, at a time that consolidation is taking place. That was really the point of the earlier quote to demonstrate that consolidation is taking place, it is not just hearsay, it is not just innuendo, hype or scaremongering. We want the banks to come or to stay here not to consolidate elsewhere. It is not much good having a theoretically sound D.C.S. (Depositor Compensation Scheme) if it has killed off the golden goose. Therefore, at this stage we should not be leaping into an unquantified and uncosted variation on a scheme that would heighten such consternation. To that I would add the comment from the Jersey Bankers Association: "The revised proposal if passed by the States of Jersey will give rise to a fundamental review of the cost base of banks on the Island. This is likely to result in uncertainty for employment prospects and firms may decide to leave the Island. The J.B.A. (Jersey Bankers Association) honestly believes that the consequences of supporting the amendments [plural] are severe." That, in my view, is the wider context of these amendments and the debate that we are having probably for the rest of today. At this stage the amendments will cause significant and very real problems for this Island. To get to the detail of this particular amendment Economic Development has said that the amendment is not costed and the impact has not been quantified. The Minister has undertaken, though, to review this during the next 12 months, but on the other side Scrutiny argue that the definitions are clear, that we should be supporting small businesses. They have tried to say that the money is relatively insignificant and that it should be easy to identify small businesses and that we should adopt their scheme. Well, I asked a point of clarification yesterday and it was a genuine point and I would like the rapporteur to deal with that when he closes. However, I have some other matters that link in with my question then. Let us deal with some definitions and I suppose I should thank the rapporteur, I think, as I had to refresh my memory on some old tax regulations, which is something I really enjoyed at midnight last night, I have to say. Such is the joy of being an accountant. The definition of a small company is not that clear and I think reference has been made to it. It is not just about local small traders selling carrots and cakes, which I think was one of the analogies that was used yesterday. The definition that we are going to be asked to adopt states that the company - and if it helps Members, it is in the second amendment, obviously at paragraph (b) on page 3 - must be incorporated in Jersey. Well, that is fine, that is very clear. It does not automatically make it a Jersey beneficially-owned company, but that is okay. "The company must be a trading company" we will come back to that. "It must either have 4 employees or less [and I will come back to that] or have a turnover less than £300,000." The definition of a trading company has been linked to that used by Income Tax: "The trading company has the same meaning as in the Income Tax (Jersey) Law 1961." What I asked yesterday was about the either/or nature of condition 7 or 8 in paragraph 6(c). That means that one could have a very high value company with either no or very few employees that could either be a property or investment trading company which would be defined as a trading company, as far as I can see, under these definitions. For example, in terms of trying to get clarity of the definitions, if we just look at the pink sheet that has come round, and I am not going to go into heavy detail because I have not had very long to look at it, but it talks about the number of small businesses - as defined in this amendment - is 77 per cent of a certain sum. Well, my understanding is that that 77 per cent is for firms employing 5 or less employees, and if one looks at the report that is what they define a small company as; it is one of the definitions. But in the amendment it is less than 5. Now I appreciate that one might say that is hair-splitting but you need to be quite careful in the way you are trying to define things. Is it 5 or less or is it less than 5, which means 4 or less? So I think there are some inconsistencies which if that is the cloudiness or the lack of clarity in the thinking on very complicated issues when we are going through this we have got to be very, very careful in how these amendments are being treated. Let us go back to income tax. In the income tax law a trading company - and this is the definition from the law - is a company carrying on trading activities, which means activities in the course of or for the purposes of a trade carried on by it. Well, I hope that is nice and clear. I think that is clear as mud, personally. I seem to recall that there was a whole legal industry at one point defining what used to

be called the badges of trade and this could be - and a lot of this is based on U.K. (United Kingdom) legislation - whether someone is selling pots of honey from the bottom of her garden to someone selling a house too quickly, having recently purchased it, was trading or not. Was that a trade or was that a capital item? These would all be subject to tax because they were deemed to be trading and if they were not trading they were not taxable. For some reason people did not really want to be caught by this because for some reason they did not like paying tax to the Revenue. Now, the point is that the taxation system aims to catch as many people as possible to charge them tax, and the same applies for companies. The Comptroller of Income Tax - I was thinking about this and I thought I had better just check that my memories are still correct - has said to me previously the badges of trade criteria are very wide so that if he even gets a sniff of somebody trading he will attack and challenge them as trading. Therefore, income tax law is very wide and, therefore, this amendment is not a tightly defined amendment. It is not just about small companies in turnover terms and it need not be about companies just selling vegetables, for example. Indeed, my understanding is, I think, that the Deputy of Grouville confirmed that everyone has said it was difficult to define and this definition they came up with is the best they can do. So, as I said previously, I have experience certainly of an investment holding company but equally an investment trading company, both Jersey residents, and obviously one of those, I think from this definition, would be treated as a trading company and would be protected under the scheme. So the amendment is not clear cut and the whole issue as to what is a trading company probably explains why data has not been available and why it is considered that care is needed here. In the accountancy world small companies are defined by reference to any 2 criteria for turnover, balance sheet totals and the number of employees. But even that would possibly be not quite right for future definitions. Certainly I have been informed that many small businesses will be sole traders rather than small trading companies. Those will be already protected under the existing proposed scheme. To reiterate the points about competitive position, Guernsey, as far as I understand, does not cover S.M.E.s. That is correct, yes? I have one shaking their head and one nodding their head. The Isle of Man, as I understand, is reviewing its position possibly with the view to no longer covering them. The point is that is why all of these matters need to be very carefully considered. Now, I would like to reiterate because it has been played on a number of times about the legality of transferring money to the shareholder and I endorse exactly what the Constable of St. Clement said, or the Assistant Minister. Many small companies will have very few if not just one shareholder. There is absolutely nothing wrong with a transfer to that shareholder via a shareholder's loan account. It is very easy to document, it probably takes 5 minutes. Payments can also be made by way of dividend. Therefore, money can go from the company to a shareholder. If it is a loan there is nothing to stop a shareholder advancing further money to the company at a future date. Therefore, the practical point is that it can be done and it is in no way illegal and I want to reinforce that position. There are always nuances to that argument but what I have said is the practical result which will be legal. I think we have already had the comment on the fact that 4,000 accounts, I think, was described as small beer and it is about £200 million. In fact, I had written down that I really hope that Deputy Southern would let me have the interest of his bank balance for at least a year or so, please, if it is that insignificant. I think I have referred to what I still consider is, in the context of the thing, not a significant inconsistency but if that is the way things go further on it starts clouding matters, which is the point of the report saying it is 5 employees or less but the amendment saying it is less than 5 employees, which is different. So, in conclusion I do not think the details of this have been properly thought out. The principle may be okay but the Minister said it will be reviewed as part of the first annual review and I think we need to go with that. It is very important that any proposals are clear and well defined, especially in the world that we are operating in today, which is, I think, accepted by most people has changed from at the very least 12 months ago. I hope that I have been able to demonstrate that the definition is not that clear, it does not achieve what it purports to achieve, it is not necessarily restrictive on size and it, along with all the other amendments, will impact on our competitive position at completely the wrong time. I really do urge Members to reject it.

The Deputy of Grouville:

I did not want to interrupt the speaker but it was my understanding yesterday the Attorney General elect said that if monies are held for a company by a person they are not covered, yet the previous speaker is saying that monies can be held by a shareholder or through loans and what have you. So, I just wonder if these will be covered because in which case this will be, I think, used quite a lot and I would just like to be clear on that.

The Greffier of the States (in the Chair):

Are you able to assist perhaps with the understanding of that? You had another query perhaps you are able to assist the Assembly as well.

2.1.8 The Attorney General Designate:

Yes. In fact I think the question from the Deputy is probably on precisely the same point that was raised by Senator Le Marquand. When I spoke yesterday and I said that Regulation 5(1)(a) required that the eligible depositor must hold money for his own benefit in order to be an eligible depositor and related that to circumstances where if he held it on behalf of a company that he would not then be an eligible depositor. I did also say, as I recall, there were, of course, situations where someone *bona fide* can receive money from a company and when I said that I had in mind the possibility of a *bona fide* arms-length loan between a company and its directors or between a company and its shareholders and, indeed, a proper - in accordance with the law - payment of funds held by a company by way of dividend into the hands of its shareholders. Provided those monies have been transferred in an entirely proper way and not necessarily for any nefarious purpose, and that individual holds that money then it is true that further down the line they can make that money again by way of investment available to that company if it is done in an entirely lawful and *bona fide* way. It seems to me that, therefore, there are circumstances in which money can be properly transferred from a company to an individual and an individual could - because he would be holding that money at that point for his own benefit in a properly lawful way - be an eligible depositor under the scheme.

2.1.9 Senator A. Breckon:

Just a few words. I think the sentiment behind this needs supporting. We heard this morning about how some employees were treated and if there was failure ... I mean, we are talking about a serious set of circumstances for this to apply anyway so it is a real backstop but it is a backstop. I think that perhaps gives some comfort to people in these situations. But maybe some have a short memory; are the Minister for Economic Development and Department not supposed to be supporting and encouraging small businesses through things like Enterprise and things like that? So, what has happened there then? Has that fallen off the radar because they were supposed to do that and I would have thought there would have been some comfort in doing that? The other thing I was interested in was when the Constable of St. Clement spoke and he talked about would individuals not prefer £100,000 instead of £50,000? Would people not like this, that and the other? But there is another question, would the banks not rather the government guaranteed it and paid for it than they did? Maybe that is the question because the banks, let us face it, in other places have had billions of pounds and dollars of government money and where there is guarantees it is now very convenient for banks and financial institutions to fall back on government for these guarantees. Now that is not where we are here but having said that if there was a choice and, as Constable of St. Clement said, what would the banks prefer - they stand guarantor for it or the government does? What would they say? Nobody has asked that question but perhaps that could be answered in the same way. I think this is a sensible amendment and I do commend the work of the panel because it is difficult because you are against the steel, as it were, when you are doing it because there is a time limit and it would be nice to have the luxury of doing this over 12 months or something like that. But there is that pressure to do it and it is required. It is for the little old people in Albert Street. But it is also to demonstrate internationally that we are where we are and

we are in line with others and I hope this will be remembered when we are looking at other safeguards for ordinary people against the might of the institutions and some of their failures. I think it is sensible to include in there the G.S.T. threshold and what the Scrutiny Panel I think have done there is they put some sensible measures in there. They have put about employees and about the 5 because ... and again I think that is a good way of putting it in part 8 of the amendment in saying that it could be 6 months because somebody could be trading seasonally and have accumulated some money but it is to see them ... you know, it could be a café, a restaurant or somebody growing spuds, or whatever it may be and, therefore, they would assume that there is some money to get them into the next year. So for me this is entirely sensible and I would have thought that the Minister and the department would have been looking at ways of accepting it rather than avoiding it. I certainly will support it.

2.1.10 Deputy D.J. De Sousa:

We are where we are at the moment because for many years it had been intimated that we needed depositor compensation. But it has not been urgent, so it has been played about with and played about with. But now we know it is urgent and we need it. We have to get it through at every cost. I agree we do need it; it is about time we got here. It has taken 10 years or more to get to this position. We are constantly told by our Ministers that we have the top 500 banks in the Island, the chances of them failing are next to none, we are constantly told that. Now we are told that this amendment cannot be accepted because if it did it would cost us so much money. What is it - do we have the best 500? Is there no chance of them failing or is it going to fail? Okay, that is the first thing I want answered. I believe one of the Assistant Ministers has not spoken yet. The other thing is to include small businesses it would cost the scheme an extra - am I right - 0.7 per cent? Sorry, 2.3? Yes, the liability is 2.37 per cent extra, okay. But in a good year the banks can easily make in excess of this amount. We are in our current economic downturn but that is not always going to be the case, we will, we are told, eventually come out of it. Can we just look at the wording of this amendment? We are being asked to include small trading companies that are Jersey registered. In part (b) of the paragraph, add the following paragraphs in this regulation: "Employee has the same meaning as in the Employment (Jersey) Law 2003. Small trading company means that the company is incorporated in Jersey, is a trading company and upon the relevant date satisfies the condition in paragraph 7 or 8. The trading company has the same meaning as in the Income Tax (Jersey) Law 1961. (7) The first condition is that the company is not liable to be registered for Goods and Services." That means they do not earn in excess of £300,000. In my mind that is a small business. The second condition is that for at least 6 months in the calendar year preceding the relevant date the company employed less than 5 employees. Now I do know the Minister is concerned about the definition of "small company" because we can have small trust companies that earn multi-million pounds and employ 5 people. It does quite clearly say here the first condition is that the company is not liable under the law to pay Goods and Services Tax. The law is that if you earn over £300,000 you pay tax, so in my mind that does state quite clearly that it is small businesses that have been included in this.

The Greffier of the States (in the Chair):

Just to ensure you do not inadvertently mislead the Assembly, it is "or", is it not? The first condition or the second condition.

Deputy D.J. De Sousa:

Yes, I have not finished yet. I will clarify that. We have also been told that it was very difficult to get the data but a lot of this data we do have. We have it through Regulations and Undertakings, we have it through the Jersey Financial Services Commission and we also have it through the G.S.T. register, then added information from the banks. The Minister is shaking his head but the banks do have a rough idea when they open a business account because each business has their own bank manager. They talk to their bank manager about their company, how many people they

employ, what way they want to go forward. So I feel this information is there and it could have been teased out. I was pulled up by the Greffier about the 7 or 8 but listen to the wording and look at the wording, it does say: “The first condition is ...”, “The second condition is ...” No, at the top it says “or”. I am listening to questions being asked at the back.

The Greffier of the States (in the Chair):

I think, Deputy, just so we do not get confused, we need to look at 6(c) which says: “... upon the relevant date satisfies the condition in 7 or 8.”

Deputy D.J. De Sousa:

Yes. Then in 7 and 8: 7 says: “The first condition”, 8 says: “The second condition.” Hang on a minute, it is a play on the words “and/or”. What I am trying to get at is - we are getting a bit pedantic now - surely if you look at the way it is worded it says: “The first condition.” So a small business either has to be not paying Goods and Services Tax (so earning less than £300,000) or have less than 5 employees. I understand where you are coming from. But in the wording it does look like “the first condition”, “the second condition”. Maybe the person who was writing the amendment did mean “and/or”. Okay, I will move on. As I said in the beginning, we are told that the top 500 banks operate here and we are told time and time again by our Ministers that they will not fail. My problem with this is the objections that they are making is we are told one thing then we are told another. If we have the top 500 banks, and they really do not believe they will fail what is the problem with backing this amendment? I will be backing it.

2.1.11 Deputy M. Tadier of St. Brelade:

I warn Members in advance that I will be giving a speech which is relevant to the words that the Dean said the other day about the pebble in the shoe. I am going to be the pebble in the shoe for the next 5 or 6 minutes. It will be a slightly uncomfortable speech but, nonetheless, within Standing Orders I am sure and it will be fairly brief, as brief as possible. I will limit it to 7 points and I would ask that if there are any points of clarification that they could be done at the end as yesterday we saw it was good not to invite interruptions. We also know that the prophet is not welcome in his own town, indeed, so much so that certain prophets have to flee to the U.K. I was very interested by 2 things that I heard. The first one was from the Deputy of Grouville and the other one was from Deputy Le Fondré. I am not speaking from an economic point of view; I can only say what I feel here. We have heard the same old threat that the banks will leave if we do not do something. This is something that has always been used, it has reared up all the time. It was done to death, I believe, by the former Chief Minister, Frank Walker, who always used it as a scare tactic. There may be a small amount of validity here but what I really think is interesting here is that we are pitting, once again, local businesses against - as the Deputy of Grouville said - people who may not have even set foot on this Island. I noticed that when she was saying that people who have deposits in Jersey, who have not even been to Jersey yet have their money protected ... one of the Deputies on my left was saying: “Quite right too.” I do not really have a problem with that. I am not saying that we should not be protecting foreign investors because we know that they do contribute to the economic success of Jersey, but what I am uneasy about is at the expense of small businesses. I see in the report that 77 per cent of the Island’s businesses - and there are 5,730 businesses - employ 5 people or less. But we know that small businesses in Jersey are very important to the economy and, if we carry on reading, we have evidence from various witnesses who say, in fact, there is a symbiotic relationship between the 2; that we need small businesses and we need big businesses and the 2 co-exist. If you take any of those out of the equation and if we leave any of those open to threat then that is a problem. Also, more on a philosophical level, it is a problem because we are treating people differently. We are saying that the clients who may invest, who may be millionaires, multi-millionaires, are subject to some safeguards whereas people locally are not. I know that it is not all of their money which is being protected but it is about the principle. So, should it be a consideration that the banks may leave? Certainly that should be a consideration

but it should not be at the cost of local businesses. I think really at the root of this issue and what is the problem here is that we have to address the question who is Jersey run for? I think if we are all honest we know that Jersey's success is based on inherent inequality. I think if any Member does not know that I would be happy to explain very briefly. I am sure we do not need to. We know that there is one tax rate for one, one tax rate ... it is relevant, Sir ...

The Greffier of the States (in the Chair):

I am sorry, the Assembly is not quorate, I am going to challenge you on relevance. I would ask the Member to be summoned to the Chamber. I ask a Member to return to the Chamber as a matter of urgency. Very well, Deputy, you may continue. I give notice, Members, I will not allow as long again before asking for the roll to be called.

Deputy M. Tadier:

It seems that if Members are losing patience I am sure somebody would be happy to propose to move to the next item if we really have no appetite to sit here and debate what we all agree is a very important scheme, but I do not think that would be healthy. So back to the question who is Jersey run for? We know that there are inherent inequalities on which Jersey has traditionally built its success. On the basis of tax inequalities, that the tax base is completely the wrong way round, we hit our locals, we hit the workers, we hit people who are struggling, the middle classes, and we are doing it more and more and we know that our government has become increasingly detached simply because the elephant in the room is progressive taxation. We know that the Zero/Ten has fallen down on this basis because it is inherently unacceptable to the European Union on the basis that it taxes ... the proposals would tax non-foreign-based businesses at zero per cent and local businesses at 10 per cent and, of course, individuals at 20 per cent. So we know that there are inherent inequalities and other Members will say that this exists all over the world, does it not? Most places in the world have a facility that lets millionaires come in, negotiate their tax base. It happens in the U.K. so why should we not do it in Jersey if we want to remain at a competitive advantage? To that, the answer I am reminded of the words of the late Tony Benn, I believe. **[Interruption]** He is still alive?

Connétable L. Norman of St. Clement:

Get your prophets right.

Deputy M. Tadier:

I am glad that Members are well informed as to their Socialist representatives in the U.K., better than I am. He said simply that if everybody else around you is whoring out their daughters to everyone does that mean that you also have to do the same. Simply, I would say, you can do the same if you want to be better competitive ... not at a competitive advantage but I suggest that there are other things which should take precedence. It is strange, is it not, that an unbeliever should have to be the voice of the Christian conscience in the States - slightly ironic. The point really, if we follow on from that, is because Jersey is based on inequality - we know that you cannot have justice in a tax haven - it is a necessary requirement that any solution to maintain Jersey's success, in the usual terms that we define success, must also have an inherent inequality in it. This is exactly what we are seeing today; local businesses are being penalised while non-locals and big business, if you like, are being protected because that is the function of government in Jersey. If we strip away all the façade we are simply here to protect Jersey but Jersey in the sense that the establishment would view it, as a finance centre, as a dot on the world map, which is like an aircraft carrier, to be used purely for profit while the inhabitants of Jersey are completely forgotten about. I am sure the Constable of St. Mary will have a chance to respond if she has not spoken already. The second from last point is that I am worried about the message this sends out to Scrutiny. We have had several Scrutiny propositions that have come to the States and I think it is a healthy thing for Scrutiny to be bringing propositions and, of course, there should not be a presumption that just

because Scrutiny brings a proposition that it should go through on the nod, although there seems to be a practice that anything that the Chief Minister or the Council of Ministers brings will go through on the nod unless there are very good reasons for it not to happen. I think that balance needs to be shifting. We need to value Scrutiny's work. We need to value the hard work that Deputy Higgins and his panel have done over the summer holiday, it has to be said, when we know that many of these people on the panel did not take holidays. What is the point of Scrutiny if we are simply going to ignore all the findings and say: "Well, we do not like this. This is inconvenient. We need to do something. It may be half-cooked but we will just sort it all out later." This seems to be the default position whereas if anyone else, a Back-Bencher brings a proposition and it is flawed then we would ask for that to be withdrawn and researched better. Really, it all boils down to what kind of Island we want to have. This week has been quite an important week for the Minister for Treasury and Resources. We know that the Chinese Ambassador has been in Jersey. We know that China has very pertinent, salient, current human rights issues going on at the moment. We know that, for example, China has a very bad record with homosexuality, they put homosexuals to death, I believe.

The Greffier of the States (in the Chair):

Is this relevant to small trading companies?

Deputy M. Tadier:

I think it is because it looks at the whole underlying philosophy. I think it is relevant and if it cannot be aired now then I would ask when it can be aired. The reason I think it is relevant is because we are talking about why local companies are not covered and it goes back to our value base. So I think it is relevant. The question we have to ask is do we do everything purely for money? Do we have to say there is a valid reason to protect local businesses and small businesses or are we only going to look after big businesses and the like? I think the parallel I was trying to make is that there is an issue to be had. We are proposing to do business with China. We know they have a very bad human rights record. Is anyone going to stand up and ask the question should we, in fact, be doing business with a country like China?

Connétable J. Gallichan of St. Mary:

I fail to see how this is relevant. I think we are very constrained on time and I really think this should be brought to order.

Deputy M. Tadier:

I think it is relevant and I said at the beginning it would be ...

The Greffier of the States (in the Chair):

I am struggling, Deputy, how China can be relevant to small trading companies.

Deputy M. Tadier:

The point is any investor in China who chooses to invest their money in Jersey will be protected by this scheme, I believe. A local business in Jersey who has less than 5 employees will not be covered by the scheme, so I think it is relevant. It may not be comfortable for Members to hear but it is my last point so I would beg indulgence. I would be finished by now were it not for the interruptions. The point is we fail to address the underlying question of equality in Jersey. We are failing to do it with this proposition; we are failing to do it on the bigger picture. If we compare China and their investors, the individual investors may be good but if we compare China with the clients and Jersey as the product ... I will not make that comparison. I do not want to make that comparison because I think it would not be helpful to make that analogy. I will simply leave the speech. I think Members take my point and I will leave it there.

Senator P.F.C. Ozouf:

Can I make the closure motion?

The Greffier of the States (in the Chair):

Yes, Senator Ozouf has given notice of possible closure.

Deputy J.A.N. Le Fondré:

A point of clarification from the previous speaker. I was trying to when Senator Ozouf stood up and you were looking in the other direction. Firstly, would he accept that many of the things he said are opinion rather than fact?

The Greffier of the States (in the Chair):

That is your opinion as well. Deputy Le Hérisier.

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

It is hard to follow that, particularly when I heard Deputy Le Fondré put the words “joy” and “accountancy” in the same sentence. I have not quite recovered from that. I am a very simple person and this is a very simple issue. I have had feedback from constituents who reflect the anger that has spread around Britain that they have been badly let down by the banking system. Their message to me has been: “Get the system in place as quickly as possible, make it as straightforward as possible and do not complicate it.” Which has put me in a situation now, of course, because this debate is descending into all sorts of complications and, quite frankly, as we have always discovered, but the lesson is sadly never learned because in the name of democracy, quite rightly, there is a belief that everything and anything that needs to be must be discussed on the floor of the House. Our ability to deal with highly complex and technical issues has always been a problem, as we know, with this House. How we deal with those issues, how we take the information forward and this debate is a case in point because it is quite clear that the Scrutiny Panel has worked exceptionally hard. There are people - unbelievably - who are passionate about the depositor guarantee schemes. Passionate about them and obviously they are being driven. But the people out there are telling me: “The banking system has badly let us down. For heaven’s sake get something in place quickly, I am really worried.” On the other side of the fence what I have to say is there was a way out which Deputy Green partly was trying to assist the Minister with. The Minister was, I have to say, far too complacent in saying: “It will be swept up in our 12-month report.” That was far too complacent. To save the situation and to save face, as our Chinese friends are involved with, he could easily have said: “Look, I will get you a detailed report out answering the fundamental questions, trying to wrestle with these technical issues that appear to be holding all this up, say in 3 months.” But instead of offering that workable compromise ... and I hope from the lofty position he will descend to earth and perhaps give us that kind of assurance because he is a man I know who is capable of doing that and who would wish to be helpful, would that be possible. So I would ask him ... because I think we are getting nowhere quickly on this. I am like Deputy Green, if I was in a court of law and the judge turned round and said: “Do you find the Economic Development Department guilty or do you have a reasonable doubt?” so to speak, I would have to say: “I have a reasonable doubt.” I have heard a lot of emotional equality arguments which have a lot of credibility but I still have to say have we sorted out all the technical issues? Have we really pinned it down? No. One point I would make to Deputy Tadier, who has raised a lot of good issues, he says: “Why are we not dealing with the locals?” which is what my constituents have said, by the way: “I am just an ordinary ‘local’ depositor and I am getting sick of the fact you cannot get the system into place.” The fact is, for good or for bad, we have a banking system which is utterly permeable and where there are no boundaries that are easy to police any more. It leads to all sorts of ironies and, of course, one of the ironies of these people who are, according to Deputy Tadier, exploiting the system is they are paying a lot of the tax that is keeping our social services afloat. That is one of the supreme paradoxes and ironies of this situation at the moment. We live in an utterly permeable world where who is a local and who is not a local, who is paying for what, who is

not paying for what, who is being treated equally and who is not, and unfortunately we have got ourselves into that situation. So I would say keep things simple, get the bones of what has proven to be utterly necessary for political confidence because at the heart, quite frankly, if you have to activate the system it is like the nuclear bomb, you have lost. As soon as you press the nuclear button you have lost. We are referring to what they used to call M.A.D. (mutually assured destruction). What I would say is could the Minister give us an assurance that he will get a serious report out with urgency as opposed to: "Well, it will be swept up in the 12 months"?

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

I think today I am like Deputy Le Hérissier, I am quite simple. I have heard some really supposedly compelling arguments why we should not be doing this. I am not sure whether I will support some of the other amendments but I, like the previous speaker, if there were so many flaws and so many reasons not to do this why did E.D.D. (Economic Development Department) not postpone maybe for another week or 2 and amend if they were not clear what a small business is? Because if Economic Development cannot tell us who a small business is I really think we are in trouble, it could have been defined.

Senator A.J.H. Maclean:

If the Deputy would give way I would be more than happy to try and clarify the position. It is not as simple as defining it from our perspective what the small business happens to be or not. There is a considerable amount of work to be undertaken and this is the view, not just of ourselves, it is the view of Oxera, it is the view of the banks themselves to collate the necessary information to be able to define how you deal with small businesses in terms of a depositor compensation scheme. We do not know what the cost would be. We do not know what the risk would be, it needs to be properly analysed. What I will undertake in response to Deputy Le Hérissier is that although we have committed to a review in 12 months' time of the scheme as a whole, I am more than happy to accelerate ... we are already going to begin work on the small business, assessing the cost and the risk, we will move with that as quickly as we possibly can and I will return to the Assembly and give an undertaking that ... I cannot give an exact date but we will move quickly. I would say it would take, from what I have had indicated to me, probably 3 months, maybe 4, to get the information collated, but we will move quickly on it. It is important to us; it is as important to Economic Development as I am sure it is to Members. We need to ensure small businesses are properly taken care of but we cannot risk natural ...

The Greffier of the States (in the Chair):

Do not stray into a second speech. That is a helpful clarification, thank you. Deputy Martin.

Deputy J.A. Martin of St. Helier:

It is encouraging to hear that. But it does worry me when I hear the Constable of St. Clement sort of trying to say that we have got small businesses out there who would not like £100,000 if their business went belly up because under the scheme they could be covered as a small business and an individual depositor. But we have a scheme that if you have got a good few million we have got 45 banks, you can ... a good business adviser, financial adviser, would tell you to spread your money around those banks which could still be lots and lots of money and if you have joint accounts it is up to £100,000. So all these people, the more money you have got the more banks you can put it in, the more you will get out of this scheme. It does not really wash with me. Again, I think it was Senator Breckon who said: "Has anybody asked the banks?" Well, I think it is quite clear by their letter that they have asked the banks. The only confusing thing in their letter - and Deputy Le Fondré said they are against the proposed amendment - they never mention they had 4 pages here of why we should fund them and they should not fund them. As I say, that is another debate, another argument, but there is not one word about why not the small businesses. It is a letter: "Can you write and tell us that you do not support the amendment but only talk about the one where we

are going to supply the money and you are not?" I fully accept their reasons for that but why have they not explained to me why they do not accept any of the amendments? Again, only a few weeks ago we had the Business Angels; we are trying to get people to start up businesses. If you had £50,000 sitting in a bank and you could not get a job would you now put that into a small business knowing that the minute you turned that into a small business your money is not covered? There is no encouragement for it at all out there. There is no encouragement. We are told by E.D. (Economic Development) we are helping them, we are even underwriting some loans for these small businesses under Schemes, but we are not encouraging them. So to me, being simple folk like the Deputy, I think there is too much coming up against ... as we say, what is the risk? If this does go belly up, no, we do not know the risk, nobody knows the risk. We are bringing in a scheme with £100 million to back it, basically. Now if, as Deputy Le Hérisier said, one or 2 of the banks went bankrupt tomorrow, or belly up, the risk is gone. I mean, a lot of people will ... it is all about having the trust in the bank. Do not turn up to the bank tomorrow and ask for all your money out because I can assure you if everybody did it in the world there is not enough money to go round. I mean, all the taxpayers in England are £30,000 each into debt to the Treasurer. Well, a lot of them would like that in their pocket. They are never going to see that money, it is all very good, you know: "Let us have this." But I really do think let us have this for the small businesses. If it is not passed today I am comforted by the words of the Minister for Economic Development that they will bring, you know, a good report, what the risks are and to encourage people to get out there. We do have very, very, what I call small businesses and I am sure it would be some of Deputy Le Hérisier's constituents who would have small businesses who would say: "Get on with it, keep it simple but, wait a minute, you are not going to include us?" because, to me, this is what ... a small business should be covered. So at the moment, unless I hear anything really different ... it is that people can abuse this system or the system can be abused by anybody. Anybody with any sense is not going to keep more than £50,000 if they have got it in one bank and they are all going to be covered. So, you know, the little people who have not got a lot of money ... we are protecting the ordinary depositor from off the Island and we are not supporting people who may want to set up a business who are there now. Let us talk about moving your money one week into your deposit account. I talk to people, one-man bands, 2-man bands, the money is going around and around. They have not got time to go into a deposit account. If it goes belly-up tomorrow which account is my money in? They are literally going around and around, they are just keeping their head above water. So it is very nice for these people who are going to put the money in there and they are going to be ... these are the people that I want to see covered. Maybe the amendment is wrong. As I have already said, E.D. should have done something about it to define a small business because I still do not believe that Economic Development could not have come up - if they think this is wrong - with a much better definition and I am quite disappointed in that.

The Greffier of the States (in the Chair):

Deputy Higgins, your light was on. You will sum up or did you wish to make some form of ...?

Deputy M.R. Higgins of St. Helier:

I would just like to confirm something from the Minister. He did say that he would come back in 4 months with ... if it is a proposal to introduce a scheme for small businesses then I am prepared to withdraw this now. If he is not prepared to come back in 4 months' time we will let the debate carry on and see where it leads to.

The Greffier of the States (in the Chair):

Are you able to briefly ...?

Senator A.J.H. Maclean:

All I can say is that clearly we will do the work to cost the scheme. We will analyse it but I cannot possibly stand here and predetermine what the outcome is going to be. All I have said is that within

3 or 4 months, as soon as the work is done, we will come back and report on the results as to whether or how we can include small businesses into the D.C.S.

The Greffier of the States (in the Chair):

So at the moment it is a “no”. The Constable of St. Lawrence.

2.1.14 Connétable D.W. Mezbourian of St. Lawrence:

I was listening to the debate on the radio as I drove back from the dentist earlier and it certainly struck me ... you get a different perspective hearing the debate on the radio than standing in the Chamber and listening to it. I must admit since I was elected it is the first time I have ever heard it broadcast live. Yes, it got to the root for me, thank you, Deputy Le Hérissier. **[Laughter]** It did not fill my expectations! **[Laughter]** Moving on, one thing that did strike me was what Deputy Labey said during her speech, which is that the Economic Development Department offer loans to small businesses and yet do not find themselves in a position to be able to give a definition of what a small business is. I am sure if it struck a chord with me it must have struck also with the members of the public who were listening because they must be saying: “How on earth can this be the case?” I find it astounding and I am sure they will feel similarly too. But another thing that struck me while I was listening was that okay, we have heard a couple of definitions; a small business is an entity that employs fewer than 5 staff and does not pay G.S.T. Now, that is one of the things I heard and it struck me that the Parish of St. Lawrence employs fewer than 5 staff and does not pay G.S.T. and it suddenly gave me a real jolt because I had not thought at any time how the parishes are covered by the proposed D.C.S. I am wondering now whether if we go forward without approving these amendments to the regulations whether my parish will be covered at all. I am quite happy to be advised on that if anyone from E.D.D. has not yet spoken, I am not sure. But I ask the question, the smaller parishes who employ fewer than 5 people will they be defined as a small business? If not, how are we covered under the substantive regulations brought by E.D.D. because it is beginning to worry me. Thank you.

2.1.15 Senator P.F. Routier:

Obviously, there is a desire from everybody, I think, in this Chamber to ensure that we have got a good coverage for as many people in our community as possible, whether it be small businesses or individual natural people. I think that is what we are all trying to achieve. Businessmen are very practical, pragmatic people who tend to do things in their business which is to their best advantage because they are in business to make money and they will do everything they possibly can to protect their interests. Even under the current circumstances, whereby we do not have a scheme in place, I am aware there are businesses who will have arranged their affairs currently to spread their ... if they have deposits, because a lot of businesses do not have deposits, a lot of them are in loans to the banks borrowing money, so there is that to be taken into consideration. We heard from Deputy Martin, who was very concerned about the businessman who is just managing to cope from one week to the next and shifting money around is not their prime concern; they just want to exist from week to week. Those people, I am sure, will be using one of the 4 major clearing banks - 4 or 5 major clearing banks - who we know are protected now. The Government is covering their liabilities, so those people who use the major clearing banks are, to a certain extent, being covered with the existing system. I understand there is a desire and there is a desire of the Economic Development Department - and we have had the assurance from the Minister - to move forward to ensure that small businesses do get some additional coverage. The problem we face today is we do have these amendments that we have to discuss and debate and we are making a lot of ... we are all having a good discussion about it. But it has been made, I think, fairly evident from some of the comments which have been made from Senator Le Marquand and others that the definition that is before us today is very, very unclear and woolly and it does not ... there are holes in it, unfortunately, which do not do the job that I think that the proposers of this wanted to do. I think the previous speaker just spoke about the concerns about what about the parishes? Well, the

parishes, to my mind, will probably ... in this definition that is being proposed today, it is not a trading company, so I do not believe that they would be covered. That would be my version of the outcome of approving these amendments today. So, I think there are so many different avenues that could go down to describe a small business that we need to get that absolutely clear and that work has not been done. Rightly or wrongly, it just has not been done. The description, what we are being offered by the Economic Development Scrutiny Panel, I am afraid does not tick all the boxes for me. It just does not achieve what, I think, we would all want to try and achieve. I think we should allow the Minister - and I am part of the team - to use the next few months to do a lot, lot more work, to bring forward and to see if it is viable to have a scheme that is suitable for Jersey. It is all very well saying that perhaps other jurisdictions do have schemes, but there are some jurisdictions who do not have schemes and for valid reasons, no doubt, and we will have to look at why that is. Guernsey do not have a scheme, the U.K. only have one up to £20,000, the Isle of Man are pulling back from their scheme. We need to get a good understanding of what is happening in the community. We also may have to understand that a lot of the small businesses in our Island, 50 per cent of them are sole traders. It is all very well talking about there are so many ...

Deputy M.R. Higgins:

Could I just ask the Assistant Minister how he knows that? Has he got the figures?

Senator P.F. Routier:

That is part of the advice I have been given by the department and from some of the banks that have been able to give us some information.

Deputy M.R. Higgins:

We have already been told the banks have not got the information earlier by other speakers.

Senator P.F. Routier:

You are conflating 2 different issues. Sorry, the Deputy is conflating 2 different issues there. Certainly, the information that we have been able to gain so far in the work that we have been trying to do to ascertain whether having a small to medium enterprise scheme is a valid thing to have, we have ... it is not as if we have been sitting on our hands thinking: "This is not something that we want to try and do." It is something that we have been looking at and we have not been able to come forward ... the urgency has been about protecting natural depositors and that is what we must do. I think the problem with what is being proposed here is that it could dilute the protection that we will be giving to natural depositors. We must not forget that when we are thinking about this. I would urge Members that because of what is being proposed in these particular amendments is that the risk is unknown, the liability is unknown, and I do think that we would be doing the Island a disservice if we were to ...

The Greffier of the States (in the Chair):

Sorry, I must stop you, Senator; the States are inquorate. I ask Members to be summoned very rapidly. **[Interruption]** It is a matter for my discretion, not yours, Senator. The Assembly has just become quorate again.

Senator P.F. Routier:

I did not have much more to say, other than to really just highlight the fact that what is being proposed today unfortunately does not tick all the boxes as far as providing a scheme which would support small businesses. I think we should allow the department to do some work over the next few months to ascertain the viability of a scheme for small businesses. I would urge Members to reject these particular amendments.

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

I am probably about the only one here, apart from Deputy Higgins, maybe, who has sat in the Chamber throughout - there may be one or 2 others - but I just wonder ... yes, we are going to have one or 2 hands going up, good. But what I am worried about is how are those people who have not been taking part in this debate, who have been in and out of the room, going to vote? Because we have had so much been discussed now that if people have been out of the room they will not have heard some of the positives; if they have been out of the room they will not have heard some of the negatives. What I am concerned about, we are going to end up with people voting against it because they do not understand it and it will be voting blind. I have got "voting blind" here as my first line, right from the beginning of the debate, because we have got this: "Not sure what we are really voting for." It is unfortunate that we have got the 2 sides and we are so close. I really thought we had almost got there with Deputy Green and then with Senator Le Marquand, I thought he was going to ask for a reference back because we got so close to that. I was almost going to get up and ask: "Would you propose the reference back?" Now another hour or so plus, we are still getting nowhere fast. I think Deputy Le Hérisier again got very close to getting somewhere between E.D.D. on our left and the Scrutiny Panel on my right, getting together with something which we can all agree to. Because my fear is that there are going to be no winners today. E.D.D. are not going to win and the Scrutiny Panel are not going to win and the real losers will be the people out there, the small businesses. We have got so close to having an agreement between E.D.D. saying: "Yes, we will come back now within 4 months" and I must admit, I think they were wrong to say 12 months, but at least we have got a concession now. Well done. 1st March, what I would like asked to both the Scrutiny Chairman and the Minister for Economic Development, please, can you not consider referring this for 1st March so that we can come back with something, which indeed if we have got something on paper, for E.D.D. to show that this is not viable, at least we have got something concrete to vote on and we may well build up something from the Scrutiny Panel, who have done so much work, I think, to compliment them, to give their summer holidays up to go through this and they have done a tremendous amount of work. At the same time, we are so close to getting nowhere. So, can I ask please that maybe the Minister and the Chairman of Scrutiny can really agree to refer this back to 1st March so we can come back here with everything properly on the table.

2.1.17 Deputy E.J. Noel of St. Lawrence:

The Deputy of Grouville's claim that Scrutiny has not held up the proposed D.C.S. is, in my humble opinion, simply not true. If Scrutiny had allowed the original scheme to be implemented in July and then worked with E.D. to review and, if necessary, amend it, we would have had it in a position where we have a more joined-up, inclusive approach by this House.

The Greffier of the States (in the Chair):

Let us get to the amendment, Deputy, rather than ...

Deputy E.J. Noel:

I am. The Deputy of Grouville talks about consistency. Well, this D.C.S. is about protecting jobs and enhancing job opportunities, as it is about protecting depositors. This morning we had an urgent question about potential job losses. This amendment is uncosted, not risk assessed, and makes our D.C.S. significantly and materially different to that of our competitors. As such, as banks are considering consolidation at this time, it puts more risk into our labour market, which could well result in far greater than 20 job losses. To answer Deputy De Sousa's query, our top banks will not fail, but this amendment is not about bank failure; it is about maintaining our Island's competitive position. Deputy Lewis, yes, has said it all. Let us get this D.C.S. in place and keep it as simple as possible. Members should be minded to reject this amendment and E.D. has already responded to Deputy Green's suggestion and will be working with all relevant parties to cost such an amendment and to assess its risks. I implore Members to reject this amendment.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the amendment? Deputy Maçon?

2.1.18 Deputy J.M. Maçon of St. Saviour:

I do have to correct a point from Deputy Noel; this is not about competitiveness. This is about protecting the people of our Island and those who have invested within the Island. That is what it is about. This particular amendment is looking at small businesses. From the definition that the Scrutiny Panel has had to create, which has taken the G.S.T. limits that already exist, I would ask Members to look at the pink sheet that has been distributed to them and I would ask them to note that about halfway down the page, in brackets: "Maximum value possible." We need to remember that we are not talking about absolute figures. We need to remember that if a bank was to go down it would only count for those people that have deposits within that bank, of which that would mean only some of the businesses that had deposits within that bank. As Senator Routier already pointed out, not every business will have deposits; some will have loans to that bank. So, the actual amount that is going to be exposed is significantly reduced to what is there. Granted, this is the maximum liability that could happen, but that is the maximum liability should every bank in the Island go down. Now, the situation in that case would be catastrophic because the D.C.S. would be worth absolutely nothing in that situation. The D.C.S. is looking at those small bank failures, perhaps one or 2 medium bank failures. The D.C.S. cannot cope with a total bank failure of every single bank; it cannot do that. So, you have to be very careful when you are looking at the total figures and you have to look at what is going to come into play. I would like to draw Members' attention to the 2.37 added by including small businesses. That figure itself is much less. The Constable of St. Lawrence has asked: "Will the parishes be covered, either under the amendments of the Scrutiny Panel or under the proposed D.C.S. as a whole?" No, they will not. Either way, they will not be. I believe, as the Deputy of Grouville said, we do need to protect the smaller businesses within our Island, given that they make such a huge part of the workforce. Part of the problem with small businesses, as Deputy Martin has talked about, is the cash flow. It is being able to keep going. This is part of the reason why the Scrutiny Panel felt it so important to include small businesses because in the event of a failure those most vulnerable, yes, will be depositors, perhaps a lady on Albert Street or whatever, but also the businesses because they need that cash flow to cover their costs of materials, to pay their staff, anything else. They need that constant supply. They need that liquidity. This is why the panel has brought this amendment forward because to ignore that would be exposing our economy, of which small businesses make up such a huge part that the panel thought that it was absolutely vital to bring this forward. We have brought this forward today. It may not be 100 per cent perfect, but how many times have we been told by the Council of Ministers: "This may not be 100 per cent perfect, but we need to adopt it." I would just ask Members to consider that. Thank you.

2.1.19 Senator T.A. Le Sueur:

There seems to be a lot of confusion in some Members' minds about what is a small business. I have heard today the words "small, local business" used quite frequently. I think I know what is in the minds of many of those who have said that. But what is in the minds of those who have said that is not what is in the amendments and that, of course, is a difficulty that has already been highlighted by several speakers. I think we do need to clarify just what we are trying to do in terms of the scope of addressing small businesses. If we follow the line of a definition put forward by the Economic Affairs Scrutiny Panel of including businesses incorporated in Jersey, but not necessarily trading in Jersey, that widens the net far more than the 5,000 businesses that they were talking about in their calculations. Now, if they are simply saying about those businesses incorporated and operating in Jersey, that is a different calculation, it is a different outcome and a different level of compensation, or claim on a compensation for costs. So, I have to go by what is in the wording of their definition of a small business, and it does include all businesses, local and non-local, if they are incorporated in Jersey. That, indeed, is consistent with the treatment of individual depositors who are covered, whether they are residents or non-residents in Jersey. So, I think I have a lot of

sympathy for the Minister for Economic Development who says: “The calculation is not as easy as it sounds because you have to be quite clear who is in and who is not in.” Although we all say this definition is not ... it is clearly not the right definition, we have not yet said what is the right definition. Until we get greater clarity on what is the right definition of what a small or medium-sized enterprise is, we are going to have great difficulty in quantifying what effect it will have in the overall scheme. Certainly, as far as this amendment today is concerned, for reasons which several Members have already expressed, the weakness of its current definition, the fact that it also has the word “or” rather than “and”, for all those reasons, this amendment certainly is not one that can be supported.

Deputy D.J. De Sousa:

Can I just ask for a point of clarification, please?

The Greffier of the States (in the Chair):

Who is it from?

Deputy D.J. De Sousa:

It can be for the last speaker. **[Laughter]** It is about the word “or” as in the issue that I raised in my speech. Surely this is an in principle vote and does it not go away to Privy Council and then come back to the House?

The Greffier of the States (in the Chair):

No, these are regulations that will be made and you will have come in force ...

Deputy D.J. De Sousa:

Okay, that is what I wanted to know.

The Greffier of the States (in the Chair):

Deputy Higgins, I understand you wish to address the Assembly?

2.2.20 Deputy M.R. Higgins:

Yes, I do, thank you. The last few moments I left the Chamber and I met with the Minister for Economic Development and we have agreed that we will pull our amendment to the law, and the agreement is that he will come back to the Assembly in 5 months from today, or as close as possible to today, with his report. Now, this enables there to be 3 months’ proper consultation with the industry and I will say to the House that if he does not do so we shall be bringing back an amendment at that time ourselves. I would say that we have achieved one of the things we set out to do. Okay, it would have been nice to get it through, but at the same time, when we worked on going through the Depositor Compensation Scheme we identified many things which we felt were flaws with what was being proposed and one of them was this absence of protection for small businesses. Now, in less than a week we came together with that definition of a small business. It is not rocket science, in one sense. We can see the flaws in it. In fact, what has happened here is in a normal process of trying to draft legislation, you will be bouncing it off different people and getting the ideas. What has happened today is that some of our accountancy friends who are very good at obviously knowing how to squirrel money away or to move it from one place to another have identified possible flaws with it. This is something we are going to face, by the way, when we start looking at Zero/Ten replacements, and Zero/Ten itself would have been the same. So, it has given us information as to how to strengthen our own definition if they do not come up with their own. So, what I would like to say is, as I say, when we produced our 173-page report, if we thought it would be ignored, binned like many other Scrutiny reports, no one would pay attention to it and we decided to bring amendments to bring the matter to the House to have these matters heard, which are all very, very important issues. So, I would like to thank the Minister for Economic Development for agreeing to come back ... first of all, carrying out a proper consultation

with the industry and we have set a time limit of 5 months. Alternatively, as I say, we will be back. Thank you. **[Approbation]**

The Greffier of the States (in the Chair):

I think I know the answer to this question; Deputy, just to clarify, you are only referring to withdrawing this particular amendment, are you?

Deputy M.R. Higgins:

Only this one in particular.

The Greffier of the States (in the Chair):

Yes, very well. It is a matter for the Assembly. Are Members willing to grant leave to the panel to withdraw the amendment? Very well, that particular amendment is withdrawn.

The Connétable of St. Mary:

I wonder if this might be an appropriate time for me just to say we have had a response there, but we were only at the very beginning of the debate on this very important piece of legislation. Could I possibly urge Members to consider the relevance of what they say and to try and progress the debate as swiftly as possible **[Approbation]** while of course with respect to the points they need to raise. We do not have a continuation scheduled for next week and it may well be that we will need to sit perhaps after 5.30 p.m. tonight and Members may need to consider that. But it surely would be less than satisfactory not to conclude this piece of business while it is started. So I urge Members to speak with clarity.

The Greffier of the States (in the Chair):

Thank you, Chairman.

2.2 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulation 5

The Greffier of the States (in the Chair):

Very well, the debate now resumes on Regulation 5, as amended by the Minister's amendment relating to the Community Savings Bank. Does any Member wish to speak on Regulation 5 as amended? Regulation 5 is amended. The Deputy of St. Mary?

2.2.1 The Deputy of St. Mary:

I have just got to go back to the original document. I think there was just a question that I wished to ask. Can you remind me which Article ...

The Greffier of the States (in the Chair):

Regulation 5.

The Deputy of St. Mary:

Yes, 5(1)(a). I just want to ask the Minister for clarification on that line there: "A depositor is an eligible depositor if the depositor (a) is a natural person and the deposit is for the person's own benefit, other than as a partner in a partnership." I want clarification on what that means and how it relates to business partnerships, or whether that is what it is talking about. I am just not clear about that particular phrasing. Thank you.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? Deputy Le Hérissier?

2.2.2 Deputy R.G. Le Hérissier:

1(d); I wonder if the Minister could identify how he is going to define a charity? Will it be a body as defined by the new Charities Commission, on which Deputy Le Fondré, we know, is doing a lot of work at the moment? Thank you.

Deputy J.A.N. Le Fondré:

If I could just make the clarification? The Legislation Advisory Panel have not been working on the Charities Commission; it has been a sub-panel with which we have not, presently, been involved, but obviously no doubt things will evolve as time progresses. I just want to clarify that because we have clarified ... there have been other priorities on our list.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

2.2.3 Senator A.J.H. Maclean:

The Deputy of St. Mary's question about partnerships and natural persons, it is business partnerships that it is referring to. I hope that clarifies the point for him. Deputy Le Hérissier, as far as we are concerned, charities would be registered charities; it is as simple as that. Thank you and I maintain the amendment.

The Greffier of the States (in the Chair):

I put Regulation 5 as amended. Those Members in favour of adopting it kindly show? Against? The regulation is adopted.

2.3 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulation 6

The Greffier of the States (in the Chair):

Do you propose Regulation 6, Banking Groups, Minister?

2.3.1 Senator A.J.H. Maclean:

I would just add, if I may, with regard to the previous question - I know we have moved on, but just for the purposes of Deputy Le Hérissier - I may have given some slightly misleading information on the charities aspect. It is as defined by income tax, I believe. That would probably be a clearer definition for him. Right, so moving on to Regulation 6. Regulation 6 allows the Minister for Economic Development to group banks for the purpose of calculating levies and compensation payments. This is a practical measure that will allow banks that are part of the same group to be treated as one for the purpose of applying the 50,000 limit and for paying levies. I will publish a notice stating that banks are grouped together to ensure that depositors are aware of this so that they can be certain of their coverage. This will help to avoid the situation that occurs in jurisdictions such as the U.K., where there is a great deal of confusion over this matter. It is very difficult for U.K. depositors to determine whether banks operate under the same licence and therefore whether they get full protection. In Jersey, there will be a readily available and published list of banking groups that will instantly inform our depositors as to their level of protection. As Members may be aware, I have agreed to pay for a project officer to work on this as well as other elements of the scheme. I do regard public awareness as being of the utmost importance. However, I believe that it is important to be clear that I intend for some of the key elements, such as public awareness, to be carried out by the J.F.S.C. (Jersey Financial Services Commission) as well as by my officials. This is not to downgrade these elements in any way at all; rather, it is ensuring that the most appropriate bodies carry out such tasks without unnecessary duplication. The J.F.S.C. is already resourced and set up with powers to enforce important elements of a public awareness campaign. For example, the J.F.S.C. has powers to compel banks to inform customers, and potential customers, of the scheme in Jersey as well as the limits. I undertake to ensure that a full public awareness campaign

is carried out by the appropriate persons to do each piece of this necessary work. I propose Regulation 6.

The Greffier of the States (in the Chair):

Is the regulation seconded? [**Seconded**] Does any Member wish to speak on Regulation 6?

2.3.1 Deputy G.P. Southern:

In listening to the Minister just then, I have become very uncomfortable about the direction that he has taken because it is one thing to say that we will publicise exactly what the terms of the D.C.S., the Depositor Compensation Scheme, are and that his department will ... and make sure that that information is out there because international best standards say that they have to be clearly promoted as to exactly what coverage you have got and in what terms. That raises the question about an up-and-coming amendment that we have about having somebody to do that in charge of the D.C.S. and where that is placed. My concern is about the role of the J.F.S.C. in that. We have clearly distinguished the promotion of finance activity and the finance sector on the Island to a completely separate body from the regulator because it was inappropriate to have a regulator promoting the body. Now, here we are saying that in terms of our Depositor Compensation Scheme, which is a marketing tool for banks, we are protected - and for Jersey - that we are going to use the J.F.S.C. not just to regulate the system, but to promote an aspect of our system. That is a remixing of roles which we, some years ago, clearly decided to distinguish between Jersey Finance Limited promoting the industry and what is available and J.F.S.C. regulating the industry, a clear distinction, which is an important one out in the banking world. I think we are in danger here of mixing a bit of emotion straight back into the J.F.S.C. and I think that is a bad move.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

2.3.3 Senator A.J.H. Maclean:

I thank Deputy Southern for his input. He will not be surprised that I completely disagree with him. The J.F.S.C. is resourced. It is set up and it has the powers in order to do this. I think he is confusing the differences between promotion and awareness. What we are asking the J.F.S.C. ... and it is only one function; we are going to be doing it ourselves. There are many other ways in which we are going to be notifying depositors of what is included in the scheme, what banks are involved in groups and so on. As far as I am concerned, it is perfectly clear that the J.F.S.C. is creating and will be delivering an awareness campaign. It will not be, as such, promoting it, it is not what it is intended to do as far as this regulation is concerned.

Deputy G.P. Southern:

A point of clarification. Does the Minister accept that in terms of having a depositor compensation scheme, that is a marketing tool for Jersey in terms of we are covered, as is the Isle of Man, as is Guernsey, as is the U.K.? We have coverage and that is a marketing tool for institutions on this Island.

Senator A.J.H. Maclean:

No, I do not. Having a depositor compensation scheme is an absolute necessity to protect local depositors and for the credibility for the Island. It is essential, which is exactly what this particular scheme intends to do; it intends to meet international standards and fulfill its obligations in terms of protecting local depositors. So that is as simple as that. I maintain the regulation.

The Greffier of the States (in the Chair):

I put Regulation 6. Those Members in favour of adopting it, kindly show?

Deputy G.P. Southern:

Can I have the appel, please?

Deputy M.R. Higgins:

I had wanted to say something.

The Greffier of the States (in the Chair):

The Minister had summed up, Deputy. I did see your light, but I am afraid it was too late. The appel is called for on Regulation 6. Members are in their seats. The Greffier will open the voting.

POUR: 37	CONTRE: 5	ABSTAIN: 0
Senator T.A. Le Sueur	Deputy G.P. Southern (H)	
Senator P.F. Routier	Deputy S. Pitman (H)	
Senator P.F.C. Ozouf	Deputy of St. Mary	
Senator T.J. Le Main	Deputy M.R. Higgins (H)	
Senator F.E. Cohen	Deputy D. De Sousa (H)	
Senator J.L. Perchard		
Senator A. Breckon		
Senator S.C. Ferguson		
Senator A.J.D. Maclean		
Senator B.I. Le Marquand		
Connétable of St. Ouen		
Connétable of St. Helier		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Saviour		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Deputy R.C. Duhamel (S)		
Deputy of St. Martin		
Deputy R.G. Le Hérissier (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy A.E. Jeune (B)		
Deputy A.T. Dupré (C)		
Deputy T.A. Vallois (S)		
Deputy A.K.F. Green (H)		
Deputy J.M. Maçon (S)		

The Greffier of the States (in the Chair):

Very well. The Running Order shows that Regulation 7 is to be held over at this stage due to later amendments.

2.4 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009): (principles adopted on 15th July 2009) Regulation 8

The Greffier of the States (in the Chair):

So we come to Regulation 8, Jersey Bank Depositors Compensation Board, and I ask the Minister to propose that regulation.

2.4.1 Senator A.J.H. Maclean:

Regulation 8 establishes an independent Jersey Depositors Compensation Board with the simple function of administering the Depositors Compensation Scheme. It does not seek to duplicate functions that are already carried out elsewhere, such as by the J.F.S.C., or indeed by my officials. I am persuaded to agree to the principle that there should be a standing board appointed immediately. Although I believe that a standing board ready to spring into action is feasible and cost effective, as supported by the Viscount's evidence to the Scrutiny Panel, I can see that having a standing board could, in the eyes of consumers, appear more credible. It is for this reason that I accept the principle of establishing the standing board; however, I do accept that it is appropriate to duplicate functions that are already carried out elsewhere, such as by the J.F.S.C., or indeed by my officials. I propose Regulation 8.

The Greffier of the States (in the Chair):

Is Regulation 8 seconded? [Seconded]

2.5 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200- (P.86/2009): third amendment (P.86/2009.Amd (3)) Amendment 3

The Greffier of the States (in the Chair):

There is an amendment to Regulation 8. The third part of the third amendment in the name of the Scrutiny Panel. I will ask the Greffier to read the amendment.

The Assistant Greffier of the States:

Page 15, Regulation 8, in paragraph 1, substitute the following paragraphs: “(1) there is established a Board called the Jersey Bank Depositors Compensation Board, (2) the functions of the board are (a) to keep eligible depositors and persons who may become eligible depositors informed of the benefits and limitations of the scheme, (b) to advise banks on how the scheme may be promoted, (c) to keep under review international developments in bank depositor compensation and developments in banking business in Jersey, (d) to make recommendations to the Minister in respect of the scheme and (e) to administer the scheme.”

2.5.1 Deputy M.R. Higgins:

Before I get into my speech, I just want to make a comment; it was one I was going to make a few moments ago about the role of the Financial Services Commission.

The Greffier of the States (in the Chair):

Try not to go too far, Deputy; we are on the amendment; we are not ...

Deputy M.R. Higgins:

Okay, except that it does relate to the amendment and some of the things that the Minister said. One of the reasons why ... I know in the comments made by the Economic Development Department that they felt there was an overlap between some of what we were suggesting for the Depositor Protection Board and the J.F.S.C. First of all, there is a conflict of interest between the regulator and depositor compensation boards and that is established worldwide. The other thing is that the regulator has failed this Island in one very, very important area. I hate to say it, but it is something the Commissioner has struggled with for years and has failed to do and that is to bring in proper advertising orders in relation to the various groups of financial services, whether it be banking, investment business or whatever, to give protection, not only for our own Islanders but also for people outside. I know that we struggled for many, many years to try and come up with it.

We tried bringing them in for individual schemes and then it got consumed into a larger scheme and we failed. I fear that the commission could probably fail on this one as well. We need a dedicated board for it. Anyway, coming back to the actual amendment. It became obvious to me yesterday, following Senator Ferguson's intervention in the debate, when we started the small and medium enterprise amendment that the whole debate was going to be coloured by information that had been provided to Members by the Economic Development Department in their St. Paul's briefing to you and in the comments paper they circulated to the panel's amendment, which we are about to debate today. Also, it will be coloured by the Jersey Bankers Association who have lobbied all States Members by letter and suggested that the States would be committing political and economic suicide by adopting the panel's amendment. I hope the Chair and Members will allow me the opportunity to address many of the points that they have made to set the first amendment in this section, and the following 2, in context. I think it is important that people have an overview, as well as detail on the actual amendment. Without this information Members may reject an earlier amendment before hearing why we decided to table the amendments we have and, as I say, an overview of the panel's proposed alternative scheme and regret their actions later. Now, E.D.D. have stated in a paper that their scheme is designed on the advice of experts on Jersey's banking industry and insolvency procedures, including the J.F.S.C., the Viscount and Oxera, who state that the risk of failure is extremely low. From evidence gathered at its hearing, the panel found that the department had consulted Oxera, who were commissioned in October 2008 by the former Minister for Economic Development to study Depositor Compensation Schemes at a cost of £97,000. Oxera did not design the scheme that you are considering today. It was designed by 2 officers in the Chief Minister's Department: the Director of International Finance and the Finance Industry Development Manager, largely in consultation with the Jersey Bankers Association. Oxera merely analysed the data provided to it from the Jersey Bankers Association via the Jersey Financial Services Commission, did some modelling, and provided general background information on depositor compensation schemes. The final Oxera report, which Members may have read, was changed in 2 material areas, in the panel's view, to reflect what the final E.D.D. Chief Minister's Department officers had devised. An email to Oxera stated: "In essence, we would like the report to tie in with our scheme, adjust more. This could be done by covering off the following areas in more depth. Firstly, explicitly providing that despite the fact that many schemes do not have state funding, if Jersey is to have a scheme that is comparative with other jurisdictions, such as Guernsey, state funding may be necessary to ensure that the scheme is credible." Secondly, in the email, they said: "Thank you for removing the data we asked for; however, we need to have a document that we can point to in public to justify the amount of the States contribution. Thirdly, the section on S.M.E.s could be slightly more focused towards the benefit of leaving them out, as in fact our scheme provides. Issues include the fact that no data was analysed on the size of the community and the fact that we do not know whether it is affordable to include them, plus the difficulties already highlighted." The department, or officials, also consulted with the Jersey Financial Services Commission and the Viscount, neither of whom had a significant role in the design of the scheme. They were both primarily involved from a technical perspective and, in the case of the J.F.S.C., as a conduit of information. The J.F.S.C. obtained data from the banks and passed it on to Oxera in an anonymised form for analysis and to sense check what the officers were suggesting, in particular with regard to regulations, law drafting and financial services legislation generally. The Viscount, an expert on local bankruptcy law, assisted the officers by helping them define the term "bankruptcy" and with some other insolvency matters. Neither the J.F.S.C. nor the Viscount appeared to be particularly knowledgeable about the complexity and problems associated with cross-border banking insolvencies, nor were the officers who designed the E.D.D. scheme, and this is reflected in the proposed scheme. They also consulted with the Jersey Bankers Association, who until recently said that there was no need for a depositor compensation scheme because of the Island's top-500 policy, the strength of the banks, and the nature of their operations meant that one was not necessary. They only changed their minds after many of their parent banks had to be bailed out or supported by their national governments, and

more importantly, because some depositors started transferring funds from the Island to other jurisdictions who had depositor compensation schemes. The banks, by and large, are extremely happy with the scheme that they have negotiated with the Economic Development Department. Why? Because in the event of a bank failure they will only have to pay £65 million in total to depositors over a 5-year period irrespective of the size of the bank failing or the number of banks failing during that period. Any money they do pay out will be offset against their tax bill. In addition, the States, the taxpayer, will pay out if the failure is greater than £65 million, up to £35 million in extra compensation to depositors, up to the overall £100 million cap on the scheme in a 5-year period. In addition, the States will also pay out up to £100 million in liquidity to the board to enable depositors to be paid out quickly. This money is not repaid out of the bank levies, but from recoveries from the failed bank's liquidation, which because of the difficulties associated with cross-border insolvencies in the banking sector is neither certain, nor timely. The officers provided no proof of the recovery rates, despite claiming 70 per cent recovery rates. It could take a decade or more to recover the money if we are to recover money at all. No wonder the banks are happy for the scheme. They have limited their liabilities in the event of a bank failure at the expense of the States and the taxpayer. The Panel discovered that the driving force behind introducing a depositor compensation scheme was competition with other jurisdictions. By that, it was meant to stop the flow of deposits to Guernsey or the Isle of Man who had depositor compensation schemes, or to bring in a cheaper or lower-cost scheme than the other centres that might attract other banks to the Island. We found that depositor protection came along in second place. Now, E.D.D. have also stated that Jersey's strong regulatory regime, coupled with the bank's lending model and the fact that almost without exception the banks operating in Jersey are systemic in their home jurisdictions, means that there is an extremely low risk of bank failure. From evidence gathered at its hearings, and from research, the panel discovered that a number of the top 500 foreign banks that have branches or subsidiaries in Jersey have gotten into severe financial difficulty during the financial crisis that started in September 2007 and had to receive aid from their national governments. These included, and are not restricted to, The Royal Bank of Scotland, Lloyds Banking Group, UBS and Allied Irish Bank. They were all systemic banks that were considered too big, too complex, too interrelated and too important to fail. Now, although this appears to support the E.D.D. case that systemic banks that we have in Jersey will always be supported by their national governments, it is countered by statements made in recent months by the Bank of England, other central banks and finance ministers from countries around the world, who have said collectively that the situation they were faced with during the financial crisis was intolerable and that banks are unlikely to be supported in the future. Instead, they are more likely to be wound up in an orderly fashion or dismembered or split into retail or investment banks in the future to minimise the loss of them failing again. Now, the Jersey banking business model that is adopted by most banks in Jersey is the collection of retail deposits from overseas; for example, from British expatriates or non-domiciled expatriates in the U.K. and from corporate and trusts that are managed in the Island. These funds are placed with banks and they are placed primarily with the parent banks, i.e. they are upstreamed largely to the city of London. At the end of 2008, loans to banks accounted for 83.5 per cent of the total bank assets, of which £248,572,000, or 77.9 per cent, took the form of loan to the parent bank. Now, the International Monetary Fund in its recent Financial Systems Stability Assessment update on Jersey, published on 1st September this year, stated: "The financial crisis has highlighted the vulnerability of Jersey banks to events in major financial centres. Most banks in Jersey are branches or subsidiaries of large international groups, to which they provide financing. This close relationship reduces risk in normal times given the group's ability to support their Jersey operations. However, it is also a powerful risk transmittal mechanism in the case when the health of the group deteriorates. In the event of extreme stress, a large share of Jersey's bank balance sheet could be at risk, as well as their core business model." Remember this is the I.M.F. (International Monetary Fund) report which came out on 1st September. We did not hear all this; we heard all the spin that came out about how wonderful we are, but we did not hear this sort of detail. The report also states that Jersey banks are highly vulnerable to concentration risk with

respect to their groups, pointing out that intra-group claims on their parents represent a major risk to the system and states that recent experiences demonstrated that even the largest banks can come under extreme stress in which eventuality a Jersey affiliate could lose access to almost all its assets, at least temporarily. Now, there were other comments made in the I.M.F. report - I am not going to go through them all - but, for example, they were mentioning that many of these deposits were lent for one year and they pointed out, for example, Bank Herstatt, which went down I think in 1974; one of the reasons for its failure was this short-term money and flows. So, what I am trying to say to you is we have been told for years that the banking business model adopted in Jersey is without risk or low risk. We believe, as I will be saying later, that the Depositor Compensation Scheme that is being produced has been produced on the premise that our banks will not fail and, therefore, sufficient attention to detail and working out what would happen if a bank failed has not taken place. They do not believe it will be used and, therefore, they have not taken sufficient attention to detail and covering the prospect - although we hope it is not going to happen - of a bank ever failing in Jersey.

The Greffier of the States (in the Chair):

I am allowing you considerable latitude, Deputy, but you are getting soon to the amendment on Regulation 8. I fear the debate will descend into total confusion if we have all the issues out at the front.

Deputy M.R. Higgins:

Well, I am trying to give the picture, the context, because, for example, we are coming to the establishment of the board and why we feel that is necessary.

The Greffier of the States (in the Chair):

That is why I have given you the latitude, but I fear the debate could descend into confusion if we have all the issues out on the table at this stage.

Deputy M.R. Higgins:

I am coming pretty close to getting to it. Now, E.D.D. also stated that their scheme was designed to take account of the unique circumstances of the deposit-taking sector in the Island and that the Scrutiny scheme is an off-the-shelf proposal designed for jurisdictions where banks fail on a regular basis. That is not true. When we conducted our hearings we found out that very largely what was the purpose behind the scheme was competition with Guernsey and the Isle of Man. It was a competitive tool. It was basically trying either to stop deposits going from out of the Island, or to try to encourage some banks to come here because we are going to be cheaper than the others. In terms of the panel's proposals, what we are proposing is not a tailor-made solution from somewhere else; we have taken the best bits of what we have seen elsewhere and what our advisers have told us we should be doing and we have been putting these forward. We do think the proposals we have been making are strengthening the scheme for this being proposed. I am pleased that the Minister has agreed that a standing board should be created, because that was a major deficiency in what was being proposed, as I will come to in a second. Now, the other reason we introduced these amendments was because we believed the scheme should be funded by the main beneficiaries, and that is the banks themselves. We have also tabled the amendments because we felt that the scheme should be paid for by the banks themselves as it is in most other countries, rather than the banks and the States, as E.D.D. are proposing for Jersey. Please do not get confused when you are being told that billions of pounds are being put into the financial sector during this financial crisis by governments. The governments are not topping up depositor protection schemes particularly; what they are trying to do is sure up the whole financial services sector because of the meltdown that was caused by ... starting, really, you could say with Lehman Brothers, or there were earlier ones with Northern Rock and so on. So, what we are saying is the system was pretty well imploding; it was melting down. Governments had to pump billions of pounds worth of money

into the economy just to stop us going into the abyss. Now, what has happened is the banks have led to the recession that we have, the real economy, that has gone around the world. We have even seen world trade fall quite considerably because of it. Do not confuse government support of depositor compensation schemes, putting money in, with that type of money. That was exceptional and I do not think we are going to see it again because the cost, not only to the British taxpayer and to taxpayers around the world, has been so great nobody wants to give the banks the ability to be able to bring this to the situation again. Now, I mentioned earlier, for example, the Bank of England have been talking about banks, if they are too big to fail then they are too big. They are talking about bringing in higher capital requirements for banks. They are talking about separating banks; the retail banks and investment banks. They are talking about ... in fact, not only just talking about, they are doing ... and this is one of the most telling ones, they have brought in 2 measures: one is the concept of the living will. The idea of the living will is when they had the problem with the Royal Bank of Scotland they had this major group, one of the largest banks in the world, that was definitely in dire trouble - we now own 84 per cent of it, by the way, or the British Government does - they were in major trouble and they thought: "What do we do?" There was not a plan. The group was so large, so complex and so difficult to deal with that the only thing they could do was bail it by nationalising it, effectively. Now, what we are saying is the living will is now telling these large banks that they have got to look at their structures and they have got to plan for their own death. So, in other words, if the bank gets into trouble it is a blueprint for how to get out of the mess for the government. In other words, how they can sure up the essential bits and how they can get rid of the other bits. What can be sold off, what cannot be sold off? What is critical, what is not critical? In addition to that, the U.K. Government has passed the 2009 Banking Act, which brings in resolution powers, which gives them tremendous powers on dealing with bank failures. The truth of the matter is I do not think there is the will any more to support these banks. The cost to the taxpayer and the nation has been too great. So, as I say, do not confuse the money that is being piled into the banks on that scale with the depositor compensation schemes. The vast majority of them around the world are funded by the banks themselves and ultimately by the customer because we all know the banks will charge for the protection that they are giving. Now, we are quite concerned because of the fact the Jersey scheme effectively will involve possibly £35 million of our money, which will be going out into paying compensation, in addition to the money we have provided for liquidity. The panel has no difficulty with providing money for liquidity to enable depositors to be paid their money quickly while either the bank is wound up, or the other banks come in with levies to top up the scheme. These schemes are not trying to stop banks doing their work and to cripple them in the process, but the idea of putting in liquidity from the government is to help deal with the payments to depositors and then, as I say, get the money back later from the banks. Our scheme does not do that. We have to rely on recoveries from liquidation. Anyway, moving on to the proposals for the board, one of the weaknesses in the proposals that E.D.D. put forward was they did not take account of the role of the Depositor Compensation Board in public awareness campaigns. Now, depositors, right from the start, need to understand the limitations of depositor compensation schemes, especially schemes that cap the amount of money that will be paid out, such as what we are putting forward. Will people understand that under the E.D.D. proposals that if one or more banks fail they may not get the £50,000 in compensation they think they are going to get because it depends upon the size of the bank that has failed. Under this scheme - and I might add the one that we are proposing - if a major bank failed, one of the top 5 or 6 went down, then the scheme would not be able to cope for it. It applies to both schemes. Those banks are just too big and we have not got the means to be able to compensate everybody in that case. They would get considerably less than £50,000. What we are saying here is these types of things need to be told to depositors, not only on this Island but also elsewhere, they should not be conned into thinking they are going to get £50,000. I might add it is not just me saying this; it is also contained in Michael Foot's report about the importance of public awareness campaigns and the limitations of these schemes. It is also mentioned in passing by the I.M.F. Okay, now just going back to this then, so we are saying then that the 6 largest banks, the scheme would not be

able to cover, but the rest, we are being told by officers, will be covered by the £65 million that the banks will have to pay into the scheme by a way of levies in the E.D.D. scheme. I might add, by the way, we have been criticised in the comments made by Economic Development because they say our £65 million will not be enough. We are using the information they provided to us to set a slightly different cap. Now, I will explain that in a moment.

The Greffier of the States (in the Chair):

Deputy, I must please urge you, there will be later amendments on the £65 million, the £100 million. We could be here for days and days if we collate all the issues together. Please try to get to the Regulation 8 amendments.

Deputy M.R. Higgins:

Okay. Anyway, I think I have made the point anyway that there are major limitations for these schemes and the public must be aware of their strengths and weaknesses. Now, they are good schemes and there is no way that the Island could afford to compensate everybody. The level of deposits we have in this Island, I think it is £33 billion worth of deposits. Retail deposits are at least £3 billion. You know, our entire States reserves would not cover them. There is no way that we could guarantee all the banks and we have to hope, obviously, that the larger ones do not go down, but we certainly will cover all the small and medium ones, and that applies to our scheme as well as theirs. Now, in addition to that, I alluded to the fact earlier that banking is different in many ways. For example, when we spoke with the Viscount we talked about liquidations, but banking liquidations are not just like ordinary company liquidations; they are very, very similar. But also, because of the nature of our banking system, all the banks that we have in the Island have parents elsewhere. In fact, there is one in Jersey that the Jersey Financial Services Commission regulate that we are considered the home jurisdiction. I know Senator Ferguson knows about this one because when she was at the commission she used to go out and expect them, out in the Middle East. In terms of the rest of the banks, we are a host country. That means that the parents are in other countries and if that bank fails then if there are branches, for example if we have a branch in this Island, the liquidator in that country is going to be determining the liquidation. Yes, our Viscount will get involved, but the liquidation will be under the law of that country and I can assure you there will be many problems trying to recover all the money from those countries. Because there have been plenty of examples where countries try to ring-fence the assets of those banks in their own country for the protection of their own deposits. That happens. We also have a great deal of difficulty getting information. For example, if a bank fails, we used to joke very often - some of us, anyway, at the F.S.C. (Financial Services Commission) - we would read about it in the *F.T. (Financial Times)*. Now, we have lots of memorandums of understanding with other regulators around the world and, yes, we would hope to be tipped off, but as the Deputy Governor of the Bank of England, Paul Tucker, was saying: "The truth of the matter is if a major group is in trouble they are too preoccupied to contact every single regulator in all the different countries that some of these groups are engaged in. We might not find out about the failure until after it has happened. When it does happen, it is the job of the Depositor Compensation Board to establish links with the bank to find out who their depositors are so they can make payments to them. Now, under the scheme that is being proposed by the department, this board would not have been in existence. We were creating a board by name only, and that is why I am pleased that we have accepted that we need to have a standing board, because what it meant was you would have to appoint the board. They would have to appoint either other agencies to do the work for them or recruit staff. They would have to contact the parent bank to try to get information and the local bank. Staff would no longer be employed. The computer system, for example, we may think it is easy. We just go to the bank in Jersey and say: "Okay. We want your records. Just tell us who your depositors are, and then we will pay out on that basis." Many of the computer systems are centralised, maybe at the head office, or they may even be using a third party which may be in another country. So, getting information is extremely difficult. So, from our point of view, we

were saying that we need to have a standing board so the board can, first of all, determine who has got the information. So all these things are put in place. They know who has got the information. They know the people they have got to go to. Equally in terms of the insolvency laws which differ throughout the world, some of them treat a bank as a separate entity; they will ring-fence it in their own country. Others will extend into other countries and into the banks they have got there. There are other rules to do with subsidiaries. We have subsidiaries in Jersey. People tend to think that a subsidiary is (I am trying to think of the term) a much better arrangement to have because you have assets in the Island. The truth of the matter is, the banks that we have here, if they are up streaming 80 per cent of their assets - their deposits - to the head office, it maybe a little shell. So, we may have difficulty even locally obtaining the money. Now, what I am trying to say is, I am not trying to paint a very bleak sort of picture of the situation. I am trying to paint a very realistic picture of some of the problems that will happen if a bank fails. The panel's view was that we must have a body in place that is researched and set up and is ready. This is why we were so critical of the department because they honestly believe a bank will not fail. I hope to God that they are correct, but what happens if one did? It would be such a mess, I would hate to think of the effect on the people and the reputation of the Island. So, it is important that we do get this body in place, and that they deal with dealing with these cross-border issues. In fact, there are other things but I cannot remember what they are. I have got so many papers on my desk I cannot find them. So, I am going to sit down at this point and let others respond, and I will come back later.

The Greffier of the States (in the Chair):

Is the amendment to Regulation 8 seconded? [**Seconded**] Does any Member wish to speak on the amendment to Regulation 8?

2.5.2 The Deputy of St. Mary:

Just let me get my papers to one side. Well, there is at the start of this debate, is there not, a sort of issue that perhaps needs resolving, because the Minister has said that he accepts in principle the need for a standing board. So, it seems that the basic arguments in favour of having a standing board are the credibility and the fact that it reduces risk. There are reasons given in our report for specific ways that having a standing board reduces risk, and our adviser listed one or two. For instance, on page 125: "If the J.D.C.S. (Jersey Depositor Compensation Scheme) will only become operational once a failure occurs, if the public becomes concerned about delays in accessing their deposits this will undermine financial stability and may bring down other banks." Here is another point: "At the time when Canada Deposit Insurance Corporation which our adviser had a lot to do with was a pay box deposit insurer the losses they had were on average 51 cents on the dollar. When the mandate for C.D.I.C. (Canada Deposit Insurance Corporation) was altered so it became a loss minimiser, their losses were 11 cents on the dollar." So, it makes a huge difference whether you are prepared and ready to go, to close down a failing bank and reduce your risk. So, there are very clear reasons for having a standing board: as I say, credibility and reducing the risk. Now, I am just a little bit unsure about the status of the Ministers accepting the principle, because as things stand, paragraph 10(8) in the regulations, if I can put my hands on them ... has anyone got it? Sorry; it is just it is difficult with all these bits of paper.

The Greffier of the States (in the Chair):

It does simply say: "In the meantime the Minister shall carry out the functions of the board."

The Deputy of St. Mary:

Thank you very much. That is exactly it. What our amendment changes that to, or future amendment which is basically bracketed with this one, implies that the board will be set up as soon as we pass this; the necessary steps will be taken. Of course there is always time, and in the meantime the Minister will be acting instead of the board if anything goes pear-shaped. So, I am sort of slightly uneasy. Maybe I could ask the Minister for clarification now, because some of the

issues raised by the proposer I would like to establish in more detail - particularly the aspect that nothing is going to go wrong: "We do not need to worry to have a board because it is all safe," et cetera, et cetera, et cetera. Now, if the Minister is saying that the board is going to appear in short order, that he accepts the standing board, then I need say less. So, can I ask the Minister to clarify what this acceptance of the principle means?

The Greffier of the States (in the Chair):

This is slightly different, Deputy. The Minister is about to speak.

Senator A.J.H. Maclean:

Well, exactly.

The Deputy of St. Mary:

That means that I might go on longer than I need to, which really would be ... Well, no that is the point about whether it is possible for the Minister to clarify.

The Greffier of the States (in the Chair):

It is a debate, Deputy, and I think the Minister will need to speak at quite considerable length to explain that.

The Deputy of St. Mary:

Okay. Fair enough. Well, I think probably the key underlining issue with setting up the standing board is the question of risk. It is a question of: "Do we need to have something ready to go?" and of course if you have a standing board, there are associated costs. They are not very great. We are not talking at this point about the £20 million; we are not talking about the standing fund. We are talking about the administrative running costs - which they should be called really - of the board doing its job of public awareness, of keeping everything under observation, what is going on, so as to protect depositors. So, we are talking about a very small commitment of money from the banks. We are talking, I think, in terms of £250,000 or possibly less per year to ...

Deputy M.R. Higgins:

About £8,000 a bank.

The Deputy of St. Mary:

About £8,000 a bank, I am informed, reliably. So we are talking about very small sums, and one wonders why the J.B.A. would want to oppose such a modest drain on their funds, and are shroud-waving at the ... and lumping all these amendments in together. I can understand possibly the reluctance later on to set up the standing fund of quite considerable size, although the board would determine the size of the standing fund. But at this point we are talking about setting up a board in advance to do the jobs that need to be done to prepare for the worst. Now, obviously it is a key issue what is the worst. What can we expect? I do have to get the right piece of paper here about what might be the worst. Now, the landscape is changing and the proposer briefly mentioned this. He said, obviously, that things have changed. But, you see, the idea that we used to have 2 or 3 years ago, that banks were nice, safe places ... well, I shared this idea, that banks were the sorts of places where you put your money and it is safe. We now use terms like casino banking, which I did not know existed 3 years ago, and we sort of changed our perceptions, have we not, of the banking industry? They are making a lot of money and they are very good at it, but we have real problems with the risk profile which has completely changed. In the good old days banks were too big to fail, the good old days being 12 months ago; 15 months ago banks were too big to fail, the governments will always bail them out, nothing ... but now everything has changed. We have just been told about living wills. I just want to quote from a columnist in the *Daily Telegraph*. Now, okay, it is a columnist in the *Daily Telegraph*, but the point is that these discussions are now mainstream. He has here: "A 10-point plan for sort of restoring growth," the headline is, and it

deals mainly with the financial industry, and point 9: “A clear timetable should be announced for breaking up the banks along the lines suggested by Mervyn King, Governor of the Bank of England, so as to create a more competitive banking landscape where individual banks are made safe to fail.” So, he has picked up this phrase of “too big to fail, too interconnected to fail, far too important for the government not to stand behind them” and he has turned it round into making them “safe to fail.” That increases the risk, clearly, to each particular bank once they have been made smaller. That, I think, is perhaps enough on that particular issue. Just to make clear just how much the landscape is changing, and it is not myself, it is Mr. Noyer who just happens to be the Governor of the Banque de France, which is their Bank of England. Here he is being quoted ... ha, ha, yes, but translated no doubt; or probably not, because these guys mostly talk English, French and German, by the way. Mr. Noyer said: “As a result of the crisis, the financial system will be permanently changed. We do not know yet what kind of financial system will emerge from the crisis. We need to think about this,” and this is the *Daily Telegraph*, 27th October. He also said: “Most of the negative effects of the economic downturn on balance sheets are still to come.” So, this idea that, you know, the worst is over, it is okay ... we heard the representative of one of the banks in Jersey and also with a sort of J.B.A. hat on, although it was not told to us in advance that she was going to be from the J.B.A. - an extraordinary bit in the transcript which I will not go into and will not quote from; you can read the transcript; it is in our report. Sort of flickering from one month to the next as to how dangerous the situation was: “Gosh, we need a Depositor ...” no, first of all: “We do not need a Depositor Compensation Scheme” back in October and so on. Then we do need one in November, and then: “Well, it is steadying up now. It is not quite so urgent.” To have that kind of vision of what is going on, when the Governor of the Bank of blooming France is telling us that the entire landscape has changed and that the worst is yet to come. He is not just the Governor of the Banque of France, he is also on the European Central Bank Governing Council. So, you know, it is not Mr. Nobody, and it is not the Deputy of St. Mary. I am trying to take what I would suggest are reliable sources. This notion that it is all very safe, of course, goes for the whole debate on all 3 amendments, does it not? It is not safe. I mean, the Minister for Treasury and Resources to give him his due, does say a lot of things changed. But then we come back very quickly to: “Well, we do not need to set up the board in advance because ... and we do not need to have protection because ... and we can have a cap that is ... because ... because the risk is, after all, passing by and it is getting better all the time.” Well, I would just make sure and try to insist that Members remember that it really has changed, and that is what we are talking about with all these amendments. Now, I was very interested that the J.B.A. suggested, I think I am right in saying, in their document a quasi-board. Am I right in saying that? I do remember seeing that ... you did say that. Yes. I am going to try and find it because it is quite extraordinary that after all the hoo-ha they should say: “Oh, all right then.” Here we are; it is page 3 of their document which they circulated to all Members: “We would also urge you to consider carefully the need for a permanent board. In the view of the J.B.A. it would make eminent sense for a working party or quasi board to be tasked with preparing detailed crisis plans in the event of a banking failure.” Well, yes. So, why did they not come to the Scrutiny Panel and say so? But they did not. They were asked repeatedly to come to the Scrutiny Panel and share their thoughts with us and be questioned, and they refused. So, it is a bit rich to come along at pretty well the last minute when this has been talked about for months, and say to States Members: “We do not need a board. We just need a quasi board.” Incidentally, the quasi board will prepare emergency procedures, but it will not cover the public awareness and so on that we are so keen on, that depositors must know what their rights are and what the position is within their bank and so on. So, I again ask the Minister to absolutely clarify this, whether we are going to get some namby-pamby quasi board that does not sit there and really deliver security as far as can be delivered; setting up advance systems, monitoring public awareness as we have said in this amendment. I think I shall leave it there.

2.5.3 Senator A.J.H. Maclean:

The panel has proposed a series of amendments with regard to the establishment of the board that would make the States rather than the Minister responsible for appointing the board straight away. This proposed board would impose a levy on banks to fund their administration costs. These are the yellow amendments on the draft regulations. As I have stated, I am persuaded to accept the principle that there should be a standing board appointed immediately. However, I would urge caution before accepting any amendment that would impose on banks an immediate, unfettered liability to pay levies without at least consulting with them first. The amendment proposes the board in a way that it duplicates what other bodies are already doing with negative cost implications. I should mention at this point that I will also be accepting the proposed amendment to Regulation 10. This will mean that the appointments to the board will be made by the States on the recommendation of the Minister for Economic Development, rather than by the Minister directly. Given this agreement, I would suggest that the large majority of the proposed yellow amendments, including the amendment to Regulation 8, can fall away. With regard to the remaining yellow amendments, I consider that there are important reasons why these should not be accepted. I would like to just comment firstly, if I may, on Regulation 12(a) which I understand from the Greffier stands or falls with the amendment to Regulation 8. As drafted this would impose an immediate liability on the Island's banks to meet the unfettered administration costs of the board. But, rather critically, no limits have been placed on the levying powers of the proposed board. Other legislation which gives a quango the power to raise taxes, includes controls or limits, such as the requirement to consult the payee or to seek the recommendation of the Minister. No such controls are contained in this proposed amendment. Scrutiny advocates giving the board this power without the proper consultation, and without the proper consultation, critically, with the banks themselves as the payees. I do not think this is reasonable, nor does it set a very desirable precedent in keeping with the basic principles of natural justice. It is only right that the potential payer, the banks, are consulted properly and given the chance to put their arguments forward. In regard to Regulation 8, the proposed amendment, I would remind Members that I have already agreed to set up the board to administer the Depositor Compensation Scheme. This element is therefore not in dispute. However, I consider the amendments regarding the functions of the board to be inappropriate. They duplicate the functions of existing competent bodies that have statutory requirements and are resourced to deliver those functions. In particular, it is one of the functions of the J.F.S.C. to ensure depositor awareness, as we have already previously discussed. They are there to keep abreast of international developments and give directions under their statutory powers to banks on promotion of the scheme. It is also a function of Ministers properly advised, to set policy and allow advisers to fully comprehend international and domestic developments in Depositor Compensation Schemes, and indeed the banking sector. The J.F.S.C. and my advisers will, in discharging their functions, make recommendations to Ministers as part of the regular reviews of the Depositor Compensation Scheme. Let us not forget that the risk of a bank failing in Jersey is exceedingly low, despite some of the scaremongering that we have heard earlier on. What cost benefit is there in an additional body duplicating functions that are already carried out elsewhere? Although I have been persuaded on balance by the Scrutiny argument to appoint a board, we must firstly carefully consider what its functions are going to be. I would therefore urge Members to reject these amendments to Regulation 8, and allow my department to progress the matter of appointing an appropriate board with appropriate powers. This we will undertake to do immediately, and I would anticipate that this would be feasible by January. I would just like also to briefly address one or 2 of the issues that Deputy Higgins raised during his speech. I realise that he made quite a wide-ranging speech. There are just one or 2 points that I think should be brought to Members' attention. I believe he made a comment that there would be a conflict between the J.F.S.C. and the D.S.C. I do not believe there would; both are key parts of a safety net involved in dealing with such matters, and the powers to compel banks to inform depositors is something that the J.F.S.C. has, and that is absolutely appropriate that they should have that particular power. I would like to also to correct Deputy Higgins. The J.F.S.C. does have an advertising order in place. It may well not have done at the time that he was part of the J.F.S.C., but there is now an

advertising order in place. So, that was incorrect. He also made some comments about recovery rates, and again I do not feel he is correct there. There are good examples around the world of recovery rates, and more recently we have got Landsbanki and Kaupthing; both governments relevant to those particular banks are expecting recoveries of between 75 and 89 per cent. Recovery rates in banking are generally pretty high, and I think Members can have some reassurance from that. I would also like to just pick up Deputy Higgins on his comments about Oxera. He did make a point that Oxera were not independent. I have to say that that is completely untrue. Oxera is what one might describe as the foremost economic consultancy. They have an international reputation which I believe is unimpeachable. They have worked for and advised on the U.K. Depositor Compensation Scheme; they have worked for the E.U. (European Union) Commission. I do not think that there is any question that they would not deliver an independent report, and I would just say that, for Members who were not able to come to our briefing the other day, we asked Oxera to come over; and Fod Barnes from Oxera did come and he gave a presentation, and he was there and available for Members to ask questions. Members did challenge him on a number of issues concerning independence and other areas of the scheme, and as I say I think it is perfectly clear that this report was independent. I think that is all I have to say, apart from once again urging Members to reject this particular amendment. Bearing in mind the time, could I also propose the adjournment?

The Connétable of St. Mary:

Before we move to the adjournment, may I just take the mood of Members and perhaps ask for their forbearance. I believe that we will not finish this debate swiftly, the way things have progressed, and I would like to propose that we consider working on an extended number of hours this evening at the close of the session. I would like to give Members the opportunity perhaps to go about putting arrangements in place as they need to, and perhaps we could discuss this at the commencement after lunch.

The Greffier of the States (in the Chair):

Very well. You will formally propose that at 2.15p.m; give Members time to ...

Deputy I.J. Gorst of St. Clement:

Could I ask the Chairman perhaps to give us an indication of the number of hours that she thinks that we might need to add to the end of the day?

The Connétable of St. Mary:

My piece of string is made of elastic today, I think. I have asked the Minister if he could give me his indication, and perhaps we will have an opportunity for a brief word after lunch, unless he could comment now?

Senator A.J.H. Maclean:

The only comment I could make is I am afraid I do not have a crystal ball. It is in the hands of Members how long the debate presses for. I would obviously hope it would be as speedy as possible.

The Greffier of the States (in the Chair):

I can say from the Chair, Chairman, I think you will have to propose a proposed closed time. There comes a time when, unlike other parliaments, I think it is not our culture to sit through the night.

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

Very well; the adjournment is proposed. Just before the adjournment I would draw 2 matters to Members' attention. Firstly, the lodging of amendments by the Deputy of St. Martin to the

proposition of the Minister for Home Affairs regarding User Pays Charges, States of Jersey Police, that is lodged I understand in Members' pigeon holes. Members may also have seen already that there are a number of copies of the North of St. Helier Master Plan in the coffee room for all Members. They were too big, I understand, to squeeze into the pigeon holes, but I would ask Members to collect a copy if they wish to take one. The Assembly stands adjourned until 2.15 p.m.

LUNCHEON ADJOURNMENT

The Deputy Bailiff:

Madam Chairman, you have a proposition.

The Connétable of St. Mary:

Yes, Sir. Before lunch I advised Members that I would be considering whether it would be worth us sitting into the evening this evening. I have talked to a number of Members, and the consensus seems to be that would only be really productive were we likely to finish the business this evening by a reasonable time. I would like to give notice that I will review the situation as to how far we have got at say 4.00 p.m. to 4.30 p.m. and then come back to Members at that time so that they still have time to firm up their arrangements.

The Deputy Bailiff:

Very well. Thank you. So we resume.

Deputy J.M. Maçon:

I would have liked to question the Minister just finished his speech just before the recess and I would have liked to have a point of clarification towards him, but as he is not here ...

The Deputy Bailiff:

That would certainly make it difficult.

Senator P.F. Routier:

Just for clarification, the Minister had some urgent family business to deal with at lunchtime. Unfortunately he is obviously a little bit delayed, but he is on his way; just unfortunately family business came.

The Deputy Bailiff:

So we resume debate on the amendment to Regulation 8. Does any Member wish to speak?

2.5.4 Senator S.C. Ferguson:

I will not be beaten this time. The Deputy of St. Mary has commented that there is a considerable amount of discussion regarding the future structure of regulation, and the structure of banking groups. This is by no means settled, and it would be extremely foolish to establish an overly-detailed scheme before the new systems have been decided, principally by the Bank for International Settlements. Deputy Higgins mentions Northern Rock. I think he should also have said that that particular bank was borrowing short and lending long, which is a classic case of mismatch and non-traditional retail banking. The Deputy also makes much play on the moneybox nature of much of our industry. In actual fact - and I am surprised the Scrutiny Panel did not mention it, but then perhaps, you know, this is perhaps because they are not as familiar with banking as some of us in this House - the simplest approach would be for the commission to consider requiring 20 per cent of deposits in the moneyboxes to be placed outside the group, rather than being upstreamed. There have been a number of comments regarding early warning systems regarding banking performance. The J.F.S.C. is in regular contact with other regulators in order to keep track of the position of banks. In my day, and I understand this continues, there were always regular visits to the Bank of England and the F.S.A. (Financial Services Authority) to discuss the position of banks. One of the other criticisms in this current crisis is the quality of regulation: in

other words, do we have the checks and balances? What I find disappointing is the cavalier manner in which the panel has dismissed the quality of our own regulation. I mean, yes, she would say that, would she not? She was a banking supervisor. But I think it has been very much under-appreciated. For instance, I can tell Members that the supervisory return system we had was so effective that the Federal Reserve Bank from Washington visited us especially to look at our system, and the principles of our system were also adopted by various Middle Eastern Gulf States. In my day, we did prepare a contingency plan for a banking crisis. What we discovered is that all crises are different, and that it is essential that you do not have a plan written in stone and based, probably, on the last crisis, much like the French in the Second World War and the Maginot Line. Members of my panel and the Economic Affairs Panel will possibly remember that at our last meeting with the F.P.P. (Fiscal Policy Panel) I raised questions about carbon trading with the Fiscal Policy Panel. In actual fact it is more likely that the next crisis will be the asset bubble which is being set up in the current carbon trading arrangements, and informed sources, apart from me, are already warning of this. Finally, the proposed board appears to be taking on some of the functions of the J.F.S.C. as the Minister has stated. There is no reason, for example, why the background work envisaged in the functions of the board should not be undertaken by a member of the J.F.S.C., and a selection of suitable individuals can be identified to form the board in a time of crisis. However, the individuals suitable for dealing with the recent crisis may be totally unsuitable for dealing with the next crisis. So, frankly, we should keep our options open, just as cavalry officers from the First World War would not have been any use dealing with tanks in the Second World War. You know, every crisis is different, every problem is different. So, I ask Members really, on the basis of practicality, to reject this particular amendment.

The Deputy Bailiff:

Does any other Member wish to speak?

2.5.5 Deputy J.M. Maçon:

Just looking at the regulations as they are, the concept of why a board should be established has been touched on, and there are very basic reasons for this. I asked a question yesterday when we were looking at Article 5 about simple things such as templates that should be formed when a depositor might be trying to produce an application - simple administrative things which do need to be done in order to allow the process to activate in the 7 days upon receiving an application, as the depositor scheme is designed. But of course for that to happen you need someone to do that. But you might say: "Ah, but the department might do it." May I remind Members that this scheme by the department was proposed to come into effect by July, with 7 days afterwards coming into effect, and yet we still do not have a template from the department on how an application, if a bank went down, would perform. So, we do need someone somewhere producing these basic administrative duties, and of course that needs ongoing review, depending on how many banks we have here, what the relationship is, et cetera, et cetera. So, those are the reasons why we should have a board - or some of the reasons. This is why we have put down all these different things. Another reason is looking at interest rates: the value of currency if things depreciate 100 million; if inflation goes up might not be appropriate. So, you need some body to continually review that and advise this Assembly of how it should be done. This is why the panel could not accept that a board should just be brought out of thin air and asked to administer the Depositor Compensation Scheme. You know, it just could not function within the timescales which were proposed. So, that is why we have asked for a board. Looking at the further recommendations, we are grateful to hear that the Minister has agreed that our amendments to Article 10 are appropriate. Looking at the body of International Depositor Insurers, a Depositor Compensation Scheme should be free of political steering, and that is why we have suggested that the body should be brought into being by this Assembly and should be appointed by us. So, we are grateful to the Minister for accepting that point, because we do think we agree on that point.

The Deputy Bailiff:

Deputy, can I remind you we are addressing this particular amendment.

Deputy J.M. Maçon:

I apologise. I am looking at everything yellow. We are just looking at part 8. Fair enough.

The Deputy Bailiff:

We are just looking at Regulation 8.

Deputy J.M. Maçon:

Thank you. Okay. Thank you. The Minister talked about: "There might be dual role between the J.F.S.C. and the board as proposed." There is one which we came across as we were looking at the Depositor Compensation Scheme. We came across the fact that the priorities of the regulator are very different to that of someone operating a Depositor Compensation Scheme in that a regulator is there to make sure the banks keep going, carry on, while if a bank fails, then: "Whose fault is that?" comes to the regulator; in which case it is in the regulator's interest to keep a bank going because obviously it looks bad on them if they fail to do that. Now, I am not passing aspersions on the wonderful ability that we do have with our regulators; it is just looking at the concept of the principles behind it. A Depositor Compensation Scheme, as the Deputy of St. Mary alluded to, wants to get in as soon as a bank has failed, quickly to cap any losses, and the Deputy of St. Mary did allude to the margins of what it is. So, we do have this struggle between the regulator wanting to keep the bank afloat and the Depositor Compensation Scheme wanting to get in straight away to minimise the losses. Therefore the panel was of the opinion that you would need an independent body to do that. You would need a standing board to do that, which needs to be separate from the regulator. So, while the Minister has said there might be duplications of role, the point is each has different priorities. While I am not casting aspersions on the good ability that we have at the J.F.S.C., on principle their priorities are very different, and you cannot build a system where one is inside the other. That is why we put this bill forward.

The Deputy Bailiff:

Does any other Member wish to speak?

2.5.6 The Deputy of Grouville:

I am going keep this very brief, because I think we have been straying off the point to some extent. Senator Ferguson's speech I thought was more applicable to Remembrance Sunday than the Depositor Compensation Scheme. Senator Maclean has accepted the principle of a board, so I do not feel that we are a million miles apart. But he feels that some of the functions being suggested in our Scrutiny Panel's list of functions are already covered by existing bodies. While I accept the J.F.C.'s (Jersey Finance Corporation) advice on international development, what we were particularly concerned about on the Scrutiny Panel was the ordinary depositors - how they are being covered - and we feel that there is a gap here, where a scheme such as this could be promoted by a board to make sure that everyone is covered, not just at the international level. The Minister said that some of these functions he felt were duplicated. I think it would be extremely useful if he had suggested which functions could be done by a board, and which ones that we have suggested are not applicable, because as I say I think we are wasting an awful lot of time discussing this in minute detail. If it is a case where we are going to set up a board and most of the functions are going to be done or covered, could he say who they are going to be covered by and which ones will be covered by this board? I do have to take issue with him about his comments about the Oxera work. While they claim to be independent, I would ask Members just to think about how independent are they when a report is produced for a department and paid for by that department? In this case, they produced a draft report initially, for the department to consider. Then, when the department had considered it, took it away and redrafted it. That is not my idea of independence. So, I would just like Members to bear that in mind when reading the Oxera report. But to save wasting any more

time on this issue, I think it would be extremely useful if the Minister could come back and outline the functions that he sees his board undertaking. Thank you.

2.5.7 Senator P.F.C. Ozouf:

The Deputy of Grouville, I think, was much more pertinent to the amendment. I listened to Deputy Higgins and the Deputy of St. Mary, and I do not think they addressed, as she has done in her remarks, exactly what the amendment is about. They spoke at length about the whole aspect of the proposition, and I will happily deal with, if I may, from my perspective, what I think the problem is. Because I think while there is an acceptance of a board, there are some important provisions that have been put forward by the panel which are unwise, and I think unacceptable. The Minister first of all has agreed to set up a board. That is, if there is a sense that Scrutiny has achieved something in relation to setting up a board, they have achieved that. Where I think that they are wrong would be to set up a board with a statutory responsibility which is set out in the amendment. I am going to go through each of the (a), (b), (c), (d) and (e) items that the amendment covers, because it really is important. Just before saying that, and dealing with the issue of the J.F.S.C., Deputy Southern earlier did, I think, confuse the responsibility of the commission. The responsibility of the commission is not to promote financial services, it is to promote the interests of the users of financial services, and therefore they have a responsibility to raise awareness on consumer protection matters. I have not got a copy of the law of the J.F.S.C., but that is one of the central issues that they are responsible for, and Deputy Southern attempted to put some confusion in relation to the responsibilities of the J.F.S.C. I am quite sure and quite clear that it should be the J.F.S.C. that should be responsible for putting consumer awareness, it should not be the board. I regard the board as an administrative tool, an extremely important administrative tool, in running a scheme, and I think that the Minister is absolutely correct in saying that this is inappropriate duplication. Clearly there is going to be a strong and important relationship with the J.F.S.C. and the board, and them working together in concert is how there is going to be the issue of consumer awareness. So that first function of the board, my view is that that is absolutely for the J.F.S.C., and I think Members will find that in the law, in the statutory provisions of the J.F.S.C., that is provided for. If it is not provided for, then the Minister can issue instructions to the J.F.S.C. to so have regard to. So the Deputy of Grouville is quite right to say that this is an important issue, but it should be covered and should be dealt with by the J.F.S.C. I think also, the issue of (c) is quite important. My own view is that the board should not be a policy formulation board. Part (c) of the amendment, which I regret to say that Deputy Higgins did not mention at all in his proposition really, is: "To keep under review the matter of international development in bank depositor compensations and developments in banking business in Jersey." That is a massive, wide-ranging policy development remit. I believe that while the board certainly, once it is established, has an important role in assisting, in terms of thoughts and evolution, they should certainly not have a responsibility of keeping under review and making recommendations to the Minister, as almost a policy-making tool. This must be a matter for Ministers, and must be a matter, ultimately, for this Assembly, in terms of policy. I have no difficulty with (e), in fact if there was a menu of options (which is not available to us) in terms of ... some of the functions of the board are not at issue. "Administer the scheme"; clearly that is what they are there to do. There is I know, and this is not relevant to this Article 8, but there is a linkage between 12(a), which we will come to if we ... I hope the Assembly is going to reject the amendment to Article 8. There is a link with 12(a), which is even worse, because it gives an unfettered ability to the board, with these vast range of responsibilities, to then charge the banks in a unilateral way for levies which in my view would be totally unacceptable and disproportionate responsibility and power for the board. The board is important, it has an important responsibility for administering the scheme, and now the Minister has accepted that it will be a board that will be put in place in the event of a failure of a scheme. But I am afraid that there is a point which just goes too far and this amendment is a point too far in terms of policy responsibility and responsibility of the commission. So I regret to say that I urge Members to reject the proposition, but they can do so safe in the knowledge that a board will be

established and will be given suitable direction by the Minister in terms of its responsibilities. The Minister can ensure that there is appropriate parallel responsibilities within his powers for the J.F.S.C.

The Deputy Bailiff:

Does any other Member wish to speak? Very well, I will call upon the chairman, Deputy Southern.

5.2.8 Deputy G.P. Southern:

Remarkably speedy there. I was waiting for you to draw breath, Sir. Let us get back to basics. Imagine for a minute you are a potential depositor in a bank, and you have got £50,000 to deposit. You are looking around in the market and you are deciding: "Where shall I put my money? Shall I put it in Guernsey, shall I put it in the Isle of Man, shall I put it in Jersey?" One of the factors you might consider is: "Right, what is your depositor protection scheme like? I have got £50,000, what do you cover? Oh, you cover my £50,000." You would go to the Isle of Man, and you would look at their arrangements there: cover is there, funding is there; they have already had failure and they have dealt with it. It took a long time, but they are obviously experienced. You look at Guernsey. A real fund, already £20 million insurance in the pot, a real board there for 12 months, it has worked out the details, you can see what is happening. You come to Jersey and you say: "Have you got a depositor compensation scheme?" They say: "Of course we have." You say: "Does it have a board?" "Well, no." "Does it have a chairman?" "Well, no." "Does it have any funding in place?" "Well, no." "Well, what sort of depositor compensation scheme is this?" "Oh, it is ex-post-funded. It does not exist until we get a failure." How much confidence do you have about the safety of your £50,000? **[Interruption]** Please do not shout across the Chamber, Senator Ozouf, that is really not fair, you have had your go.

Male Speaker:

Through the chair.

Deputy G.P. Southern:

Through the chair: I wish the Minister would refrain from shouting across the Chamber. **[Interruption]** It may or may not be rubbish, but it is my turn. So we look at the way in which it is set up and the credibility of the scheme. No chairman, no board, no funding in place at all, until we have a failure. Is that a credible scheme? Because that is absolutely vital in terms of setting up a scheme. We are told that the Minister for Economic Development has changed his mind, and that he is, in principle, in favour of setting up a standing board, which is what we recommend. He has been asked once, and he gave an answer, but I still do not understand what "in principle" support for a standing board that we are going to set up is, when he says: "Oh, but not this standing board. What we want you to do is go through with a piece of legislation which does not involve setting up a standing board, and we will come back and amend it later." Instead of going with the amendment which does create a standing board, funded from the beginning, with admin charges - yes, there is some cost - and if necessary, if we think there are too great powers given there, let us amend that. So: "We are in favour in principle of setting up a standing board but we want you to go through with a piece of legislation which does not set up a standing board and we will fix it later." I ask Members, do you think that is a reasonable way to behave? What does "in principle" mean? I am not sure that it is. In fact, I am convinced that it is not. We have had some discussion, in particular, about raising public awareness, and I will just, for the moment ... So the importance of having a body to promote and advise people on what our scheme does. Principle 12: "The promotion of public awareness so that people depositing money in Jersey know what is protected, and know particularly what is not protected. In order for a deposit insurance system to be effective, it is essential that the public be informed about the benefits and limitations of the deposit insurance system. The characteristics of this deposit insurance system should be publicised regularly to maintain and strengthen public confidence. All deposit insurers (the managers of the scheme)

should promote public awareness about the deposit insurance system on an ongoing basis.” It then goes on: “In our advisers’ opinion, are there arrangements in the unamended regulations, are there arrangements to regularly publicise the characteristics of the J.D.C.S. to maintain and strengthen public confidence?” Answer: “No.” “Is public awareness about the deposit insurance system promoted on an ongoing basis?” Answer: “No.” “Are objectives of the public awareness programme clearly set out?” “No.” “Does the J.D.C.S., unamended, comply with Principle 12 of the principles for deposit compensation schemes?” The range is Principle 12 fully, mainly, partly, does not comply. Answer (in the box): “Does not comply.” A major element where our adviser says the scheme as proposed, unamended, does not comply with Principle 12 of the principles that should underlie and ensure that any compensation scheme is solid. Of course Guernsey has a scheme which is a hybrid scheme, it is a mixture of ex-ante - money in the pot - and ex-post; following the collapse of a bank more money comes in. In the scheme in Guernsey there is a permanent board structure, it is there. The board is independent of the Guernsey Financial Service Commission - it does its own stuff - and the States of Guernsey. Independent body, whose sole intention is to look after depositors - not look after depositors and do something else - its main job, but its sole function. There are 4 members of the Guernsey Banking Deposit Compensation Scheme, the scheme is administered by a limited company. The board has met on a fortnightly basis and its remit includes working closely with the banks to ensure that clients are made aware of the protection that is afforded to depositors banking in Guernsey. It has a real job to do: the board advised the panel that Guernsey’s scheme required banks to contribute annually to the admin costs for operating the scheme. All banks are charged an annual fee of £5,000. Is that enormous, does that break the bank? No, it does not. Our scheme provides a similar ... The total annual cost for administration is £220,000. Is that an enormous sum? No, it is not. A similar scheme could be set up in Guernsey. Isle of Man Financial Supervision Commission, established in 1983, independent statutory body, responsibility as the designated scheme manager for the administration of its depositor compensation scheme; a real board, a real body whose sole job is to protect depositors. When you are looking around for where to deposit your money, that sort of thing is important. But, you know, we are asked to go forward with a piece of legislation that does not set up a real board. Why not? Possibly the answer is in the evidence that we were given, the chairman, Deputy Higgins says: “Would it not be more credible if the board was there and doing the work?” Mr. de Forest-Brown, the International Relations Development Director - they are usually directors, are they not - said: “That is a debate to be had.” The point is, we are just simply trying to get a scheme out, and we are getting the cost of not having a scheme, we are continuing to debate all these issues, but we are putting off getting a scheme in place. If we get a scheme in place, we could go on and then focus our resources on the second part of the elements, whether it is a real scheme or not. In response to the question: “If you get a collapsed bank, you are just going to get some expertise from somewhere to instantly form a depositor protection scheme and its board, how will you do that?” “We believe there would be the availability to find suitable people to fulfil the role of the board.” And: “The structure proposed, effectively, from a cost-saving perspective [notice, from a cost-saving perspective] of the order of £5,000 to £8,000 per bank. The cost saving is the one we believe is the most appropriate, and that the expertise will be available should we require it, in a timely fashion to fulfil all the obligations required.” We are talking here about, a bank goes down and we instantly form a board which can then deliver compensation within as tight as ... Within 7 days, in fact, some compensation within 7 days. Imagine that. I would like to know who that board would be, because I think they wear a big t-shirt with and “S” on it: Superman.

The Deputy Bailiff:

Deputy, will you forgive me for just a moment. I say this in the context of the comments needing to be relevant to the debate. The Minister’s proposition is to establish a board called the Jersey Bank Depositors Compensation Board and its only function is to administer the bank depositors compensation scheme. The amendment also establishes the board, so the board is established both by the Minister’s regulation and by the amendment, and the amendment also includes a provision

for administering the scheme. All that is in issue with this amendment, are the functions of the board at 2(a), (b), (c) and (d). That is the only matter which the Assembly must address. **[Approbation]** The board does exist under both the Minister's proposition and under the amendment. You are entitled to make the point that you have, that it is not a real board because it will not be doing anything unless you expand the functions. That of course, is perfectly legitimate and relevant. But it is just to remind Members generally that we are looking at (a), (b), (c) and (d) only.

Deputy G.P. Southern:

Okay. I accept your guidance, thank you, Sir. I have dealt with (a): "To keep eligible depositors and persons who may become eligible depositors informed of the benefits and limitations of the scheme." Absolutely correct. "To advise banks on how the scheme may be promoted." Absolutely correct; there is certainly work to be done there. "To keep under review international developments in bank depositor compensation and developments in banking business in Jersey." Entirely appropriate that this body should be there doing exactly that. There is a one stop shop for anything to do with depositor compensation scheme. It is those, there they are, in a real form. "To make recommendations to the Minister in respect of the scheme." Absolutely, it is not inflexible, but the people who should be advising on that are not. Those dealing with other things and: "Oh, and incidentally this scheme." But those who are only concerned with this scheme and developing it, it would be appropriate, perhaps, Minister, to move in this direction, or to change that and to administer the scheme. Yes, there will be a cost, yes, there will be a board. This board needs to be clearly seen to be independent and to be the central point for all matters pertaining to the protection scheme. The amendment should be accepted, and is the way forward.

2.5.9 Deputy A.E. Jeune:

I will probably ask you to clarify if this is appropriate for me to ask, inasmuch as this morning, because amendment 2 was withdrawn, the questions I asked of the chairman of the panel in relation to consultation, i.e. either with the industry or with Members, obviously he did not do a summing up, and therefore did not get answered. Would it be appropriate for me to ask - because they were general comments he had made - whether he could include those in the summing up of this, please Sir?

The Deputy Bailiff:

You are certainly entitled to ask the chairman if he consulted on the terms of these proposed amendments, and I am sure he will have noticed that.

Deputy A.K.F. Green:

Sir, you have covered the point I was going to cover much more eloquently than I could have done, so I will sit down again.

2.5.10 The Connétable of St. Clement:

I am very grateful for your directions because I was getting very confused. What we are debating is not whether we have a board or not, but what the board should do. What is it we, the States, want this board to do? Do we want them to administer the compensation? That is what the Minister is asking. He is asking them to set up this board, which he said he will do by January, to get them together, structure in place, ready, in the unlikely event of a bank failure. To prepare the template for claim forms and other things like that, and to basically administer the scheme that hopefully we are going to approve today. To do all the other things that this amendment asks, is totally unnecessary, a duplication of effort and extremely costly. The first 3 items in the amendment, (a), (b) and (c) ... well (a) and (b) in particular, are clearly and obviously, in the law that set up the Financial Services Commission, belonging to the Financial Services Commission. They have the power already to do that, to advise the banks on how to advertise and promote the depositor compensation scheme, and if they do not do that, or do not do it satisfactorily, the Minister has the

power to instruct the J.F.S.C. to do it. But that power is already in existence, it happens now. Why have another board doing exactly the same thing? But the big one is (c): "To keep under review international developments in bank depositor compensation and developments in banking business in Jersey." That is a huge task, it will require a significant secretariat to do that, and is that not already being done, not only by the Financial Services Commission, but by the Chief Minister's Department, and by the Economic Development Department? Why do we want to set up another bureaucracy, another secretariat, another lot of public servants, to do a job which is already being done? The other 2 items: "To make recommendations to the Minister." Anybody can make recommendations to the Minister. I even do it sometimes, sometimes he takes notice, [Laughter] but not always. So what we are going to do is set up a quango, with a significant sized secretariat which is going to cost a lot of money. Where is that money going to come from? According to the Scrutiny's amendment, it will come from levies imposed by the quango itself. They will not have to refer to anybody, they will effectively be a tax-raising authority with no accountability to either the Minister for Treasury and Resources, the Minister for Economic Development, or from the States. All they have to do is decide what they want to spend, and send the bills out to the banks, and the banks will have to pay, under these amendments proposed by Scrutiny. Have we ever heard of anything so dire? Are we abdicating our responsibilities to that extent? What a risk. The banks will look at this and say: "Look, we have got unlimited liability. These guys are going to send us bills and we do not know what they are going to be." You know, it is quite possible we will not need a depositor compensation scheme, because there will not be any depositors. All the deposit-taking institutions will disappear to responsible jurisdictions who know how to look after their businesses, and also know how to look after their businesses' customers. This does not do it.

The Deputy Bailiff:

Does any other Member wish to speak? If not, I will call on the Chairman of the Scrutiny Panel to reply.

2.5.11 Deputy M.R. Higgins:

First of all, I am just going to go through some of these things about the functions. Let us just deal first of all with the conflict with the Financial Services Commission, because - obviously you do not believe it - we have heard so many people say there is absolutely no conflict between what the J.F.S.C. does and what the board does. We invited the Director General of the Financial Services Commission to come and give evidence before the panel. We asked him - we were talking about the different models, in fact I think Deputy Southern asked the question - it was: "We are seeing different models as we look at the U.K., the Isle of Man and Guernsey, and there are different relationships between the J.F.C. or the J.F.S.C., or their equivalent, and the board of administrators of the depositor compensation scheme. Do you see any role for the J.F.S.C. in this scheme?" This is the Director General: "I think throughout, what we have found is that we have a degree of expertise, and certainly, lots of information and knowledge, and we would put it at the disposal of the public authorities, so that we can facilitate the process, but I do not think that we have a preference as to which model." For example, they are talking about some depositor compensation schemes are stand alone, such as the one in Guernsey. The Isle of Man one is linked with the regulator, but that is something they are going to change. The U.K. one is stand-alone and away from the F.S.A. (Financial Services Authority). He says: "What I do have concern about is that the commission is dragged more and more into the decision-making process for the activation of a scheme, because I think there are some conflicts that are there for us. The real core conflict is that these schemes are all about eligible depositors, i.e., man in the street. If you like, £50,000 or less. Our function is that we need to look at the interests of all depositors and all counterparties for any banking group. [So, beyond depositors.] So a decision that we might be making about the supervision and ongoing management, possible insolvency or liquidation of an entity, or withdrawing or revoking a license of an entity, must be based on the entirety of its relationship that it maintains with everybody, all its counterparties, all its depositors, and so on, and other

supervisors. Whereas, those charged with administering the deposit protection scheme are by definition only interested in the interests of the eligible depositors, and that is my main concern. There really is a bit of inherent conflict there.” That is the Director General of the Financial Services Commission. He sees the conflict, we saw the conflict; obviously quite a number of Members do not, including the Minister. Next, we are being told, for example, that in terms of the functions of the board, that it does not include acting in the best interests of the Island. This is not normally a requirement of depositor protection schemes unless they play a much wider role than simply paying out compensation to depositors, such as being involved in the rescue of banks and financing aspects of their rescue. Then they have a much bigger role, and then they would be looking at the wider things. This particular depositor compensation scheme is simply to deal with paying compensation, getting the money in from the banks and paying it out to the depositors, and then collecting it from the liquidators if they can, through the subrogation process. The reason why this is the case is because depositor protection boards are but one element in what is known as the financial safety net, which is normally made up by the Treasury or Finance Ministry. The I.M.F., by the way, are mentioning there should be an increased role for the Treasury in terms of the safety net within Jersey. I have told you about some of the risks that they identified with our banking model. They are saying it needs to be beefed up in terms of Treasury, but equally, the regulator as well. There is also a role, in part of this safety net, for the depositor protection board. They have distinct roles, and therefore they need to be separate. I would also say too, that as far as the best interests of the Island are concerned, that is the job of the Minister and the regulator. It is not ... in fact, it is even written into the J.F.S.C. legislation: “It is the duty of the depositor protection board to look after depositors.” We are also being told there are potential overlaps with the role of the J.F.S.C. I have already indicated some of them from what the Director General has said. I have got here that: “The role of the board is to deal with the payment of compensation to depositors in the event of a bank failure.” Yes, the board has to obtain information from the banks to be able to carry out its functions. Yes, it needs to determine the laws relating to bank resolution; in other words, this is where governments, whether it be in the United Kingdom or elsewhere, are trying to save a bank and they are using different techniques to try and prop it up or dismember it. They also deal with other depositor compensation schemes and with insolvency in the different home jurisdictions which our banks come from. It has to do this in order to be able to do its job, and as far as I can see, there is no overlap between the depositor compensation board and the J.F.S.C. For example, if a bank fails, as I said earlier, really at the first sign of trouble you would expect regulators to contact other regulators in the jurisdictions where that bank is located. The I.M.F. report - in fact, I am certain it was the I.M.F. report - reported that the J.F.S.C. did not get information with some of the bank crises that were going on from the regulators, they had to approach the regulator and ask them if there was anything they needed to know. The system does not always work perfectly when there is major sort of problems going on. The depositor compensation board also would have their links into other depositor compensation boards. So in other words, they may get intelligence from them that a bank is in trouble, independently of what the regulator is getting, and together they would be looking at how they would try to solve the problem of compensating the depositors in the different jurisdictions. There is, certainly in my opinion, no conflict of interest in terms of those roles, between the role of the depositor compensation board and the J.F.S.C. The J.F.S.C.’s is a regulatory one and in fact, certainly, if a bank was not supplying information to the depositor protection board, you would expect them to go in and start using their regulatory powers to tell them to get the information that the board needs. We are also being told by Economic Development that the board would be given an unfettered power to impose unlimited charges on the banking industry without any consultation. We are looking here at the setting up of this standing board. Yes, it is going to get the power to charge an administrative levy to help fund its operations. We have already identified the likely cost, and it is the cost that the department came up with, about £250,000. With the banks that we have got that will be about £8,000 a year. What we have also done, and written into the amendments that we put forward, is an appeal to the Royal Court, so if the board was being unreasonable, the banks would

be queuing up at the Royal Court, saying: "This is totally unreasonable, we would like to see it struck down." In other words, there is no way that anybody would allow the board to be charging much in excess of £250,000, they would have to justify any expenditure over that. There is no question of them just totally dictating to banks, and just a license to print money by getting sort of fees from them. We are also being told by Economic Development that ... and this comes in a little bit later and I am going to sort of go on to it, because these other elements that are in yellow in your sheets are consequential on you passing this. One of them is the fact that is not appropriate for the States to get involved in the detail of the terms and conditions of the appointments of the board members, and it would sit more comfortably with the Minister. That is what is written in their comments. We were concerned very much by the draft that Economic Development had put forward on this area; really, really concerned. For example, in Article 11 of the E.D.D.'s draft, it says that: "A person appointed to be a member of the board (a) holds the appointment on terms and conditions between the person and the Minister."

The Deputy Bailiff:

I am sorry to interrupt you there, Deputy, but would you please confine your remarks to the amendment, which is Article 8(2).

Deputy M.R. Higgins:

Yes, but with respect, Sir, once we vote on this here, everything else will fall away if we lose this, and this is part of what will be relating to the depositor protection board.

The Deputy Bailiff:

I for my part do not see that that is true. This is a debate about the functions of the board. The question of how the board is constituted when it takes office is a different question, whatever its functions might be.

Deputy M.R. Higgins:

Well, Sir, what I would say is, it was certainly referred to in the comments made by Economic Development, and I think the counter-argument should certainly be put forward. In fact, Constable Norman, a few moments ago, was talking about Article 12, which again, would not have been relevant to this debate.

The Deputy Bailiff:

I very nearly pulled him up on it, you are quite right. But he talked about article 12(a) briefly, in the context of the cost of these functions.

Deputy M.R. Higgins:

Okay, all I would say in conclusion on that particular point then is that we are very much concerned about the independence of this board. One of the main reasons for us bringing forward the changes that we made were quite simply one of the International Association of Deposit Insurers' core principles - and this is backed by Basel - is that the board must be independent, for example, of the Minister. Under the draft that was put forward by Economic Development, it gave considerable powers to the Minister. Therefore, the question of the board, it needs to be independent, and I would ask Members to support this particular proposal, because a lot of red herrings have been said.

The Deputy Bailiff:

Deputy, the Greffier correctly points out that 12(a) is linked to this debate, and nothing I have said so far is intended to inhibit you from addressing 12(a) and the comments that have been made on that.

Deputy M.R. Higgins:

Thank you, Sir, I stand corrected, then.

The Deputy Bailiff:

Well no, perhaps I stand corrected, rather than you.

Deputy M.R. Higgins:

One of the problems we have with these desks, as I am finding, as I found earlier, and did not go through half of what I should have done, is the fact that we have so little space that it is very difficult to find anything. So if Members can bear with me for a moment, I want to be able to answer some of the questions that have been posed by some of the States Members. I think this is Senator Norman, I am not sure. Constable Norman ... no, maybe not. Okay, if we go to Senator Ferguson, she mentioned I think that she felt we did not understand the moneybox concept, because this is where basically, the deposits are acquired by the banks and passed on upstream. In other words, they are just basically taking a deposit and passing it upstream. She said the J.F.S.C., for example, could order that a certain percentage of them should be placed outside the groups. The I.M.F. was quite critical of the J.F.S.C.'s policy of giving automatic exemptions on that. Again, imagine giving the J.F.S.C. the power to be responsible for a lot of the actions of this here, and yet they are also giving the groups the power to upstream the money which is considered to be ... okay, it is the banking model, and I will ... Sorry, in case I have given the impression that I am totally anti-banking, I am not. I am just trying to explain to people that our banking model is not without risk. If the J.F.S.C., for example, is giving an automatic exemption and they are allowing them to place 80 per cent of their deposits with their parent on a regular basis, or an automatic basis, without checking to see what is going on, and keeping tabs on what is happening, that would be totally irresponsible, because we have got the regulator deciding that and then also being involved with dealing with deposit protection issues. I might add the I.M.F. also said it would be dangerous for the banks if the J.F.S.C., at a time of stress, kept on insisting that they kept more money back or put it somewhere else. So there is quite a conflict. Senator Ferguson also mentioned about the J.F.S.C. getting information from other sources. I have already made the point that during the recent crisis it did not get information directly, as a matter of course, from some of the regulators we should have been communicating with if we were having trouble with their banks. They had to go to the likes of the F.S.A. to seek information. In fact, although she may have been digressing a little bit, the contingency plans for failure, just so you are aware of it, originally - I remember when I first went to the commission - was one sheet of paper explaining thoughts on how you might deal with a bank failure. I know that Senator Ferguson and her colleagues, I think, beefed it up to about 3 or 4 pieces of paper. Things have moved on an awful lot since then. Senator Ozouf believed that the Financial Services Commission was already responsible for consumer awareness. Yes, it does occasionally. We see there is a scam and it will be on their website and so on, but what we are seeking here is a very, very active campaign to advise depositors of, as I say, the limitations of the scheme; the advantages, disadvantages, and so on. I have said to you, and I wonder how many of you realised earlier, that you may not get the £50,000 that is written on the packet. It depends on so many things: which bank goes down, if it is in the first 6 then you are definitely not going to get £50,000. If you have 2 failures, you are not going to get your £50,000. There are major sort of problems associated with it. Something else that people do not realise is, there are different types of deposit. Does the scheme cover every deposit? We had some debates on this, we had some discussions on it. There are certain types of deposit that are more akin to investments. Could it be that certain types of deposits are being sold, people think they are going to get protected and really they would be classified by the courts, when it comes to the insolvency, as being an investment product, so they get nothing? Therefore you need a board that is constantly evaluating what the deposits are, what is classed as a deposit, and monitoring, and giving appropriate advice and information. He mentioned also, I think it is in 2(c), he mentioned it was a wide-ranging policy, and we said, yes, the board has to be keeping itself abreast of all the sort of ... what is going on in the field of depositor compensation around the world. It also needs to understand - it does not have

to be directly intervening in the same way as the J.F.S.C. does - but it needs to have an understanding, whether through dialogue with the J.F.S.C. or the banking community itself, on what they are doing and the risks involved, so it can assess what it needs to do and how it needs to function. Again, Senator Ozouf did stray on to 12(a). There is no unilateral charging because, as I said, there is the appeal rights. I was going to correct Deputy Southern on the Isle of Man board because, as I say, they are at the moment part of the regulator. When we met with the Isle of Man regulator, he said that they felt it did not fit comfortably at all and they wanted to have a totally separate depositor protection board from the regulator. I know this well because I knew the regulators who dealt with the B.C.C.I. (Bank of Credit and Commerce International) collapse, and they work within ... In fact, the current director of supervision is the old person who used to be in charge of the depositor protection board, they were so interlinked. Now they are planning on separating it. Deputy Jeune; yes, I am going to give her an answer about consultation. Did we consult with the J.B.A.? The answer is: "No." I will explain why. It was not a case of not wanting to communicate with them. We had been working under intense pressure, and we invited the J.B.A. executive to come and give evidence to, and discuss depositor compensation with the panel. Throughout August they were not available, we invited them to come in September, and in the end they declined to come and see us and discuss it with us. It is not a question of us not wanting to consult with the Jersey Bankers Association, they did not want to speak to us. Why? Because we were going to be scrutinising it, we were asking awkward questions and they did not want to answer them. We would have put these things to them, and I might add on this point too, that we found - I am not going to give way - we found through the hearings that J.B.A. and Ministers **[Interruption]** ... The Jersey Bankers Association, and Officers, and Ministers - it is amazing how many people were following the proceedings going on by our hearings. Because it is funny, when they were giving evidence, they would mention something about what had gone on in a previous hearing. They were really keeping up to date with what we were doing but they did not want to come and speak with us. All I can say is, what do they have to hide? Or was it, what did they have to lose?

Deputy A.E. Jeune:

Sir, can I just clarify, my question was in relation to consultation with them on the amendments.

Deputy M.R. Higgins:

I have already made the point, we have not. The panel has been working at extreme speed, some of this work ... I have to say, some of this work ... you would not believe the amount of work that went into in such a short period of time. No, you probably would, probably, after the first debate this morning. But an awful lot of work went in; we have come a lot further than the Economic Development Department ever did, in terms of trying to define what a small business is. Also, had they turned up, we would have discussed all these things with them. We did not have time, we rushed it through, as you know, these things have all been done in a matter of days and there was not time to do it. But what we are proposing is not going to hurt them? £8,000 a year fee to support a board that they are going to work with, which is to help them, because remember it is a reputational issue. If you have a depositor compensation scheme in your jurisdiction, you are more likely to get people bringing their money here. After all, they told us that. They said the reason why they wanted a scheme was because - okay, it was anecdotal, they could not give us any figures, because we were asking for quantities - of the fact that we did not have a depositor compensation scheme here. Why did they not come and work with us to make sure it was the best possible scheme? So that is the answer to that, Deputy Jeune. Okay, and I think that I will leave it, but I would urge Members to support this, it is a very, very important body, and all I can tell you is, if ... and I pray to God that we never have a bank failure but if we do, and we do not have a proper board in place ... and that was our fear, because everything that we came across was, they did not believe the scheme would ever be used. On that basis, it is a recipe for disaster, because if a bank goes

down, they are going to be caught with their pants down, and the Island will suffer because of it. Please support this amendment.

Senator A.J.H. Maclean:

Sir, can I ask for clarification from the Attorney General? I feel that Deputy Higgins may have unwittingly misled Members with a couple of comments, and I thought that the Attorney General could help clarify the matter. What I am referring to in particular, he was talking about the bank right of appeal, and he was saying that the banks had right of appeal, and indeed would be queuing up should they have been unreasonably charged for costs. My understanding is that costs of the board are **[Interruption]** ... No, exactly. There is nothing there to reasonably limit the costs, the levies. I just wondered if the Attorney General could clarify the point.

The Attorney General Designate:

Yes, the appeal provisions are provided under Regulation 36 of the draft regulations, and under amendment 1(a), if it is accepted, it indicates: "A bank that is dissatisfied by a decision of the board requiring the bank to pay an annual contribution to the board's general costs may appeal to the Royal Court against the decision on the grounds that (a) the bank is not liable to pay the annual contribution, or (b) the board has miscalculated the amount of the annual contribution." Unless there is a general right of appeal, and I do not see one within that regulation, which is where I would have expected it to be, it appears that those limited grounds are the only grounds upon which an appeal could be made to the Royal Court.

Deputy M.R. Higgins:

If I could just make a point of clarification on that. You also look at 36(c), we have copied the wording used by the department for the other levies. So if it does not work for us, it does not work for them.

The Deputy Bailiff:

I just did not hear that comment, Chairman. Could you say again, if you look at Article 36 ...?

Deputy M.R. Higgins:

Sorry, Sir, 36. It is in the green, it is 3(a). Sorry, it is 2, it is the original 2: "A bank that is dissatisfied by a decision of the board requiring the bank to pay a levy may appeal to the Royal Court against the decision on the grounds that the bank is not liable to pay a levy, the board has miscalculated the amount of the levy, or any instalment of the levy the bank is required to pay, or the board has miscalculated the date on which the levy or instalment becomes payable." There are no other grounds in the E.D.D.'s.

Senator A.J.H. Maclean:

Sir, I think that is different.

Deputy M.R. Higgins:

It is a different levy, but the concept is the same.

The Deputy Bailiff:

Attorney General, you may wish to expand on your answer, and in particular, give the advice to Members that is appropriate in relation to the separate remedy at judicial review.

The Attorney General Designate:

I am grateful, Sir, for that indication. Indeed, the rights of appeal are set out in paragraph 36, and they are limited with regard to the amendment, and indeed, in regard to the original draft, in the way that has been mentioned by the various Members. There is of course, always, in addition to the right of appeal, the right of any person who is aggrieved by the functions of a public authority -

in this case, the board - to go to the court with an application for judicial review. In those circumstances, the court will determine whether or not that decision should be overturned on the grounds, among other things, of what is known as Wednesbury unreasonableness. It is a high test to meet, and it is a very material level of unreasonableness, but that is the test the court will apply.

Deputy P.V.F. Le Claire:

Sir, may I also ask the Attorney General Designate, the query has been raised that somehow this would be an unreasonable amount and there would be limited grounds for appeal, but set within 12(a), the grounds for the fee should be determined by the administration costs of the board, and therefore it should be reasonably defined by the estimate within those regulations as to what a reasonable liability would be, based upon the administration. It is not a cash cow, it is covering the administration costs.

The Deputy Bailiff:

Thank you Deputy, I think that is another speech and it does not call for advice on a point of law. We are going to move to the vote.

Deputy M.R. Higgins:

I would like to call for the appel.

The Deputy Bailiff:

All those Members wishing to vote should kindly return to their seats. The amendment is the amendment of the Economic Affairs Scrutiny Panel to Regulation 8 of the draft scheme. The Greffier will open the voting.

POUR: 15	CONTRE: 32	ABSTAIN: 0
Senator A. Breckon	Senator T.A. Le Sueur	
Connétable of St. Lawrence	Senator P.F. Routier	
Deputy of St. Martin	Senator P.F.C. Ozouf	
Deputy R.G. Le Hérisssier (S)	Senator T.J. Le Main	
Deputy J.A. Martin (H)	Senator F.E. Cohen	
Deputy G.P. Southern (H)	Senator J.L. Perchard	
Deputy of Grouville	Senator S.C. Ferguson	
Deputy P.V.F. Le Claire (H)	Senator A.J.D. Maclean	
Deputy S. Pitman (H)	Senator B.I. Le Marquand	
Deputy M. Tadier (B)	Connétable of Trinity	
Deputy of St. Mary	Connétable of Grouville	
Deputy T.M. Pitman (H)	Connétable of St. Brelade	
Deputy M.R. Higgins (H)	Connétable of St. Saviour	
Deputy D. De Sousa (H)	Connétable of St. Clement	
Deputy J.M. Maçon (S)	Connétable of St. Peter	
	Connétable of St. Mary	
	Deputy R.C. Duhamel (S)	
	Deputy J.B. Fox (H)	
	Deputy of St. Ouen	
	Deputy of St. Peter	
	Deputy J.A. Hilton (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	
	Deputy I.J. Gorst (C)	
	Deputy of St. John	
	Deputy A.E. Jeune (B)	

		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		

The Deputy Bailiff:

The Assembly now returns to the debate on Regulation 8 as proposed. Does any Member wish to speak? No Member wishes to speak, we can advance to the vote. All Members in favour please show, all those against? The Regulation 8 is adopted. Minister, you wish to take Regulation 9?

2.6 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulation 9 and 10

2.6.1 Senator A.J.H. Maclean:

Yes, please. Regulation 9 provides for the independence of the board from Ministers and from the States. A key part of this work will be done by following the enactment of a statutory D.C.S., namely, the signing of a M.O.U. (Memorandum of Understanding) with the J.F.S.C. in order to ensure that the board is independent of the Minister in accordance with international principles. I propose Regulation 9.

The Deputy Bailiff:

This is seconded? **[Seconded]** Does any Member wish to speak?

Deputy M.R. Higgins:

Yes. Just once again, I would like to return to the point that I made earlier, that when we looked at what was stated ... Sorry, I apologise, I am on the wrong one.

The Deputy Bailiff:

No other Members wish to speak? I think there is nothing to reply to there, Minister. We will go to the vote. All Members in favour kindly show? Those against? The regulation is adopted. We now move to Regulation 10. Minister, please.

2.6.2 Senator A.J.H. Maclean:

Regulation 10 provides for the constitution of the board. Sir, I propose Regulation 10.

The Deputy Bailiff:

Seconded? **[Seconded]** There is an amendment in the name of the Economic Affairs Scrutiny Panel. The Greffier will read the amendment. Chairman, the running order suggests that (c) has fallen away as a result of the previous vote. Do you accept that?

2.7 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009): third amendment (P.86/2009.Amd (3)) Amendment 4

Deputy M.R. Higgins:

Yes, that was the point I was trying to make earlier, when I was trying to address it. Thank you.

The Greffier of the States:

Page 4, Regulation 10: “(a) paragraphs 1-3, substitute the following paragraphs: ‘(1) the board must have at least 3 members; (2) the members of the board shall be appointed by the States on the recommendation of the Minister, made after consulting with the Appointments Commission’; (b) in paragraph 4, for the words ‘the Minister may not appoint as a member of the board a person who is’, substitute the words ‘a person shall not be eligible for appointment as a member of the board if the person is’.”

The Deputy Bailiff:

Chairman, do you wish to propose the amendment?

2.7.1 Deputy M.R. Higgins:

Yes, I do. One of our great concerns, as I was trying to say earlier, was the fact that the Minister has tremendous power under the scheme that has been put forward by the Economic Development Department. As I said earlier, the International Association of Deposit Insurers believes that the board should be independent, and we felt that the Minister had too great a power. One of them ... okay, it is coming on to terms and conditions on 11, but the point is we believe that the best way of appointing anyone to a position, whether it be the Jersey Financial Services Commission or any other statutory body, should be through the Appointments Commission which everybody accepts is an independent board. It should not be the Minister appointing people. On their proposals they were going to call for candidates from the Jersey Bankers Association, or nominations from the J.F.S.C. What we are wanting is that the Appointments Commission should be the body responsible for making the recommendations to the Minister, I should say, and then the Minister would bring those appointments to the States for approval. This would be the way that we believe that the board would be independent of the Minister and we could all have confidence in it, I would hope that Members will support this amendment.

The Deputy Bailiff:

The amendment is proposed. **[Seconded]** Does any Member wish to speak? Minister?

2.7.2 Senator A.J.H. Maclean:

Sir, if I may. I have already signalled that I can accept parts (a) and (b) of the Scrutiny’s third amendment. This will have the effect of giving the States the responsibility for appointing members of the D.C.S. board following my recommendation, so I do not think there is anything contentious here. It is accepted.

The Deputy Bailiff:

No other Member wishes to speak? Then all Members in favour kindly show?

Male Speaker:

Could we have the appel please?

The Deputy Bailiff:

The appel is called for. Those Members wishing to vote kindly return to their seats.

The Deputy of St. Mary:

Can I just be absolutely clear, Sir, we are voting on the amendment, which has been accepted by the Minister, is that correct?

The Deputy Bailiff:

We are voting on the amendment of the Scrutiny Panel which, as you say, has been accepted by the Minister. All Members wishing to vote have returned to their seats; the Greffier will open the voting.

POUR: 41		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator T.J. Le Main				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				

Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

2.8 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulation 11.

The Deputy Bailiff:

We return to Regulation 10, then, as amended. Does any Member wish to speak on this regulation? All Members will come to the vote on Regulation 10, as amended. Members in favour kindly show? Those against?

The Deputy of St. Mary:

Carried.

The Deputy Bailiff:

Minister, Regulation 11.

2.8.1 Senator A.J.H. Maclean:

Yes. Regulation 11 provides for members of the board to hold the appointment on terms and conditions agreed with the Minister. I propose Regulation 11.

The Deputy Bailiff:

Is there a seconder? [**Seconded**] There is an amendment in the name of the Economic Services Scrutiny Panel. The Greffier will read the amendment.

2.9 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009): third amendment (P.86/2009.Amd (3)) Amendment 5

The Greffier of the States:

Page 16, number 5. Page 16, Regulation 11: “(a) In paragraph 1, for the words: ‘Agreed between the person and the Minister’ substitute the words: ‘Approved by the States’; (b) in paragraph 2, for the words: ‘The Minister’ substitute the words: ‘the States’.”

The Deputy of St. Mary:

Could we please establish whether the Minister accepts this amendment?

Senator A.J.H. Maclean:

Yes. Very clearly, no.

Deputy M.R. Higgins:

In that case, I will just speak briefly on it.

The Deputy Bailiff:

As I understand it, the Minister does not accept the amendment.

2.9.1 Deputy M.R. Higgins:

I am only going to make a brief comment. Basically, when we looked at the powers of the Minister, we were concerned that if individual Members could be appointed on individual terms and conditions and different salaries that it would not really be independent. You do not know what each Member is doing. I am not saying I have tremendous confidence in this particular Minister, but you have no idea what another Minister might do in the situation. He could stack it with people who he wants on whatever terms he wants and in terms of their future appointment and everything else it could be done. We would rather see a standard set of terms and conditions which are approved by the States. It is not a question of trying to micromanage the thing. It is just let us get a set of standard conditions, whether it be a salary scale or whatever. The Financial Services Commission, if I am not mistaken, I believe they are appointed on a standard set of terms and conditions from the States. Also there is a slight difference in salary. At one time it used to be all the commissioners were on one salary and the chairman was on another. But I think in a debate the other day I heard it had been varied which I find rather strange but anyway. The panel’s view is that we should have a standard set of terms and conditions for all and it should be approved by the States rather than by a Minister to make sure there is true independence.

The Deputy Bailiff:

The amendment is proposed. Is it seconded? [**Seconded**] Does any Member wish to speak?

2.9.2 Senator A.J.H. Maclean:

Although I was happy to accept that the States should make appointments to the board, I do not believe that it would be appropriate for States Members to determine the terms and conditions of each appointment. There is no precedent for the States setting the terms and conditions of the members of a board of this nature. While the States approves key appointments to comparable bodies such as the J.F.S.C. and the J.C.R.A. (Jersey Competition Regulatory Authority), the States does not approve the terms and conditions. In the case of the J.F.S.C., the commission or a subcommittee of the commission has the oversight of the terms and conditions of the commissioners. In the case of the J.C.R.A., the States approves the appointment of a chairman and

the Minister approves the appointment of board members. Terms and conditions of board members including annual remuneration increases are approved by the Minister. A common thread running through the Scrutiny Panel's amendments seems to be increasing the States involvement in running of the D.C.S. I should point out that we did consult with the Comptroller and Auditor General over these provisions. He agreed that it was appropriate for the annual accounts and the report to be laid before the States under Regulation 15. He did not consider that extra safeguards were needed to be put in place over and above this particular requirement. I, therefore, oppose the amendment to Regulation 11.

2.9.3 Deputy P.V.F. Le Claire:

I may be a bit simple but I just did not think there were going to be any accounts until there was a meltdown. Is that right? Maybe some clarity would enlighten me.

The Deputy Bailiff:

Does any other Member wish to speak? I call upon the Chairman to reply.

2.9.4 Deputy M.R. Higgins:

I think we will just go to the appel, Sir. I think the argument has been made by myself.

Deputy P.V.F. Le Claire:

Sir, with respect, I am unsure or uncertain or at best confused and I was seeking some clarity. If in the position the Minister has there is no need for the States to set a standard set of conditions and there is a preference to have a subcommittee set individual terms and conditions and that those are going to be tabled with the annual review or the annual report to the States, my question was I did not think there would be an annual report to the States because I did not think this board was going to exist until there was a financial meltdown. I am confused, I was just asking for clarity.

The Deputy Bailiff:

Deputy, thank you. Chairman, it is entirely up to you. Do you wish to make any further statement on this point or not?

Deputy M.R. Higgins:

The only point I was going to make was that the Minister has already agreed that there will be a standing board that will be established now rather than in the event of a bank failure. Therefore, there would be accounts if there is any expenditure and I believe the Minister has indicated the department would be providing the funds. He was not going to ask the banks for the money but he is certainly going to expect accountability for any money that is going to be there so there would be a report to be brought before the House.

The Deputy Bailiff:

Thank you. The appel is called for. I invite Members to return to their seats to vote on the amendment of the Economic Affairs Scrutiny Panel to Regulation 11 of the draft regulations. The Greffier will open the voting.

POUR: 11		CONTRE: 30		ABSTAIN: 0
Senator A. Breckon		Senator T.A. Le Sueur		
Deputy of St. Martin		Senator P.F. Routier		
Deputy R.G. Le Hérisssier (S)		Senator T.J. Le Main		
Deputy of Grouville		Senator F.E. Cohen		
Deputy M. Tadier (B)		Senator J.L. Perchard		
Deputy of St. Mary		Senator S.C. Ferguson		
Deputy T.M. Pitman (H)		Senator A.J.D. Maclean		
Deputy T.A. Vallois (S)		Senator B.I. Le Marquand		
Deputy M.R. Higgins (H)		Connétable of Trinity		

Deputy D. De Sousa (H)		Connétable of Grouville		
Deputy J.M. Maçon (S)		Connétable of St. Brelade		
		Connétable of St. Saviour		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Deputy R.C. Duhamel (S)		
		Deputy J.B. Fox (H)		
		Deputy J.A. Martin (H)		
		Deputy of St. Ouen		
		Deputy of St. Peter		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		

2.10 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulation 12

The Deputy Bailiff:

The debate therefore returns to Regulation 11. Does any Member wish to speak on Regulation 11? The Assembly will, therefore, move to vote. All those in favour of adopting Regulation 11, kindly show. Those against? The regulation is adopted. We come next to Regulation 12. Minister?

2.10.1 Senator A.J.H. Maclean:

Regulation 12 sets out certain procedures of the board and places a duty on the board with regard to administering the scheme. The board must ensure that the scheme is administered in a prudent and economical manner and the resources are used efficiently and effectively. I propose Regulation 12.

The Deputy Bailiff:

Is it seconded? [**Seconded**] There is an amendment in the name of the Economic Affairs Scrutiny Panel. I will ask the Greffier to read the amendment.

2.11 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) third amendment (P.86/2009.Amd (3)) Amendment 6

The Greffier of the States:

Amendment 6, page 16, Regulation 12, after paragraph (3) insert the following paragraph: “(4) The Minister must present to the States a copy of any determination made under paragraph (3).”

The Deputy Bailiff:

Chairman?

2.11.1 Deputy M.R. Higgins:

Again just very briefly. It is part of the panel’s view that we want to see the greatest possible independence and, therefore, we want to make sure that everything was open and above board and we would like the States to see the procedures of the board.

The Deputy Bailiff:

The amendment is proposed. Is there a seconder? **[Seconded]** Does any Member wish to speak on the amendment?

2.11.2 Senator A.J.H. Maclean:

Again, I admire the Scrutiny Panel's desire for States Members to be kept informed of the minutia of how the board is going to operate. I am not sure that this is the best use of States time. However, I am trying to be as reasonable as possible with the panel's amendments and I, therefore, will agree to the amendment to Regulation 12.

2.11.3 Deputy M.R. Higgins:

We thank the Minister for that.

The Deputy Bailiff:

We will, therefore, move to a vote on whether to adopt the amendment. All those in favour of adopting the amendment. The appel is called for. Members wishing to vote, kindly return to their seats. The Greffier will open the voting.

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

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

2.12 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulations 13 and 14

The Deputy Bailiff:

The debate, therefore, resumes on Regulation 12 as amended. Does any Member wish to speak? If not, we will move to a vote on adopting Regulation 12. Members in favour, kindly show. Those against? The regulation is adopted. The next amendment is 12(a) which has fallen away. We come to Regulation 13.

2.12.1 Senator A.J.H. Maclean:

Regulation 13 limits the liability of the board and certain other parties to pay damages except for acts or omissions which are done in bad faith or which are unlawful under Human Rights Law. I propose Regulation 13.

The Deputy Bailiff:

Is there a seconder? [**Seconded**] Does any Member wish to speak? We will move to the vote. All Members in favour of adopting Regulation 13, kindly show. Those against? The regulation is adopted. Minister, I understand you do not wish to propose Regulation 14.

2.12.2 Senator A.J.H. Maclean:

That is correct, Sir. Perhaps a short explanation might be appropriate.

The Deputy Bailiff:

I think that would be helpful to the Members.

Senator A.J.H. Maclean:

Although I am satisfied that the content and effect of Regulation 14 are correct it has been identified that the provision should be located within the interlinked banking regulations, P.87, instead of the D.C.S. regulations. This is a stand alone provision so it has no effect on the scheme at all and we will re-lodge in due course. Except Members understanding on it.

2.13 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) third amendment (P.86/2009.Amd (3)) Amendments 9 and 11

The Deputy Bailiff:

Proposed Regulation 15 is to be held over and not proposed at this stage. I understand the running order is that Regulation 15 will be proposed at a later stage. So we next come to the amendment of the Economic Affairs Scrutiny Panel to insert new Regulation 15(a). I will ask the Greffier to read the amendment. The Greffier reminds me that Regulation 15(a) is being taken with the proposed additional Regulations 25(a) and 25(b) and it is suggested that we take the amendments as read, unless Members wish me to ask the Greffier to read them all out. They are very long amendments.

Deputy P.V.F. Le Claire:

Taken as read, please.

The Deputy Bailiff:

Taken as read, so be it. Chairman, do you wish to propose, therefore, Regulations 15(a), 25(a) and 25(b)?

2.13.1 Deputy M.R. Higgins:

I am confused. I am sorry, yes, if we are talking about the standing fund and annual levies. Yes, Sir, I would like to propose this. Part 9. Now I am finally with us I think. We have jumped from yellow to green and I got confused.

The Deputy Bailiff:

Green for go, Chairman.

Senator B.I. Le Marquand:

Sir, on a point of order. Should the Article not be proposed before the amendment is taken?

The Deputy Bailiff:

A new regulation.

Senator B.I. Le Marquand:

Sorry?

The Deputy Bailiff:

Brand new regulation.

Deputy M.R. Higgins:

Levies on banks. What we are proposing is that under the banking compensation scheme we have at the moment, we have a system whereby if a bank fails, banks will pay after the failure. That is what is known as an ex post payment system. The other types of system that are used for Depositor Compensation Schemes are ex ante - in other words, a fund is built up in advance of a failure - and there is a third type known as the hybrid. The hybrid consists of a standing fund but with the ability to levy banks if the standing fund is insufficient to meet the claims that are going to be made on the depositor compensation board. Members might have been puzzled by some of the things that have been written I think in the comments that we are creating a £20 million standing fund. We found in law drafting that we have to put a maximum figure on but it was not our intention that it be £20 million from the start. The intention would be to build up over a period of years and I mean years because we were not planning on the banks being overtaxed in terms of the amount of money they were putting forward but the idea was to build up this standing fund which would become the first line of compensation or liquidity because if a bank fails, we know from what is written in the regulations that the board are going to have to determine the amount of losses for the bank. They are going to have to go to the banks to find out the amount of eligible deposits they have got. Then they are going to have to calculate the levy - this is on the main levies anyway - what the banks are going to have to pay them. This takes time. In the world today, to give confidence to depositors that they can get their money back pretty quickly in the event of a failure and, very importantly, to give confidence to other depositors in banks because remember the last thing anyone wants to see is if one bank goes down, you suddenly get a run among the other 6 or 7. As was mentioned earlier, because of the way banking is done, banks never have sufficient cash within the bank to be able to meet a run on the bank. The money can be brought in. It can be brought from various sources and, therefore, people would be paid out but it causes tremendous inconvenience, causes tremendous doubt and concern among the population at large. The idea of Depositor Compensation Schemes is to pay people as fast as possible. Under the scheme as it stands at the moment, the States are proposing to lend to the depositor compensation board up to £100 million and that would be coming through the Treasury and so on. That money would be used for quick payments. But we believe that, first of all, there should be a standing fund so there is some liquidity already within the scheme but, secondly, we happen to believe that the scheme

should be totally funded by the banks. What we are proposing, therefore, is that the scheme itself is a hybrid scheme which has part of a standing fund but with the ability to levy the banks in the case of a failure and that the fund either be used initially for liquidity but then also for paying compensation on a major sort of basis. Under the proposals we are putting forward, if a bank fails the standing fund money would be the first to be used by the board. Levies would then perhaps be made on the banks and would be paid to the board and they would set up a separate fund for the bank in default. The idea is that that bank in default would have its own administration so, in other words, the board still has some administration money coming in. Let us say it is £8,000 we are talking about originally or which in the first year certainly the Minister has indicated he is going to pay. That money would enable the main board to operate but all the additional administrative expenses associated with the failure of whatever bank has gone down would come out of the new fund to deal with the bank in default. What we are doing here then is setting up the procedure so that we have the standing fund to deal with the annual levy that the banks pay in - the £8,000 or whatever to cover the costs - and whatever sum is agreed. As I say, the way that we have looked at this although we said the board will determine it we would expect the board to determine it in consultation with the banks. No one is trying to cripple the banks. No one is trying to cause them major problems. What we are seeking to do is to gradually build up a fund over years, which will be invested as well to build up to this £20 million level. There is nothing to stop ... in fact, our view was that if Members wanted to set the fund at £10 million, whatever. But to be credible and remember the Guernsey scheme is £20 million and we have been told consistently that we want to try and be at least on par with if not more competitive than Guernsey then £20 million was the figure that we came up with. From a customer credibility point of view - a depositor credibility - the fact you have a fund, you have money, gives you much greater credibility I say than an ex post scheme that does not. I will tell you that throughout the world I think it is something in the order of about 80 per cent are ex ante schemes or hybrids. The vast majority of them. The United Kingdom has a small residual sort of ex ante sum to do with the way the whole scheme came into being but it has been ex post. The Deputy Governor of the Bank of England, Paul Tucker, has indicated, as have others, that they wish the U.K. to move to an ex ante scheme. Why? Simply because the taxpayer cannot afford to bail the banks out any more. They want them to build up a fund in advance, together with all the other mechanisms they are going to bring into place. The idea will be the banks will be funding it and the money will be there at the start to deal with the problems. The other thing too that Paul Tucker has indicated and we have not gone this far ... but the Jersey Bankers Association in their letter was suggesting something that we dared not even mention to them. They were suggesting that the ex ante fund should be risk based. In other words, the banks that are more risky will pay a higher premium into the fund than the ones that are safe. We are told that all our banks are safe but at the same time there could be a flat fee. But it is a question of the board together with the banks to arrive at the best method of building up this fund over time so it does not cripple them but it is a credible fund. The other thing too about it is one of the big problems with ex post schemes is you are going to start asking the banks for money at the wrong time. If banks are going down you have got a major crisis. All you are doing is adding to their woes. You are taking money from them which they need to try and shore up their balance sheet and so on but with an ex ante or hybrid scheme they can be paying in when the times are good. Just in the same way the States is very proud of itself and rightly so for the fact that it built up the Stabilisation Fund and it built up the Strategic Reserve in exactly the same way. In other words, it is countercyclical. We are taking money out when you have got good times and putting into the pot. When there are bad times we would not take as much. When we were having our discussions with the law draftsmen, whether we have succeeded in what we were doing, we were saying that the board must take into account the economic conditions at the time. We want them to understand and work with the industry to make sure the fund is built up at the most appropriate place. Do not get us wrong. We are not trying to get all the money from the banks under any cost or anything else. We want to build up a fund in a way that is sensible and credible and to give the scheme that much more. Basically most of the amendments going through are explaining how we would pay

money into the standing fund and so on. It is more technical things about it. But the essentially thing that people really need to understand is that the fund itself is there to assist with paying compensation and giving liquidity. It is a very sensible thing. To be honest, the banks in a sense do not like it. Banks never like it. By the way, on everything that we have talked about we have spoken with the regulators in Guernsey, including the Deposit Protection Board there. We have spoken to the Deposit Protection Board in the Isle of Man. Their banks do not like it either. They all say it. But these are standard practices for these types of scheme. They are recognised throughout. In fact I have got to say that one thing that really has annoyed me about this process is the scaremongering - and I mean scaremongering - of the Jersey Bankers Association. The reason why I am saying this is, yes, there is consolidation going on. It is a point I was going to make earlier. There is tremendous consolidation going on throughout the world. This crisis has caused a re-examination of all the banks and their structures. Some of the banks are having to restructure because they got State aid. The European Union, for example, are insisting that if banks have got too much money they have got to divest themselves of certain things because it gives them an advantage over banks that did not get the money. There are restructuring issues there. The living will which I mentioned earlier is also causing banks to restructure because if banks are too complicated that no one can figure out how to unwind them if they get into trouble, then they are too complicated and you have got to slim things down. If there is duplication they have got to change. Irrespective of whether you pass the proposals that we are putting forward or the proposals that Economic Development are talking about, there could still be restructuring which will take banks out of this Island and cause unemployment. The cost of a Depositor Compensation Scheme compared to all the costs and all the other considerations that are going on at the moment are minor. Quite minute. As I say, the banks are very good as most businessmen would ever think, if you are faced with 2 or 3 centres, you plead them each off and you try and get the lowest possible cost and the lowest possible disadvantage. The only other comment I would make on that is the banks have done this before. We know they have. They did it with Zero/Ten. They are doing it now. When we start looking at tax to fill our strategic black hole and we start looking at some corporation taxes or some taxes that may affect them, you will be hearing them then saying that they are going to move and they are going to consolidate elsewhere. As far as depositor compensation is concerned, the sums and the inconvenience to them is relatively minor compared to, for example, any changes we might make with tax or something else. I think that is most of the points covered. If anyone has any questions I will certainly deal with them as we go through. But in the main it is a setting up of this fund. It is a different concept to what Economic Development are talking about, mainly because it gives the pro cyclical effect. You can if they wanted to ... as I say, the Jersey Bankers Association mentioned risk based premiums, you can introduce that. If they want to do it, at least they would have confidence in the other banks that are in the scheme and know that the risky ones - they know who is risky - would be paying more and, as I say, the depositors would have greater confidence. I hope Members will support this amendment.

The Deputy Bailiff:

So amended Regulations 15(a) which deals with the establishment of a standing fund, 25(a) which deals with the establishment of annual levies and 25(b) the payment from standing fund into the fund in respect of the bank in default are proposed. Is there a seconder? **[Seconded]** Does anyone wish to speak?

2.13.2 Senator A.J.H. Maclean:

The proposal for pre funding is based on the Scrutiny Panel's rejection of all the evidence from the experts on the strength of the banking system and insolvency processes in Jersey. The unified message from the J.F.S.C., Oxera and flowing from our analysis of the banks in Jersey is that the risk of a bank failure in Jersey is exceedingly low. This evidence is further supported by the fact that we have been through one of the most serious banking crises ever and no banks have failed in Jersey. The panel state that we cannot guarantee that this will continue. They state that change is

coming so the banks will be allowed to fail in the future. However, it is equally probably that proposals will be accepted to hive off individual deposits and keep them in a guaranteed safe bank. This would result in Jersey deposits being safer than ever. I think that we should admit that this whole area is complex. We cannot predict the future and we will need to respond once we know what changes are to be made relating to bank regulation. But at present we need to produce the best scheme for Jersey based on the current state of affairs. The Scrutiny report also states that post funding is not in accordance with international principles. The panel's report stated that the International Association of Deposit Insurers core principle 11 reject post funding. The fact is that this finding was based on material that is not part of the relevant core principle. Core principle 11 reads: "A deposit insurance system should have available all funding mechanisms necessary to ensure the prompt reimbursement of depositors claims whether ex ante, ex post or hybrid." This makes it very clear that post funding is in line with international standards. The issue of pre funding or post funding was considered in great depth during the development of the scheme. Although there are advantages and drawbacks to both models, I am in no doubt whatsoever that pre funding would definitely not be appropriate or proportionate for Jersey. The D.C.S. regulations follow the recommendations of the Oxera report that post funding is the best way of meeting the funding needs of a D.C.S., especially a scheme designed for the particular requirements of Jersey and its unique banking model. The report expressly states: "An ex ante, i.e. pre funded scheme, may impose costs in terms of fund administration or management and opportunity costs for industry that exceed the benefits." Pre funding is used where there are frequent bank failures as a means of reassuring depositors the liquidity will be available without having to wait for post failure levies from banks to come in. This is the reason that the U.K. are moving to pre funding. They suffer small scale failures from banks that are outside of the top 500 on a regular annual basis. However, Jersey does not suffer from regular failures. Jersey is clearly not needing to consider that particular option. The Scrutiny report states that pre funding would be fairer on banks although I might add they did not ask the banks themselves about this matter. However, we did ask the banks for their view. They firmly rejected the concept of pre funding. The Scrutiny report states that pre funding is more credible. However, it is hard to see what extra credibility pre funding gives. Pre funding would not result in there being sufficient monies to pre fund the failure of a medium size bank from the pre fund. Liquidity funding in such a case would come from the States loan. This is the crux of the matter. After all we are asking the States to provide liquidity to the Depositor Compensation Scheme so that there could be a quick payout. Adding pre funding does not add extra credibility. I believe there is no evidence that depositors would suffer any detriment under post funding compared to pre funding. Oxera state in their report: "Provided the right measures are in place, there is no reason why compensation payments under a post funded scheme should not be just as timely as those under pre funded arrangements." Indeed the Scrutiny Panel's own expert states in his report on page 146: "The expressed ability of the Jersey bank compensation scheme to borrow from the government adds to the credibility of the system." As the right liquidity measures are proposed, I cannot see any benefits from pre funding in Jersey. On the other hand, the drawbacks from having a pre funded scheme are all too apparent. The administrative costs of pre funded schemes are substantially greater than those of post funded schemes. There would be a cost to the States of establishing a £20 million pre fund from bank levies. Based on banks paying 10 per cent tax it can be seen that the payment of £20 million would result in a £2 million loss of income tax revenue to the States. The recently circulated Jersey Bankers Association letter indicates that if this amendment is accepted there is a strong risk of some bank consolidation out of Jersey which of course would lead to job losses and a further reduction in tax revenue. A 10 per cent reduction in our banking sector from the loss of banks translates into a 5 per cent fall in G.V.A. (Gross Value Added) and a loss of tax revenue of between £25 million and £30 million a year. The Jersey Financial Services Commission has indicated that consolidation is currently being actively considered at present by a number of banks. This is not, I confirm, the Jersey Bankers Association; this is the Jersey Financial Services Commission who are indicating that consolidation is being considered by a number of banks. Accepting these amendments will make the Jersey Depositor

Compensation Scheme uncompetitive and increase the risk of us losing banks. Pre funding would also require the imposition of immediate levies on Jersey banks to the tune of £20 million. This will needlessly remove capital from the banking system that might otherwise be used to fund lending to Jersey businesses and Jersey households; a critical factor in the current economic climate. Finally, our competitor jurisdictions have either rejected or indeed are moving away from pre funded schemes. Although Guernsey currently does have a pre fund, they have recently written to the banks indicating that they are going to consult about the possibility of removing it. For Jersey to introduce a pre fund element significantly weakens our competitive position when we do not expect to have any bank failures, based on our banking model. Our strong banking model, I should add. This analysis shows that the costs and disadvantages of a pre funded scheme in Jersey are considerable. Indeed it is hard to see any additional benefit that pre funding brings. This is why when I considered this issue I came to the conclusion that the objectives of the Depositor Compensation Scheme can be met just as readily by a post funded scheme. The cost and considerable significant negative factors associated with a pre funded scheme mean that I could not reject this amendment more strongly and urge Members to please do the same.

The Deputy Bailiff:

Does any other Member wish to speak?

2.13.3 Deputy P.V.F. Le Claire:

I thought that was a very good speech from the Minister for Economic Development. Unfortunately I am not able to support the amendment. It is a gut feeling I have got. You sometimes develop a gut feeling from experience. I remember when I was body-guarding the chairman of the Merrill Lynch group in Canada. The warnings were there loud and clear to the country basically. If they did not get their licence they would be off. They did not get their licence and they went. They moved rapidly. As I said before in speeches I have made, they went from I think something like 38 to 40 Mercedes Benz down to one overnight. The resulting job losses and the sell off of the brokerage arm of their business was just as rapid and the impact upon the economy was noticeable, and a chain event occurred. What it tells me is that when the Jersey Banking Association, present at that meeting the other day, spoke to me their words were ringing in harmony with those experiences that I went through. The risk of consolidation at this time for Jersey means that we would have not only just put at risk income, we would also put at risk jobs. I cannot support a scheme that is going to put £20 million away that is going to be invested. When you invest money you have to manage it and there are management costs to those investments. We would be playing with those monies and we would be incurring investment costs and people would be possibly benefiting or not to get this money raised. The Minister has spoken about a loss to the Treasury of £25 million to £30 million a year which far outweighs the cost of the money that is being offered on the other option. Beside which I thought this is what the States guarantee was for. The States were guaranteeing the money upfront. I think we have got an opportunity to get in place something now and we have got an opportunity to have something in place that we can measure and it is going to be reviewed in the next few months. I think that we need to get something on board that is not going to frighten off the businesses that we are trying to protect ourselves from. Let us not forget the fact that it is not just about protecting jobs in Jersey. Banking is all there is. It is not like in any other jurisdiction really. Banking is the only show in town. We have got to take on board their concerns because there are so many of us that depend upon the finance industry. Like it or loathe it, it makes sense to support it. I will not be supporting the amendment. I believe that there is a real risk with deposits being able to be moved from jurisdiction rapidly that any consolidation that a bank might do in the U.K. or elsewhere would transfer from this jurisdiction to another. The banks would also be increasing their costs. They do not grow money. They do not paint it, as my wife says. They are not painting money. They charge for those and we are seeing increased charges now. We will soon see greater increased charges. The next 6 months is going to be a critical period in the global term of financial institutions. The ability to access capital is going

to be certainly an issue for businesses that have been struggling to get back on the rebound. I think this would be a threat, not only to consolidation of jobs outside of the Island but it is also going to give us nothing really in return other than another £20 million upfront. It might frighten off a lot more money. It certainly could put jobs in jeopardy. While I agree it is a different scheme that has merit, I do not believe in this instance, in Jersey's context, it is a sensible one having listened to the arguments. I might be wrong but my experience and my gut feeling tells me I do not think I am.

2.13.4 Deputy S. Pitman:

I would like to respond to some of what the Minister has just said that the Scrutiny Panel has not listened to all the experts. We have taken advice from a Mr. John LaBrosse of Patterson & LaBrosse Financial Consultants Limited in Canada. He is an international expert and adviser and has advised the Canadian and U.S. (United States) Governments on these issues. We have consulted on documents from the International Association of Deposit Insurers. One can see if they look at the appendix in the back of our report, all the documents that we have read. That statement from the Minister is certainly not true. Who has the Minister listened to? Oxera, of whom his department drew up the terms of reference for their reports, and the banks and the Jersey Bankers Association, who have a direct interest in paying as little as possible to this scheme. As we have already heard from Deputy Higgins, Guernsey, the Isle of Man and the U.K. have moved to the hybrid system. That is the mix of ex post and ex ante schemes. Many other countries around the world are too and have already moved to these systems because they have learnt from the recent bank collapses. The Minister also referred to the International Association of Deposit Insurers principle 11 in one of their documents about funding. I would just add to what he read out. This is one of their principles: "Member banks should pay the cost of deposit insurance since they and their clients directly benefit from having an effective deposit insurance system. Recent I.D.A. (International Development Association) research indicates that ex ante funding has many more advantages than disadvantages, particularly with respect to ensuring prompt reimbursement to insured depositors, the maintenance of public confidence and as a means to avoid the pro cyclical effects of deposit insurance assessments." That is from the International Association of Deposit Insurers. Also the next few lines I will read from advice from our adviser. He asks: "Do Member banks pay for the cost of deposit compensation under this scheme?" "Yes." "Is the system able to levy banks ex ante before the occurrence of a payout event?" "No." "Does this system comply with principle 11, which I have just read out?" Partly."

2.13.5 Deputy D.J. De Sousa:

The Minister has just told us several times that the risk is negligible. The likelihood of our banks going down is negligible. We have a very strong banking model. I do not see what the fear of this is. If the banks are so strong and there is no chance of them going down, what is the problem with them paying into the scheme? The £20 million would be built up over a number of years not straightaway. They would gradually build up that fund. We have been told there will be a drop in tax revenues and drop in the G.V.A. if we adopt this amendment because the banks will leave the Island. Some of the banks are already choosing to leave. We have already been told this morning that 4 are relocating and a possible other 2 within 12 to 18 months. Am I right? It was mentioned this morning, was it not? A lot of this is scaremongering. What we did as a government, we planned, we put aside several pots for the bad times, and that is why we have money in the pot now to help us with the stimulus fund. We had the Strategic Reserve Fund, Consolidation Fund and the Stabilisation Fund. We as a government paid into those in the good times for the bad times. What is wrong with the banks paying into the fund in case the bank did go down in the unlikelyhood? Therefore, I will be supporting this amendment.

2.13.6 Senator A. Breckon:

I was thinking about this very carefully and I thought if there was a fund established from among the banks, who would pay for it? I thought as well about something the Constable of St. Clement

said about who would rather pay. I also thought about the travel industry. They have an insurance scheme. The question is if there is a failure of a tour operator or an airline, who pays? The travelling public pay because every time they buy a holiday within it is a few pounds towards a scheme which in effect bails everybody out. I know there is some discomfort, there is some public concern about the Strategic Reserve being used as an insurance, as a backstop for what is indeed commercial activity. There is I know some public concern for that. But the other question is if there is a levy on the banks, who will pay it? Will it be the banks or will they pass it on? I believe they will pass it on. There will be no such thing as a free bank account. It will be a premium per year; £10, £15, I do not know, £20. Obviously it will be able to be worked out. The banks themselves will not carry the cost of any of this I do not believe. They will pass it on. You and I and everybody else will pay. We will pay because there will not be a free account. The insurance scheme will be there from the banks but we will pay for it. I think that is what Members should bear in mind because I think from my point of view I can live with what is being proposed by Economic Development. I think were there to be a funded scheme then I think the Minister could ask the industry what they would do if that was the case and let us get the bad news out there so that we can make an informed decision, because I think it would be a premium on an account. It will not be a charge or a cost that the banks would carry themselves. They would certainly pass it on. It is the easiest thing in the world to do because within months they can write to all their customers and say that they are changing the terms and conditions for the accounts. It happens quite regularly and many banks are already charging for current accounts. I believe they would do the same and they would pass it on. For my part I am happy to go with Economic Development on this and at a later stage with the banks ask them what they would do if this were to be proposed because I think they would pass it on. I think if that is the case there should be transparency. If we are going to do it we should know what the effects are and what they would be on the ordinary person because that is who I believe would pay for this. That is why I am not comfortable with this amendment.

The Deputy Bailiff:

Does any other Member wish to speak? Just in time, Deputy.

2.13.7 The Deputy of St. Mary:

Just in time. Oh dear, gosh, is this important or is it not? Okay, fine. I was glad to have that confirmation from somebody. I have slightly been put off my stroke. The key argument against this I think is ... apart from the one that Senator Breckon mentioned just then which is quite telling of course. Eventually of course the banks will pass it on. Apart from all their shroud waving they will pass it on to their customers if we go ahead with this, it will have an additional small cost implication. I say small because to deal straightaway with that £20 million. We were told by the law draftsmen we had to put in a figure. The £20 million is the upper limit. If you look at Regulations 13 and 14 of section 25(a), you will see that the board determines that limit or would determine that limit. The key questions here are the matters of countercyclical, the fact that it can be set lower than £20 million and allowing risk weighting. The matter of being countercyclical is very important. I think my chairman pointed out that in 25(a), section 7, there is reference to the prevailing economic circumstances. It is not as if the board will go wildly out and levy banks to whatever degree they fancy. They are instructed to take account of what the economy is doing. We are just saying that it is prudent to have a pot. It is especially prudent to take money in the good times and set it aside for this purpose, rather than go and scratch people for money when they are facing real problems. That is not a very clever thing to do and we should not do it. We should try to build up the fund in the good times. So that is the countercyclical argument. It is important. One point that people have not mentioned, I do not think, is that as far as I am aware the E.D.D. made no investigation of hybrid schemes. They simply lighted on this which they are proposing which is ex post. They did not look at ex ante and ex post and hybrid schemes which they should have done in the light of the fact that hybrids are now the norm. It is normal. Jersey will be out on

a limb if we go with E.D. and if we do not approve this amendment. We will be sort of unusual. One element of taking money in advance is that it allows you to do some risk weighting. To look at that area of risk weighting. I know that in Guernsey they tried to do this and found it very problematic but that it is not a reason not to do it. Our adviser was quite strong on this that the issue of moral hazard is very important. It is the doing away with moral principles that has got us into the mess that we are in. Perhaps I will not enlarge on that point but the fact is that changes in banking behaviour are important. This is a tool to encourage risk adverse behaviour and to discourage risk if you go for risk weighted. You cannot go for risk weighted premiums if you do not have any premiums; if you simply collect the money when a bank has failed. By then it is too late. The risky bank has gone and the good boys and girls have to pay. That is not a good way to arrange a system to penalise people who behave well and the risk person just goes bankrupt. That is not what we should be encouraging. I am very concerned with the J.B.A.'s comments as relayed in the comments of the Minister on this amendment on page 4 where he says: "The cost of a Depositor Compensation Scheme is one of the critical factors that govern consolidation decisions." It is as if the D.C.S. will cost banks more than K.Y.C. (Know Your Customer), more than all the other compliance measures, more than suspicious transaction reports. It will cost them more than anti money laundering provisions. It will cost them more than all that. But they are the costs of doing business in any well regulated jurisdiction. The D.C.S. is simply a part of what has to be provided. The question now of course is whether it has an element of ex ante or not. I think maybe one of my last comments will be was the Minister said - and my eyebrows really went right up - what we want is the best scheme based on the current situation. But that is what got us into this extraordinary mess that we find ourselves in. Here I will just take Members to page 54 of our report - you do not have to go there because I will read it out - where we have a local banker, I think H.S.B.C. (Hong Kong and Shanghai Banking Corporation) with her J.B.A. hat on. With Standard Bank I am told. We had this extraordinary sequence as she told us about the consultation process which the department had had with the J.B.A. who of course did not come to meet us. She said, and I quote: "Certainly the J.B.A. meeting in November. At that stage I would say it was kind of seen as we do need to have a depositor protection scheme and at that stage people were starting to haemorrhage a bit of money. A lot of the small accounts were going so that more clearing banks were starting to panic about that having a big impact." That is November, starting to hit the panic button. "The consultation I think at that stage the J.B.A. said, yes, we think we should have one. That consultation followed through. I think there were a couple of special meetings ... because the world was changing quite fast at that stage. So I think first of all the J.B.A. said get one in quickly and then various members of the J.B.A. ..." and then she goes on. "I think certainly the March meeting concluded that things had died down." So in 2 months things had died down. "So I breathe a sigh of relief. Things are changing in the way people are thinking about this. Things were quieter. There was not the same haemorrhaging. It was more of a slow leakage now. So the message from J.B.A. was while not all banks think it is absolutely necessary, it is seen as a hygiene factor now." So we have moved on a few months. Now it is a hygiene factor. "Without one we are just not playing on an even playing field. So it was I think we need one and the message was if we are going to have one let us get one in quickly. But it was very balanced and we did change our views as time progressed." I have got a little note in my margin saying: "Astonishing". It is like every month there is a little flicker and we are nearly there. It is all right now. Breathe again. That is okay. I must say I do admire the good lady's frankness. I think it was very helpful to have that kind of insight into the thinking processes of the J.B.A. but certainly if they had come back to us formally as the J.B.A. they would have been questioned on that strange stream of consciousness which kind of flickered about and is totally at odds with what we hear from Mr. Noyer. I am very quote him again because it is so critical. I have a different quote. Remember this gentleman is the Chair of the French National Bank, the Bank of France like the Bank of England, and is also a member of the European Central Bank Governing Council. He said: "The only reason a number of banks have been able to return to profit is measures taken by policymakers to save them from failure not a return to normality in the industry. Indeed, one major risk in the period to come is the

emergence of a business as usual mentality.” I think that putting those 2 side by side sort of puts in perspective what the J.B.A. are telling this Assembly in their lobbying notes. There you have got to be very, very careful. Then I would like to repeat Mr. Noyer’s other remark as quote in the *Daily Telegraph*, 27th October: “Most of the negative effects of the economic downturn on balance sheets are still to come.” I just find that the contrast between this sort of fairly easygoing laid back, it is all going to be all right. I mean I wish it was true. As our Chairman has said we do not welcome the prospect of failures. It is not very pleasant being a Cassandra. But the fact is that the world has changed and that senior, senior people are telling us that the risk profile is completely different. If we say we are not going there, we will just hope that we do not need any pot at all ... because we are talking about any pot at all. We are not talking about £20 million. We are talking about having a pot and in the light of circumstances we will adjust the pot. To say that we do not need any pot at all is itself risky. I think Members should take that on board. They should take on board that having an advanced pot allows the board to adjust for risk, to lean on banks, to look at them carefully so that they can adjust the premiums and it allows this countercyclical process whereby you can top up the pot when the going is good. I would urge Members to reject the scaremongering of the J.B.A. they are all going to run away tomorrow. I think it is inappropriate and I will say more about that on the next major amendment. But for now I think that is enough. I do urge Members to go with this.

The Deputy Bailiff:

Does any other Member wish to speak?

2.13.8 The Deputy of Grouville:

I would just like to make a couple of points on this. The Minister said that this is very complex. I would most certainly agree with that. But there are many issues to consider. It is certainly not as simple as it may seem, if indeed it does seem simple. The point I would like to make is what the States are being asked to do here is to be the first port of call for any monies. If a bank fails, the States are being asked to cover the depositors first. I ask again, as I did this morning with the issue to small businesses, is this fair? Is this fair to the taxpayer? An issue that we have not considered. When people say it is okay that the States can pay up first and there is no risk with the banks. Members should consider about different branches and subsidiaries and upstreaming. I do not know if anybody has heard of the term “upstreaming” but it means that the money is not necessarily sitting in St. Helier waiting to be paid out. It is upstreamed in most cases to branches or subsidiaries. It is not necessarily going to be there at the ready. What the banks are asking the taxpayer to do is to have the funds there on the ready. So it is okay for them to make investments, to make loans, to have the monies whereby they can make money out of it but the banks and taxpayers have to secure this money in an account waiting for a bank failure which hopefully will never happen. But what about the States investments? What about our investments? Just a couple of points. Senator Breckon said that there is no such thing as a free lunch and the banks are going to charge for this. The banks are very sensitive to being competitive. They do not want to lose deposits. They do not want to lose money. Just perhaps another way of thinking about this is if we have the added security here whereby there is a tangible fund sitting there to pay out if anything does go wrong, it might secure more deposits. It might work in the reverse way that others are thinking. I am afraid that our general feeling was that there is not a standard scheme. There is not a standard Depositor Compensation Scheme. We keep on comparing ourselves to the Isle of Man, to Guernsey which are all changing. It is disappointing that we have to compare ourselves all the time to the Isle of Man and Guernsey because what really should have happened was probably about a year ago it should have been recognised that we do need a scheme in, this is a possibility and we should have worked with the Isle of Man and Guernsey because what we have done at the moment, we have created a situation whereby we are competing with one another. I am afraid it is a race to the bottom again. The Minister for Economic Development should take this on board because during a recent debate of the financial ombudsman I wrote down what he said because we

were working on this Depositor Compensation Scheme at the time. He said: "Let us work with Guernsey" but it is such a shame that we have not done so in this case because while we are their competitors, all it has done is create a situation whereby we are competing with one another on this particular scheme and this scheme should be for the retailer, should be for the depositor. Those are the people who we ought to be looking out for not giving the banks and bankers a blank cheque and saying: "You, States, pay out everything. You create the fund and we will sit back and wait and see what happens and then we will get our money in."

The Deputy Bailiff:

Does any other Member wish to speak? I call upon the Chairman of the Scrutiny Panel to reply.

2.13.9 Deputy M.R. Higgins:

I have just been writing a few notes as we have gone through. One of them was I wonder if Members are aware of the term "regulatory capture"? Regulatory capture is where a regulator is taken over by the people that he is regulating. There is also another term known as "jurisdiction capture". The truth of the matter is the Island has become so dependent on the finance industry, generating 53 per cent of our G.V.A., a large percentage of the employment, a large proportion of the purchasing power, that is has tremendous leverage in terms of what it wants to do. Therefore, as I indicated early, whether it be to do with the Zero/Ten proposals when they were being discussed because we heard that from Oxera or whether it be trying to fill the black hole in the future. When we start looking at how we are going to do it there is going to be pressure on G.S.T., certainly on certain types of capital gains taxes, the banks will make exactly the same statements as they have been making already about there will be consolidation or we will be driven from the Island and all the rest of it. This is a fact of life, it is something that, if Members are not aware of it, is going to become standard practice. I think maybe Islanders should be aware of it. It is the price you pay if you become too dependent on any industry. It makes no difference if it is finance. If we were depending on a fishing industry it would be exactly the same thing or tourism. They have leverage and they are exerting their leverage. Now I am not convinced that they are going to leave the Island because the Island has a lot of things going for it and, in fact, just looking at the latest Business Tendency Survey there are a number of little interesting points on it. It mentions that: "The indicator of future business activity was strongly positive for the finance sector and was slightly positive for the non-finance sector." However, then you start looking at other things it says ... start talking about employment, the current and future employment indicators were negative for both finance and non-finance and were particularly negative for large firms in the finance sector so, yes, you have lots of confidence in the Island in what they are doing but they are already looking at shedding jobs. The truth of the matter is that we received a lot of evidence from people in saying look at how bad the Isle of Man is, look how bad Guernsey is. The Isle of Man have had 2 banking failures. They had B.C.C.I. which is a major one and I remember the Isle of Man Depositor Protection Board people telling me: "The banks told us if we have another failure, we are off" and they were really unhappy with the fact they had a failure there. It took an awful long time to get the money back. Recently, they have had Kaupthing Singer and Friedlander, K.S.F., the Icelandic bank failure and, again, big money, a lot of unhappiness and so on. Now their banking mix is totally different to ours. If you look at Guernsey they have had Landsbanki and, again, their banking mix is different to ours. Yes, I may go on about the I.M.F. report but what I am trying to do is to highlight to people that our model is not without risk and, therefore, we make contingency plans. I do not believe they are going to fall down around our ears tomorrow but the point is I do believe in making contingency plans. I do not believe that if we brought in a Depositor Compensation Scheme, whether it be a standing fund or we do some of the other things that we are proposing, they are going to leave this Island. There are a lot of benefits with being here as the most recent report indicated from the *J.E.P. (Jersey Evening Post)* tonight with the American, I think, economist who was talking about how much funds were going out of Jersey into neighbouring locations such as the U.K., and most of it was coming out of Jersey. They have got a good situation

here and they are not going to want to give it up lightly but they will threaten it. Going back to Senator Breckon, he mentioned the cost will be passed on to customers. Yes, we all know that is going to happen anyway. I do not believe it will be to the extent that he thinks. It could be a matter of a few pence on an account. There are so many accounts they could recover any monies that they are putting into it quite easily. Whether they would stop at those few pence, I do not know but the point is it would not be the magnitude of £10 or £20 I do not believe. In terms of competition we have got, as Deputy Labey has mentioned, into this whole thing about competition. We talk on the one hand that we are going to co-operate with Guernsey on tax. I was a bit surprised at that when I heard the Minister for Treasury and Resources because Guernsey were announcing their proposals for changes in tax well ahead of anything I had heard here, so we are either working with them or we are not. They say that we are facing a common threat from the United Kingdom, for example the Isle of Man has had its V.A.T. (value added tax) rebate reduced quite considerably. They were told they would get no bailout because of their banking failure from the U.K. Government, as was Guernsey. So all the Islands, whether it be reciprocal health or things about passport controls, we are all coming under pressure from the U.K. and from other sources and we should be working together. The biggest failure of this whole thing about depositor compensation was that we should have been working in co-operation with the other Islands and taken co-operation out of it because it is, as Deputy Labey said, a race to the bottom. It is always the lowest common denominator, the lowest possible cost. One thing that I do hope people will do ... I think the vast majority of people did not read the I.M.F. report. I think it was about 320 pages or something like that. I did; needless to say that is why I highlighted some of the points we have been making. The truth of the matter is we have had it rammed down our throats for years. It is part of the spin that we have all come to accept from the Government in the Island, that everything is rosy, nothing will ever go wrong and, therefore, you know, what are people complaining about? The truth of the matter is not everything is rosy in the garden. I am not saying it is dire and there is going to be a collapse tomorrow but we must take on board that our banking model is not without risk. The Director of International Finance, for example when he was giving evidence to us, he was describing our banking business model and said how wonderful it was; you know, we are just a pot. Money is coming from all over the world and we are upstreaming it up to the head office. It is absolutely safe. It is safe until it gets to them he said, and then they go into casino banking. He even admitted the casino banking aspect of it. They could lose all the money; that side, we may not get it back. So the possibility of failure is not zero, it may be only a few percent or I do not know, 5 per cent, I have no idea; who knows. We do not really know how these groups are operating. Believe it or not even the Financial Services Commission does not really have a handle on it. Read the I.M.F. report. It says the J.F.S.C. should do some stress testing, make contingency planning; it should improve its links with other regulators and so on and according to the report they are doing that. The point is though there is a risk out there and we need to make contingency plans. I am finally just going to say that I hope Members will consider this. I think there would not be the disaster or the big calamity going for this. It is a good prudent safe guard. I support the amendment.

The Deputy Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is on the amendment proposed by the Economic Affairs Scrutiny Panel to adopt amended Regulations 15(a), 25(a) and 25(b).

POUR: 9		CONTRE: 36		ABSTAIN: 1
Deputy of St. Martin		Senator T.A. Le Sueur		Deputy D. De Sousa (H)
Deputy R.G. Le Hérisssier (S)		Senator P.F. Routier		
Deputy G.P. Southern (H)		Senator P.F.C. Ozouf		
Deputy of Grouville		Senator T.J. Le Main		
Deputy S. Pitman (H)		Senator F.E. Cohen		
Deputy of St. Mary		Senator J.L. Perchard		
Deputy T.M. Pitman (H)		Senator A. Breckon		

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

2.14 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200- (P.86/2009) (principles adopted on 15th July 2009) Regulations 16 to 22

The Deputy Bailiff:

The Assembly now comes to Regulations 16 and 17. The proposed amendments, Minister, to Regulation 18 fall away and I wonder whether you might wish to propose Regulation 16 to 22.

2.14.1 Senator A.J.H. Maclean:

I was going to do exactly that, Sir; a splendid idea. Now we have a head of steam. Regulation 16 sets out the obligations of the board if a Jersey bank becomes bankrupt. The board will publish a notice of the relevant date on which it considers a bank to have become bankrupt. The Minister must then inform the States as soon as possible of the name of the bank in default and the relevant date. Regulation 17 provides for the board to establish administrative arrangements following a bank becoming bankrupt. The board will send notices to the bank in default and to the other banks requiring information to enable the board to carry out its functions, for example by verifying claims and to allow it to calculate levies. The board must ensure that applicants for compensation are given clear instructions on how they may make valid applications for compensation. Regulation 18 requires the board to establish a fund in respect of a bank in default and sets out what must be paid into and what may be paid out of the fund. Regulation 19 provides for the board to make an interim compensation payment of up to £5,000 within 7 working days of receiving a valid application for compensation that requests such an interim payment. The amount of the interim payment may be decreased and the period may be increased in certain circumstances. Regulation 20 provides for the

board to pay the balance of compensation for a valid application within 3 months of receiving a valid application. The amount of compensation may be decreased and the period may be increased in certain circumstances. The Minister may also permit compensation to be paid by instalments over a specified period if satisfied that it is necessary to do so for the better administration of the scheme. Regulation 21 allows the board to refuse to pay compensation if an eligible deposit is liable to confiscation under anti-money laundering, proceeds of crime or terrorism legislation. Regulation 22 provides that applications for compensation cannot be accepted more than 6 months after the relevant date except where it is satisfied that the applicant was prevented from applying during that period by events outside of his or her control. I propose Regulation 16 to 22.

The Deputy Bailiff:

Regulations 16 to 22 are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak?

The Deputy of St. Mary:

Are we on the Article **[Aside]** ... I am sorry, sometimes you are called away. Are we on the Article which talks about the 7 days?

The Deputy Bailiff:

We are on Regulation 16 to 22. Does any Member wish to speak? Then we go to vote on Regulation 16 to 22. All Members in favour kindly show? Those against? Those regulations are adopted.

Deputy R.G. Le Hérissier:

If I can interject, the Chairman of the P.P.C. (Privileges and Procedures Committee) was going to make some kind of announcement as to how she was going to deal or propose the situation be dealt with.

The Deputy Bailiff:

Yes. Is it a convenient time, Minister, to take a break and hear from the Chairman of the P.P.C.?

Senator A.J.H. Maclean:

Absolutely, Sir.

The Connétable of St. Mary:

I am not much the wiser for this but, of course, I wanted to see what happened to the result of the large amendment we had which had a lot of consequential business to judge. I think there is a chance, depending on how one more amendment goes, that we could get to the end of this proposition which would be much more satisfactory I think than leaving it in mid-stream, as it were. Certainly, there would still be business to carry over to the next sitting. I wonder whether Members might agree to sit initially to say 6.30 p.m. to give us a chance to put this one to bed as it were.

The Deputy Bailiff:

Is that a proposal?

The Connétable of St. Mary:

Sorry, yes, it is a proposal.

The Deputy Bailiff:

The proposal is to sit until 6.30 p.m. Is that seconded? **[Seconded]** All those in favour kindly show? All those against? The proposition is adopted. The Assembly will continue until 6.30 p.m.

Senator P.F.C. Ozouf:

If I may just say, the Chairman is quite correct with this proposition and I do not wish to take the time of the Assembly but there are 3 consequential propositions or linked propositions from the Minister for Treasury and Resources. I just express the hope that people can speak very briefly on the issues. We have had some very long speeches **[Approbation]** which I am not sure would necessarily have changed Members' minds. If we have however long we have got, I reckon we can do the business.

The Deputy Bailiff:

Minister, Regulation 23.

2.15 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200- (P.86/2009) (principles adopted on 15th July 2009) Regulation 23 to 28

2.15.1 Senator A.J.H. Maclean:

Regulation 23 limits the amount of compensation per depositor per banking group to a maximum of £50,000. This matches the level of protection on offer in comparable jurisdictions including the U.K. and Guernsey and is in line with international standards. I propose Regulation 23 as amended by amendment one.

The Deputy Bailiff:

Members have adopted the amendment in relation to Community Savings and Credit Limited so it is probably pragmatic to take it as amended unless there is any opposition to that, but there does not appear to be. Is there a seconder? **[Seconded]** Thank you. Does any Member wish to speak on Regulation 23 as amended? All those Members in favour kindly show ... All those against ... The regulation as amended is adopted. We now come to Regulations 24 and 25, Minister, and I see that the amendment to Regulation 26 falls away and to 27, so you may wish to take Regulations 23 to 28 inclusive.

2.15.2 Senator A.J.H. Maclean:

Indeed. Yes, I will. Regulations 24 and 25 provide for the payment of compensation where the depositor is also entitled to compensation under a scheme in another jurisdiction, and allows the board to reduce the amount of compensation where a depositor has already received a payment in respect of his eligible deposit. Regulation 26 provides for the board to require banks to pay a levy. The board will send a notice to each bank specifying the amount the bank is required to pay, how much, how the amount has been calculated and the date on which the amount of the levy or any instalment of the amount becomes payable. Regulation 27 provides for the total amount of levies to be sufficient to raise funds to pay compensation and its administrative costs subject to caps on the levies and on the total amount of compensation payable. Regulation 28 sets out how the levy on each bank is to be calculated. This is by reference to the amount of eligible deposits the bank held on the relevant date. I propose Regulations 24 to 28.

The Deputy Bailiff:

Are Regulations 24 to 28 seconded? **[Seconded]** Does any Member wish to speak?

2.15.3 Connétable D.J. Murphy of Grouville:

Can I ask in respect of number 25, reduction in the amount of compensation, that there are arrangements made with banks about a right of set-off with borrowings against credit balances; would that be included in this paragraph and what would the effect be?

The Deputy Bailiff:

Does any other Member wish to speak?

2.15.4 Deputy M.R. Higgins:

I think I can help the Constable on that. There is no netting in the scheme at all; no netting, no right of set-off. In other words, it is done on gross. In other words, if you had, I do not know, £50,000 in the bank and you owed the bank £10,000 they are not going to net out the £10,000 and you only get the £40,000. That is not part of the scheme. In terms of 25, reduction in the amount of compensation, just a point of information for the Assembly and this basically is talking about where there are other Depositor Compensation Schemes and if you were going to get a payment from another one it would be deducted from what you are going to get here, so you do not get over your £50,000. The point I would just make on this is there is not one single Depositor Compensation Scheme anywhere with the banks that we have located who are going to pay anything out to Jersey. All our banks, the best majority of them are from the U.K. and also from Europe and the European Economic Area, their scheme for depositor compensation will not pay compensation to Jersey. We are outside the E.E.A. (European Economic Area) and, therefore, we can expect no support in the event of a bank failure there. We will get no money from Canada or from the United States so basically we are on our own when it comes to depositor compensation. So just a point of information for you; it is not going to be sort of netted out. Who knows, in the future if a bank came in and there was a scheme that would cover us but as I say we are on our own. We fund our own scheme.

The Deputy Bailiff:

Does any other Member wish to speak? Minister, do you wish to reply?

2.15.5 Senator A.J.H. Maclean:

Just very briefly, Deputy Higgins has very kindly answered the question I think of the Constable. There is no set-off or netting-off in this regard.

The Deputy Bailiff:

Regulations 24 to 28 are proposed. All Members in favour kindly show? Those against? Those regulations are adopted. We come to Regulation 29, Minister.

2.16 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulation 29

2.16.1 Senator A.J.H. Maclean:

Regulation 29 limits the total amounts that the board may expend on paying compensation and its administrative cost to £100 million during a 5-year period or any 5-year period I should say. The figure of £100 million is a cap for each 5-year period was reached for the following reasons. Firstly, the analysis of the data by Oxera shows that £100 million would be sufficient to create a scheme that protects natural depositors in small and medium sized banks in line with international standards. Secondly, it is important for the size of the Jersey scheme to match the Guernsey scheme in order for our scheme to be credible. Thirdly, caps are commonplace in Depositor Compensation Schemes and can be compliant with international standards. I would like to propose Regulation 29.

2.17 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) third amendment (P.86/2009.Amd (3)) Amendment 14.

The Deputy Bailiff:

Is the proposal seconded? [**Seconded**] There is an amendment to Regulation 29 in the name of the Economic Affairs Scrutiny Panel. I ask the Greffier to read the amendment.

The Greffier of the States:

Amendment 14, page 24, Regulation 29: For Regulation 29 substitute the following regulation: (29) limitation on the amount the board may expend in respect of bank in default. The maximum

amount that the board may expend in respect of a bank in default, by way of compensation and to meet the board's administrative costs in respect of the bank in default, is £65 million.

2.17.1 Deputy M.J. Higgins:

I can tell how it is all going anyway so I am not going to be spending a phenomenal amount of time going through this. What I will say is the panel has a different view of the way that this Depositor Compensation Scheme should be funded. We feel very, very strongly it should be funded by the banks themselves. The reason we say this is, and this is where we disagreed with the sort of changes to the Oxera report, because the fact is the vast majority of Depositor Compensation Schemes are paid for by the banks themselves. What we have done is we have created a system of caps which effectively are limiting the bank's liability. In fact, it is not quite as we have been told the way it has been done. We are looking at the moment because we have transcripts where it was described to us why the scheme was being brought in, in the particular way it was. Really the starting point was Guernsey, a £100 million account, and then we started looking at some of the figures and so on and we were told by the officers that if a bank failed it would be about £65 million ... In fact, yes, here we go. I will just read this out to you. We were taken through the process of how they arrived at the figure with the Director of International Finance. He said: "The reason you arrive at £65 million is because we have chosen to put a cap with an eye on the competing jurisdictions. So we looked across the water and saw Guernsey had a £5 million cap, we thought we could live with a greater cap, the industry were not happy with it but we thought we could get to a negotiated level where there was an acceptable gap but a reduced imposition on the Government and gave a fair charge to the industry. So we introduced at £10 million [that is cap]. Now, when you run all those numbers you come up with a figure of £65 million." I had better explain. Basically, depending on the amount of eligible liabilities the maximum of the larger banks would have to pay £10 million into the scheme. Smaller banks depending on the amount of money would pay £5 million into the scheme. When you put it together for all the banks it would be £65 million would be gathered by way of compensation. So he said: "Again, looking across the water, Guernsey have got a £100 million scheme. So starting from scratch in terms of credibility, could we have a scheme that offered cover that was less than Guernsey? We did not think so. So our starting point was we must have at least the same cover that Guernsey does, £100 million. So that one we thought: 'Okay, which of the pieces of jigsaw can we move?' So we thought that was a minimum. We thought there were many arguments for having a higher figure but we thought £100 million, that is the minimum, let us run through the numbers. We have ticked that box, we have ticked the £50,000 per deposit box, because that is the current standard." He then went on and he talked about how the sort of standard ... What I am trying to say is the scheme was not a fantastically well thought out, well researched thing. It was purely and simply looking across at Guernsey and just looking to see what we were going to have in a competitive way. Under this arrangement that we have adopted, we have capped the liability of the banks that in any 5-year period if a bank failed the banks would only pay £65 million but we brought in the £100 million cap. That means there is going to be a short fall. If one bank or 2 banks fail and we exceed the £65 million figure, it means we are going to ... Let us say we go to £100 million so we have a short fall of £35 million. Where are we going to get the money from? We are going to get it from the States, the taxpayer. So in terms of compensation, if a bank fails, a large bank fails and we have 2 or 3 banks fail and we have a liability of £100 million the banks pay the first £65 million, the States pay the other £35 million. If another bank fails within that 5-year period no one will get any money whatsoever. Forget the £50,000, it does not matter. We have capped it that in any 5-year it is £100 million in total. Now the Scrutiny Panel looked at this and we said, well, we do not believe the States should be putting in this money and it is even worse in other respects because it is also agreed under the scheme that the States will lend £100 million or up to £100 million to the board to use as liquidity to pay out. I have no problem with that and neither do the rest of the panel because we believe in protecting depositors, and if we can make a quick payout and pay them off quickly,

fine. The question is, though, how is that £100 million repaid? Well, as it stands at the moment the banks have paid their £65 million in that 5 years; we cannot ask them for any money. They are not going to be paying it back so where is the money going to come from? It is going to come from any money that we can recover from the liquidation of the bank. We were told earlier that, yes, Landsbanki are going to get a good return; they are going to get about 60 or 70 per cent back of their money. Well, Landsbanki was interesting because the first 30 pence in the pound was because they had the cash in Guernsey so they could get their hands on it. The other 40 sort of pence was transferred to Heritable in the United Kingdom and it was invested in property and other sort of medium/long term investments and rather than doing a fire sale and selling them for a fraction of the cost, they waited for them to mature and they are probably going to get back a bit more. The rest of the money they are probably unlikely to recover because some of it went to Iceland and we know how broke Iceland is and even though they were lent money by the I.M.F. and the British Government and all sorts so they can pay U.K. depositors, it did not extend to Guernsey or, in the case of K.S.F., into the Isle of Man. Not all bank failures will result in a very high recovery rate. I will give you an example. One that is going to take years and the chances of the people getting any money back is ... Okay, it is not a retail bank but it is Lehman Brothers. Lehman Brothers is an absolute nightmare. Before it went down the money was sucked up from all the branches and all the subsidiaries and went off to the head office and it has disappeared and there are so many legal actions and recovery actions going on, it will take decades. I think B.C.C.I., if I am not mistaken, took about 10 years or more to recover the money. Remember that we are looking to recover our money, our £35 million, from the recovery so we are going to have to wait for it and there are going to be lots of other creditors because we are not a preferred creditor. Although we are entering into subrogation where we ask our depositors to sign over their rights to the Depositor Compensation Board, it does not mean that we are top of the pecking order when it comes to payouts. We are not. We are treated ... I think *pari passu*, on the same level as everybody else. We also have a situation where ... So we have lost our £35 million which we have to recover from the liquidation process, it may take years, we may get it back, we may not and as I say cross-border insolvencies are an absolute nightmare. The European Commission are having lots of conferences about it to try and see if they can do something about it. No one knows the outcome of these things. Now the £100 million which we have lent for liquidity, again how is that going to be paid back? That is supposed to be paid back by the board. I think the board are supposed to pay interest on it. But where is the money going to come from? Again, it is going to have to depend, if the banks have paid their £65 million, on the recoveries. How long is that going to take to come back? The panel's view was as I have said before that these schemes are funded virtually everywhere else by the banks themselves so the proposals that we put forward are an alternative. We have taken the figures that the department has come up with itself, the officers have come up with, and they have said £65 million can be covered by the banks and they would cover most bank failures up until I think it is the 5th or 6th largest bank which, by the way, is all we are covering under our scheme anyway because the big ones if they fail we cannot cover them. So we said if it is £65 million that the banks can do, we do not want the States putting any money in so we will make it £65 million in the event of any one bank going down. Now, any one bank. We have not put a cap on it, there is no 5 years but the cap of £65 million in the case of only one bank, so on their figures we should cover all the claims on it. Mind you, there is going to be an element of recoveries in that as well. In terms of removing the 5 year cap, what we have said is if there is a multiple failure, let us say 2 banks go down, then the bank is going to have to have for £65 million for 2. By taking away the 5 year cap it just means they are going to pay for a bit longer. But what we did do to make it not unbelievably onerous on them and to give them an idea of what they would be paying, we capped the original individual caps per bank so, in other words, we were saying that in any one year they will only pay I think it is £2 million or £5 million. I cannot remember what the figures are but whatever it is we are keeping the same figures E.D.D did so that they would know each year how much they are going to pay. It is just that they are going to pay for more than 5 years to cover the losses on those banks. We have been told, and there was a lot of information that was put into the comments ... and I am not going

to go through them. I had lots of notes on these but I think everybody is tired and fed up and everything else, but the essential thing is that our scheme is no worse than - in fact, I think it is better than - the scheme we are putting forward. For a start, if 2 banks went down there is £130 million that we would put in. Okay, there would not be as much liquidity because again there is still only the £100 million that we are going to borrow from the States to pay depositors out, so it may mean some phase payments but that is built into this scheme. You have already heard, for example, the Minister can make powers to give a lesser sum, a reduction; it may be rated across or it may be delayed, it may be paid in instalments. These are standard for all these depositor schemes. So what we are saying is that our scheme is more generous than the one that we have got here and is more capable of dealing with a multiple failure, let us say 2 banks, than the scheme being put forward by the department. As I say, the scheme has no government funding. As far as we are concerned, the one we are putting forward has no government funding in terms of paying compensation which then we have to wait 10 years and try and get through recoveries. The only government money that would be used would be the £100 million liquidity but the difference between ours and E.D.D. is the banks would have to pay it back out of their levies. They can wait for the recoveries from the liquidators of the different banks. I think I am going to stop at that point. I can see the time going and people going but I think I have summarised what we are putting forward. I think people in this Island are going to feel quite resentful of the fact that this Chamber is going to be funding failure on the part of banks especially when the Financial Services Commission has no real idea what the money that these banks are upstreaming to their head offices is being used for. There is not ... The I.M.F. have mentioned this by the way, they do not have the degree of information and knowledge of what is happening upstream and as the Director of International Finance has already told us our banks are safe, they are just deposit takers but they upstream it and they go into the casino banks on the other side. I think if there is going to be a risk it should be borne by the banking industry, not the taxpayer. I will stop at that, thank you.

The Deputy Bailiff:

The amendment to Regulation 29 of the Economic Affairs Scrutiny Panel has been proposed. Is it seconded? **[Seconded]** Does any Member wish to speak?

2.17.2 Senator A.J.H. Maclean:

Now that the blue amendment has been proposed and States Members fully understand the concept, I would comment that this is a quite remarkable fundamental amendment to the proposed Depositor Compensation Scheme. The amendments would change the nature of the scheme almost beyond recognition transforming it into a multiple £65 million scheme per bank failure rather than a £100 million scheme over 5 years. These blue amendments have been lodged at short notice without any consultation with the banks who would, of course, be asked to pay. Curiously, the blue amendments do not appear to come from the Scrutiny Panel's own report or from any evidence given to the panel by the experts or any submissions to the panel from its own expert. There is no analysis or reference to reducing the £100 million to £65 million or having multiple streams in the panel's report or the report's findings or recommendations. These proposals are unprecedented compared to Depositor Compensation Schemes in competitor jurisdictions. While reducing consumer protection, they would increase the cost base and place an unlimited contingent liability on Jersey banks. Analysis shows that these amendments would lead to fewer depositors being fully protected because the £100 million cap would be reduced to £65 million. Should there be a failure in any one of 4 medium sized Jersey banks, depositors would not be fully covered for a quick payout compared with the £100 million scheme that we are proposing. This means the potentially thousands of depositors would be disadvantaged. Jersey needs a £100 million scheme in order to protect our depositors in line with international standards and to remain competitive. So are there any other benefits to the amendments? Although the amendment is apparently designed to cover more simultaneous failures, in practice they would not be able to do so. This is because there is no

additional funding in place on top of the States £100 million of liquidity funding. For example, if a series of 4 medium sized banks were to fail leading to a £200 million liability for the Depositor Compensation Scheme, where is the board meant to get £200 million from to pay depositors within 3 months? It will only get £100 million of States liquidity funding. We know from our inquiries that it would be very expensive if not virtually impossible to obtain insurance cover and commercial loans would be prohibitively expensive if not impossible in an environment where multiple banks are failing. The simple fact is that if the amendments were adopted it is inconceivable that the board would be able to raise monies quickly and would be unable to compensate depositors in line with international standards. The panel may believe that the board would be able to get money over time from levying the banks but this would add minimal value to the depositor. By the time that this happens with levies spread over many years, recoveries would be received from the insolvency process. Depositors would already have most if not all of their money back if the schemes did not exist. In summary, there do not appear to be any actual benefits to depositors under the proposals put forward by the Scrutiny Panel. They would not cover the failure of any one of 4 medium sized banks and would not appear to work any better in the event of multiple failures. These proposals do not increase but reduce depositor protection. Let us turn now to consider the cost implications of the amendments. The Scrutiny scheme is uncompetitive compared to schemes in comparable jurisdictions. It potentially requires a bank to pay up to 24 times the amount levied under our scheme per year and 48 times the amount levied under the Guernsey scheme per year. It would also remove the 5 year cap which would match that in place in Guernsey. To give numerical examples, if 4 medium sized banks failed in Jersey, under the Guernsey scheme a large bank would pay £5 million. In Jersey, under the proposed scheme the liability for large banks would be increased to £10 million. In Jersey, under the amendments lodged the liability for large banks would be £40 million. The contrast is stark. The cost of a Depositor Compensation Scheme is one of the critical factors that govern consolidation decisions. Our scheme aims to reduce the risks of banks consolidating out of Jersey with associated office closures, job loses for Jersey workers and the loss of tax revenues. In summary, the design of a Depositor Compensation Scheme was developed over many months by reference to expert economic analysis by Oxera and is supported by reams of data and analysis and an extensive consultative exercise with the key bodies and stakeholders. In contrast, this amendment would do nothing to improve depositor protection and would reduce the protection under the scheme. It would, however, almost certainly have additional costs and risk the long term interest of the Island in terms of the reduction of tax revenues and the loss of local jobs. I would urge Members to reject this amendment.

The Deputy Bailiff:

Does any other Member wish to speak?

The Deputy of St. Martin:

Could I just ask the Minister, if it incurred costs who would be paying those costs; would it be the banks or the public?

Senator A.J.H. Maclean:

It would be the banks.

2.17.3 The Deputy of St. Mary:

To deal straight away with that major point made by the Minister before it leaves people's minds, he was painting a scenario of 4 banks going down £260 million ... well, they said £200 million of liability and where would the liquidity come from? Well, exactly the same scenario, we had this little discussion, surreal discussion, in the briefing that the Economic Development Department gave to Members and I remember discussing with a civil servant who was putting forward this extraordinary scenario - which I think is slightly odd in itself, but anyway - of 4 banks going ping,

ping, ping, ping and saying: "Well, where is the liquidity? There is only £100 million in the scheme as amended." Well, actually, no. There is £100 million that the Minister for Treasury and Resources would be able to lend to the scheme immediately without coming to the States. But I have here a little note from the law draftsman and I think it is worth reading it out because it sheds light on this question. First, she says: "The £100 million limit in the Public Finances Depositor Compensation Regulations does not prevent the States lending more than that amount to the board" and we are talking about the liquidity amount. We are not talking about the liability; that would rest with the banks in our scenario but, of course, you need money quickly. "The £100 million limit does not prevent the States lending more than that amount to the board. There is not a problem. The £100 million limit is there to enable the Minister for Treasury and Resources to lend up to that amount to the board without seeking States agreement. If more than £100 million is to be lent [and, of course, now we are in a scenario of 2 quite sizeable banks going down] the Minister would have to seek the States approval first." Secondly, she says: "The Public Finances Regulations are not cast in stone. They can be amended. The panel ultimately decided not to include any provision in the B.B.D.C. (Banking Business (Depositors Compensation) (Jersey) Regulations) about the consequences of successive defaults. As I understand it that was because it was felt that if there were successive defaults the B.B.D.C. regulations would have to be reviewed anyway." In other words, the situation would be so dire we would be sitting here in emergency session scratching our heads thinking: "What do we do now?" and by the way it would be rather helpful if we had had a standing board at that time and hopefully we will have by that time. It would seem logical that the Public Finances Regulations would be reviewed at the same time. So in a situation of 2 or more banks going down, as has been suggested by the Minister quite implausibly because after all, all our banks are top drawer and this will never happen, then in fact the situation is retrievable. There is the mechanism for the liquidity situation to be sorted. The £100 million, straight away the Minister can do it tomorrow and the extra £100 million the States would have to approve the Minister's need to lend that money. So I just felt it was important to spell that out because the Minister made a bit of a meal of that, and it is quite critical because it would have undermined the position of the amendment if Members had not understood the true position. I want to start by saying that the Government support to the board and the D.C.S. is totally agreed with by the panel. We support the board, the law and all its effects and the liquidity guarantee and that demonstrates the commitment of the Government to the scheme and to the banking industry. There is huge sensitivity here, there are thousands of depositors, it would be a mass problem, there is public concern and so on. So we are totally with this but the question we are discussing with this amendment is taxpayers' money at the back of the scheme. Taxpayers' £35 million and, in fact, the £100 million at some degree of risk. **[Aside]** So we are talking about £35 million which is fundamentally being put into the scheme by the taxpayer, but I want to turn this debate on its head in a way and just point out to Members that that is extraordinary. It is not the opposite that is extraordinary; it is not taxpayers putting in £35 million. What is extraordinary is that the taxpayer should be asked to do this and for 4 reasons I have here. The first is that we, the States, are being asked to insure one sector. I just ask you to imagine if the building industry came to us and said: "Oh, by the way, we do not like this situation where we can be sued for defects in the first 10 years or whatever it is or we do not like this situation where if we mis-design a building and bits fall off that we should be liable. So could you provide some backup insurance?" Well, no, and the same would go for any other sector. But is it not strange that we are being asked to support in this way ... I have already said we have supported the industry by the very work we are doing now and by a huge framework of law which we pass from time to time quite urgently when it comes to us from E.D. So there is the support there but we are being asked to back up an insurance scheme with public money. That is extraordinary and we should see it as such. The second extraordinariness about this is this element of the J.B.A. saying: "We will leave." The Minister's comments on this amendment, wisely they quote the ... sorry, does anyone have the Minister's comments? Sorry, I have it myself. It is okay. The Minister's comments on page 7: "The consequence is that the J.B.A. have stated in a letter to the Minister that the panel's proposal would

lead to additional consolidation away from Jersey.” Then on page 4 which I quoted before in another context: “The cost of a Depositor Compensation Scheme is one of the critical factors that govern consolidation decisions.” That is the Minister’s references in his document to the J.B.A. But, of course, he is being very cautious, is he not? Those are not exceptionable ... one would not take exception to those comments but one might take exception to where they point. The Minister is pointing us to the J.B.A.’s letter to all Members and there we have a completely different kettle of fish. Well, it is the same kettle of fish but expressed differently. We have on the second page of the J.B.A.’s comments to Members ... what do they call it? Well, it is just a letter to Members: “The proposed amendments to the Depositor Compensation Scheme would add such a level of uncertainty as to future profits that it would seriously affect Jersey’s ability to retain let alone grow its banking industry. We believe that such a step could lead to a vicious circle effect, i.e., if one major bank leaves the Island there will be fewer banks to pay for the D.C.S. and the regulatory infrastructure of Jersey making it more expensive and uncertain which would cause other banks to leave. In our considered opinion, this would be political and commercial suicide for the Island of Jersey.” That is a pretty serious thing for a lobby group to be saying and on the final page of their letter, page 4: “The revised proposal, if passed by the States of Jersey will give rise to a fundamental review of the cost base of banks operating on the Island.” Then they talk about the uncertainty of unemployment prospects and firms may decide to leave the Island. They are definitely waving the shroud or, as the Deputy said, the spectre and it is a very serious threat and I would ask Members to consider the nature of that threat and remember the context is that I am point out how extraordinary this all is. “The banks will leave”, they say. “The banks will leave.” It is blackmail. Pure and simple and the question for us is ... and remember that they did not appear to Scrutiny. They have written to Members. They appeared at the E.D.D., the Economic Development Department’s briefing, but did they come to Scrutiny? No, they did not and I reckon that that comes pretty near to contempt. They came to one side. They were consulted constantly by the Economic Development Department but would they come to us, formally, as the J.B.A.? No, they would not. It is a sector of the economy that thinks it is above the Government and I do ask Members to consider that if they vote, in effect, for the bankers, in other words saying that the taxpayer has to pick up a third of the potential liability, that this Assembly is no longer sovereign and my Chairman talked about capture, regulatory capture. We would be in second place and I just ask: “Does that not fill you with alarm?” Because that is exactly what the critics of our Island and other offshore centres, in fact, say. So there is an issue there about control and about governance of the whole Island. We are told that offshore banks move easily. I think that is in the comments. It has certainly been said in the debate at some point and I was fascinated to see Senator Ozouf nodding vigorously in disapproval when my colleague, the Chairman, was mentioning this fact because the Chairman was saying: “The banks have good reasons to stay in Jersey.” As we know, a vast pool of highly trained, highly experienced labour, beautiful beaches. Yes, they do count. The quality of life does matter. You do not want to go shooting off to somewhere that has a far lower standard of public services and so on. But the good Senator, the good Minister for Treasury and Resources shook his head because there is, really, no reason for the banks to stay here. They could and would go and I question the loyalty. I question the values behind an industry that is here sitting in Jersey and is threatening us by saying: “We will leave. We will leave.” There is serious issues there and I would ask Members to discount a little bit what the J.B.A. tell us, not only for that regulatory capture issue but also for the 3 quotes I am going to read to you on the front page: “You should be aware”, they say: “of our initial and continued support for the original D.C.S. proposal.” Original ... initial and continued support? They were the ones who held it up. They are the reason why we have not got one already. “J.B.A. fully understand the need for a scheme which protects depositors”, well I am glad they say that and then the fact that they did not come to Scrutiny to share their concerns with us or to go through anything at all. So that is the second reason why this is quite extraordinary, this £35 million being put in by the taxpayer. The third reason is that it is the richest sector in the world possibly bar the oil sector. I do not know. There are vast profits. I read in *Meridian* the other day about a top banker getting £9 million in his pay

package, not the salary but the pay package. We are talking vast sums and vast profits except for when it goes bad when they become vast losses. So that is extraordinary that this poor sector is coming to us and asking for this financial support in the area of insurance. In the area of insurance for what their normal activity is. The final reason for which it is extraordinary is that this is the sector that has just wrecked the world's economy by acting in ways that were immoral. They were packaging up and selling things they had no idea what the true value was and the image of the friendly, here-to-help you banker, I am afraid, has changed. The *Daily Telegraph* a few days ago, I just saw it, I did not buy that one, had a headline that every family the country ... I think it was every household in the country has now bailed out the banks to the tune of £3,500 each. That has changed people's perceptions and the perceptions of the culture around banking and there are references in, in fact, our report and I quote from the Governor of the Bank of England in a speech he made on 17th June 2009: "There is no support in this country and no case for excessively bureaucratic regulation but change to the structure, regulation and, indeed, culture of our banking system is necessary." Culture. "Blaming individuals is not a substitute for acknowledging the failure of the system of a certain type of banking." We have a real opportunity now to put that right and regain the trust that has been lost but by putting in one-third of the funds for liability for insurance, we are saying: "Go back. Carry on." We are not saying: "Regain the trust. Insure yourselves, put up the money, and be sure that what you are doing is safe." The Deputy Governor, we quote on page 32: "It must be redrawn to reflect the lessons from the crisis and also to mark a credible shift in regime so that as an industry you can re-establish trust and stand on your own 2 feet." That is what this amendment is about. Whether the industry will and can and should stand on its own 2 feet. So I think I am going to leave it there.

2.17.4 Deputy P.V.F. Le Claire:

I can understand the Deputy of St. Mary has a passion for putting across his intellect and I do not want to be condescending and patronising as I was accused of being yesterday when I speak but I am just speaking from a position where I believe I need to justify why I cannot support this amendment, to demonstrate the electorate who are sold on the idea that why should the banks pay, we should protect the local population and ... sorry, why should the taxpayer pay? We should protect the population and make the banks pay. Well, the banks, arguably, will never leave Jersey. It is highly unlikely as long as there are banks in operation that Jersey will ever not have a bank. The offshore moves of a bank and its staff are not easy to move but they can move. But what is important to realise is that the offshore deposits that are held, and the vast amount of those are held by non-residents, can easily transfer to another jurisdiction and if the costs ... it is difficult to concentrate while everybody is speaking in their own ... while the costs of the bank's operations are met by the deposits and accounts they hold, the individual ... let us take an expat sitting in Cyprus, for example. They get told by their bank that their bank charges in Jersey are going to go up £2 a month, £5 a month, and they see a comparable scheme in Guernsey is £5 a month cheaper. It is very, very simple for them to move from Jersey to Guernsey. I think that is the issue. Because I do not think we will lose the banks, we will just lose all the accounts in the banks and we will just lose all the jobs in the banks and the banks will still stay here upstreaming all their profits because nobody can identify what is going on but the benefits that we receive from the banks will diminish and they will move offshore. They will move offshore from our offshore jurisdiction to some other offshore jurisdiction. That is what I am worried about. I am also worried about the fact that the scheme needs to be a credible scheme and what is being proposed is a credible scheme. It is £100 million to match £100 million. The subsequent amendments that were required in the States Strategic Reserves transfers have not been brought forward by the Scrutiny Panel so we do not see the compensation in relation to these risks in other legislation. So I think we need to recognise sometimes we need to get people on board and adjust the direction once they are on board. If we move now too far, I think there is a great risk that we will not get these important institutions on board. I think the message will go back to head office when they are doing their marketing: "Let us market our other jurisdiction and let us put all of our new jobs or our new locations into that

jurisdiction.” Consolidations will occur in other jurisdictions and, more importantly, new banks who are considering coming to Jersey will not come. So I think it is far better to protect the needs of the taxpayer by preserving our economy today and accepting a little bit of the responsibility as the States of Jersey for this activity and the guarantees matched pound for pound by our Strategic Reserve which sends out a strong signal to the population; we stand by our industry, we believe in our industry and our industry will, if in the unlikely event it suffers, its needs will be met and the deposits of the individuals will be covered. I just believe if we try to go too far the consolidations I have witnessed firsthand sitting next to the chairman of a very, very large multinational, the ones I have seen and the effects I have seen, I think they will come to Jersey and if they come to Jersey, look out because we have nothing else and no way of getting out to do anything else to come home to. We have got to preserve this industry. We have got to get them on board and if we need to make changes in our directions, let us do it 6 months time, let us do it in a year’s time, let us do it in 12 or 18 months’ time. Let us not try and mess it up now. Let us try and cut down some of the long speeches including my own [Approbation] and get this thing in place now so we can protect the people now in case, on Monday, things do not turn out the way we would like.

2.17.5 Deputy J.M. Maçon:

Just to make a point, I believe the Minister for Economic Development said that the scheme needs to be £100 million because if a medium bank went down, £65 million would not cover the cost of that going down. I believe that is what the Minister said. Therefore, in the event of 2 medium banks going down, either scheme would not cover the amount of money in which case the Minister for Treasury and Resources would have to come back to us regardless. Now, we have this issue of the £65 million. This is calculated by small banks paying £5 million and medium-sized banks paying £10 million and so that comes to a figure of £65 million with £35 million being the taxpayer picking up the rest. However, in the event of a failure, the figures do change. If a small bank goes down, we cannot claim the £5 million that that bank would contribute. Therefore, we are looking at a split of 60:40 because we cannot claim from a bank which has failed. If it is a medium-sized bank it goes down by £10 million. If we lose a medium and a small bank it goes down by £15 million. If that were to happen it becomes a 50:50 split. So I think Members really do need to understand the figures and how easily they can change. Of course, if we get more banks with retail deposits in Jersey then that figure will increase. Of course, if we lose banks, that figure will decrease. So I just want to draw Members’ attention to the fact that the £65 million, with only one-third being public liability, is very fluid in this situation. Also, one further point is, if we are in the horrific situation where we have more than one bank going down, obviously, the amount of deposits that are being claimed for will increase which means that the overall money needed to pay for that will also go up. So again, looking at the balances and how this all changes, the scheme as proposed does expose the taxpayer more and more and this, I believe, is the panel’s fundamental problem with this scheme as proposed. Therefore, we have suggested that if we had £65 million per bank failure paid by the banks, the industry itself which, as we have seen, has caused a failure by itself. It is its fault. We have not done anything; the taxpayer has not done anything. It is the banks because of the business, how they were pursuing their practices. We have brought forward the amendments saying that, really, it is not the Jersey public that should be paying for this. It is the industry because it is the industry that has got itself there. I just wanted to raise these points because I think Members needed to understand the figures and how they change depending on the situation at the time. As it stands, under the proposed scheme by the department, taking the banks that we have here, it does come to a figure of £65 million but if we lose a bank, that figure does decrease and increases the public liability.

2.17.6 Senator P.F.C. Ozouf:

I want to just say to Deputy Maçon that I think that he fundamentally misunderstands the representations and the comments that have been made by the Bankers Association to all those involved in drafting of the scheme and it is simply this; that the scheme provides for banks that

have remained in business. After a failure, they are the ones that pay and the Deputy, I do not think quite understands the fact that there have been aspersions cast - and I will come to the Deputy of St. Mary in a second - about banks but it is the remaining banks that pay for the failure of the failed banks and the linkage is that the States also should pay over and above a certain amount in the event of a failure. I really wanted to ... and I cannot let, I am afraid, the comments of the Deputy of St. Mary go unchallenged because I am sure at this hour there are many members of our banking community who will be listening to this debate. There will be many managers, many directors, many relationship managers, call-centre workers whose jobs depend on the banking industry [Approbation] and I have to say that as a Member of this Assembly I am shocked to have heard the tirade that I heard from the Deputy of St. Mary [Approbation] and I would go out and I would suggest that there should be a clear message sent out from this Assembly that the comments of the Deputy of St. Mary are not reflected of the majority - at least I hope - of Members [Approbation]. Our banks, yes, are here to be profitable businesses but they are also well run banks. They are the best banks in the world with one of the best regulatory environments which has been proven by independent evaluation. They employ thousands of people. They pay significant resources to our Island community. They contribute to culture and art in this Island and have made this Island what it is today. I have to say that it is shocking to hear a Member of this Assembly cast aspersions as he did, in the way that he did. I think that members of the Bankers Association, staff and employees have the best interests of Jersey at heart when they are commenting and making representations [Approbation] and to suggest the kind of comments that have been made, I am almost speechless. Because to accept the amendment is as simple as this; another Finance Minister in another place once said: "I think it is a bit like sending the team out for a cricket match with the bat smashed up," because that is what, effectively, from a competitive position this Assembly would be doing to our bankers in the event of putting in place this unacceptable, unlimited liability on our banks. It is simply incredible and unfair. I think I have gone far enough to express the disappointment of the comments that the Deputy has made. But I will say one final thing. In relation to the amendment, the amendment has to be credible. The proposal for a scheme has to be credible. It has to be certain. One of the important aspects of a Depositor Compensation Scheme and its credibility is the ability to make a payout of £5,000. The whole purpose is to allow for automatic, without further reference to this Assembly, arrangements for a payout of £5,000 and I am afraid nothing ... immediate payment, that is the arrangement up to £100 million, if Deputy Maçon is confused. I am afraid that this amendment simply does not work with the cash flow arrangements that have been made. It simply does not work in terms of being credible and in terms of cash flow. If there was any reason for Members not to support this amendment, it simply does not work from a cash flow arrangement according to the other propositions and the linked matters that Members have before the Assembly. So I urge Members, if Members were concerned about the pre-funding option, this one is far worse.

2.17.7 The Connétable of Grouville:

Firstly, I would just like to take Deputy Le Claire to task on the fact that he thinks it is easy to transfer a bank account. Believe you me, if you have tried to open or transfer a bank account recently, you go and try to do it. It is not easy, believe you me. Secondly, I completely agree with the Minister for Treasury and Resources and his comments about the Deputy of St. Mary's remarks. Quite frankly, I was astonished and shocked. Not because they were so anti-banker but they were so anti-Jersey and so anti-establishment.

The Deputy of St. Mary:

I would like to make a point of order there.

The Connétable of Grouville:

Going to the meat of the matter ... no, I am not giving way.

The Deputy Bailiff:

Do you have a point of order, Deputy?

The Deputy of St. Mary:

Yes. The Constable is suggesting that I am anti-Jersey. That is, in fact, the opposite of the truth but I would like to say that something I did not say was “here in Jersey”. I was not referring to the culture of banking here in Jersey when I was talking about failings and culture, I was talking about higher up because that is what Lord Myners is talking about. That is what the F.S.A. are talking about.

The Deputy Bailiff:

Deputy, please sit down. Connétable, please sit down. That is as far away from a point of order as it is possible to get. A point of order requires the Chair to rule on an objection of some sort, usually to apply Standing Orders. That is just a second speech and I do not expect Members to raise points of order when they are not such. Connétable? **[Approbation]**

The Connétable of Grouville:

It is a pity that the Deputy did not make his meaning clear when he spoke. Going back to the meat of the amendment, I have to say that in my experience, which is some long time ago in banking, banks do not go down singly. What happens is you will get a bank that goes, that will waiver, it will fall. That then creates problems with other banks because confidence goes. Then the other banks go. Now, if that happens, as I understand it here, we are open for a series of £65 million if that happens. Under the regulations as presented by the Minister, we have a cap of £100 million where we can then sit back, conjugate and decide where we are going from there and I much prefer that. We are very fortunate in that we have a Bankers Association in Jersey who are willing to work with us to help and assist in drawing up these regulations and I do not think we can really get a much better backing than we are getting from them and I really do think this amendment should be withdrawn now.

2.17.8 Deputy G.P. Southern:

It is always refreshing, even at 5.45 p.m. on a Friday evening to hear Senator Ozouf up to his usual tricks telling one Deputy that he is confused and another Deputy is making shameful statements. How refreshing it was to hear the original thoughts, the genuine and passionate thoughts of the Deputy of St. Mary when he outlined what happened in cases of jurisdiction capture because we are certainly being captured. Let us examine some of the issues that have been brought before us today. We have a scheme designed by the Minister for Economic Development and his officers which is designed the way it is with one single causative factor driving it; that we have such good banks in Jersey, none will ever fail. But this Minister for Economic Development wants to have it 2 ways. He then starts talking about: “Let us suppose that 4 middle-sized banks go down” having started from a premise that that will never happen in Jersey. The consequence of this never happening in Jersey is that of course we do not have to make up a real scheme. What is the prime driver of our scheme? Is it to protect depositors or is it to keep costs down for the bank? The scheme that they have come out with does the latter very well. It keeps the cost down to the absolute minimum. Reluctantly, the Minister has come around to say: “Maybe you are right. I have to form a real board.” We had imaginary one before, that was minimal cost completely. So he has moved a little but not very far. Then in order to dish the alternative presented by Scrutiny, he then invents 4 banks failing simultaneously. As Deputy Maçon has pointed out, if 4 banks go down we are in deep trouble because neither scheme is going to bail us out of that. In fact, if 2 but certainly, if 4 ... let us pick the extreme version presented to us by the Minister for Economic Development. We are in a mess. Certainly, so if 4 banks go down, under the Minister’s scheme what happens to depositors? Will they see their money? No, he has a cap on contributions that is not only a sum per year but cannot go beyond 5 years. How much money can he raise? Not very much, and then spread it through 4 bank’s worth of depositors who have lost their money. So it is a

very thin guarantee indeed. While we are at it, we come across this argument and we come across it time and time and time again; the banks will leave. "Do not treat us with kid gloves and we will leave." Well, where are they going to go? Because all around the world everywhere where banking takes place, they have a Depositor Compensation Scheme. It costs, usually the banks, something. All around the world. So where are they going to trot to where they can get away without paying something towards a banking contribution scheme? Nowhere. That is the answer. Where are they going to go? Will they go for that reason? Of course they will not. Of course they will not. This is a nonsense argument because everywhere around the world has a Depositor Compensation Scheme. Now, when we were talking to the U.K., with all their problems they have had, I asked their people: "What happens?" Yes, you provide liquidity. So you will put money in the system for the banking deposit protection scheme. You will also, if necessary, put a whole pile of money to support the whole banking system but particularly, for liquidity sake, just like ours, you will put some money in the system to make sure that depositors are protected. What happens as a result of that? Their official said: "We will claim that money back from the banks." I said "What? How long would that take? You might be talking millions. Billions." "As long as it takes", he said. "We will get every penny of that back if we possibly can because this is a cost of doing business." In the past, maybe, you did not have to have Depositor Compensation Schemes but now, in order to have any trust in the banks from depositors out there we have to. It is a cost of doing business and he says: "That is the cost of doing business in the U.K." It is the cost of doing business in the Isle of Man. It is the cost of doing business in Guernsey, and it is the cost of doing business in Jersey. That is the reality. Live with it, bankers. That is the statement because the world has changed and while we are at it, this idea of the 5 year cap on contributions which makes sure, you know, if you have not got a belt on and braces that you are not going to be forking out too much because you have a 5 year cap. How many places do they have a 5 year cap on contributions? I am sure you know the answer; one. The one we have copied in Guernsey. It is unique, except we are going to replicate it. It will no longer be unique. Everybody else does not have that sort of a cap. They have a cap but not time limited and that is a rare, rare thing. Instead of which we are called upon to put taxpayers' money into, as Deputy Wimberley says, this extraordinary situation of supporting an insurance scheme that should be paid for by the banks. That is what we are going to do if we do not accept this amendment.

The Deputy Bailiff:

Does any other Member wish to speak? Senator Routier?

2.17.9 Senator P.F. Routier:

Deputy Southern has really brought me to my feet. Some of the comments he made just now about: "Live with it, bankers," I just cannot believe that he could just come out with a comment like that to say to the business community who we need as much as they need us. The cost of doing business is something which they do compare from jurisdictions to jurisdictions. Those Members who have had the opportunity to come along to the meeting which was held, and there were representative of the banks there, and listened very careful to what they had to say and they do make judgments and it is not judgments that are made in Jersey. It is judgments that are made in the boardrooms of their parent companies. It is made in the U.K. It is made in Europe and if the board of directors look at the costs which are different in Jersey, Guernsey, Isle of Man, they will make that decision and if they see that the costs, and our scheme does not have a limit, they take the cap off, they will make that choice and, evidently, to my mind ... to me it is a big, big risk we would be taking if we supported these amendments. I think it was the Minister for Treasury and Resources who said that if Members felt that the pre-funding was an issue they were worried about, well this is a real one to be worried about. The 9 Members who supported the pre-funding amendments, well, I hope even some of those think about the way they vote on this one because this one is the worst of the lot. The £100 million is ... well, there were comments in the previous debate about the £100 million and we should work with Guernsey, a lot closer. Well, that is what Guernsey have. They have a £100

million cap. So I do not think we should divert ourselves from what we have here. There is one thing I just cannot let go, I am afraid. It is something that the Deputy of St. Mary commented about; that the J.B.A. had not contributed to their Scrutiny advice. To me, I just cannot understand why he said that. I do not know if he has any second thoughts but I am not going to give way because I have a copy here of the transcript of a Scrutiny hearing, and the Deputy quite clearly said that the J.B.A. had not been involved in giving evidence. The Scrutiny hearing on Monday, 7th September ...

The Deputy of St. Mary:

I did not say that. That was not true.

Senator P.F. Routier:

The Deputy throughout the ... well, I heard him very clearly say the J.B.A. did not take part and it was only the J.B.A. only spoke to the Executive side.

Deputy M.R. Higgins:

That is not true. The Deputy of St. Mary mentioned in his speech the Director of Standard Bank came along who said she was a member of the J.B.A. One, she was not expected and, secondly, the people he had invited to speak was the Executive of the J.B.A., the President and the Secretary, who basically said they did not think they had anything to offer. That is the response we had from the J.B.A.

Senator P.F. Routier:

Sorry, the transcript of the Scrutiny Panel meeting is very, very clear. Ms. A. McFadden said: "I am Alison McFadden. I am C.E.O., Chief Executive Officer of Standard Bank, and I am here representing the Jersey Bankers Association today." Even your own report which is here is very clear that Ms. McFadden was at and has given evidence to the panel. It is just that was a comment that was made. I am not going to make a big issue of it. It is just that it was just a comment that was made which misrepresented the Jersey Bankers Association. I just do not feel that was an appropriate thing to have been said. I was amazed that it was said. I will leave it at that. I do reinforce the point that this particular amendment is probably the most dangerous of the lot for Jersey.

2.17.10 Deputy M. Tadier:

I just feel that some of the previous speakers who may have been involved with the panel have been hard done by here. I would like to pick up on what I think were the Deputy of St. Mary's points. He quite clearly said that a Depositor Compensation Scheme, we are all behind that, it is clear that it is needed and that the banks can quite rightly say that they might leave or that the clients might leave if the Depositor Compensation Scheme was not in place. I think we all agree with that and there is probably a valid reason if they were to leave because of that. That would be understood. The Deputy of St. Mary simply went on to say that it was not satisfactory given that we are all bending over backwards to try and accommodate the banks in this sense but also the investors in the banks, more importantly. It is not, then, satisfactory for the banks again to threaten to leave simply on the basis that they would be asked to pay for their own insurance, effectively. So I think the point that the insurance should not come from the taxpayer but from the banks is a valid one and I think that, effectively, in the first scenario it was valid, in the second scenario it is, effectively, blackmail. I think also that it is interesting that the Deputy of St. Mary was accused of being anti-Jersey. I am sure this is something he will address at some point, perhaps, with a personal statement to clarify. But this is the strange situation. We have been in Jersey for the last few decades whereas anybody who talks about the finance industry and suggests that there could be something that needs improving is immediately labelled anti-Jersey because for some people, or the foot-stamping variety of people when Senator Ozouf gave his speech, the 2 are synonymous. Jersey is simply the finance industry. The finance industry is Jersey. The 2 go hand in hand. If the

finance industry leaves one day, presumably Jersey will stop existing and maybe all the supporters of the finance industry will leave with it. But for many of us this is not what Jersey is. Jersey is about the people in Jersey. While there are good banks and while there may be bankers listening who are managers and hedge fund managers and there may even be front-line workers who are listening ... I doubt it, probably, on a Friday at 6.00 p.m. But the reality of it is there are good and bad banks. There are good and bad employees and employers in every sector and this extends to the banking industry and this is why I cannot sit back and listen to the sycophancy that we hear in this Chamber about the banking industry, because we know for certain - I know and I have spoken to people that there are banks - there are other employers in other sectors that do exploit their workers, that expect workers to stay on extra hours without pay and if they complain they will get the sack. So this is the truth and if there are any managers of banks out there I would like them also to listen to this and maybe we can have a foot stamp for this because, in fact, it is the Islanders who work in the banks at whatever level - and I am sure we can all stamp our feet for this - who make the banks what they are and it is also they who contribute to tax. So let us not get too carried away with thinking the banks are all perfect. I think we need to have some balance here and I think the Deputy of St. Mary and other speakers are quite right. It is right that we should have a Depositor Compensation Scheme. It is not right that the banks should then ask the insurance to then come from taxpayers. I think that is one step too far and I would ask Members to support this amendment.

Deputy I.J. Gorst:

I am not sure if it is a point of clarification or not. I know we have struggled with that in the course of this States sitting but the previous speaker has just indicated, or I thought I heard him indicate, that financial institutions along with other institutions on the Island are in breach of employment legislation. I am sure that was not what he was saying but that is what I heard him to have said.

The Deputy Bailiff:

Before I ask Deputy Tadier to respond to that, can I just say from the Chair that this debate is rapidly becoming a debate about the conduct of banks. Now, of course, the finance of the scheme is a relevant consideration but it is not about the conduct of banks nor is it about whether financial institutions do or do not meet the employment law but, nonetheless, the point has been put to you, Deputy Tadier, and if you would like to respond, you may. No? Thank you. Does any other Member wish to speak? Then I ask the Chairman of the Scrutiny Panel to respond.

2.17.11 Deputy M.R. Higgins:

I will be extremely brief. I think everybody has had enough. I think that one of the most disappointing things about this debate is the downright lies that have been put. Sorry, I am going to say it.

The Deputy Bailiff:

That is decidedly unparliamentarily.

Deputy M.R. Higgins:

In that case, sorry. Falsehoods, then, that have been made against what this Scrutiny Panel has been called.

The Deputy Bailiff:

No, I am sorry. Even that is unparliamentarily.

Deputy M.R. Higgins:

I will go for inexactitudes, then. Yes, I will accept that. The basic reason I am saying this is that quite simply what the Economic Development Department have said and what they produced in their comments is factually incorrect. I started off by saying that the scheme that we put forward

based on £65 million was based on what they had given us in evidence. I have here part of the transcript, this is the Director of International Finance, Martin de Forest-Brown and he said ... remember the Economic Development Department state: “The proposal would be rejected because it would result in depositors in any one of 4 medium banks not being covered in contrast with the E.D.D. scheme.” So it is saying that if any one of 4 medium banks would not be covered by what we are proposing. That is what they said. Absolutely false. Why? The Director of International Finance says: “Even at a fairly modest level of scheme, certainly within the £65 million that is proposed to be funded by the banks, all our banks up to number 6 are covered.” Up to number 6. Five are major banks which this scheme would not even cover and I am not even convinced it will cover number 6. Further on it also says, too: “If you look at our banks and if you go through the data you will see that the only place that we get into the £100 million above the £65 million mark is at bank 5 and above. So this is absolute and utter rubbish. They have gone out of their way to denigrate the scheme. They have used their figures and the scheme would work except that there is, obviously, a big lobby group at work here. There is a tremendous amount of fear about what will happen if the banks did not like it. The truth of the matter is that at some stage or other the Island has to understand that there is a price to be paid for being a finance centre and part of it is ... well, we are already seeing it one respect. Within the Island, here, how many Islanders can afford to buy property at £500,000? Right? It is a direct result, part of it, because of the strength of the finance industry and the number of things coming here. Now, I am not anti-finance. I recognise what they have done for the Island. I know it sounds strange that I want to see a scheme that protects depositors. I want to see responsible banking. I do not want to see sort of scare mongering and so on. What I would also say is that what you do not realise is that the scheme that you are going to adopt has already been pilloried on the internet. The Guernsey scheme, the Landsbanki depositors in Guernsey are putting out on the internet what a sham the Guernsey scheme is. There are pictures of it, there is information going around warning people around the world that this scheme with its £100 million cap and all the other sort of restrictions they have is not a credible scheme. All I can say is, we will go ahead with this and Jersey will be painted with the same brush if there is a bank failure. I think the other thing, too, is that I just want to reiterate that even the scheme that you are going to adopt because I know you are not going to accept this one will not protect all depositors. I stress again the reason why we wanted the permanent board was because people need to be aware of the limitations of these schemes. Anyway, I think we have all had enough and just one other thing, just the fact that the £35 million, as Deputy Maçon has said, is not fixed. It could be increased. We will go to the vote and I call the appel.

The Deputy Bailiff:

The appel is called for on the proposition of the Economic Affairs Scrutiny Panel, the amendment to Regulation 29. I invite all Members who are not in the Chamber who wish to vote to return to the Chamber. The Greffier will open the voting.

POUR: 9		CONTRE: 37		ABSTAIN: 0
Deputy of St. Martin		Senator T.A. Le Sueur		
Deputy G.P. Southern (H)		Senator P.F. Routier		
Deputy S. Pitman (H)		Senator P.F.C. Ozouf		
Deputy M. Tadier (B)		Senator T.J. Le Main		
Deputy of St. Mary		Senator F.E. Cohen		
Deputy T.M. Pitman (H)		Senator J.L. Perchard		
Deputy M.R. Higgins (H)		Senator A. Breckon		
Deputy D. De Sousa (H)		Senator S.C. Ferguson		
Deputy J.M. Maçon (S)		Senator A.J.D. Maclean		
		Senator B.I. Le Marquand		
		Connétable of St. Ouen		
		Connétable of Trinity		
		Connétable of Grouville		

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

The Deputy Bailiff:

We now return to Regulation 29 as proposed by the Minister. Does any Member wish to speak? Then can I ask Members to vote on Regulation 29? Those in favour please show. Those against? The Regulation is adopted. Minister, you will perhaps now wish to take Regulations 30 to 38 *en bloc*?

Senator A.J.H. Maclean:

Yes, and I was wondering if I could take 1, 7 and 15 at the same time.

The Deputy Bailiff:

I think there is an amendment to Regulation 1.

Senator A.J.H. Maclean:

I think it falls away, Sir, but I may stand corrected.

The Deputy Bailiff:

I think it is the amendment which deals with the Appointments Commission at paragraph c. The Appointments Commission have been introduced by an amendment by the Scrutiny Panel which you accepted.

2.18 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulations 30 to 38

2.18.1 Senator A.J.H. Maclean:

So I propose Regulation 30 to 38. Regulation 30 caps the levy which banks can be required to pay and sets an overall cap based on a proportion of their eligible deposits. A bank will not be required to pay more than 0.3 per cent of the eligible deposits held by the bank on the relevant date. Where these amounts are more than £5 million, the bank's levy will be capped at this level but where this

amounts to more than £10 million, the bank's levy will be capped at this level. Banks will be able to pay the levy in instalments of £1 million per year except if the bank's total levy is capped at £10 million in which case the bank will be able to pay by instalments of £2 million per year. Regulation 31 provides for any shortfall resulting from the application of the caps on bank levies to be paid by the States. The regulation provides for funding to come from the consolidated fund because all States expenditure must flow from this fund but the Minister for Treasury and Resources will be bringing a proposition in a moment, I hope, to allow the use of the Strategic Reserve to provide this shortfall funding. Where the States have provided upfront liquidity of this scheme which is also being dealt with under a separate proposition, the States shortfall funding due to the scheme under Regulation 31 may set off against this. Regulation 32 provides the compensation payments will be reduced where, for example, as a result of the limit on the amount of compensation that the board may pay, the board has insufficient funds to pay the full amount of the compensation and its administrative costs. Where the amount of compensation due to depositors under Regulation 23 together with administration costs totals more than £100 million, the amount of compensation payable to each depositor would be reduced by an equal proportion. Regulation 33 requires the board to apply any excess funds to repay the States any liquidity loan and shortfall funding and then to repay the banks their levies in proportion to their contribution. Regulation 34 provides that a compensation payment will not be made until a depositor has subrogated his rights to the bank insolvency to the board. Recoveries in liquidation of the bank are then paid to the board rather than to depositors. The board will retain these recoveries up to the amount of compensation paid to the depositor. Any excess recoveries will be paid over to the depositor so the depositor should, eventually, be in the same position as if he had waited for recoveries in the liquidation himself except that the Depositor Compensation Scheme would have prevented hardship by providing access to these funds much more quickly. Regulation 35 provides for the board to be treated as a creditor in the bank's liquidation. Regulation 36 provides for depositors, banks and the Minister for Treasury and Resources to appeal certain decisions of the board to the Royal Court. For example, a depositor may appeal a decision of the board that he or she is not entitled to compensation or a decision with regard to the amount of compensation that has been awarded. Regulation 37 is a citation provision and Regulation 38 provides for these regulations to come into force immediately. I propose Regulations 30 to 38.

The Deputy Bailiff:

Regulations 30 to 38 are proposed. Are they seconded? [Seconded] Does any Member wish to speak?

2.18.2 The Deputy of St. Mary:

Just briefly for a point of clarification from the Minister, if I may? Article 30, paragraph 3, the board is basically the one that says that no more than £2 million in any period of 12 months or the £1 million depending on the size of the bank. I just have a question, really. If there was a default and the need is, presumably, to get the money in quickly in order to pay out the compensation as quickly as possible, I am sort of puzzled that there is a limit on the speed that the money comes in. It comes in over a 5 year period so, presumably, that means the refunding will take at least 5 years. So I just wanted that clarified as to whether there is some good reason that it is delayed for the 5 year period when depositors want their money soon and I am not talking about the initial £5,000. I am talking about the whole £50,000.

The Deputy Bailiff:

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

2.18.3 Senator A.J.H. Maclean:

The Deputy of St. Mary, the £1 million and £2 million sums that he has referred to; of course, this will not make any difference to the speed at which depositors would receive their payout. Quite

simply, the liquidity funding is being provided by the £100 million that Treasury and Resources will be bringing a proposition on shortly.

The Deputy Bailiff:

Regulations 30 to 38 are proposed. All Members in favour kindly show? Those against? The Regulations are adopted. Minister, we now return to Regulation 1. Would you like to propose that?

2.19 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulation 1

2.19.1 Senator A.J.H. Maclean:

Yes, thank you. Regulation 1 lists and defines certain terms and phrases used in these Regulations. In particular, “bank” is defined so as to include all banks operating in Jersey registered under the Banking Business (Jersey) Law 1991. I propose Regulation 1.

2.20 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) third amendment (P.86/2009.Amd (3)) Amendment 1

The Deputy Bailiff:

Is that seconded? [**Seconded**] There is an amendment to Regulation 1 which is on page 11. The Greffier will read the amendment.

The Assistant Greffier of the States:

(c) After the definition “administrator”, insert the following definition: “Appointments Commission” means the commission established under Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005.

The Deputy Bailiff:

The amendment is in the name of the Economic Affairs Scrutiny Panel. I do not see the Chairman there. Is there another member of the panel?

2.20.1 Deputy J.M. Maçon:

Again, we have already covered this. It is simply about making the whole process more independent by allowing the Appointments Commission to go forward and appoint members of the board. I make the amendment.

The Deputy Bailiff:

It is a consequential amendment as a result of the amendment already accepted by the States. Is that proposition seconded? [**Seconded**] Does anyone wish to speak? No. All Members in favour kindly show? Those against? The amendment is adopted. Does anyone wish to speak on Regulation 1 as amended? No. All Members in favour of adopting Regulation 1 as amended kindly show? Those against? Regulation 1 is adopted. I think, Minister, we are now on Regulation 7.

2.21 Draft Banking Business (Depositors Compensation) (Jersey) Regulations 200-(P.86/2009) (principles adopted on 15th July 2009) Regulations 7 and 15

2.21.1 Senator A.J.H. Maclean:

Regulation 7 provides for the liability of a bank to pay a levy to arise on the relevant date, i.e. the date that the board considers the bank became a bank in default. I propose Regulation 7.

The Deputy Bailiff:

Is that seconded? [**Seconded**] Does any Member wish to speak on Regulation 7? As I understand it, the amendment to Regulation 7 falls away. All Members in favour of adopting Regulation 7

kindly show? Those against? The Regulation is adopted. Minister, do you wish to propose Regulation 15?

2.21.2 Senator A.J.H. Maclean:

Regulation 15 provides for the board to be an independently audited States body and requires its audited accounts and a report to be laid before the States. The Comptroller and Auditor General is also given powers to audit the board's accounts following consultation with the present incumbent. I propose Regulation 15.

The Deputy Bailiff:

Is the proposal seconded? **[Seconded]** Does any Member wish to speak? I ask Members to vote on the adoption of Regulation 15. All those in favour please show? Those against? The Regulation is adopted. Minister, do you wish to propose the Regulations in Third Reading?

Senator A.J.H. Maclean:

Yes, Sir.

The Deputy Bailiff:

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

2.21.3 Senator J.L. Perchard:

Yes, Sir. Just briefly, I would like to congratulate the Minister for taking through a very complex set of Regulations and for making it easier on Members by having a briefing, which I found of great interest and support. One thing I want to say about all these Regulations is I make no apology for the fact that we, the States of Jersey, have a sympathetic regulatory regime that supports our financial services industry. It is right that we should and I am proud of it. Just to remind the Minister that I did have a concern about the fact that small businesses did not receive protection. I shall be looking closely at his efforts to bring back some level of protection for small businesses on the Island.

The Deputy Bailiff:

Does any other Member wish to speak? I saw the Deputy of St. Mary.

2.21.4 The Deputy of St. Mary:

Very briefly, I just want to express the thanks of the panel and probably of all of us to the Greffe for making it so clear and relatively - relatively only - simple to follow with the coloured amendment version and the full version with the amendments in and that wonderful guide through the various amendments. **[Approbation]** It really is a great help and we should acknowledge the quality of our Greffe because it really is something that helped this Assembly. I would also like to pay tribute to the work of the Law Draftsman who was exceptional in her help to us in bringing these amendments. **[Approbation]** I hope that it has not been seen as a waste of time. It is important to have this debate.

2.21.5 The Deputy of St. John:

I think this debate has been welcomed by many out in the wider Island. I think that although we do not always have to agree with other Members, i.e. I did not vote on all the scrutiny issues in support of them, but I think Scrutiny have played an excellent part. Scrutiny and their officers I think do deserve a vote of thanks in this **[Approbation]** because under the new system of government as adopted 4 years ago I think Scrutiny is now earning its feathers.

2.21.6 The Deputy of St. Martin:

Very much in the same vein, personally it is rather disappointing that the chairman of the Chairmen's Panel is not here to compliment all the work that has been done on behalf of the

Scrutiny Panel because, really, the Deputy of St. Mary has had to get up ... self-praise is no recommendation but it is a recommendation because I think they have done a tremendous job and tremendous work. The sadness is, really, that so much work has been done and one wonders what is the value of scrutiny if people do all that work [**Approbation**] and yet at the end of the day it can be so meaningless. You can see possibly why I no longer am a member of Scrutiny. I think we owe a great debt of gratitude to Deputy Higgins and his team for a tremendous job in such a short time and to give up their summer holidays, too. So, again, well done.

12.21.7 Deputy G.P. Southern:

I am sorry to hear the Deputy of St. Martin being so negative about Scrutiny. [**Approbation**] I think what we did today was we clearly examined the issues; we had a thoroughly good debate about the issues that were contained in the amendments. I think going down the amendment route was the way to focus people's minds, and I am glad to see that I believe we have made a significant difference, certainly in opening the eyes of the Minister to the plight of small businesses and certainly in having him decide, albeit at the last minute, that a real board would probably be better than an imaginary board. I congratulate him for paying attention to the detailed work that we did on those issues.

12.21.8 Deputy R.G. Le Hérisier:

Sorry, Deputy Southern has taken the words out of my mouth. I have to refute the words of the Deputy of St. Martin. I think it is a proud day for Scrutiny. Yes, they have not got the vote. They shook the tree, they questioned, they made people think about the bigger issues, and the Minister was, I thought, very magnanimous in the progression of the debate. It was a good day for Scrutiny. We should not be negative. [**Approbation**]

12.21.9 Deputy S. Power:

Very briefly, in my 4 years in this Assembly I think today the Hansard record of 6th November 2009 will go down in history as having had some of the most strangest speeches that were ever made to do with the Depositor Compensation Scheme. It will be the stuff of boardroom and bank lunches for a long, long time. [**Laughter**]

12.21.10 Deputy J.M. Maçon:

If we are talking about hard work, then I think we no doubt do have to extend that to the officers of Economic Development. [**Approbation**] They have worked very, very hard in what they have produced. While we may disagree with their conclusions, they have worked very hard. I would also like to thank everyone who has helped develop this scheme, the people who have come to Scrutiny, the people who have been to the department. It is very good that they helped Jersey develop this and I personally would like to extend our thanks particularly to our Scrutiny Officer who has worked tremendously hard in order to bring our report and amendments together. [**Approbation**]

12.21.11 Deputy P.V.F. Le Claire:

When I brought this proposition originally to the States Assembly, which was supported unanimously, the job of work that I had set before the Minister and before the Scrutiny Panel was beyond my comprehension. The dedication and the work that has been taken up by the chairman and not totally supported has not been lost upon those that were not able to support some of the amendments. I want to particularly congratulate and thank him for the work that he undertook during the summer break. I think I would like to finish by saying without one shadow of doubt - and that shadow of doubt has been cast from all corners of this Chamber - we all support the people of this Island. That is what we are here for and we all support the industry that supports those people.

The Deputy Bailiff:

Senator, do you wish to reply?

12.21.12 Senator A.J.H. Maclean:

Yes, I will very briefly, if I may. I will largely echo the comments of Members. I was particularly pleased with the comment that Deputy Maçon made in thanking the Economic Development Department and in particular the officers, 2 of whom are sitting at the back there, many others who have worked considerable hours in bringing forward this legislation. I have had emails at all hours of the day and night and I can assure Members that considerable effort has been put in. There have been thanks also passed to many other people who have put work into this legislation: the Law Officers; my Assistant Ministers, of course, have contributed significantly to it. I have to say that as far as I am concerned the role of Scrutiny and the work that they have done in challenging us and in challenging the executive is something that we should all be proud of. I think it is absolutely right. It shows that Ministerial government is working, and I think it is an indicator and a light for the future that this type of debate should come with scrutiny challenging legislation when it is brought forward. So, I think that is positive. I have nothing else to say other than I think we have hopefully the right result now and depositors from the Island will be protected and, most importantly, we have also protected our essential, significant and major industry, the finance industry, as well. I think it is a right and balanced result.

The Deputy Bailiff:

The Regulations are proposed in Third Reading and the appel has been called for. I ask any Members outside the Chamber wishing to vote to return to their seats. The Greffier will open the voting.

POUR: 42		CONTRE: 3		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy G.P. Southern (H)		
Senator P.F. Routier		Deputy S. Pitman (H)		
Senator P.F.C. Ozouf		Deputy T.M. Pitman (H)		
Senator T.J. Le Main				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				

Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

Senator P.F.C. Ozouf:

I know that Members are looking at the time and it is 6.29 p.m. I would beg the indulgence of the Assembly to take the 3 related propositions which mean that the Depositor Compensation Scheme can be brought into force, which are related. I will attempt, with Members' patience and understanding, to zip through them as quickly as possible, but I would ask Members if we can now deal with these 3 and the associated Acte Opératoire.

The Deputy Bailiff:

Senator, the States agreed a few hours ago to adjourn at 6.30 p.m. I think you had better put a proposition and we will see if it is successful.

Senator P.F.C. Ozouf:

Yes. I think that it should take no more ... it is difficult to know whether or not Members will wish to speak, but it should be relatively straightforward. There are 3 amendments to deal with: propositions 81, 84 and 85.

The Deputy Bailiff:

And P.87 as well, so that is 4 propositions. The proposal is that the States continue until those 4 propositions have been dealt with. Is there a seconder for that? **[Seconded]** Does any Member wish to speak? I do not think so. All those in favour kindly show? Those against? We will, therefore, continue.

2.22 Draft Banking (Depositors Compensation) (Jersey) Regulations 200- (P.87/2009)

The Deputy Bailiff:

So, the next proposition is the Draft Banking (Depositors Compensation) (Jersey) Regulations 200-, P.87/2009. I will ask the Greffier to read the proposition.

The Assistant Greffier of the States:

Draft Banking (Depositors Compensation) (Jersey) Regulations 200-. The States in pursuance of the Order in Council dated 28th March 1771 have made the following Regulations.

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

These draft Regulations are the second part of the package of draft legislation needed to introduce a fully functioning statutory Depositors Compensation Scheme. These Regulations prescribe offences for the purposes of the Banking Business (Depositors Compensation) (Jersey) Regulations; that is, the D.C.S. Regulations which Members have just passed. The department has been advised that the enabling power under Article 37 of the Business Banking (Jersey) Law 1991 to make the D.C.S. Regulations does not extend to the creation of new offences. It has, therefore,

been necessary to prescribe for offences separately under these triennial Regulations. In brief, these Regulations will create offences for depositors who make false claims against the scheme and for banks and administrators of failed banks who fail properly to comply with notices for information. The Law Officers Department has considered these Regulations and has confirmed that the penalties for new offences are commensurate with those for existing offences. I propose the principles of the Regulations.

The Deputy Bailiff:

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

2.22.2 Deputy G.P. Southern:

I will say this just once. I think we are setting a bad precedent by rushing through any legislation in this way, especially legislation which is significant and calls for significant expenditure and, in this case, punishments are hopefully at the appropriate level but we are rushing through this. We should never be doing this.

The Deputy Bailiff:

Does any other Member wish to speak? I call upon the Minister to reply if he wishes.

2.22.3 Senator A.J.H. Maclean:

I do not think I can add anything to that comment.

The Deputy Bailiff:

I put the principles to Members. All Members in favour of adopting the principles kindly show? Those against? The principles are adopted. I am advised by the Greffier that when this matter was debated on 15th July the Scrutiny Panel called in all the relevant propositions. Therefore, I do not propose to refer these propositions back to the Scrutiny Panel at this stage. Minister, will you propose the Regulations *en bloc*?

2.22.4 Senator A.J.H. Maclean:

Yes. Regulations 1 and 2 link these offences to the D.C.S. Regulations which establish the Depositors Compensation Scheme. Regulation 3 sets out the offences and provides for penalties. I paraphrase them by stating that it will be an offence for depositors: (1) to provide false or misleading information when applying for compensation; (2) to fail to inform the Depositor Compensation Scheme of circumstances when they receive less compensation; or (3) to fail without reasonable cause to reimburse compensation if they receive payments in respect of the same deposit from another source. It will also be an offence for banks: (1) to fail without reasonable cause to comply with a notice to provide the board with a statement of the total amount of eligible deposits held; or (2) to provide false or misleading information in response to such a notice. It will be an offence for administrators of failed banks: (1) to fail to comply with a notice to provide the board with information it requires to carry out its functions under these regulations; or (2) to provide false or misleading information in response to such a notice. Regulation 4 is a standard clause to ensure that the officers of a body corporate such as a company's directors can be made individually liable as a deterrent. Regulation 4 also makes it an offence to aid or abet the commission of an offence under these regulations. Regulation 5 is the citation clause. Finally, Regulation 6 provides for these regulations to come into force immediately because they are triennial regulations. They will remain in force for 3 years, after which time they have to be replaced or renewed. I propose these regulations.

The Deputy Bailiff:

The Regulations are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak? Senator Le Marquand.

2.22.5 Senator B.I. Le Marquand:

Very briefly, I wanted to enquire of the Minister whether it would not, in fact, be proper to change this into a law. Though these are only triennial regulations they are really designed for short-term and emergency use, although some have continued to be renewed for many years. I would like to ask the Minister would it not be proper if he undertakes to the House that this will be turned into a law in due course.

The Deputy Bailiff:

Does any other Member wish to speak? Minister, do you wish to reply?

2.22.6 Senator A.J.H. Maclean:

Yes. Senator Le Marquand makes a good point and in due course I think that is the obvious course to take. Obviously we were keen to get the Depositor Compensation Scheme into force immediately and that was the reason that we took this particular course.

The Deputy Bailiff:

The proposition is to adopt Regulations 1 to 6 *en bloc*. All Members in favour kindly show? Those against? The Regulations are adopted. Minister, do you propose the Regulations in Third Reading?

Senator A.J.H. Maclean:

Yes.

The Deputy Bailiff:

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

Deputy M. Tadier:

I am not sure if it is the right place to do it, but just one question, I suppose. Sorry, I think it is too early for this. I will bring it in a moment. Sorry.

The Deputy Bailiff:

If no other Member wishes to speak, the appel has been called for. I invite Members outside the Chamber to return to their seats. The proposal is to adopt the Banking (Depositors Compensation) (Jersey) Regulations, P.87/2009, in Third Reading. The Greffier will open the voting.

POUR: 40		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				

Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

3. Draft Income Tax (Amendment No. 32) (Jersey) Law 200- (P.81/2009)

The Deputy Bailiff:

We come next to the Draft Income Tax (Amendment No. 32) (Jersey) Law 200-, P.81/2009, in the name of the Minister for Treasury and Resources. I ask the Greffier to read the proposition.

The Assistant Greffier of the States:

Draft Income Tax (Amendment No. 32) (Jersey) Law 200-, a law to amend further the Income Tax (Jersey) Law 1961. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

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

We have had a long debate about the Depositor Compensation Scheme. This is a change to the Income Tax Law to provide for certain provisions for deduction of contributions made by banks to the Depositor Compensation Scheme to make arrangements for reimbursements and to provide exemptions from income tax for payments to a bank that has been in default. I move the preamble.

The Deputy Bailiff:

Is the proposition seconded? [**Seconded**] Does any Member wish to speak? Senator Breckon.

3.2 Senator A. Breckon:

I wonder if the Minister could give any indication of what the liability of this could be in lost tax revenue.

3.3 The Deputy of St. Mary:

In similar vein, I think, to the previous question, on the report, paragraph 1 on page 4, this provision allows a tax deduction of contributions made by banks to the Bank Depositor Compensation Scheme. In what sense is this not a business expense? Certainly, when I was running my business, I did not get sort of chunks off income tax possibly for things like this. I just want clarification on

the principle underlying this exemption. Also paragraph 2, I would just like clarification about what exactly that is about.

The Deputy Bailiff:

Does any other Member wish to speak?

3.4 Deputy M. Tadier:

Can I just make a similar point? It seems strange, that part, in the sense that ordinary members of the public, when we pay our Social Security contributions, for example, we get taxed on that money that we do not actually get. I know it is something that benefits us in the long run, but also likewise with the banks, this is something which is being set up to benefit them. So, I think it is very strange that this should be tax deductible.

3.5 Deputy J.A.N. Le Fondré:

I do not know if it helps. The analogy I would use is effectively this is an insurance scheme and for a company insurance payments are deductible and allowable for tax purposes, and this essentially ensures and clarifies the position. That is my comment. I hope it helps.

The Deputy Bailiff:

If no one else wishes to speak, I will ask the Minister to reply.

3.6 Senator P.F.C. Ozouf:

I thank my Assistant Minister for his accountancy explanation. I think that both Deputy Tadier and the other Member who spoke simply are not understanding the concept of what we have passed. In fact, banks' levies are going to be called upon in order to pay for a bank that has failed, not their own activities but another bank. That is an insurance premium, as the Assistant Minister has said, for another bank. I think there are entirely justifiable reasons. It codifies the arrangement for expenses and I think it is a perfectly legitimate expense for a business that is suffering an expense which in this case is of no fault of their own. I move the preamble.

The Deputy Bailiff:

All Members in favour of adopting the preamble kindly show? Those against? The preamble is adopted. Minister, do you wish to move the detail of Articles?

3.7 Senator P.F.C. Ozouf:

I move the Articles *en bloc*. I will answer any questions that Members may have. I did not answer the question previously about the total liability. Banks are, of course, taxed at 10 per cent, so *in extremis* it is 10 per cent of 100 million. However, the total ultimate liability for the States is £35 million based upon all the matters that we have discussed previously. I move the Articles.

The Deputy Bailiff:

Is the proposition seconded? **[Seconded]** Does any Member wish to speak? Deputy Le Claire.

3.8 Deputy P.V.F. Le Claire:

I did ask the Minister for Treasury and Resources at the beginning of Tuesday morning during Questions Without Notice if he could confirm the numbers in relation to natural depositors. I did ask if that could be presented to Members prior to the actual debate that is already completed. I trust then, having not received that information, that the information that was provided to us by Scrutiny and the numbers that were explained to us by Deputy Southern were accurate numbers.

The Deputy Bailiff:

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

3.9 Senator P.F.C. Ozouf:

I thank Deputy Le Claire for his ongoing scrutiny and questioning in these matters. The point that he raises is not directly relevant to the Income Tax Articles. I am sorry if he does not think that he has had satisfactory answers to his questions. The answer to the question, which is not related to this, is that it is a 90 to 10 per cent split. There is a 10 per cent amount of deposits that are local. Natural persons are 90 per cent non-Islanders. I recall the figures; it is £3 billion of local depositors and, therefore, 90 per cent ... my maths at this time of night is not that good, but it is the equivalent of 90 per cent but not directly relevant to that. I move the Articles.

The Deputy Bailiff:

All Members in favour of adopting Articles 1 to 6 kindly show? Those against? The Articles are adopted.

Senator P.F.C. Ozouf:

I move them in Third Reading.

The Deputy Bailiff:

The Bill is proposed in Third Reading. Is it seconded? **[Seconded]** Does anyone wish to speak? The appel is called for. I invite Members outside the Assembly Chamber to return to their seats. I ask the Greffier to open the voting.

POUR: 40		CONTRE: 0		ABSTAIN: 1
Senator T.A. Le Sueur				Deputy T.A. Vallois (S)
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				

Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Minister, I understand you wish to make ...?

Senator P.F.C. Ozouf:

Yes. As Members will be aware, Article 90 of the Finance Law has the provision of bringing into immediate effect laws that relate to income tax. The usher is kindly circulating with your permission, and I would ask that an Acte Opératoire in other words declaring that the amendment that has just been passed is able to have immediate effect under the normal provisions of our income tax when we pass income tax laws.

The Deputy Bailiff:

I will ask the Greffier to read the citation.

The Assistant Greffier of the States:

Act declaring that the Income Tax (Amendment No. 32) (Jersey) Law 200- shall have immediate effect. The States in pursuance of Article 19 of the Public Finances (Jersey) Law 2005 have made the following Act.

Senator P.F.C. Ozouf:

I think I have explained the provisions. It is simply to bring into immediate effect the Act that the Assembly has just passed. I move the Act.

The Deputy Bailiff:

Is the proposal seconded? **[Seconded]** Does any Member wish to speak? All Members in favour of the Act kindly show? The appel has been called for. Those Members who are outside the Chamber who wish to vote, would they kindly return to the Chamber straight away. I ask the Greffier to open the voting.

POUR: 39		CONTRE: 0		ABSTAIN: 1
Senator T.A. Le Sueur				Deputy T.A. Vallois (S)
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				

Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

4 Strategic Reserve Fund: use for Bank Depositors' Compensation Scheme (P.84/2009)

The Deputy Bailiff:

We now come to the Strategic Reserve Fund: use for Bank Depositors' Compensation Scheme, P.84/2009, in the name of the Minister for Treasury and Resources. I ask the Greffier to read the proposition.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion to refer to their Act dated 5th December 2006 in which they approved the revised policy for the use of the Strategic Reserve Fund established under Article 4 of the Public Finances (Jersey) Law 2005 and agreed that the fund should be a permanent reserve where the capital value was only to be used in exceptional circumstances to insulate the Island's economy from severe structural decline such as the sudden collapse of a major Island industry or from a major natural disaster and (a) to agree to vary that policy to enable the Strategic Reserve Fund to also be used, if necessary, for the purposes of providing funding for the Bank Depositors' Compensation Scheme to be established under the Banking Business (Depositor Compensation) (Jersey) Regulations 200-; and (b) to agree that monies from the Strategic Reserve Fund up to a maximum combined total not exceeding £100 million should be made available, if required, to meet the States contribution to the Bank Depositors' Compensation Scheme and/or to meet any temporary cash flow funding requirements of the scheme.

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

I am grateful to the Assistant Greffier for having virtually explained the proposition in her reading of the statement. This proposition is required in the unlikely event of a bank failure and in the possibility in that event of the Consolidated Fund not being able to fund the £100 million immediate requirement. We do forecast regularly the balance of the Consolidated Fund and for the foreseeable future it has, I have to say, sufficient resources within certainly the next couple of years in order to meet this £100 million according to the cash flow requirements of the States. We do

need to have the fallback position in the event that the current account, the Consolidated Fund of the States of Jersey, does not have sufficient resources in its account to meet that £100 million immediate payment. The immediate payment, as the Minister has previously stated in the previous debate, is one of the key tenets of the credibility of a Depositor Compensation Scheme, the ability to make a £5,000 deposit immediately in the event of a failure of a bank. I will attempt to answer any questions Members have and I move the proposition.

The Deputy Bailiff:

Is the proposition seconded? [**Seconded**] Does any Member wish to speak? Deputy Martin.

4.2 Deputy J.A. Martin:

Just briefly, I was just whispering to the Deputy of St. Mary, I really wanted to know ... the first question was it says there will be financial consequences to the Strategic Reserve. It does not say how much, if we have to put a million in ready market or we can draw it out without too many default payments. The Minister has not spoken to this. He has told us he is going to use the Consolidated Fund. It is not in here and also the Consolidated Fund is there, I thought, for other reasons. So I am quite concerned now that he has brought another fund in that is not even mentioned in the proposition.

4.3 Deputy G.P. Southern:

There is a long history of people trying to use or get hold of some of the funding in the Strategic Reserve and manifestly failing and being told the Strategic Reserve is not big enough, we should add some more to it. Yet here we are inventing a new use for the Strategic Reserve, not one it was set up to do. Everybody else cannot touch it apart from a Minister when he decides that it will be nice and convenient to touch it with the effect in all probability ... because there will not be total 100 per cent recoveries of money put in and the £35 million we are using to prop up this insurance scheme, some of that will go, so this effectively, make no mistake, will be depleting our Strategic Reserve at some stage should it ever be called upon.

4.4 Senator A. Breckon:

I am uncomfortable with this. It is nearly 7.00 p.m. on a Friday night and reminds me of a story somebody used to make about motor cars. They say do not buy one or if you have a dodgy one it was made on a Friday afternoon when everybody was ready to go away for the weekend. I do not know what the make of it was. But the thing is, there was great play made earlier in this debate about consultation with the banking industry. My question to the Minister for Treasury and Resources is who has consulted the general public, whose Strategic Reserve this is? Because it is being guaranteed to underwrite commercial activity. Now, the question for me, then, is if another Member thought that such and such an industry should be supported with a backstop, then does this open the gates for them to say that whatever it may be, the widget industry, should have the Strategic Reserve to back them should they fail or should they have problems? So, I would like to know who this is open to, if it is open to any of us to suggest schemes, if people might be thinking of new ideas or new areas of industry. For that reason when it comes to it, I will be asking for the appel and I will be voting against this because I am uncomfortable with the Island's rainy day fund - and I think it is raining today - the Strategic Reserve being used for this purpose.

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

Just briefly, I do not agree with the last 2 speakers. I think the Strategic Reserve is there for the benefit of the Island when it is absolutely necessary. That interpretation at the end of the day means that something as important as this to everyone in the Island, including the businesses and the individuals, means that we do need to have that requirement available. We can be rest assured that States Members if they are uncomfortable about it should it ever be required, will be coming back to the States with all sorts of amendments or propositions, so I feel very confident for this and would vote for it.

4.6 Deputy P.V.F. Le Claire:

I think this is the first time I have been given the opportunity 4 times in one session to chase a Minister for an answer that he has promised in Question Time and not given us yet. I did possibly refer to it wrongly in the previous debate, but what I have been trying to say since Tuesday and what was promised to Members on Tuesday by the Minister for Treasury and Resources was an analysis of the number of natural depositors. I do not know if the Minister for Treasury and Resources is listening to me because I am trying to explain to him exactly what it is I want to know. I do not want to know the split of the deposits held on account. I want to know the numbers of natural depositors that there are. The Scrutiny Panel gave us some numbers in their report and I have been waiting to see the treasury numbers to see if they match. I appreciate he may not have those today, but he did promise those to us. I was hoping they would have been delivered prior to the actual debate; it did not happen. He sort of answered in the previous question I made 5 minutes ago, but he did not get the answer right because he did not address my question. It is based upon the premise that we could not fund small businesses because we did not have a quantifiable risk. So, what I am trying to ask is if we have a quantifiable risk with just natural depositors, how many natural depositors do we have? The Minister says it was a complex question that needed some analysis and he would circulate the numbers. I do not need the answer today, but I would plead with the Minister to provide those numbers of natural depositors from his department so we can see whether or not they coincide with the Scrutiny report because I think it is important to make sure that the number of natural depositors that they have quantified the risk for matches the numbers of natural depositors that the Scrutiny Panel have put in their report.

4.7 The Deputy of St. Mary:

Before I say a few words on this thing, I would just clarify the point for the good Deputy. The figures in the Scrutiny report are taken from the J.F.S.C. and I.M.F. staff estimated as contained in the I.M.F. report on Jersey, September 2009. They are on page 15. I doubt if the Minister for Treasury and Resources is going to come up with anything better than that, so the figures are there: 516,000 balances less than 50K and 112, 484 balances of more than 50K. I think the figures are on the pink sheet as well. So, that might save the Minister some work. The guy has enough to do anyway. Now, on this proposition, I am sort of troubled but I think I have come to terms with the Strategic Reserve issue. The proposition says that the Strategic Reserve, we are legally obliged to use it ... the capital value only to be used in exceptional circumstances to insulate the Island's economy from severe structural decline such as the sudden collapse of a major Island industry. You could argue that supporting the Depositor Compensation Scheme with a loan fits that definition, but I doubt it. I think you would be stretching the words. But I take Deputy Fox's point that that is the legal phrasing, but the problem with legal phrasing is they tie you down and they tie you down, and here we are faced yet again ... although I am not sure the A.G. (Attorney General) designate is looking too happy about the legal phrasing being twisted a little bit to what the Assembly needs to do. But we need to do this backing now that we have gone in this direction. I just want to point out to Members that by extending the use of the Strategic Reserve in this way we are accepting a slightly wider definition of how we should use the rainy day fund. Yes, I think this is appropriate that it be used as a source of liquidity and possibly of some liability in this instance, but that does mean that we have accepted the principle of widening out the use of the Strategic Fund. Now, I personally do not have a problem with that. There is a rainy day fund. If and when we think it is raining, then we may be using it. The definition of whether it is raining or not will vary. In this case we are not complying with the letter of the law probably, but we have to go there. I just wanted to make that point that we are now extending the use of the Strategic Fund. I think it is right in this case and it may be right in other cases, too.

The Deputy Bailiff:

Does any other Member wish to speak?

4.8 The Deputy of St. John:

Given the previous speaker mentioned that we are not complying with the letter of the law, could the Attorney General designate give us his view on that, please?

The Deputy Bailiff:

If I may say so, Deputy, the proposition itself makes it plain that the Act under which it had previously been operated would, if this Act is adopted, be extended. That is what the proposition includes. Does any other Member wish to speak? Then I call upon the Minister to reply.

4.9 Senator P.F.C. Ozouf:

I know it is getting late. I will just, if I may, give Members ... because Deputy Martin asked a perfectly reasonable question about the bank accounts and the different funds of the States. The States has 3 bank accounts: the Stabilisation Fund, the Consolidated Fund and the Strategic Reserve, some of which are held in investments. The Consolidated Fund is the current account. It can be withdrawn and is used for all income tax payments and all departmental expenditure. Its use is automatic and does not require any interventions of this Assembly outside the decisions of the Business Plan. Also, its use is automatic in relation to the trigger that would happen in the event of a bank failure. The normal current account balance, the Consolidated Fund balance, is significant. I think the current balance today may well be in the region of £220 million, £250 million. Maybe it is higher because of income tax payments being currently made. It would be that fund that would be paid in the event of a failure. In the event, for whatever reason, once the Energy from Waste plan has been fully deployed, other capital programmes have been made, it is possible that the balance at some point in the year may fall in future below £100 million in order to make payments for a bank failure. So there are 2 other funds that the States could then call on. One is the Stabilisation Fund. The other one is the Strategic Reserve. The Stabilisation Fund and the Strategic Reserve require specific decisions of this Assembly in order to make propositions. Indeed, the only person that can bring forward proposals to use those funds is the Minister for Treasury and Resources. The Stabilisation Fund will probably be used in the next 2 years in full as a result of the economic downturn and the fiscal stimulus; therefore, there could be an eventuality at some point that the only fund that could be used for an immediate payment is the Strategic Reserve. That is why this proposition is being made. I am sorry if I did not make that clear to Deputy Martin. I hope that those circumstances will never arise. I hope that they will not happen. I would say simply to some of the Members that have spoken against this, this is also not expenditure. It is cash flow. It is up to £100 million cash flow of which the extent of the ultimate liability of the States will be the aforementioned £35 million depending on which banks collapse. I think we have had this debate, so I hope I have made the explanations that all Members sought. I would simply refer and apologise to Deputy Le Claire if I had not made it clear. The Deputy of St. Mary and I do not agree on many things, but I agree entirely with him that the figures of natural depositors are not only in their report, they are also in the pink sheet that has been sent around to Members. I move the proposition.

Deputy P.V.F. Le Claire:

I thank the Minister. Can we have the appel, please?

The Deputy Bailiff:

The appel has been called for. I invite Members outside the Chamber to return to the Chamber in order to vote on the proposition for amending the terms upon which the Strategic Reserve Fund might be utilised. I ask the Greffier to open the voting.

POUR: 35		CONTRE: 5		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy S. Pitman (H)		

Senator T.J. Le Main		Deputy T.M. Pitman (H)		
Senator F.E. Cohen		Deputy D. De Sousa (H)		
Senator J.L. Perchard				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

5 Public Finances (Depositor Compensation) (Jersey) Regulations 200- (P.85/2009)

The Deputy Bailiff:

The last of the Regulations which we agreed earlier to deal with this evening are the Public Finances (Depositor Compensation) (Jersey) Regulations 200-, P.85/2009, in the name of the Minister for Treasury and Resources. I ask the Greffier to read the proposition.

The Assistant Greffier of the States:

Draft Public Finances (Depositor Compensation) (Jersey) Regulations 200-. The States in pursuance of Article 23 of the Public Finances (Jersey) Law 2005 have made the following Regulations.

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

I beg Members' indulgence for a very quick lesson in debits and credits. The Finance Law of the Island sets a strict limit on the total lending - that is the States lending to third parties - of 15 per cent of the total taxable income of the Island. The current lending that the States gives is currently 4 per cent. The difficulty that the D.C.S. scheme has presented is that the 15 per cent limit would be insufficient in order to make the arrangements for payment of £100 million, so there is a corresponding change to the Public Finances (Jersey) Law to increase the amount that the States

can lend to an organisation; in this case specifically and only in this event, the Depositor Compensation Scheme board up to the figures that are set out. I move the preamble.

The Deputy Bailiff:

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

5.2 Deputy G.P. Southern:

Once again, we are rushing through major legislation and major changes to the way we run the Island with no notice and no real explanation for why we are doing these things in a rush. We should not be doing it.

The Deputy Bailiff:

Does any other Member wish to speak? Do you wish to reply, Minister?

5.3 Senator P.F.C. Ozouf:

I do because I understand the importance of this legislation and I say to Deputy Southern I beg to differ. We have had a substantial debate on this Depositor Compensation Scheme. This legislation has been laying before the Assembly since June. The Corporate Affairs Scrutiny Panel has looked at it. It has been examined and we have had related debates on it. This is not a case of passing at speed legislation. This is legislation which is consequential to other legislation we have passed. It may be being held at speed, but that does not undermine the importance and the scrutiny which it has already had. I move the preamble.

The Deputy Bailiff:

The principles are proposed. All Members in favour kindly show? Those against? The principles are adopted. Minister, do you wish to propose the Regulations *en bloc*?

Senator P.F.C. Ozouf:

En bloc and answer any questions Members may have.

The Deputy Bailiff:

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

5.4 Deputy G.P. Southern:

Just briefly to point out that it has not had proper scrutiny. We have been tied up for whatever it was, 12 weeks or whatever it was, with the Depositor Compensation Scheme, not the peripheries around it. So, we are rushing this through without real, proper sight of why we are changing in a major way the way we have done things.

The Deputy Bailiff:

Does any other Member wish to speak?

5.5 The Deputy of St. Mary:

Just a question on Regulation 1, increasing the amount we can lend from 15 per cent to 33 per cent. I just want to hear the justification for that rise because on my figures the £100 million would be within the 15 per cent. I am not sure, but just spell that out, please. As the good Deputy Southern said, this is major legislation.

5.6 Senator S.C. Ferguson:

My panel did understand when we agreed to let the Economic Affairs Scrutiny Panel take the lead on this particular depositor protection scheme that they would be looking at all the legislation. I am sorry that they did not have time to do it. However, I am not going to call it in, but my panel will

take the opportunity to review the Minister for Treasury and Resources' part of the legislation in due course.

The Deputy Bailiff:

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

5.7 Senator P.F.C. Ozouf:

I can give the Assembly quite an assurance that I have looked at this extremely carefully. I will not bore Members at this time with the figures, just simply to say in response to the Deputy of St. Mary, the current estimated tax revenue for 2008, which is the baseline figures, is £576 million. Current lending is £25 million. The maintenance of the current potential for lending is under the current arrangements 61; the current potential maximum lending to the D.C.S. would be 100; therefore, the percentage follows that the total potential lending required is £186 million divided by £576 million, 33 per cent, hence the number that is in the Regulations, if that assists the Deputy. I move the Articles.

The Deputy Bailiff:

Regulations 1 to 3 are proposed. All those in favour kindly show?

The Deputy Bailiff:

The appel is called for. Any Members outside the Chamber wishing to vote, please return to the Chamber as soon as possible. On the adoption of Regulations 1 to 3 of the Public Finances (Depositor Compensation) (Jersey) Regulations, Projet 85, the Greffier will open the voting.

POUR: 35	CONTRE: 4	ABSTAIN: 0
Senator T.A. Le Sueur	Senator A. Breckon	
Senator P.F. Routier	Deputy G.P. Southern (H)	
Senator P.F.C. Ozouf	Deputy S. Pitman (H)	
Senator T.J. Le Main	Deputy T.M. Pitman (H)	
Senator F.E. Cohen		
Senator J.L. Perchard		
Senator S.C. Ferguson		
Senator A.J.D. Maclean		
Senator B.I. Le Marquand		
Connétable of St. Ouen		
Connétable of Trinity		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Saviour		
Connétable of St. Clement		
Connétable of St. Lawrence		
Connétable of St. Mary		
Deputy R.C. Duhamel (S)		
Deputy of St. Martin		
Deputy R.G. Le Hérisssier (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy P.V.F. Le Claire (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy K.C. Lewis (S)		
Deputy of St. John		
Deputy A.E. Jeune (B)		

Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

Senator P.F.C. Ozouf:

May I just take this opportunity, as the Minister for Economic Development did, of thanking my own officials and for the collaborative working which the Treasury and Economic Development has taken together with the Law Draftsman for bringing what have also been very complicated regulations. I thank the Assembly for their forbearance. **[Approbation]**

The Deputy Bailiff:

Is that a proposition that they be adopted in Third Reading?

Senator P.F.C. Ozouf:

It is.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak? The proposal is to adopt these Regulations in Third Reading. All Members in favour kindly show?

The Deputy Bailiff:

The appel is called for. Any recalcitrant Members can return to the Assembly. I ask the Greffier to open the voting.

POUR: 34		CONTRE: 4		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy S. Pitman (H)		
Senator T.J. Le Main		Deputy T.M. Pitman (H)		
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				

Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Deputy Bailiff:

Chairman, the business for the next meeting.

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

As they say, I never thought this day would come. **[Laughter]** The business for the next meeting is as per the lavender sheet with the following changes. Well, first of all, the business that remains on today's Order Paper, P.172/2009 and P.173/2009 with comments, goes forward to the start of the next meeting on 17th November in accordance with usual convention. Deputy Shona Pitman has requested that P.173 be taken first and the Chief Minister has expressed no strong opinion, so perhaps that could be noted. Then P.171/2009, provision of States Members' lunches at certain meetings and car parking, is moved to the 1st December sitting, along with the comments. There are comments lodged for P.110/2009 in the name of the Minister for Treasury and Resources. The Deputy of St. Martin has an amendment to P.176/2009. Then the other item of business will be for the 19th January sitting, P.189/2009, Draft Planning and Building (Amendment No. 5) (Jersey) Law 200- in the name of the Minister for Planning and Environment. May I say there is a considerable amount of business set aside for the 17th November meeting. I think it might be wise to make provisions so that we do not find ourselves in a similar situation. I would like to set aside the 4 days of that week and say that if that business is not concluded it might be wise perhaps to reconvene the following Tuesday for a continuation rather than a new sitting in order that we may deal with all that important business.

The Deputy Bailiff:

Is that a proposition at this stage?

The Connétable of St. Mary:

Sorry, Sir. Yes, I propose that we set aside 4 days for the sitting which commences on 17th November with an extra continuation day scheduled for 24th November should that be required.

The Deputy Bailiff:

Is that proposition seconded? **[Seconded]** Does any Member wish to speak? The Deputy of St. Martin.

6.1 The Deputy of St. Martin:

All I would ask is, is there no reason why we cannot meet on Monday, 23rd November, rather than leave it until the Tuesday? It would seem to make sense to start on the Monday and have the rest of the week off. **[Interruption]** **[Laughter]** Can I make it clear we are talking about starting on the Tuesday, working through to the Friday, and then if we do not finish on the Friday we will start on the following Tuesday. What I am asking is would it not make more sense to start that second week on the Monday rather than the Tuesday. That is all I am asking.

The Deputy Bailiff:

Can I suggest that we pick up any other comments and then come back to the chairman? Senator Breckon.

6.2 Senator A. Breckon:

If I may, I wonder if I could ask the Chairman of P.P.C. to comment. We did on a trial basis do the questions and the other things on a Monday afternoon and then we started the Tuesday morning sort of clean, straight into some debate. I wonder if she has a reason for not doing that here. If not, then perhaps I would like to propose that if that is not the case, if Members would like to consider that.

6.3 Senator J.L. Perchard:

Just briefly, I know it is the intention of the Council of Ministers and this House to sign up at the earliest possible convenience to the U.N. (United Nations) Convention on the Rights of the Child. I do believe P.148/2009, naming of young offenders, if approved by this House will be contrary to the U.N. Convention on the Rights of the Child. I do ask the proposer to take advice and not waste the House's time if it is contrary to the U.N. Convention on the Rights of the Child, that he withdraws it before 17th November 2009.

6.4 Deputy T.M. Pitman:

No such advice has been forthcoming and actually what has been indicated so far is the Senator is mistaken. So, if things change, certainly, but not at this point.

6.5 Deputy J.M. Maçon:

I believe that there are the primary school visits on the Monday, all day, and, therefore, I do not believe we could sit.

The Deputy Bailiff:

Chairman, do you wish to reply?

6.6 The Connétable of St. Mary:

I was just trying to ascertain. I know that there are primary school visits, Deputy Maçon is quite correct, but I believe that sometimes the primary schools are only in the morning, until 2.30 p.m. in fact. So, it is possible we could start on the Monday afternoon. It is just that I am very loath to set a precedent regarding that when normally Tuesday is our starting day. We did, when we discussed it earlier in the year, make a sort of informal arrangement of doing that for what we call the set piece debates such as budget, business plan, et cetera.

The Deputy Bailiff:

So, do you keep to your proposition?

The Connétable of St. Mary:

I keep to my proposition, yes.

The Deputy Bailiff:

The proposition for Members is to sit for 4 days starting on 17th November with the possibility of an extra continuation day if necessary the following Tuesday. All Members in favour kindly show? Those against? I think that is agreed. The proposition is adopted.

6.7 Deputy J.A. Martin:

Just before we adjourn, could I ask the Chairman of the Constables, I did have an oral question and I think he did say he was going to do a statement. Is it going to be a statement or shall I just reset the question? It is up to the Constable. I just need to know ahead.

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

I did say that I would make a statement. It is entirely in the Deputy's hands. I am quite happy to make a statement and Members will be able to ask questions from that statement.

The Deputy Bailiff:

I think, if I may say so, that we agreed to continue to deal with the 4 propositions and it is a bit late to have a statement with questions.

6.9 The Deputy of St. Martin

Before we close, I have 4 propositions for next time and I am waiting on the comments from the Economic Development Committee and also maybe from the Chief Minister to my propositions for 2 weeks' time. Could I ask that they are forthcoming before the Tuesday of the debate?

The Deputy Bailiff:

I am sure those comments have been noted. Now, before I adjourn the proceedings, we have been sitting until 7.15 p.m. and I am sure on behalf of all Members you would like me to thank the staff from the Greffe and the usher for staying late. **[Approbation]**

ADJOURNMENT

The Deputy Bailiff:

The States stand adjourned until 17th November 2009.