

STATES OF JERSEY

OFFICIAL REPORT

FRIDAY, 10th DECEMBER 2010

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[09:31]

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

PUBLIC BUSINESS - resumption

The Deputy Bailiff:

We now resume debate on the amendment of Senator Le Gresley and I call on the Chief Minister to speak.

1. Expenditure Proposals for 2012 and 2013 and Draft Budget Statement 2011 (P.157/2010) – second amendment (P.157/2010 Amd.(2)) - resumption

1.1 Senator T.A. Le Sueur:

The problem with this amendment is that, unlike G.S.T. (Goods and Services Tax) on some sorts of necessities, these fees are optional and I.S.E. (International Service Entity) providers will only opt for these fees or additional fees if it is in their interests to do so. They have a choice: they can opt in or they can opt out and charge G.S.T. One might think that they would do that and they would work out how much G.S.T. they would have to pay, how much annual fee they would have to pay and choose the cheaper option, simply on grounds of cost. Unfortunately, it is not as simple as that and the choice will often not be made simply on cost grounds but on some of the other side effects that there are in having to apply G.S.T. in the normal way: administration costs and compliance costs and these sorts of issues. What we have here, we can remind ourselves that of the income we get from International Service Entities the majority of it comes from the individual clients of those service providers, not from the service providers themselves, and we are already proposing an increase in the basic I.S.E. fee, an increase which the Senator proposes to increase still further. But that work always has to be done with a degree of care, one often speaks about taxation being like the plucking of a goose: you have to do it feather by feather, and the danger with this is that we are going to do rather too much at one go. It is important that when one does make changes like this to a tax where International Service Entities can opt in or opt out that we consult with them, and that is the intention of the Minister for Treasury and Resources in having that consultation, just as we have had the consultation already in proposing to increase the I.S.E. fee from £100 to £200 per entity. But we have had no consultation on a potential doubling of the fees by the service providers and, in my view, I contend that before having that increase - which may or may not be desirable - that consultation, that discussion with the providers is essential and in the absence of such discussions these amendments should be put on the side for the time being and not proceeded with. On that basis, I would urge Members to oppose parts 2 and 3 of this amendment.

Senator B.E. Shenton:

Sir, could I rather belatedly declare an interest because I will be affected by this and we are talking as a debate.

The Deputy Bailiff:

Noted. Deputy Trevor Pitman.

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

Sorry, I thought there was someone before me, Sir. Thank you. That was an interesting turn of phrase that the Chief Minister used: “You need a degree of care with tax: it is like ...” what did he say: “Plucking a goose”? It could have been a slip of the tongue but I thought he said about: “Plucking the peasants” because that is what we are doing. I have to say, the proposer of this amendment, I knew him to a degree before he became elected, his politics are not that much different from my own but, my word, he must be really finding it a real eye-opener in these 5 months; he has entered the twilight zone of the parallel universe of the States Chamber. We had the adjournment yesterday and I was quite pleased because I really thought the Minister for Economic Development was going to get out his violin. Once again, having agreed to tax the ordinary

working people 5 per cent ... I do not know if anyone saw the news but the O.A.P.'s (Old Age Pensioner) party there and what it will mean to them, but we are going to tax them. Yet again, here we were, the same old spin, the same old spiel of the Minister for Economic Development, as is the Council of Ministers' way, telling us it would be Armageddon if we raised this by a few pounds, really. Yes, everyone would up sticks and leave, no evidence, and I challenge the Minister for Treasury and Resources for him to come up with some evidence but, as usual, they do not have any. It is just one rule for some and: "Let us hit the sitting ducks, let us hit the easy targets" as we do, again and again. How do we justify this continued hammering of some and this kid's-glove treatment of others? I have to applaud, I think it was the BBC ... the Minister for Treasury and Resources has been accused of being a scrooge, well, if I was a 1(1)(k) with an income of £3 million a year, I would call him Santa Claus: 4 per cent tax, nice hey? Yes, we are going to take £5 out of every £100. How does this House, or some of this House ... and I am pleased that on the radio today they stressed it was the majority only of the Government who voted to hammer the ordinary people yet again by protecting those who were big enough and rich enough to squeal that they will run away if they have to pay their dues. We had a good-humoured debate, as I think it was Deputy Le Fondré who said, yet we come to this amendment and I am sorry but good humour cannot divert from telling the truth. I had 17 contacts last night, which is not a lot, but people do not contact you after most debates. As one lady - Mary from St. Brelade - said: "Do not be downhearted, that vote with just 2 difference shows that we need just a handful more of States Members who live in the real world instead of all of these third-rate businessmen who come from privileged backgrounds." That, I am afraid, goes to the real core of what we hear again and again when it comes to big business, when it comes to finance; when it comes to the ultra rich being asked to take their medicine like the rest. Senator Le Gresley is a reasonable man, what he is proposing is moderate, it is the personification of the word, and yet again we are reeling out the same old spiel about why it must not be done. "We must consult", well, we did not consult before we considered bumping it up to 6 per cent yesterday, did we? I have never met one member of the public who was consulted on that. "This figure would remain in the ballpark of our competitors" so what is the problem? I was told yesterday by a Senator: "Yes, Trevor, but you are not understanding how the world works." Well, I am sorry, but it is not the way my world works and, if you look around the world, the world is changing and this world is dying. I had an exchange with a member of the public a couple of months ago and I was really pleased as he was bandying about quotes to use a very badly - written in English - one to be fair from Mexico: "The definition of a free-market fundamentalist: a man who will understand nothing until there is nothing left to understand" because all it is about for them is exploit, exploit, exploit; take, take, take, big stick. Is it not funny that just on the American news yesterday there was a programme about the Leona Helmsley, the "Queen of Mean" for those of you who do not know. The infamous saying: "Tax is for the little people, we do not pay tax" and that is the way some of this Government is going; I am not part of that Government and I just cannot wait for the elections to come because this hypocrisy, these double standards are going to come home to roost at last and I applaud Senator Le Gresley for bringing it and I say to him: "Hang in there, stick to your guns, do not be bullied, do not be sucked into the group-think of the Tories, who are leading us to the abyss."

[09:45]

The Bailiff:

I call upon the Deputy of Grouville.

1.1.2 Deputy C.F. Labey of Grouville:

I would like to think I am one of the free speakers and thinkers in this House and I applaud Senator Le Gresley for bringing these 2 propositions forward, and I can understand why he has done it. I understand the sentiment behind it because there is a school of thought that believes that the finance industry is not necessarily paying its way in these difficult times. However, I am afraid I cannot

support either amendment. Having worked in the finance industry, I do know a bit about it and I am afraid the timescale that he is proposing here, to be implemented by 1st January 2011, is just totally unrealistic. Most people will realise that annual fees for companies will have gone out in November for the next year and this is just too much. I would say to people who run departments, Ministers who are in charge of departments who say: "It has not been consulted upon", but I would say to them, well, it is for them with their army of officers to consult on these issues, not for the Back-Bencher who is doing their best bringing something forward. But if he had changed the date to 2012 I would say it may be realistic but, unfortunately in its present form, I cannot support either amendment.

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

Just an aside at the beginning, Deputy Trevor Pitman's catchphrase appears to be: "Tax is for the little people" well, he is right, I am a taxpayer and I am a little person. **[Laughter]** There appears to be some confusion yesterday and Deputy Trevor Pitman still appears to be a bit confused. No, Deputy Pitman, this will not result in Armageddon, it will simply mean that we collect less money from the finance industry. Both part 2 and part 3 of Senator Le Gresley's amendment are well-meaning but they will not achieve what he is trying to achieve. It is correct that if we put up the fees as suggested in part 2, we will receive less income from the finance sector and I would like to explain this to Members. Currently, we get from banks and trust companies and similar financial institutions an I.S.E. in the respective banks of £30,000 per annum and in respect of trust companies, £7,500 per annum. But in addition to that, as the Chief Minister explained, we get a further £100 for every single one of their client companies and this amounts to some 67 per cent of the total I.S.E. fees received each year, that is some £3.1 million just from the individual client companies. If we increase the bank and trust company I.S.E. fees, as suggested, they may simply switch to paying G.S.T if it is less cost to them in terms of administration and in terms of the G.S.T. paid, and that is a not a bad thing; that is their choice. But an unintended consequence of that is that we will lose all those lots of £100, which is some £3.1 million per annum. In adopting part 2, we will end up with less income which I am sure is not what the good Senator is trying to achieve. Last year the Minister for Treasury and Resources was asked in an amendment brought by I believe Senator Breckon, to increase the fees and we explained at that time, as the Deputy of Grouville has just explained, that it is practically not possible. When I used to run trust companies, we raised our fees in October, we processed them, the bookkeeping was done, the client ledgers were updated, those fees were sent out to our clients at the beginning of November and we collected the money at the beginning of December. It has been a long week but I believe it is 10th December today; in my last trust company that I worked in, we would have collected something like 70 per cent of our fees for the next year by this time. Much of what I was going to say has already been said by the Deputy of Grouville and by the Chief Minister. If we accept Senator Le Gresley's part 2, we will end up with less income and I am sure that is not what Members want so I strongly suggest that we reject part 2. Really, it is a matter for Members whether or not to accept or reject part 3 but from my mind it is too late. Last year, the Minister for Treasury and Resources was asked and gave an undertaking to look at I.S.E. fees and to include provisions in this year's Budget and that is exactly what he has done, he has doubled the minimum fee from £100 to £200. At this stage, I think we can do no more.

Deputy M. Tadier of St. Brelade:

Sir, can I ask for clarification? It seems to me that there would obviously be a gain in one respect because of the increase in the I.S.E. fees if they were to double. Potentially, if there were none of the companies left, there would a complete doubling of those fees, so what is the threshold, what is the optimum point at which one starts to lose money and what research has been done for that, because that would be really useful to know? Because it seems that if fewer companies than anticipated opted out, then we would be winning but obviously if more opted out through doubling

the fees then we would be losing, and it is really important that we have that kind of information from the Assistant Minister, because at the moment it seems to me ...

The Deputy Bailiff:

This is a question, not a statement.

Deputy M. Tadier:

Yes, that is the question.

Deputy E.J. Noel:

I am happy to answer that. It will vary from case to case because it depends on the amount of inward consumption that an individual bank or trust company would spend in G.S.T. so it varies from case to case. But for example, to give you an idea now, some 40 per cent of banks already pay G.S.T. and are not covered under the I.S.E. scheme because it is cheaper for them to do so, that is 40 per cent already. Some 20 per cent of trust companies already are under the G.S.T. scheme not the I.S.E. scheme because it is more cost effective for them, so we can only assume that that would go up and therefore we would get less revenue.

Deputy M. Tadier:

Sir, could I ask for a point of clarification while the Assistant Minister for Treasury and Resources is around? He says that if we go from £100 to £200 as the Minister for Treasury of Resources is suggesting, it is not too late to do that but it is too late to add another £25, I do not understand this. Could you explain?

Deputy E.J. Noel:

It is quite simple: the Budget was lodged some 6 to 8 weeks ago and trust companies and banks know what was in that Budget and they have raised fees accordingly.

The Deputy Bailiff:

I call on Deputy Southern.

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

I was not aware I had pressed the light.

The Deputy Bailiff:

Do not speak if you do not wish to.

Deputy G.P. Southern:

I certainly will. I do wish to speak because I am simply amazed by the logic again, or the apparent lack of logic, in what has been stated. We must not raise these fees by an additional £25 because we will lose revenue, because some companies will opt out of the alternative to paying G.S.T. and stay in the system that we have and pay G.S.T. thereby contributing to revenues of the States. Either they are going to pay a fee not to pay G.S.T, in which case we get money, or they are going to pay G.S.T. and they could make their minds up which one they are going to do but, either way, money comes into our pot, it is quite simple. We were warned yesterday, we got a variant on: "They will all leave" which was: "No more will come because we are charging them too much." Hang on, wait a minute, we know we are in a competitive market and the Isle of Man has gone down to 10 per cent, the Island is clinging on to 12.5 per cent as its headline rate, Guernsey is ... well, we will talk about Guernsey in a minute, perhaps. Our competitors, those 2 competitors, are sitting in there with a headline rate that is low to attract companies to their shores and when they are there they recognise that they pay any number of fees: a fee for this and a fee for that, for example, their social security fees are much larger than ours so they lose out on that. It is a competitive market but everybody is going with the headline rate and then putting some charges

underneath there, whether they are registration or this or that, that is the way they are generating some money from these companies. That is exactly what we are doing here: we have got a headline rate of 10 per cent tax on finance sectors but we have G.S.T. and we have got this get-out clause, this: “You have got to contribute something to the Exchequer, to the Revenue, and you can either do it by paying G.S.T. on those services that you have used locally or not, you can opt out and pay us some money to opt out.” Not a problem, but we are in a competitive market. I am hearing words that a lot of business at the moment is going towards Guernsey. I think: “Why is that?” is that because their fees to register and be exempt from whatever are high or low, is that why people are moving? Are people moving for £25? Are companies moving for £200? Does that make a difference to where somebody goes? No, I do not think so. But what advantage does Guernsey have at the moment: Why? It has decided that it is not going to pursue Zero/Ten and therefore, people are saying: “Oh, the E.U. (European Union) are no longer gunning for them, that is the safest place to be.” If I was to choose between Isle of Man, Jersey and Guernsey, I would be going where the pressure is off because the pressure is certainly on us and it is certainly on the Isle of Man in terms of compliance with the E.U. Code of Business taxation and our Zero/Ten and the Isle of Man’s Zero/Ten is number 1 target in the view of the E.U. If business is at the moment going to Guernsey then that is perhaps it, it is not about competition over piddly little fees. Then we have heard the other reserve that is trotted out. I have been here 8 years and I have heard it time and time again, which is: “No, we cannot touch businesses without consultation.” What consultation have shopkeepers out there got over duty rises? We cannot possibly do anything almost overnight by 1st January, what would shops be doing on 1st January or 1st June, whatever, they will be putting their prices up. It is a single letter: “The Government has raised our charges, we are passing them on.” It does not take long to write and send out and those companies that have pre-judged the Budget, let them learn the lesson, if they have sent their fees out already, that this House and not the Minister for Treasury and Resources decides what we put in the Budget and this House can amend the Budget and if there is an extra £25 on this particular fee then so be it. That is the way government works and if businesses have pre-empted that and pre-judged it, well, more fool them ... pause: “Send out your bills in January when you know where you are” that is common sense. But: “Oh, no, we cannot do that and we cannot act and we must consult and take our time over it and we cannot possibly raise the fees by this much because we are not competitive.” Of course we are competitive still, so let us take a long hard look at this and we are getting the sold old tired arguments trotted out time after time: “We must not touch the finance sector in any way whatsoever.” Let us put the context on it: under Zero/Ten we halved the tax that we were getting from the banks and the finance sector. Are we fools? Do we just give that up, do we just say: “Well, that is it, lucky old banks. Our revenue is depleted.” Come on, we have got to look around for charges, everybody in the world is doing it, this is a sensible move that can be done, let us please vote for this.

[10:00]

Senator J.L. Perchard:

Sir, can I ask for a point of clarification from the previous speaker? He may like to confirm something that he has said. He said, when talking of Guernsey: “They have decided that they will not be pursuing Zero/Ten.” Does he stand by this statement and will he share any written evidence he has to support it?

Deputy G.P. Southern:

Right, here we go. The statement would be: “Although Guernsey operates a Zero/Ten corporate tax regime similar to those operated by Jersey and the Isle of Man, its regime is not being assessed as Guernsey was deemed by the group [the ECOFIN Group] to have made strong enough public commitments to move away from the current regime.” That is what I am saying and that is why it is a fact.

Senator J.L. Perchard:

I am afraid, Sir, the Deputy is misleading the Assembly.

The Deputy Bailiff:

If you wish to speak, in due course you will be able to, Senator. I call on the Deputy of St. Martin.

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

I do not have a problem in making sure that we will play it their way, but really, we are going to make heavy weather of this if we do not look at what the proposition is. The Deputy of Grouville has made it quite clear, and I support what the Deputy of Grouville is saying. The question was: "Do we think it is fair to impose these charges as from 1st January 2011?" If you do, okay, vote for it, if not, I would ask we take the vote. I certainly cannot support it. I might support the raising of fees in 2012 but not 2011 and I would ask that Senator Le Gresley looks seriously at this proposition and ask that he withdraw it and come back with another one for 2012; he may well get my support and he may well get a lot more people's support, but not for 2011.

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

Sorry, I am a bit late to rise now having just heard that speech, however, I felt I ought to rise after Deputy Southern's comments there. I think the only thing missing from his normal speech that he would have made on these occasions was either starting or finishing with the terms: "I support finance" and then going on to do anything but that. I was also somewhat surprised to hear him outline the sentiment that in his opinion we should tax them before they go and I find that extremely frustrating and not constructive at all and not understanding the world in which we, as States Members, must operate. I think he also used the phrase: "We will show them." That, I do not think is a responsible attitude for any legislator to hold when it comes to understanding **[Approbation]** any of the industries that make this Island the success that it is. I think if I could just move very quickly and briefly back to a number of points that have been raised and that is an understanding that there are finance companies out there who choose to pay the I.S.E. fee rather than going through the whole of the G.S.T. administration. There does become this tipping point where they are prepared to pay a higher fee than they would have to in G.S.T. because of the perceived benefits to their clients of not having to have added administration, and there is a cost associated with that, and they will consider perhaps paying a higher fee than the administration would be. Once they get out of balance with what that extra administration would be then they take the decision that they will fall into the G.S.T. regime and that, quite simply, seems to me something that Members are not necessarily understanding. However, the main point is that this is, in my opinion, not achievable for 2011, as the Deputy of Grouville and the Deputy of St. Martin so ably said.

1.1.7 Deputy M.R. Higgins of St. Helier:

I shall be supporting this amendment and I will give 2 reasons why: for a number of years... I worked 12 years at the Financial Services Commission and during that time I spent a number of times working in the Registry as the ... I cannot remember the title now, maybe it was Assistant Registry Manager or whatever it was, but I was vetting some of the companies that were coming through into the Island and also special purpose vehicles and various other types of companies that were coming through the Companies Registry. I can tell you the one thing that really struck me was that our fees are not that bad, to be perfectly honest, and they could go up. Secondly, was the level of fees that are being charged by the industry. How many of you read the *Daily Telegraph* 2 or 3 days ago? To give you an idea of some of the fees that are being charged, not just in Jersey, we are talking about the U.K. (United Kingdom). But in terms of pensions, they have estimated that because of hidden charges, hidden fees from the people who are providing investment management and so on, that basically half your pension that you have saved up for your life will go to the investment managers and the others. What I will tell you is I know from many a time when

we were challenging different companies and we were looking at what they were proposing, it did not seem to meet with the regulations, and you question them, they were going back to their clients... and we knew they were charging their clients a lot more money, but their clients were prepared to pay it, they wanted funds here. I think that some of the arguments that are coming from some Members of this House are from accountants who work for many of those firms or have worked for those firms, they know what their fee structures are like, they are making a lot of profits from it, despite what they say, and a lot of those charges are hidden charges and so on. If they took a hit on their margins a little bit and offered a better product, they may get more business. For example, Deputy Noel was talking about he was not sure of the amount of fall-off; in economics it is called price elasticity of demand: you measure what the effect would be of putting the price up a certain level to see what the fall-off in demand is. I do not think they have done any analysis on either this or anything else, even on G.S.T. or even some of the products that we have been looking at, on import duty. I do not think they have even done the figures so the point is there is a lot of rubbish talked in this House at various times ... okay, some people on the other side of the House will say it is coming from here, we think it is coming from over there. There is so much disinformation as well, but let me just say I do not believe this will impose too great a burden and I do believe we should do it. I think if Jersey really wants to get ahead in finance we should look at more ethical charging, for example, we could do an awful lot better, we could build up a proper investment management thing on pensions in this Island if we got rid of those hidden charges that the *Daily Telegraph* was talking about and marketed that abroad and I think we would get a phenomenal amount of business. I shall be supporting this amendment.

1.1.8 Senator S.C. Ferguson:

Just a quick one. I too worked in the Registry, vetting companies. The Deputy talks about the high level of fees. Surely there is a rule in economics that the labourer is worth of his hire? It is just 3 years to do an economics degree, an accountant is more like 5 years, a good investment manager is 5 or 6 years and for him to be quite so dismissive is really a bit pathetic. He is straying into the realms of marketing and I am not sure that an economics degree qualifies you for the science of marketing.

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

That was a nice lead-in to some of what I am going to say, the science of marketing, but I want to make a couple of points first. I think the really important issue that has been highlighted is this business of it being too late which the Deputy of Grouville referred to and I am struggling with that. The realism of a charge at a month's ... well, it is not a charge in Article 3 of the amendment, it is an additional £25, the Minister for Treasury and Resources is already going to put it up from £100 to £200, that has not been ratified, so if any companies have sent out fee invoices then that is a bit odd because they cannot because they do not know what the rate is. To make it, instead of £100 increase, £125 increase, I just would like ... I know Deputy Noel attempted to explain it, but I am still finding this very odd because the bills are going out before the rate is set so I just have a problem with that and if someone can prove to me that it is impossible then I will continue to have a problem. With the second part of the amendment, paragraph 2, I think that there is a problem because that was brought in the middle of November so maybe the proposer can somehow deal with that. That is the "too late" but I think we do have to remind ourselves about the disbelief out there among the public about what we are talking about, G.S.T. going up 2 per cent, and then people shaking their heads and wondering whether the contribution of the finance industry matches in any way that 2 per cent or whether they are sharing the pain at all. That is just my second point. The third point is this question of marketing. Whether or not we put up the fees this time, I do have a problem because exactly the same will happen next year: the Budget will be drafted and it will be published towards the end of October, amendments will then go in more or less at the same time as they did this year, in the middle of November, and it will be too late again. There is a thing for Members to get hold of: if we do want to raise these fees then we would be able to do it next year

or is this a perpetual game of never being able to do it? Will this make a difference, will this doubling of the fees under 2 for some vehicles and the addition of £25 in the third part in part 3 of the amendment, will this make a difference to companies coming to Jersey or going from or leaving? I ask myself what attracts people to Jersey, why would they choose to be in Jersey and I looked on the Jersey Finance website. Jersey Finance, right on its front page: "Is proud to announce Jersey's recent accolades" and I do not hear anything about £25 on the I.S.E. fees. "Top offshore jurisdiction in the most recent Global Financial Centres index" and we are often told this about how brilliant Jersey is in the finance world: "Best offshore centre, Global Investor awards": "International Finance Centre of the Year step awards 2009/2010." "Best international finance centre International Fund and Product awards, 2010": "Top tier I.M.F. (International Monetary Fund) rating Jersey higher than the U.K. or the U.S." although I am not sure that is a very high benchmark, but top tier I.M.F. rating: "O.E.C.D. (Organisation for Economic Co-operation and Development) G20 White List achieved since 2002." So we do have something to shout about but it is not whether or not we put £25 on the I.S.E. fee, it is the fact that we are the best in this field and we are judged to be the best by the people who know. The other sheet I looked at was: "Why Jersey?" out of all their downloadable files, which I thought: "That is the one, let us see what that says" because the good Senator Ferguson talked about marketing: this is it: "This is where you would go. History: one of the longest-established most politically-stable and respected international finance centres. Location: we have got flights everywhere, central time zone and we speak English" well, of a sort. "Co-operation, regulatory representation" I am just reading out the headings now: "Corporate climate, resources and tax." Not a word about the fees because, of course, when you are the best you really do not need to worry about £25 because the marketing is elsewhere, the marketing is based on the fact that you have the expertise to do what your clients want you to do. Honestly, that whole argument is a complete red herring, it is a complete nonsense. The other thing that I wanted to point out, which nobody else has mentioned, is that I asked the Minister for Economic Development yesterday to clarify something he said and he agreed that, in the past, Jersey-exempt companies paid more than they do now, substantially more. My recollection of reading J.F.S.C. (Jersey Financial Services Commission) annual reports was I think it was £600 was the standard rate for an international company, and it has now gone quite a way down from that.

[10:15]

I really cannot see the problem. The only issue for me, the only practicality, is the 2-leg question, otherwise there really is no problem with this amendment at all.

Deputy E.J. Noel:

Can I ask a point of clarification from the Deputy of St. Mary?

The Deputy Bailiff:

As long as it is not a second speech, Deputy.

Deputy E.J. Noel:

No. Is he suggesting that we should only put up the basic I.S.E. fees by 2 per cent as we have done with G.S.T. instead of the 100 per cent that the Minister for Treasury is already proposing?

The Deputy of St. Mary:

Sorry, I was distracted, could you ...?

Deputy E.J. Noel:

I believe that the Deputy of St. Mary suggested that we should be putting up the basic I.S.E. fees by 2 per cent, as we have done with G.S.T. but the Minister for Treasury is already, I would suggest, proposing 100 per cent increase. I am a bit confused by the ...

The Deputy of St. Mary:

No. I can explain this quite easily. I was comparing the effect of 2 per cent on your ordinary, average person in the street and we have understood from Deputy Southern you are talking about hundreds of pounds on the annual bill and I was comparing that to a raise of £100 on company fees in an industry which has a profit of £900 million.

Deputy M. Tadier:

Can I ask, I do not know if it is in order, but it is from the Minister for Treasury and Resources?

The Deputy Bailiff:

Not at this stage, Deputy, if you will forgive me. Members, certainly on the Deputies' side of the Chamber, will have noticed a gathering of very eminent people, including his Excellency, in the gallery, but also including the Right Honourable Lord McNally, who is the Minister of State for the Ministry of Justice and Deputy Leader of the House of Lords. Lord McNally is in the Island for meetings today and he has an extraordinarily busy schedule. I am sure on behalf of all Members you would like me to give him a very warm welcome to this Chamber. **[Approbation]** I am sorry, Deputy Tadier, you had a point of clarification.

Deputy M. Tadier:

What I wanted to ask of the Minister for Treasury and Resources is his proposal to increase the fees, when does that come in, is it next year or is it in 2012? I probably should know that but ...

Senator P.F.C. Ozouf:

I think I have already been quite clear: the fee increases are from 1 January. They have been indicated at £200.

The Deputy Bailiff:

Does any other Member wish to speak? Then, I call on Senator Le Gresley to reply.

1.1.10 Senator F. du H. Le Gresley:

I realise that we are probably all getting a little bit tired of the Budget debate and I am not proposing to go through everybody's speech who has spoken on these 2 amendments. What I would say is I would like Members to remember that this was part of a package, the first part was to increase income tax exemption limits. Those of you who recall, as Back-Benchers we were told: "If you want to come forward with amendments to the Budget, you have to find appropriate savings." This was my package for increasing income tax exemption limits and I had to find some money. That is why these were put together as a package. I realise that if you increase income tax exemption limits the actual money does not really affect that year, it is only when people start to pay tax, so there is an argument - and a very good argument - to say that the increases that I am proposing should really come into effect in 2012 because that is when the effect of the proposal I had for raising income tax limits would have needed the money. Unfortunately, because of the process that we have been through with this Budget debate, my income tax exemption proposal was lifted, dare I say, out of this amendment, debated before we even discussed G.S.T. It was rejected by this House by 26 votes to 22 and I warned Members that if you do not vote for this now, if you do not get your G.S.T. exemptions later or a lower rate of G.S.T., you will have done nothing to help middle-income people in Jersey. I warned you and this is exactly what has happened. **[Approbation]** So yes, I have kept this in the debate, and I have been under pressure to withdraw it, as you will imagine, but I have not withdrawn it because there is a principle here, the principle is the Treasurer's Budget is a package, he has told us that: "Do not unwrap my package because it all hangs together" and we have gone through the whole of this week trying not to unwrap his package. Well, my package was unwrapped **[Laughter]** and I am not happy about it, I am not happy at all. I am going to carry on with this proposition, I am not going to withdraw it and, like the Deputy of St. Mary would say, I have got 3 points to make and I have already made the first

one, which was the package. **[Laughter]** The second one is morals. Yesterday we heard a lot about morals, we heard people say that morally it is wrong to tax food, maybe it is, and we saw Ministers voting to exempt food on their morals. I have got some morals as well and my morals say the finance industry must contribute more. I know the Minister will say he has doubled the I.S.E. fees to £200, but that is not enough, we want them to contribute more, I do anyway, and I hope the majority of Members do. I would say to Members I agree that part 2 is a big jump, I agree that, but I am still going to take a vote on it so you are not going to get away with it, but part 3 is quite practical. I say to people, and the point has been made by many Members, if they were fool enough to send out their letters saying the fee is £200, well, so be it, sorry you got it wrong folks, it is now £225. If you do not want to pass the £25 on, absorb it within your commissions and profits, that is what I say. I am very adamant about that. I accept many of you probably will not vote for 2, but I would like to see who would, 3, please stick with me on that one, it is not a problem to write a letter to a client and say: "I am sorry, the States decided in the Budget the fee would go to £225 and we need to charge you another £25." It is not a problem, I do not think it is a problem, anyway. My last point: need. Now I have lost the debate on income tax exemption limits, many people will say: "Well, there is no need for this, this is just wasting our time." Okay, so we still have a deficit, we still need some more money, do we not? £2.85 million here, would we not like to have that money to make things easier? That was a very good prompt there, schools. But I am not going to say school build. Most of you will remember that I had lodged another proposition: St. Martin Primary School. I pulled that one because the Minister for Treasury and Resources made me promises, made you promises and made the people of St. Martin promises that they would get their new school in 2 phases, but unfortunately it has to be 2 phases because we have not got enough money. £7.7 million is needed, £2.85 million will fund the first phase so if you approve this, St. Martin Primary School will have their new school sooner than later. Would the finance industry not be proud to have built the brand new primary school in St. Martin and they would all be invited to the opening and they would be able to donate furniture that they have bought free of G.S.T. **[Laughter]** what a wonderful arrangement that would be. Sir, I am going to ask for the vote to be on each amendment and I maintain the amendments.

The Deputy Bailiff:

Do you call for the appel? The appel is called for on the 2 amendments which Senator Le Gresley has brought forward. I invite Members to return to their seats. The first vote is going to be taken on the first of these amendments and I ask the Greffier to open the voting.

POUR: 17

Senator A. Breckon
 Senator F. du H. Le Gresley
 Connétable of St. Helier
 Connétable of St. Martin
 Connétable of St. Lawrence
 Deputy R.G. Le Hérisssier (S)
 Deputy J.A. Martin (H)
 Deputy G.P. Southern (H)
 Deputy P.V.F. Le Claire (H)
 Deputy S. Pitman (H)
 Deputy K.C. Lewis (S)
 Deputy M. Tadier (B)
 Deputy of St. Mary
 Deputy T.M. Pitman (H)
 Deputy M.R. Higgins (H)
 Deputy A.K.F. Green (H)
 Deputy J.M. Maçon (S)

CONTRE: 27

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 S.C. Ferguson
 Senator A.J.H. Maclean
 Senator B.I. Le Marquand
 Connétable of St. Ouen
 Connétable of Grouville
 Connétable of St. Brelade
 Connétable of St. Clement
 Connétable of St. Peter
 Deputy R.C. Duhamel (S)
 Deputy of St. Martin
 Deputy J.B. Fox (H)
 Deputy of St. Ouen
 Deputy of Grouville

ABSTAIN: 0

Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy I.J. Gorst (C)
Deputy A.E. Jeune (B)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)

The Deputy Bailiff:

I will ask the Greffier to reset the system and to open the voting on Senator Le Gresley's third amendment seeking an increase in the basic I.S.E. fee. I ask the Greffier to open the voting.

POUR: 20

Senator A. Breckon
Senator F. du H. Le Gresley
Connétable of St. Helier
Connétable of St. Martin
Connétable of St. Lawrence
Deputy R.G. Le Hérissier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of St. Ouen
Deputy J.A. Hilton (H)
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

CONTRE: 24

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 S.C. Ferguson
Senator A.J.H. Maclean
Senator B.I. Le Marquand
Connétable of St. Ouen
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Clement
Connétable of St. Peter
Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy J.B. Fox (H)
Deputy of Grouville
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy I.J. Gorst (C)
Deputy A.E. Jeune (B)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)

ABSTAIN: 0

1.2 Expenditure Proposals for 2012 and 2013 and Draft Budget Statement 2011 (P.157/2010): fifth amendment (P.157/2010 Amd.(5))

The Deputy Bailiff:

Very well, we now come on to amendment number 5 in the name of Senator Breckon and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

On page 2, paragraph (b) after the words: "As set out in the Budget Statement" insert the words: "except that the estimate of total taxation revenue shall be increased by £5 million by increasing the rates of stamp duty for probate or letters of administration as follows." So there are 2 columns here: "If the net value of a personal estate is sworn" and: "The proposed stamp duty: not to exceed £10,000 will be nil, to be between £10,001 and £100,000, 1 per cent, between £100,001 and 500,000, 1.5 per cent, to be between £500,001 and £1 million, 2 per cent, to be between £1,000,001 and £5 million, to be 3 per cent, to be between £5,000,001 and £10 million, to be 4 per cent, to exceed £10,000,001, 5 per cent."

The Deputy of St. Mary:

Sir, for clarification, may I point out to Members that if they cannot find it, it is because it is amendment 5 and in the running order it says amendment 4.

The Deputy Bailiff:

It is indeed amendment 5, Deputy. Senator Breckon.

1.2.1 Senator A. Breckon:

By way of background, I would just like to explain something to Members. I was an executor for an estate of a young person who died suddenly and the family who I knew did not want to deal with it and they asked me if I would do that, so I have an experience of dealing with an estate. I must say praise is due to the Judicial Greffier and the Deputy Judicial Greffier for the way that they handled this; because my surname was not the same as the deceased person, it does cause some difficulties, if you are making inquiries about someone's estate: why do you want to know? It is difficult until you get the Letters of Administration. Also, in particular, Lloyds TSB Bank were particularly helpful because they have a probate department which is dedicated to this and it helped me through the process, and the person who died did not leave a will - they died intestate - which again I was given guidance on. So I did have some experience of that. Having said that, basically, I was given by the family - because as I say emotionally they could not handle any of it - 2 carrier bags full of paperwork and said: "Can you sort this out, find out what it is all about and do it?" so I went through things.

[10:30]

Basically what it is about is finding out what is in there: the person is in a job so there are possibly wages, there are maybe bills to be paid, there are insurance policies and things like that so the actual process of probate, I would say to Members, is fairly straightforward and would be achievable by perhaps the average person with some guidance, and that is available, and I must again commend them through the Judicial Greffe, they were excellent in assisting me through that. But then why am I then bringing this? What Members should now have on their desks - there is a paper coming round which gives some ideas of fees that are charged quite recently - I want to come to that in a minute or 2. But if we are going to look at tax and spend then my contention is we should look at everything. I brought this a couple of years ago and it got defeated, but then I will bring it again because not that many years ago, as the Deputy of St. Martin might remember, I brought a proposition to cap mortgage relief and the Finance and Economics Committee of the day put comments down what an idiot I was, how Guernsey and the Isle of Man would benefit, we could not do anything to affect the housing market, the whole thing would collapse. A couple of years ago I brought something about ramping up the stamp duty, and it is on the Minister for Treasury and Resources' agenda for today, to do the very same thing that I proposed a couple of years ago. But the reason I say that is the comments of the Council of Ministers are in the same vein. I think it is excellent that this stuff goes on the record because when we come back to the main Budget debate, there were some things that were said, advice we were given, which was absolute rubbish, and I will prove that when we come round later. But the thing is, this is on the record and this - to me - is manna because I think the first 2 rules of the legal profession are: "Get it in writing" and the second thing is: "Do not write it down yourself." I think the Council of Ministers - not for the first time - finance committees and others have done it before, they fell into the trap. It is on the record which for me is enough for now. Again, it is to do with finance, and I will come to that in a minute or 2, because I understand there has been some lobbying from Jersey Finance, and this has happened before, because it is always good to hear from them. I do not know if their *pro bono* work includes protesting on their own behalf, but perhaps it does. But if Members will look at the paper I distributed, and I have taken that down and I have taken out ... this is a fairly straightforward case and, as you can see, I have made representation on the person's behalf,

the bits that are Tippexed out are Tippexed out for a reason because it identifies the person, and I have also Tippexed out the law firm. But as Members will see, the fee comes to very nearly £32,000, this is on the second page under the box, on an estate of £112,000. If Members are worried about fees, they need to be worrying about probate fees: they perhaps should be questioning some of these charges. I have given the breakdown of that because what I have asked for and I have not yet received is a breakdown of that. If I put my car in the garage, when I get the bill, it tells me if they put a tyre on, what they have done to the exhaust, how much it was; this does not say any of that so that is where we are. This is real life, this is happening. If I was in this business, I would be howling as well if somebody was going to perhaps make a difference to that because this is nice work if you can get it. No big deal, I was executor and I did not take any money for doing that and it was, I would say, fairly straightforward. Obviously this is a professional organisation and this is part of their business, the work of probate, so it is a different thing, but to me ...

Senator T.A. Le Sueur:

As a point of order, Sir, is this in any way relevant to the issue of stamp duty?

The Deputy Bailiff:

I must admit I am struggling with whether it is relevant. Why are the charges, Senator, which a law firm may have imposed for a particular estate, relevant to the amount of stamp duty which ought to be charged on the grant of probate?

Senator A. Breckon:

Protestations from the finance industry are about an increase in fees and this a fee that has been charged to a family for work that has been done and my contention is if there is an issue about fees, it is not about the probate fees, it is perhaps in this area more. The people who have ...

The Deputy Bailiff:

That, if I may so with respect, is not relevant to your amendment. There will be some legal fees which are considerably less than this, I regret to say there will be some legal fees which are more than this and I must say I am struggling with how relevant a particular bill is to the issue which is being debated, and we are certainly not debating legal fees today.

Senator A. Breckon:

Sir, the comment of the Council of Ministers within days of this amendment having been lodged, very strong representations have been made to the Minister for Treasury and Resources from Jersey Finance Limited and a number of representative bodies for different sectors of the finance industry. My link with that, Sir, is that they have a vested interest which, because they are getting some fees of various descriptions for this work, is part of their protest, if you like.

The Deputy Bailiff:

You are absolutely entitled to address that comment from the Council of Ministers.

Senator A. Breckon:

That is why I have used this for demonstration purposes of the type of fee and, as you say, some will be higher, some will be lower, some will not exist at all and the Judicial Greffe will deal with it. That is where we are and, as I say, the Council of Ministers made that comment. I do welcome the comments of the Council of Ministers because that is constructive because we are looking at a time now when, as Senator Le Gresley has just mentioned, could we do with some more money and where from? For me, this was something that maybe could have been looked at, should have been looked at. It was adjusted a number of years ago but perhaps it could have been adjusted. But again, unless it comes up in a Budget debate or we can do that then the ordinary Member does not have that opportunity. The other thing is, this gets this subject - in some difficult times for us - into

the public arena and of course it is entirely up to Members how they vote on that but I would contend that there is the possibility of raising extra money without doing too much harm to the level of business we do and where we do it. There are some figures contained in the report and the sort of bonus year, if this had been in place and no business had been lost, would have brought in an extra £21 million in the 2009 financial year. My estimate is that conservatively - with a small "c" - this could possibly bring in £5 million. Again this was raised before with the industry a couple of years ago, and again I did not see any substantial figures. I heard the howls but that was it, and the Minister for Treasury and Resources at the time was Senator Le Sueur who made virtually the same comments that are being made this time, but I believe this matter is definitely worth putting on the agenda. It is something that we must consider and if the House does not approve this today then somebody should look at it and increase fees because when it comes to things like harbour fees, we put them up every year. I am not saying we should put this up every year, but perhaps we should do that from time to time. With that, I make the amendment.

The Deputy Bailiff:

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

1.2.2 Senator P.F.C. Ozouf:

The Council of Ministers opposes this amendment and opposes it quite strongly. Senator Breckon brought a similar proposition in 2007 and that was rejected by the Assembly, 2 votes in favour, 39 against. I am afraid we have not managed to convince Senator Breckon on the basis of evidence of the danger that this proposes to our economic interests. This is an appealing proposition, and I regret that I am standing here opposing a proposition which could generate, on the face of it, more revenue. I am afraid that it is not the case. I am afraid that Senator Breckon, he made a number of points which I do not think are relevant at all, and display, if I may say, not a real understanding of how - which I will attempt very briefly to deal with - the financial services industry works and why this matters. There is a real danger that if this proposition were accepted there would be a withdrawal of bank deposits and other investments from Jersey. Stamp duty on probate, as I am sure Members know, applies to moveable assets like cash and shares. It applies to individuals who are resident and not resident in Jersey. The amendment by Senator Breckon proposes that the probate duty paid on moveable estates is increased by more than 5 times. Increasing the rates on probate duty risks individuals withdrawing their funds from Jersey and putting them in, in a more competitive place that do not have such a charge that would be imposed, as the Senator is proposing. Funds are deposited in Jersey banks. They are invested in Jersey funds and they are held in Jersey entities. That generates revenue and the Island generates fees from that. Those companies pay tax on those profits in Jersey. Large numbers of people are employed doing just that, to manage those assets and that cash, *et cetera*. A move to increase the probate duty to non-Jersey people to those levels will harm our competitiveness, it will cause a loss of jobs. It will cause the contrary to what Senator Breckon is proposing, it will reduce our overall revenues. It is almost disappointing to hear that just because representative entities make representations to this Assembly and to me in terms of what is in the economic interest of Jersey that they are doing something wrong. Jersey Finance making representations is wrong. I think that many people who work hard, who give up their time in Jersey Finance and others in terms of their *pro bono* work are looking out for the economic interests of Jersey, and yes I have had strong representations from the Jersey Branch of the Society of Trust and Estates Practitioners, the Jersey Association of Trust Companies, the Jersey Funds Association and a number lawyers, tax advisers, and individuals who work in Jersey's trust sector. They are expressing concern that the impact on this amendment would have on their industry, if it were to be approved. So why would a foreign investor deposit cash in Jersey with the risk that when he dies he will be taxed at 5 per cent. That is the bottom line. When he could instead deposit that cash, very legitimately with all of our strong regulatory standards, but if they do deposit and they have good reason to do so, maybe they are a non-resident in the U.K. who are resident outside, there is an alternative. They can deposit it in Guernsey and

they will be taxed at 0.5 per cent, or the Isle of Man where they will just pay a nominal fee. Jersey already charges probate duty at higher rates than our closest competitor. Guernsey charges probate duty of 0.35 per cent compared with our rate of 0.75. The Isle of Man, as I said, only has a nominal sum regardless of the estate. Other countries charge nothing at all. These amounts are not punitive and people are, at the current levels, still willing to invest in Jersey even though there is evidence that since we removed the cap that this has deterred some investment, and I accept that. If these charges ...

The Deputy Bailiff:

I am sorry, Senator, we have become inquorate. I invite Members to return to the Chamber as soon as possible. We are now quorate.

Senator P.F.C. Ozouf:

I think I was just saying that the rates that we have in Jersey, they have been increased and they have deterred some investment, I accept that, but on balance we have made carefully judged decisions. The Senator suggests that increasing the rates of duty will raise that £5 million. I am afraid that this is simply illusionary. It will not happen. Two-thirds of all estates who pay probate duty in Jersey belong to people who are non-domiciled in Jersey. If large numbers of people take their money away from Jersey the amount of probate will fall. One example, if the Senator's amendment is successful the probate duty of an estate worth £15 million, say, would be increased by nearly £475,000. If that individual withdraws those assets - which they will - from Jersey, the Island will not only not get the £475,000, will lose the probate level that we already have, which we generate £112,000. Of course, we would lose all the benefits of having that investment activity in Jersey. I am afraid to say that wealthy people have choices, and they will have a choice of a more competitive jurisdiction. For Jersey-born people there are structures also that will be put in place inevitably to mitigate against these charges. These rates are competitive. There is little incentive for people to carry out those practices, but I suspect that if they were to be increased for residence - that is the smaller amount of the issue - then effectively we would be counterproductive in terms of raising revenue. I urge Members, this is a damaging proposition to Jersey. It is damaging because of the non-residents and so I hope Members do not have much more sympathy than they had the last time they voted on it, and they reject the proposition, and we do not take too long in doing so.

[10:45]

Senator T.J. Le Main:

Can I make a comment, Sir? I am very disappointed to see so few Members in this Assembly in this very important amendment, which has some dramatic ramifications for the Island. They should be in the Chamber listening to the Minister for Treasury and Resources and listening to the arguments for and against this amendment. I think it is quite serious.

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

When the Senator left he made us inquorate. **[Laughter]**

1.2.3 Senator B.I. Le Marquand:

This proposition if passed will be very damaging to our banking industry, which is a vital part of our finance industry. The fundamental flaw is that the increase will apply not only to the estates - that is the moveable assets - of people who died domiciled in Jersey - that is with Jersey as their permanent home - but also to people who die domiciled outside Jersey. Now Probate in relation to Wills, Letters of Administration in relation to where there is no Will, are an application to the Registrar of Probate at the Judicial Greffe, so I therefore do know quite a lot about this because I used to oversee the operation of that as Greffier, to authorise executors or administrators to obtain the moveable assets in order to distribute them. It is not a death duty. It is a fee for a court service based on the value of the moveable estate. It also does not affect real property - that is land or other

such real assets, immovable assets - in Jersey. I have in front me complete lists of the stamp duty in relation to applications in 2009. I have that list by virtue of the place of domicile. I have it by virtue of the value of the estate, and I have it by virtue of the amount of stamp duty paid. I have had great enjoyment during some of the long debates, which were perhaps not that interesting or were rather predictable, in counting up all sorts of interesting figures, which I would like to share in detail with my colleagues, but I am not going to do that. I am going to share just nuggets of information from that. In 2009 more than 80 per cent of stamp duty came from people domiciled outside Jersey. However, there was one huge estate of a person who died domiciled outside Jersey with a value of more than £290 million. That alone produced £2,181,125. Also by number in 2009 there were 1,364 out of 2,000 applications non-domiciled in Jersey, 68.2 per cent. The problem is massively illustrated by that estate of £290 million plus. The fee, which was high enough as it was at over £2 million, a complete windfall, would in fact have been more than £14 million under this calculation, because what we would have effectively is a kind of tax - not a fee, but a tax - on the estate. That is completely in addition to any death duties, capital transfer tax, inheritance tax or whatever it might be called in the jurisdiction where the person was domiciled. Now it should be clear in my view to any Member that that sort of massive penalty or potential penalty would make us totally and utterly uncompetitive. Once it got out that there was a sort of risk of a hit to a person's estate they would not put their money in Jersey. They would put it anywhere else. So as it is, we have at the 0.75 per cent figure really quite a high figure of stamp duty, but it is complete and utter financial suicide to seek to increase it. It is unfortunate because if Senator Breckon had brought before this Assembly a proposition in relation to increase of stamp duty, in relation to those who died domiciled in Jersey, i.e. with their permanent home, then I believe we might have had some sort of sensible debate as to whether or not we were in favour of some kind of death duties, because this proposition would still have represented effectively a type of death duty and we could have had that debate; and I have arguments which I could present today in relation to that, but I am not going to do that because it is not necessary to do so on this occasion. So quite simply, this is an ill-conceived measure. If it had referred to domiciled in Jersey we could have had a debate and we would have been divided on that and I think it still would have gone down, but as it is, it is utterly hopeless, and I very strongly urge Members to vote against.

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

While I cannot support the amendment principally, because I do not think the proposer has thought the consequences through, as has been explained by previous speakers, I do empathise with his thrust with regard to charges on estates and costs of curatorships and such like. While I understand that you have ruled that this has no bearing to the proposition as such, I would urge the proposer to consider bringing a proposition to bring those under control, because I think it is a very valid point.

1.2.5 Deputy P.V.F. Le Claire:

Very briefly, I have withdrawn my proposition that asked us to look at making certain that when companies and people's estates were closed there were no charges made upon those, as I have received evidence that there is currently. So perhaps Senator Breckon will forgive me for not being able to support him this morning because I do feel, unless he can make a persuasive argument to sum up, the Minister for Treasury and Resources and also Senator Le Marquand has convinced me that this is going to be not helpful for the Island. So I am sorry to say I cannot support him unless he can do something incredible in his summing-up. But I would ask him to forgive me for that, and ask him to help me possibly look at these issues in the New Year and combine his considerable abilities in helping me ascertain and understand what it is I am trying to achieve as well.

1.2.6 Deputy G.P. Southern:

I rise to speak just briefly because my attention is drawn to the bottom of page 3, in the comments of the Council of Ministers where it says: "In addition, accountants and tax advisers have contacted the Minister for Treasury and Resources in recent days to advise him that probate duty in its current

form can be avoided relatively easily, both by Jersey and non-Jersey domiciles. The easiest way for non-domiciles to avoid probate duty is of course for them to remove their investments from the Island. For Jersey-born people there are structures which can be put in place to mitigate the charge. While the rates are relatively low there is little incentive even for Jersey domiciles to do this, but if they increase by dramatic factors proposed by Senator Breckon there is little doubt there would be a new incentive to avoid the duty. While it would be possible to bring anti-avoidance measures to counter this for Jersey domiciled individuals, this represents a relatively small proportion of the total moveable assets held in Jersey.” It seems to me, combined with the contribution from Senator Le Marquand, that once again we are being advised to treat domiciled people, people who live here, differently to people who do not live here. That occurs time and time again throughout our tax and fee structures. Once again, certainly Senator Le Marquand, he is saying if this were just ring-fenced to benefit people who do not live here then it would be all right. The fact is, we have a deficit in our Budget and in examining ways in which we might charge fees one of the things we must not do is discriminate yet again against people who live here, our own residents, to the benefit of those who do not. We do it time and time again. But I am particularly struck by this phrase: “This duty can be easily avoided.” The point I make is: and how many other taxes and charges can be easily avoided is a question I have asked of the Minister for Treasury and Resources in the past. We are in the game of tax avoidance internationally, what is happening locally? How much tax are we not picking up through various tax avoidance mechanisms, which we should be picking up in order to fill the hole that we have got. I just leave that for Members to consider.

The Deputy Bailiff:

Does any other Member wish to speak? I call upon Senator Breckon to reply.

1.2.7 Senator A. Breckon:

I am grateful to the Minister for Treasury and Resources for the points he raised and also to Senator Le Marquand, who obviously has some experience in this area. I think what he has raised are some interesting points and I am particularly interested in the statistics he had because I did not have access to that. It is, I think, a matter worthy of further consideration. But that is a matter for another day, as they say. We are where we are. I will not dwell on this. I maintain the amendment and I ask for the appel.

The Deputy Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is on the amendment of Senator Breckon and I ask the Greffier to open the voting.

POUR: 6

- Senator A. Breckon
- Deputy J.A. Martin (H)
- Deputy G.P. Southern (H)
- Deputy S. Pitman (H)
- Deputy M. Tadier (B)
- Deputy T.M. Pitman (H)

CONTRE: 36

- Senator P.F. Routier
- Senator P.F.C. Ozouf
- Senator T.J. Le Main
- Senator J.L. Perchard
- Senator S.C. Ferguson
- Senator A.J.H. Maclean
- Senator B.I. Le Marquand
- Senator F.du H. Le Gresley
- Connétable of St. Ouen
- Connétable of St. Helier
- 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

ABSTAIN: 0

Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy R.G. Le Hérisssier (S)
Deputy J.B. Fox (H)
Deputy of St. Ouen
Deputy of Grouville
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 T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

Connétable K.P. Vibert of St. Ouen:

Before we move on, might I suggest to the House that this would be a very good item for Scrutiny.

The Deputy Bailiff:

No doubt that comment has been received by the relevant Scrutiny chairman. Members will have on their desks an urgent oral question from Deputy Southern to the Chief Minister, which it seems to me would be convenient to deal with before we come to the amendment in the name of the Deputy of Grouville.

2. Urgent Oral Question - Deputy G.P. Southern of St. Helier of the Chief Minister regarding Zero/Ten and the Island's compliance with the EU Code of Conduct on Business Taxation:

2.1 Deputy G.P. Southern:

It was with that in mind that I asked for an emergency question. In the light of the assurance from the Minister for Treasury and Resources that Jersey only had a minor issue with deemed distribution in relation to the Island's compliance with the E.U. code on business taxation and that the E.U. decision awaited a further meeting in February, what responsible does the Chief Minister have to the statement from H.M. Treasury following a meeting with ECOFIN Ministers that states that ECOFIN noted the view of the Business Taxation Group that Jersey's Zero/Ten corporate tax regime gave rise to harmful effects and was not compliant with the code, and that the U.K. Government therefore expects Jersey to abide by commitments to comply with the code and implement the abolition of the harmful measures?

Senator T.A. Le Sueur (The Chief Minister):

The position remains as set out in the press release which we issued earlier this week. This is based on our understanding from the information that we have been able to obtain to date that the Code Group, while agreeing that our Zero/Ten corporate tax regime gives rise to harmful effects, recommended that this be reviewed in due course on the basis of the conclusions of a E.U. Council High Level Working Party work on examining the scope of the code.

[11:00]

In the light of this, it is clear to us that we should await the outcome of the review by the High Level Working Party before we are able to determine what steps to take to remove any harmful effects on our present corporate tax regime. Our present understanding is that the harmful effect is the interaction of the deemed distribution rules and the Zero/Ten regime. We have seen nothing that would suggest that the tax rate in itself is a matter that falls within the scope of the code.

2.1.1 Deputy G.P. Southern:

Does the Chief Minister accept that our Zero/Ten measures, as currently constituted, offer advantages according to only non-residents in respect of transactions carried out with non-residents; is that the case? Does it break Article 1 of the E.U. Code of Conduct?

Senator T.A. Le Sueur:

Our view is that deemed distribution is a personal tax measure. The E.U. Code of Conduct Group is concerned with business taxation.

2.1.2 Deputy G.P. Southern:

If I may, then I will move on to Article 2 of the E.U. Code of Conduct, which says one of the tests is whether advantages are ring-fenced from the domestic market so they do not affect the national tax base. Is that the case with our measures on Zero/Ten?

Senator T.A. Le Sueur:

That is a question which I would be better placed to answer once I have read the response of the High Level Working Group. At this stage the answer is: who knows?

2.1.3 Deputy M.R. Higgins:

First of all, Lord McNally was in the gallery earlier and obviously was in the Island, as the Minister who is responsible for the Channel Islands, is the Chief Minister trying to tell us he had no discussions with Lord McNally about the British Government's position last night at the dinner? Or are we expected to believe the topic did not even come up in conversation?

Senator T.A. Le Sueur:

Members may appreciate I have been in discussions with Lord McNally for the last three-quarters of an hour and I had to leave those discussions to come up here to answer questions. We have been discussing a variety of things, and we have not come round to that one yet, but no doubt we will in due course.

2.1.4 Senator P.F. Routier:

Would the Chief Minister give us any indication whether he has had any official written communication from the U.K. Government which highlights any of the issues which have been talked about?

Senator T.A. Le Sueur:

I have had no written communication whatsoever from H.M. Treasury in recent weeks.

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

Have you received a statement from Her Majesty's Treasury now that we have a second-hand email from Guernsey press report?

Senator T.A. Le Sueur:

No, I have had no such statement. I have seen the press report in the Guernsey press and I treat that with the respect I think it is due. **[Laughter]**

2.1.6 The Deputy of St. Mary:

Has the Chief Minister not seen the statement from the U.K. Treasury which says the E.U. Commission considered that taken as a whole the systems were designed to offer nought per cent tax rate to foreign investors, although some sectors are not taxed at nought per cent rate, while avoiding residents benefiting from the nought per cent tax rate? Does the Chief Minister agree that that is what the statement from the U.K. Treasury says?

Senator T.A. Le Sueur:

A statement from the U.K. Treasury says that the Commission was looking at the deemed distribution and attributions provisions in isolation. One has to look at this in the round, and that is why, as I have said, I am awaiting the outcome of the High Level Working Group findings.

2.1.7 The Deputy of St. Mary:

May I ask a supplementary and point out to the Chief Minister and ask for his comment on the fact that the U.K. Treasury is not waiting for the High Level Group and what they say is that: "Following a discussion of the Commissioner's evaluation the Group agrees that Jersey's Zero/Ten corporate tax regime and the Isle of Man's new tax legislation give rise to harmful effects." Zero/Ten corporate tax regime, not the deemed distribution, little bit on the side, the whole regime. Could the Chief Minister explain to the House why he seems to be obdurate in not accepting that this is what the U.K. Treasury have said.

Senator T.A. Le Sueur:

I think the Deputy of St. Mary has summed up what the U.K. Treasury have said very well. It gives rise to harmful effects. Once we see what precisely those harmful effects are and how we can counter them, we can deal with them. If they are harmful effects which we need to adjust in order to maintain a normal internationally acceptable business regime then we will do so.

2.1.8 Senator S.C. Ferguson:

Originally the Chief Minister told Members that the Zero/Ten regime was accepted in principle by the Code Group. Why did the Chief Minister say that and does he maintain his stance?

Senator T.A. Le Sueur:

Absolutely. I took the precaution of bringing with me a copy of the ECOFIN statement from June 2003, where it notes that the Code Group of Business Taxation has considered the proposed, revised or replacement measures of Member States and of dependent and associated territories for those listed in annex C of SN4101/99, and as set out in annex B, and has found that none of these, which included Zero/Ten, are harmful within the meaning of the Code. It did not at that stage talk about things like deemed distribution because at that stage the details of the Zero/Ten arrangements had not been thought out. But the Zero/Ten principle was deemed not to be harmful within the meaning of the code, and that was June 2003.

2.1.9 Deputy P.V.F. Le Claire:

Would the Chief Minister not accept that the E.U. Code of Conduct provides that Member States with dependent or associated territories will commit those in their constitutional frameworks to adopt the principles and therefore the real problem is that our Member State is the United Kingdom and it is our Member State that has not understood or is not understanding our position, and it is our Member State that is committed to ensure that we apply these principles. That is the real issue; does he not agree?

Senator T.A. Le Sueur:

We have 2 problems here. Firstly, the U.K. has a constitutional framework but Jersey has a constitutional framework as well and we have to abide by the constitutional framework within which Jersey operates. Secondly, the E.U. has a code of conduct arrangement: it is, to that extent,

an informal group in which one can hardly apply constitutional principles, particularly constitutional principles of a place like Jersey, which is not a Member of that consultative group.

2.1.10 Senator J.L. Perchard:

Zero/Ten is extremely complex and people's misunderstanding of the policy is evident, particularly when one reads the press. The Chief Minister has confirmed that Zero/Ten has been formally assessed and approved and it is only a partial detail of the policy, the deemed distribution detail, that brings about harmful measures, and that is the area of the Zero/Ten policy that is under some criticism, and that is the area that Jersey Government could quite easily amend.

Senator T.A. Le Sueur:

Certainly, if that is all the problem then that is something Jersey can quite easily amend. I am satisfied with my answers, because in the presentation that we made to the Code of Conduct Group back in September the focus then was entirely on the impact of deemed distribution, and the attribution of profits. No other aspects were discussed at that time. No report has been made on it in an informed way on anything other than deemed distribution, and that is why I am focusing on that aspect of the matter.

2.1.11 Deputy M. Tadier:

The Chief Minister said a moment ago that in 2003 when the proposal, as it was put, was found to be unproblematic. He said that the deemed distribution had not been thought out. Is he in the habit of making proposals which go before the E.U., which have not been thought out properly, only to change them later to introduce a very controversial aspect, which is the deemed distribution, which only then goes to get kicked out? Does he think that this introduces the much needed stability for our finance industry?

Senator T.A. Le Sueur:

Absolutely. You firstly ensure that the principle on which you are working is a sound principle; having agreed that the principle of Zero/Ten was a sound principle you then fill in the details in order to deliver that. Deemed distribution was one of those details which we believed at the time was certainly the way to deliver part of that solution. If now it turns out that that is not an acceptable part of a solution then we will find other ways of dealing with the solution in order to deliver Zero/Ten in a different form.

2.1.12 Senator T.J. Le Main:

Does the Chief Minister and his Ministers take seriously the information and views of Richard Murphy and the Tax Justice Network, which is often being passed to Deputy Southern and Tadier and others, and does he believe this is credible and trustworthy?

Senator T.A. Le Sueur:

I think the difficulty is that we can be faced with a variety of information from sources of a more or less informed nature. I do not take particular note of the views of the Tax Justice Network, but I am aware of them, as I need to be aware of them, in order to understand the full ramifications of some people's thinking. The fact that I do not happen to share those views is my own personal choice.

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

Would the Chief Minister not acknowledge that this is a broader problem and that there is a broader thrust from the U.K. Government, for example, would he take the view seriously of Dr. Vince Cable who said that the fulfilment industry as structured was extraordinary and seriously unwise, or the views of George Osborne, the Shadow Chancellor, of the Conservative's intent to hold the Government to account for the effect on domestic business if nothing is done. In other words, is he

monitoring all these alleged tax avoidance schemes in order that we will not incur further wrath from various people?

Senator T.A. Le Sueur:

Indeed, and that is why I am, as I say, awaiting the outcome of the High Level Working Group review. But I would mention that earlier this morning I was talking to Lord McNally about the fulfilment industry and demonstrating to him the responsible attitude which the Island has taken in dealing with what you might call sham fulfilment industries and discouraging them from setting up in Jersey. That is something which needs to be clearly understood, and which I have been at pains to explain to Lord McNally, although I am aware that H.M. Treasury and H.M. Customs and Excise is well aware of the good work that Jersey has done in putting its house very firmly in order and being seen to.

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

I believe I have heard the Chief Minister now make reference twice to a High Level Working Party. Would the Chief Minister please inform the Assembly who is the High Level Working Party?

Senator T.A. Le Sueur:

The High Level Working Group has been set up by ECOFIN as a result of their meeting earlier this week, to look into the implications of the arrangements that there are. I am just trying to find the precise wording if I can, not to mislead the Deputy: "ECOFIN has accepted the Code Group's report which proposed a review by the High Level Working Group on tax issues. This working party will determine what the code means by "business taxation", whether the scope of the code goes beyond company tax to include shareholder taxation and whether, if so, this would impact on Jersey's regime."

The Deputy Bailiff:

I give notice to Members that this is an urgent question and a reasonable time needs to be allowed for supplementaries, so I have allowed 15 minutes. The main debate is coming up on the Deputy of Grouville's amendment shortly. I am going to allow 2 further questions: one from Deputy Trevor Pitman, one from Senator Shenton and then a final supplementary from Deputy Southern.

2.1.15 Deputy T.M. Pitman:

I must point out I do ask this question with due respect. We have seen the danger of giving categorical assurances recently; over the last 18 months the Chief Minister and his Minister for Treasury and Resources have again and again given assurances that this would be compliant. If it is not in February where does that leave the Chief Minister's position? Will he resign if he is not proven correct.

Senator T.A. Le Sueur:

That is a hypothetical question. I have no intention of resigning, I have every confidence in the way these matters are proceeding.

2.1.16 Senator B.E. Shenton:

The Chief Minister may be aware that the Isle of Man Government has issued a statement saying that they were seeking to clarify the origin of the purported U.K. Treasury statement which had appeared on the Channel Island website, and which was described as highly misleading and not accurately reflecting the outcome of the ECOFIN meeting. **[Approbation]** There seems to be a lot of ignorance among Members, the population and the media and some politicians with regard Zero/Ten. Will the Chief Minister endeavour to get a clear message across to the public of the Island exactly what Zero/Ten is and what the implications are?

[11:15]

Senator T.A. Le Sueur:

I will endeavour to do so at the earliest possible opportunity. This question is an urgent question but I am making arrangements to give a proper report and timetable of recent events to Members hopefully early next week.

2.1.17 Deputy G.P. Southern:

Finally, as they say, the Minister for Treasury and Resources has said that he will examine means to introduce a tax avoidance measure to replace deemed distribution. Does the Chief Minister not accept that whatever measure is brought in can only be applied to locally-owned companies and cannot be made to apply to non-locally owned companies, and therefore must inevitably extend the ring-fence around non-resident companies? In fact, is it not the case that we cannot, without extending that ring-fence, obtain revenue from non-locally owned companies?

Senator T.A. Le Sueur:

No, there are various ways in which this can be addressed, but I do think that the Deputy makes a very good point because he too is focusing simply on the distinction between local companies and non-local companies. In other words we are talking about corporate taxation, business taxation.

[Approbation]

PUBLIC BUSINESS - resumption

3. Expenditure Proposals for 2012 and 2013 and Draft Budget Statement 2011 (P.157/2010): seventh amendment (P.157/2010 Amd.(7))

The Deputy Bailiff:

That brings the questions on the urgent question to an end. We now come to the amendment number 7 in the name of the Deputy of Grouville and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

On page 2, after paragraph (b) insert a new paragraph (c) as follows: “(c) to agree that a new mechanism should be put in place to ensure that an equivalent amount of tax revenue is raised in relation to the profits of non-locally owned non-finance companies trading in Jersey as is raised through the mechanisms in place in relation to the profits of similar locally-owned companies trading in the Island, and to request the Minister for Treasury and Resources to bring forward for approval the necessary legislation to give effect to this decision so that the new system can be fully implemented by 1st January 2012;” and renumber the remaining paragraphs.

3.1 The Deputy of Grouville:

This is a budget being made in extremely difficult economic times, and I do not think anybody envies the position of the Minister for Treasury and Resources in this current global recession. As a community, I am sure we can all recognise that times are tough. We must all pull together and address these circumstances in a comprehensive and fair way. I shall come back to the word “fair” later. The 3 general proposals put forward by the Minister for Treasury and Resources being a comprehensive spending review, economic growth and a review of our existing tax regime, are all laudable, right and proper. It is the word “review” I shall also come back to later. Because the single biggest tangible element that was put on the table in this Budget transpired to be the nearly doubling of the rate of G.S.T. This was hardly a review of our existing tax regime and it was certainly not fair. It might have been fair if all other taxation measures had been exhausted first but we all know they were not. How can they have been when one such example is where we have a situation where locally-owned companies pay tax, yet foreign-owned companies do not? This is not fair. It is grossly unfair and it is harmful, which brings me to my amendment before us today. It also brings me back to the Minister for Treasury and Resources’ word “review”. I have been in the States now for nearly 8 years. The notion of Zero/Ten complying with the O.E.C.D. meeting

international standards and making up the deficit has been bounced around, talked about, worked upon and will now have to be reviewed again. The aspects, however, which have been implemented most enthusiastically and efficiently in order to make up the deficit is to tax ordinary working people: 20 Means 20, G.S.T., *et cetera*. I have heard it said many times we are going to review the fallout of Zero/Ten at some point in the future. We are going to review the unfair playing field that exists. In the meantime, locally-owned companies who are paying tax, trading side by side their foreign-owned companies who do not are the casualties. Some of whom are going under for they are trying to compete in these hugely challenging times with only so much business to go round. So what are we left with? The locally-owned company bankrupt and the foreign-owned company still in business taking all the custom, paying no tax. You have only got to look at King and Queen Streets to see the reality. We have shot ourselves quite comprehensively in the foot. What has been created in our Island while pandering to the O.E.C.D. is a tax regime which is positively discriminatory against local people and is discriminatory against locally-owned businesses. I noted in the Minister for Treasury and Resources' speech he is rightly encouraged by the 700 new entities that have been set up in the past year. In among them he mentioned Waitrose providing opportunities, good; creating jobs, good; but paying no tax. So we have a locally-owned company like Holme Grown in my Parish, also providing opportunities, also providing jobs, but paying their dues. They have to compete against the likes of Waitrose who do not. Again, the Minister for Treasury and Resources mentioned the U.K. retailers who were jostling for space at Liberty Wharf, but not paying tax. I am not even sure they are paying rent this year, but that is a debate for another day. I have worked and I understand enough about the finance industry to realise this is an extremely complex issue. I have possibly been oversimplifying the situation to demonstrate the point and the harsh reality that exists. But what I also know is that the people out there who are struggling in their locally-owned businesses really do not care about the statement made by the European Union. They do not care about what is going on in Brussels and that our tax regime may be harmful. They do not care if deemed distribution may be considered as personal rather than corporate tax, and they do not care if the Crown Dependencies have now got to introduce a revised corporate tax regime. They care when they are being squeezed-out of the marketplace because their foreign-owned counterparts have less outgoings because they do not have to contribute in the Island where they do their trade. The entire time I have been in the States the Blampied proposals on deemed rent have been talked about, on the grounds of them paying something to trade in Jersey and thus evening-up the playing field just a bit. Several Scrutiny Panels have worked on this issue. The last report issued in March 2009 chaired by Senator Ferguson and her sub-panel commented as follows: "The panel is greatly disappointed that no substantive work has been done by the Treasury concerning the implications of the comments made by the Corporate Services Scrutiny Panel in 2008. It appears that the onus has been put on Scrutiny to justify the progression or lack thereof of this piece of legislation." It went on to list its concerns, and in among them said: "The panel is concerned that there is no Ministerial support for the proposition." So we are getting to the nub of the issue. It went on: "The panel remains concerned about the underlying issues that this tax was meant to resolve. If the deemed rent tax is the only runner then it needs to be examined properly, not in this half-hearted manner." In its recommendations the panel stated that the review was undertaken from a position of agreeing with the premise that equity should be established for all companies in Jersey and that all companies should make a contribution to the Island's tax structure, and the then Minister, who is indeed the current Minister, was charged with bringing forward a complete proposition to address this issue. As I said, that was March 2009, 21 months ago. So I was extremely disappointed that there was no firm proposals in the Budget, either last December, nor even before us today. In the Minister's own Budget presentation speech on 22nd October, at the Town Hall, he said: "As part of the review I remain committed to bring forward ways of recovering the corporate tax revenue that was lost from U.K. businesses who trade in the Island." I then read in the *J.E.P. (Jersey Evening Post)* of 28th November, in response to my amendment lodged 5 days earlier, which the Minister for Treasury and Resources was quoted as saying: "We have got an answer which is being considered." So

where is it? Why is not a possible solution mentioned even if it has to wait for the green light from the O.E.C.D.? Why do we not have a withholding tax on all distributions, whether the company is local or offshore? Under the double-taxation agreement with the U.K. the tax in the U.K. is only payable if the amount is remitted, therefore the deemed distribution is totally unfair if tax is charged in the Island as it should be credited against the potential tax in the U.K. If the money is distributed to other offshore locations it appears that in some cases no tax will be liable. The double-taxation agreement with the U.K. needs urgent attention to address the lack of credibility with the current setup, and I cannot believe that Treasury are unaware of this anomaly. I listened carefully to the Minister for Treasury and Resources' opening speech. Other than a brief mention of the potential of taxing shareholders' loans I heard nothing to give me any confidence that these proposals are being considered seriously. I know we will be coming on to the lodging or not of the Minister's extremely late amendment to my amendment, but the wording of that amendment just demonstrates to my mind that there is no commitment. **[Approbation]** We have heard the Blampied proposals and other solutions like territorial tax systems, taxing branch profits, double-taxation agreements with the U.K. and now the possibility of taxing shareholders' loans: all need time, effort and importantly a political will to bring them forward. I have sensed that the political will is not there, and I believe Scrutiny in 2009, sensed it was not there, and that is the reason why I have made my amendment today. I know enough to know that we need to work with or take on board the deliberations of the Code Group to get the best solution for our Island, so of course it must not jeopardise the integrity of Jersey. I would not expect it to be approved by this Assembly if it did. But the time has come when we have heard enough about being committed to finding solutions. We have heard enough of reviews and further reviews and reviews of reviews. Words come cheap and in the middle of an economic recession our local businesses do not need words while they struggle against their foreign-owned counterparts. They need a workable solution and they need it now. That is why I am calling time. It is time we saw from the Minister for Treasury and Resources and all our tax experts a workable proposition tabled before us. A workable solution to right the wrong that exists. A solution that does not discriminate against our locally-owned businesses to favour foreign-owned entities.

[11:30]

A proposition that evens the level of the playing field so everyone who benefits from our Island is paying their dues to this community. We need a system that is fair. This does not have to be a long debate. All I am asking is that the Minister for Treasury and Resources table these long overdue proposals for debate in the New Year. We will have guidance from the Code Group in February, if we are to believe the Minister for Treasury and Resources, or we may already have them. He also tells us he is committed. Well I am giving him a year to seek his advice, table his proposition and debate a solution so that equity will exist, so we no longer discriminate against our own local businesses. Businesses need a timeframe and a structure to work to. I am therefore proposing that it be implemented by 1st January 2012. I make my proposition.

The Deputy Bailiff:

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

The Deputy of St. Mary:

Can I ask for one little point of clarification? The speaker quoted, I think the Minister for Treasury and Resource, which she read in the local paper: "I remain committed ..."

The Deputy Bailiff:

Deputy, if I may say, you will have the opportunity of making a speech on the amendment in due course when you can ask her about ...

The Deputy of St. Mary:

I just wanted to ask one specific little point.

The Deputy Bailiff:

Now there is an amendment which was lodged on 8th December by the Minister for Treasury and Resources. In accordance with Article 20(3) of the Public Finances Law 2005 only the Minister may bring an amendment within the 14-day period from the start of the debate, but it is up to Members to indicate whether they agree that the amendment may be debated. Minister, do you wish to address Members on this?

Senator P.F.C. Ozouf:

Yes, I have been criticised for not bringing amendments and I have been criticised for bringing amendments. I want to be able to accept the sentiments and underlying sentiments that the Deputy of Grouville is attempting to bring forward to the Assembly but within the parameters that I can operate, and I ask Members the opportunity of debating my amendment in order that we can then support the amendment. It is late, I accept that, but Members will understand that there has been a great deal of moving and work going on in relation to the whole issue of Zero/Ten, and that has been one factor that has been causing the delay. I ask Members to accept my proposal to debate my amendment.

The Deputy Bailiff:

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

The Deputy of Grouville:

Do I jeopardise my right to speak if I object?

The Deputy Bailiff:

No, you may certainly respond to the Minister for Treasury and Resources' proposal if we take his amendment.

The Deputy of Grouville:

I would just like to object to this late lodging of his proposition. To my mind it is a complete abuse of the system, we discussed a couple of days ago when a proposition was brought late. This was brought 2 days after the debate had started. The only reason the Minister for Treasury and Resources is allowed to bring amendments to the Budget debate is to rectify figures when the debate materialises and things get altered and amended, and this is certainly not the case here. So I object to this late lodging.

The Deputy Bailiff:

I hope Members will not want to have a debate about whether or not to debate the amendment. It would be very undesirable to have any protracted debate.

Deputy G.P. Southern:

Understanding your sentiments expressed I will try and be very brief. I object too, to this amendment to the amendment at a late stage because I believe, in practical terms, it negates the original proposition and it negates it because of the final phrase that is put into this amendment: "Provided that to do so would not jeopardise the integrity of Jersey's business tax regime or its international competitive position." The reality is that in trying to mend this hole we almost inevitably will have to jeopardise our international position. That is the result of that phrase. Absolutely clear as mud.

The Deputy Bailiff:

Can we please then take a vote. Do you wish to reply?

Senator P.F.C. Ozouf:

I just want to say, I think that if Members do not like the amendment they should vote against the amendment, but I am trying to be helpful.

The Deputy of Grouville:

Likewise. If he does not like my amendment he should vote against it.

The Deputy Bailiff:

Members have got a clear proposition before them. It is whether or not to debate the amendment which has been lodged late by the Minister for Treasury and Resources. The appel is called for. I invite Members to return to their seats. The vote is on whether or not to debate the amendment of the Minister for Treasury and Resources, which has been lodged late. I ask the Greffier to open the voting.

POUR: 23

Senator T.A. Le Sueur
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator T.J. Le Main
Senator F.E. Cohen
Senator S.C. Ferguson
Senator A.J.H. Maclean
Senator B.I. Le Marquand
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Clement
Deputy R.G. Le Hérisier (S)
Deputy J.B. Fox (H)
Deputy of St. Ouen
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy K.C. Lewis (S)
Deputy I.J. Gorst (C)
Deputy A.E. Jeune (B)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)

CONTRE: 19

Senator B.E. Shenton
Senator J.L. Perchard
Senator A. Breckon
Senator F. du H. Le Gresley
Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy of St. John
Deputy M. Tadier (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

ABSTAIN: 2

Connétable of St. John
Connétable of St. Mary

3.2 Expenditure Proposals for 2012 and 2013 and Draft Budget Statement 2011 (P.157/2010): seventh amendment (P.157/2010 Amd.(7) - amendment (P.157/2010 Amd.(7)Amd.)

The Deputy Bailiff:

We then come to the amendment of the Minister for Treasury and Resources and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

On page 3 in the substituted paragraph (c), for the words “an equivalent amount of tax” substitute the word “additional”; for the words “in relation to the profits of” substitute the words “from certain”; for the words “through the mechanisms in place in relation to the profits of similar” substitute the word “from”; and after the words “1st January 2012” insert the words “provided that to do so would not jeopardise the integrity of Jersey’s business tax regime or its international competitive position”.

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

I will be brief. As Members will be aware I would have been in the position of having to oppose the amendment brought by the Deputy of Grouville had I not amended it. I understand the sentiments behind what the Deputy of Grouville is trying to do and I have already committed and I want to commit again - and I would like endorsement of the Assembly to commit - to bring measures to raise revenue. I have already committed to do so as part of the business tax review. I have committed to do so in terms of the Budget speech that I have made but I have to commit in a way that is acceptable and that I can work within in terms of our international obligations. I am afraid that the unamended proposition would not allow me to do that. The Deputy's amendment talks about an equivalent amount of tax as it is raised through the mechanisms in place in relation to profits of similarly owned companies. I am assuming that that proposition refers to deemed distribution and we have had a discussion about that. Members will be aware after the urgent oral question that that is something which is a live issue which we are dealing with and I hope that we will know and have clarity on that in the New Year. The Deputy refers to raising revenue through tax or charges but only refers to tax in her proposition and I need to be able to consider the things that I can consider in terms of revenue. There is an issue about what is corporate tax - and the Deputy is looking at me across the Assembly - and what is personal tax and it is in the interrelationship of the 2 which are problematic, which I need to bring forward proposals which are compliant with our obligations and which are not going to undermine the fundamental principle that we have a general rate of tax of zero. That is what we have in terms of our economy. We deliver tax neutrality and I have to bring forward, while I understand all of the desires of the Deputy and other Members, measures that are compliant and that is why that second part of my proposition says that I can only bring forward measures that are not just isolationist, that do not just look at issues for Jersey but looks at our obligations and how we can raise revenue which is compliant with our international position. That is the second part of my amendment. I am committed to bringing forward proposals. I would have brought forward proposals if the Code Group assessment had not been carried on over the last few weeks. I do have proposals which could be brought forward to the Assembly but I have to understand what the conclusion of all of the issues that we dealt with in the urgent question are. I will attempt to answer Members' questions in relation to the amendment. I hope it is clear in terms of the report and I make the proposition.

The Deputy Bailiff:

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

3.2.2 The Deputy of Grouville:

I think this amendment is clutching at straws but reading the wording of it, what it demonstrates to me is contrary to what the Minister asserts. He is not committed to finding a mechanism to tax foreign-owned companies. His amendment splits hairs to such a ridiculous degree - an embarrassing degree - I can only surmise that either he cannot bear the thought of an amendment being brought by a Back-Bencher or he is not serious or committed. Looking at the wording, he says that I am looking for a new mechanism to be put in place to enable foreign-owned companies to be taxed. That is quite plain and simple. A new mechanism to be put in place to enable foreign-owned companies to be taxed. An equivalent amount of tax is what I say. He says: "Additional revenue." Please, a rose by any other name. The good Senator in charge of our Treasury needs to realise that if additional revenue is charged by a government it is in effect a tax. If he calls it a fee, a charge, a revenue, whatever, it is a tax. Then he goes on to say, when I am asking that we introduce a tax on foreign-owned companies by the 1st January 2012 and, wait for it: "Provided we do not jeopardise the integrity of Jersey's business tax regime or its international competitive position." That just nails it. What exactly are we afraid of here? All I am asking is for a level playing field for our local businesses. That has got to be brought back to this Assembly anyway and we will have the debate on whether it ... if the Minister for Treasury and Resources was so stupid as to bring something forward to this Assembly that would jeopardise the international integrity. This Assembly has got to vote on it, one way or another, once it is brought forward. All I

am asking - because we have been waiting and our local companies and local people have been waiting for a level playing field - all I am doing is putting a timeframe on it. I am sorry, I just see this as a wrecking amendment, it is wrecking tactics and it will just serve to continue to discriminate against local businesses.

3.2.3 Deputy R.G. Le Hérisier:

I did vote for Senator Ozouf's amendment for the simple reason it obviously embraced issues that had to be discussed and it seemed churlish not to allow that discussion, or to pretend that discussion could not take place. It has to take place. That said, I would agree with the Deputy of Grouville because there is no doubt that the last italicised clause "provided that to do so..." could embrace anything. As I suspect what is happening is they have got themselves into a box and quite frankly I think we have, as I alluded to when I was talking about the fulfilment industry, got ourselves into various boxes because I am reading here a very extensive analysis of the Channel Islands fulfilment industry and it says: "Two writers report on the tax loophole that is killing small businesses. Every C.D. (compact disc) that is sold is a tax advantage to the purchaser at the expense of other taxpayers, it makes a mockery of V.A.T. (Value Added Tax) and a mockery of the E.U. The reason I raise that is we had a lot of pointed calls yesterday about the effect of G.S.T. on small businesses and here we are being accused of playing a major role in the decimation of U.K. small businesses.

[11:45]

I do accept in that regard the Senator did, I thought, make some good political moves a few years ago to stem the tide and to try and manage that situation. But the elephant remains in the room and the problem, as I intimated in my question to the Chief Minister, is going to remain. Wherever you lie on this spectrum of, are you pro Richard Murphy or are pro what Vince Cable said about the offshore industry, and Chancellor Osborne I should add. I thought I would quote the great and the good. My point is you cannot go along with that kind of condition, because quite clearly we are in an evolving world, a turbulent world. We will win some, we will lose some; it will be 2 steps forward, one step back. It is a very intricate complex political world we are in at the moment where we have got Conservative governments saying they are going to bring in ... I forget the deal now but a couple of days ago they announced as part of the trade-off with the LibDems they would bring in more legislation next year on tax avoidance. So you cannot give that kind of open remit to the Minister for Treasury and Resources. So that is why, although I have got not a problem with the earlier of his amendments, I cannot accept that condition because to allow the Government to impose that condition on its proposals means it will totally wipe out the Deputy of Grouville's amendment. I far prefer hers in the sense that it has tight deadlines, they may prove in the end to be tactically incapable of being achieved but we will learn that hopefully in time. I do not know, but we have got to realise that the people who speak with concern about this are not people who are necessarily in the anti-finance camp, they are people very worried about the political storm clouds that are gathering and want these things dealt with in a more prescient, thoughtful fashion rather than: "Do not give anything away until you are absolutely ... you have a gun held against your head against the wall" which, quite frankly, has been the policy too often. With the exception, I did think the Minister for Finance and Resources a few years ago took some very wise actions in regard to offshore, even though they will not necessarily stem the tide.

3.2.4 Deputy M. Tadier:

I must admit I have been fairly disappointed, if not to say disgusted, by this particular process. This is clearly an abuse of democracy, we have had this brought at the very last minute, that is why I voted against it. We virtually had no debate, no debate was really permitted on whether or not to accept this amendment, and that is really what I see as an abuse. It was the one thing which did need a considerable amount of debate but I did not have the presence of mind perhaps to bring it up at the time, one lives and learns. I think Deputy Le Hérisier's point is very interesting about these

camps which say: “Oh, you are not listening to so and so, are you?” Those who do try and take the very fundamental issue as the Deputy of Grouville is doing are almost dismissed as if first of all they do not seem to understand it, simply because they have a different point of view or maybe because they are listening to people on the ground. As the Deputy of Grouville said, she is not even asking for the rescindment of Zero/Ten, she is asking for the rights and wrongs morally of it, she is asking for a practical arrangement for retailers in Jersey to address the fundamental inequality which is both perceived by many in the population and very many retailers, and not simply the perception but the reality of that fundamental inequality. I will remind Members what they voted for in 2008 for the Strategic Plan, that we were wanting to move towards a more equitable society. If we are really to be serious about this I would suggest we cannot today be accepting the amendment of Senator Ozouf, which is essentially a wrecking motion. That is exactly what it is. Deputy Southern put his finger on it. We have this meaningless ... we have this phrase right at the end which is a catch-all so that the Minister for Treasury and Resources can turn around and say: “I cannot do that because I think subjectively with the Council of Ministers that it is going to harm Jersey’s competitive position.” An argument which we hear again and again, that hoary old chestnut, for inaction. What the Minister for Treasury and Resources is proposing here is procrastination, prevarication and inaction. It cannot be tolerated. If this amendment goes through I will not be voting for the substantive proposition because it will be a completely different amendment to what we have. It will no longer be the amendment of a Back-Bencher which has been researched, which has been brought in good time, in due process, only to be completely negated here today by a trick of what I would call dirty tactics. The last point, and I think Deputy Le Hérisier has brought it up, we must move beyond this name calling: “Oh, you have been listening to Richard Murphy, who himself is an expert tax adviser.” I am sure that if Senator Le Main had been around in the Middle Ages when Galileo was around, he would be one of those: “Oh, you cannot be serious, you have not been listening to that Galileo fellow, have you? He has been saying the earth goes around the sun, he must be mad.” **[Interruption]** “I have full confidence in the Pope.” You would not have been a Galileo supporter either, Senator Le Main, that is the point I am making. What we have to do is face the facts, we have to wake up ... as the Chief Minister quite rightly said in his balanced opinion it is absolutely necessary to take on board and consider alternative opinions even if they perhaps are not ones which sit easy with you, because that is what one needs to do in politics. So let us listen to the voices but let us, in particular, listen to the voice of one of our own, I think, esteemed Back-Benchers here today when she has stuck to process, she has done what she has done for her constituents and for retailers and Islanders in general. Let it not be wrecked by this particular amendment. Let us go to the unamended amendment as it was put. If you do not like it, fine, vote against it but let that be a clear decision and let that be the Deputy of Grouville’s amendment to either be rejected or to be endorsed today.

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

Glad to follow Deputy Tadier. Yes, I did not vote to have this even debated because I just wonder where ... we have the Deputy of Grouville who is a lone fish and we have the Treasury. For the last week we have had half a dozen advisers sitting out there and they can just about bring an amendment on 8th December. There have been comments but this is, I think, only the second amendment the Minister for Treasury and Resources brought. He even brought the V.A.T. one earlier. This has been lodged in plenty of time. Why today? The Minister had decided that it is additional revenue. Perhaps I could have lived with that. I did not even want to debate it but perhaps I could have lived with that, but I just take this House back - and it is that last sentence - to when we were being asked to extend G.S.T. for an extra 6 months next year. The Chief Minister stood up in his speech and reminded us all the world’s eyes were on us, looking at us because of a finance industry and we must balance our books. What does this say? Unless they get a nod from all of the world ... that is absolute belt and braces to do absolutely nothing. Absolutely nothing. I cannot believe the Minister for Treasury and Resources thinks, as the Deputy of Grouville, that the whole of the Ministers and himself are even stupid enough to bring something that they could stand

up say: “Well, I have brought this but it is going to jeopardise the integrity of Jersey businesses and the regime of international competition.” It is a step too far. Maybe if he had not have put that in and he has explained the additional ... I wonder how something can be additional when you are absolutely collecting nothing at the moment. It is either the same as but additional? We are collecting nothing. Walking along, walking in today, I was stopped in Colomberie by a small dress shop owner who said: “Oh, 5 per cent, we have got 5 per cent. What about the big store [I will not name them] in King Street, British company, does not pay anything?” They cannot understand it. I said: “Look, obviously ordinary shop owners talked to me and did not talk to any other Ministers because they said everyone was happy to absorb this other tax.” But on top of that they are competing with massive chain stores that are not paying the tax. As for the great decision of the fulfilment industry, Guernsey is ... I do not think it is a great decision because Guernsey are raking it in, and what does the article from Deputy Le Hérissier say? The Channel Islands. Guernsey are making all the money. We stepped back the minute the Treasury said jump and we are still getting the flak, but we are getting none of the money. So I am sorry, belt and braces, I am supposed to follow that. I cannot support this amendment and I urge everyone to. The Minister has not explained yet why it is so late and why he has put that stupid, stupid sentence in at the end. It is stupid. Thank you.

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

The Minister for Treasury and Resources said: “I cannot accept the Deputy of Grouville’s amendment” as it does not allow him to look at other mechanisms to raise funds. However, let us look at the Minister for Social Security. We agreed 5 or 6, he came back with 12. The Chief Minister was told to have different levels of Civil Service and suspension reviews, he went and included in the Corporate Management Board and the Deputy of St. Martin had to come back and change it again. What a politician is told to do and what a politician does, perhaps they are not exactly the same. I am to believe with this amendment that the Minister for Treasury and Resources will go forward and, if unamended, will bring forward proposals that would jeopardise the integrity of Jersey’s business tax regime or its international competitive position. We all know that the Minister for Treasury and Resources is one of the most passionate Members in this Assembly when it comes to the finance industry. I do not believe for a moment that he would come and bring something that would damage us at all. For one moment, I would not believe it. Therefore I do not think it necessary to support his amendment.

3.2.7 Senator T.J. Le Main:

I have to smile with Deputy Tadier with all his wisdom and advice. I wonder what kind of work Deputy Tadier will be doing after next year’s elections. The Deputy of Grouville, Deputy Martin and also Deputy Tadier continue to state that local businesses are at a competitive disadvantage. I would like to ask the Minister for Treasury and Resources if he could explain if these foreign-owned business pay tax on their profits in Jersey, in their own country? If they do, how does this make, as claimed by other Members, local businesses at a competitive disadvantage as has been continually promoted by the Deputy of Grouville and others?

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

I could not resist, given the second phrase in the Deputy of Grouville’s report, a comment that was made to me ages ago which was is the elephant in the room that is eating the nettle that needs to be grasped because of the number of clichés we sometimes come out with in these type of debates. There is always going to be issue about timing of amendments because ... I hasten to add, I do not claim any credit for that expression. There is always the issue over the timing of amendments and the point is the Deputy of Grouville’s amendment was lodged in time, definitely. No question about it. But obviously for it to be considered properly the Minister then has a very limited time to get all of the amendments for the entire Budget in and that is why this particular one, it is much further down the process, has come in later. So I will say, and I do not consider there is anything

sinister about it or anything along those lines, it is just the way the process works. It is not about the Council of Ministers abusing that process. Also I would say I think we are all agreed entirely that this issue does need to be addressed and it is not just politicians saying it. As you say, a number of people have been saying it for a long time. I was very recently at what is called the J.A.C.C.A. (Jersey Association of Certified Chartered Accountants) Conference, which is annual accountancy conference. Even there one of the Island tax commentators was making that a part of their presentation to the several hundred accountants in that room. So there was not a disagreement that this issue needs to be addressed. The key thing... in fact the Deputy of Grouville made a comment in her speech, she is looking for a new mechanism for foreign-owned companies to be taxed.

[12:00]

To be taxed was the exact expression she used. The trouble is that is the fundamental issue we are facing on this. In her report she says: "As I said I realise it is complex, I realise we may have to call the charge on foreign-owned organisations and their shareholders something other than a tax, a fee for doing business and trading in the Island." I am not interested in whether it is a tax or a charge, I want the money. I think that is where we all are. But the amendments specifically relates, in her second line to an equivalent amount of tax revenue. So it is a fine distinction but the key amendment, I would say, is to ensure that additional revenue is raised as opposed to tax revenue. It is the difference between whether it is a tax or whether it can just be: "We want more money from them." I think that is the key thing to think about. Is it a tax or do we want money? I do not care how it comes, we want the money. It does not have to be labelled tax and unfortunately the proposition unamended refers to just tax revenue. In relation to Deputy Le Hérissier's comment about deadlines, the deadlines do not change, we are particularly talking about 1st January 2012 on this. Now, there is a subject ... obviously there is the caveat, the last couple of sentences in italics on this proposition, but there are going to be overlaps with Zero/Ten because we are dealing with the whole tax package. Therefore we do have to make sure that we look at everything very carefully. So it is a given but that does need to be stated as well. So I do not have any particular problems with the amendment to the amendment and I obviously I will be supporting it, I hope other Members will do. It does achieve broadly what the Deputy of Grouville is looking for as far as I am concerned. I just go back to remind people I want the money, I do not care if the label is tax or fees but the amendment talks about tax. The amendment talks about tax only.

Deputy M. Tadier:

Can I ask a question of the Solicitor General, I do not necessarily expect an answer straight away but I think it would be helpful to the debate?

The Deputy Bailiff:

I am aware that another Member also wants to ask a question of the S.G. (Solicitor General) so what is your question.

Deputy M. Tadier:

I think Senator Le Main did raise a valid point about whether or not foreign-owned companies, even though they do not pay tax in Jersey, pay tax somewhere else and so about the level playing field. The question I would ask the Attorney General is first of all is it possible that some companies may not pay in tax in Jersey or anywhere else, and is it also possible that it is not possible for us to necessarily be able to verify whether companies which are not taxed in Jersey are taxed elsewhere or not. So just those kind of questions would be ...

The Deputy Bailiff:

What was the second question?

Deputy M. Tadier:

The question was about the verification, how would we know, even if we wanted to know, whether companies are or are not paying tax elsewhere?

The Deputy Bailiff:

Senator Routier, I understand you had a question for the Solicitor General as well?

3.2.9 Senator P.F. Routier:

Yes, I would like to ask a question of the Solicitor General but before doing that I would just really want to say that I wholeheartedly support the theme of what the Deputy of Grouville is trying to achieve here. I think the Minister for Treasury and Resources does as well. But we are tripping over the wording of this amendment. Certainly I can understand people who are tripping over certainly the last paragraph. When I saw that I ...

Deputy M.R. Higgens:

Is this a speech or a question?

Senator P.F. Routier:

It is a speech and then I will come to a question when I am ready, if that is all right with you.
[Laughter]

Deputy M.R. Higgens:

That is acceptable, thank you.

Senator P.F. Routier:

Certainly I have a couple of issues with this amendment. Firstly, the question that I would like to ask of the Solicitor General is that the wording which the Deputy has brought forward talks specifically about tax revenues and then from what we have heard from the Minister for Treasury and Resources, he would like to be able to perhaps raise a charge on businesses as opposed to a tax. I really just wanted a bit of clarity about if the Deputy of Grouville's amendment was successful and that the Minister for Treasury and Resources' was rejected would the Minister for Treasury and Resources be able to come back and raise a charge as opposed to a tax if the Deputy of Grouville's amendment was successful?

The Deputy Bailiff:

Solicitor General, are you able to deal with those questions now or do you wish to have time to consider them?

Mr. H. Sharp Q.C., H.M. Solicitor General:

No, I am happy to deal with them now. Can I deal with Deputy Tadier's questions first. It is not an exhaustive review of tax law but basically a company is taxed usually where it is controlled, and usually this is controlled where it is resident. So if you have a company in Jersey then you would expect for it to be taxed in Jersey. If, however, there are laws which say that no tax is applicable in particular circumstances then obviously that company will pay no tax. Therefore in terms of a company owned by an overseas individual that company would usually not pay any tax anywhere in the world, assuming that no tax was due in Jersey. There may be exceptions to that which I will not get into now in terms of branches and agencies and complicated structures. But the basic principle is, no; no tax is paid anywhere in the world. I think the second question is can one ascertain from an overseas tax authority whether or not a particular company is paying tax and the answer is no, not ordinarily save for perhaps examples where there is a criminal investigation and then there can be mutual legal assistance. But the starting position is no. Moving on to Senator Routier's question, there is a legal definition between a tax and a charge. If I have understood the question correctly, can the Minister bring a proposition at a later date inviting the Assembly to

introduce some form of charge, then the answer to that is yes. He can bring any proposition he likes. He will want, no doubt, to take into account the political consequences of what happens today if this particular amendment is passed. But, if you ask me is there any legal bar to him bringing a proposition, then the answer to that is no.

Deputy J.A.N. Le Fondré:

My question is just in relation to the comment the Solicitor General made about foreign-owned companies owned by individuals outside the Island. In the event which I have always assumed a majority of the publicly seen companies operating in Jersey are owned from outside and they are the equivalent of P.L.C.s (Public Limited Companies); in other words they are probably incorporated in the United Kingdom; they are owned by a very large group of shareholders. Therefore I would assume that what the Solicitor General inferred is that no tax would be payable anywhere. I would assume in the instances of P.L.C.s that the tax would be charged in the country in which that P.L.C. operated, and therefore that is a further ramification on the competency mode. In other words, although that company may not be paying tax in Jersey, it might well be paying tax in the United Kingdom.

The Solicitor General:

I think, if I may say so, basic principles of taxation of companies tend to evolve around the residence of the company and where it is controlled; i.e. where are the directors taking the decisions? So, if you have a Jersey company in Jersey taking decisions in Jersey, it would be liable to Jersey tax only, as a starting position, and there it is. I am not ... the fact that it may have a shareholder in New Zealand would not render it liable for tax in New Zealand.

Deputy M.R. Higgins:

The question I would like to ask the Solicitor General is going back to this question of a charge or tax. Now, I accept the point that he says that if the States Assembly decides, or the Minister brings a proposition which the States agree that we will bring in a charge, a charge could be brought in. However, in the context of the E.U. harmful tax regime, this is exactly where the problem is, and this is why the Minister for Treasury and Resources is bringing the proposition. What we are talking about here... the question is if we bring in a charge the E.U. Code Group are going to look at it and say: "Is this yet another device to get around the fact that they are not paying tax?" For example, foreign companies do not pay tax in Jersey, and we know that local companies do not pay tax in Jersey, but we claw it back to a device known as deemed dividends, and what they are ruling on is they see that as a device to get around ... we do not charge people abroad tax, but we are charging local people tax. This proposition, I think the Minister is afraid ...

The Deputy Bailiff:

Sorry. Could you come to your question?

Deputy M.R. Higgins:

My question is could the E.U. Harmful Tax Group... if we look at the first thing they consider which is whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents, nil is discrimination is supposed to be equality of treatment. If we just tax trading companies but do not tax finance companies or a charge, then there is discrimination, and therefore we will fall foul of the E.U. harmful tax regime.

The Deputy Bailiff:

So that was not a question.

Deputy M.R. Higgins:

Well, it was. I am asking him to confirm whether it could be considered to be harmful tax going by their code by having discriminatory measures which tax some companies and not others. We are using the charge as a device ...

The Deputy Bailiff:

For my part I am struggling to see how the Solicitor General can answer a question as a matter of law on what the E.U. Code Group might or might not do. If you are able to answer it, please do.

The Solicitor General:

I am afraid I am not going to answer that question for the very simple reason you need to look at the whole proposition, the whole tax structure that the Minister for Treasury and Resources may or may not be proposing and consider the whole thing. I cannot possibly offer you an answer based on the proposition of a charge being made against somebody somewhere, I am afraid

Deputy I.J. Gorst:

Could I just ask the Solicitor General to clarify: in his earlier answers he was talking about general principles of company taxation, but if I heard him correctly he was not saying categorically one way or the other whether companies operating in Jersey which might be foreign-owned are not liable to tax liabilities elsewhere and they could in fact be paying tax elsewhere. Of course, in his very opening answer he also talked about the complications of branches as opposed to subsidiaries and they would have a different requirement as well.

The Solicitor General:

Yes. My answer was very qualified in the sense it was dealing with just the basic starting point of taxation and I was not remotely seeking to give you a full overview. No doubt there will be companies that do pay tax elsewhere in the world.

Deputy M. Tadier:

Can I thank the Solicitor General? My question was that it is wrong to presume that companies that do not pay tax in Jersey will pay tax somewhere else. In fact, it is entirely possible if not likely that they do not. Is that a fair position?

The Solicitor General:

I did not catch that.

Deputy M. Tadier:

The point of my question was to say that it is wrong to presume that companies that are not taxed in Jersey will automatically be taxed somewhere else. That kind of position would be entirely misleading. Is that correct?

The Solicitor General:

I do not really think I can improve on my previous answers which are some companies will not pay tax elsewhere, some companies will; and I cannot really improve on that.

Deputy P.V.F. Le Claire:

May I ask a question of the Solicitor General, please? It will become a little more clear in my speech, but I would like to ask the question since we are asking questions. Could I ask the Solicitor General if Jersey was to adopt a territorial tax whether it would be appropriate ...?

The Deputy Bailiff:

Does that go to this amendment?

Deputy P.V.F. Le Claire:

It does; in my speech it will. Would it be possible for Jersey to apply a different level of tax to another territory than it would to its own?

The Deputy Bailiff:

Solicitor General, are you able to answer that today?

The Solicitor General:

I would want to consider it in much more detail than that abstract way, if it is possible. Are you asking me ... I presume the additional part of the question that you did not put was: "And be compliant with any E.U. Code of Practice?" Again, it is the detail that matters.

Senator F.E. Cohen:

I think that it is really rather unfair of Members to put these complicated questions on the hoof to the Solicitor General. These are matters that need very careful consideration and cannot simply be answered in a yes or no on the floor of the House.

Deputy P.V.F. Le Claire:

Either we have access to legal advice or we do not.

The Deputy Bailiff:

The Chair has only limited sympathy for the Solicitor General in that respect.

[12:15]

Senator P.F. Routier:

May I finish my speech? My question was a very simple question with regard to the Minister for Treasury and Resources' ability to be able to raise a charge as opposed to a tax, and I thank the Solicitor General for his advice. I am going to ... it leaves me in a little bit of a difficulty. I think we need to be able to give the Minister for Treasury and Resources the ability to raise a charge; so I am swaying towards supporting his amendment. But I would want to ask him whether to be helpful whether he would be prepared - it may be something that the House may be asked to allow - to approve an amendment to this amendment on the floor, to withdraw that last sentence which everybody seems to be tripping over. If he would be prepared to withdraw that last amendment, provided that to do so would not jeopardise the integrity of Jersey's business tax regime or its international competitive position, I think that would satisfy a lot of people. Certainly I tripped over that when I first read it, and that is from a number of speeches I have heard that. So I would ask the Minister for Treasury and Resources whether he would be prepared to withdraw that.

Deputy A.E. Jeune:

May I ask your advice on what has just been said? I mean, I have highlighted that sentence, but is it not a Minister's responsibility to ensure that nothing is done to jeopardise the integrity?

Senator P.F.C. Ozouf:

I fully take the point of both Senator Routier and Deputy Jeune. Members will criticise me for being belt and braces to spell it out, but of course I would not bring something forward that would not be in the Island's interest, but I think there is no issue with having it there. But if it is a problem to Members, if that is the issue, it is the charge of the tax issue which has been rehearsed which I cannot do, and this Assembly cannot ask me to do something that I am not able to do. But if that is the wording that is the issue I am more than happy to withdraw that wording with the leave of the Assembly, because it goes without saying.

The Deputy Bailiff:

Are you making a proposition to seek leave to amend your amendment?

Senator P.F.C. Ozouf:

To withdraw that wording, because it is ...

The Deputy Bailiff:

I do not think Standing Orders in normal circumstances would permit the alteration of a proposition which is before the Assembly. There is a possibility under Public Finances Law that you are proposing a further amendment without notice if the States agree that you should do so. Whether you wish to do so is a matter for you.

Senator P.F.C. Ozouf:

I think the wording is clear. I know I have been asked by Senator Routier to do it. The wording is what it is. I think that we are going to get ourselves into terrible difficulty if we start amending amendments on the floor of the Assembly. The Public Finances Law gives me some ... I have been asked to do it. I think that I need to maintain the amendment as amended in order to create good order and not to create disquiet among Members. Members can see the wording and I will come back in summing-up as to reinforce the reasons why I do not think it is objectionable.

3.2.10 Deputy A.E. Jeune:

I just wish to say that I do not share Deputy Tadier's opinion about bringing this amendment. I believe ... sorry, the amendment to the amendment of the Deputy of Grouville. The Assembly took a vote and accepted to accept it and that to me is democracy. But on the wording of the amendment to the amendment I would be grateful if the Minister would tell me why they have inserted the word "certain". It says: "from certain non-locally owned non-finance companies." Why the word "certain"? Perhaps he can clarify for me also as to whether I have understood correctly that under Zero/Ten companies are treated the same. It is the shareholder taxation that differs in that if it is a locally-owned company, the locally-owned shareholders will be taxable in Jersey and if it is a non-locally owned company and the shareholders are not local they, I would assume, would be taxed in their own jurisdiction.

3.2.11 Deputy P.V.F. Le Claire:

I think it is a great shame that I cannot sign up to a lot of this Budget because obviously there are elements of it that are important. But I just think that as a whole it is not going to go down, I am afraid, with me anyway. I appreciate Senator Ozouf has got a difficult job to do, and I also appreciate as you will be aware from our conversations over the years and my activity politically that we cannot always put our cards on the table. Unfortunately this Government has been quite adept at not putting its cards on the table in any form whatsoever, and in the States Strategic Plan we signed up to having more open government, and the only thing that has been open in my view is the drawer that shows us the closed book. It is not my Budget; it is a political manifesto in my view that is being carried forward here, and I see these amendments as something no other really ... they are very, very late. It is understandable why they are doing it, but they are buying time and that is what they need, because Zero/Ten is not going to be acceptable and deemed dividend is not. The problems with those aspects have been highlighted. We are trying to work forwards. Zero/Ten was a position; it has been described to me as a position to be moved to. But we also know from talking to the advisers and from the information the Minister for Treasury and Resources himself has put forwards, that a territorial tax is what really is going to have to come about sooner or later. Unfortunately the legislative changes that are required admittedly by the Minister himself last week in answer to my questions, are going to be considerable and may take between 3 to 5 years to install, at which point it may be that a lot of the finance industry has decided to reconsider where it is doing business. But if we look at this paper which was issued to us by the Minister for Treasury and Resources on the day that we were presented with the Budget, we get an interesting insight as to what is happening in this regard. Under item 5 it says "ongoing reviews" and he talks about the independent review of the 1(1)(k)s. He goes on to talk about the Business Tax Review which is

continuing and is quite interesting: “The Business Tax Review is continuing and a significant amount of work has been carried out. I would like to thank all those who responded to the consultation paper on such an important issue. Focus is now on the assessment of our Zero/Ten tax regime by the E.U. Code of Conduct Group. The process started in September and further consideration will be given to the regime at the next meeting at the end of November. No changes will be proposed to Zero/Ten before the Code has concluded its review, and I will then be in a position to provide a further update in December. We continue to work closely with the U.K. and other Code Group members and I am confident that Jersey will continue to be in a strong position as a result. I committed as part of the business tax review to investigate whether it is possible to recoup the corporate tax revenue lost from certain non-finance companies with Jersey-based business activities on the introduction of Zero/Ten without unintended economic consequences. I am still committed to do this but am awaiting the completion of the business tax review before concluding this matter. I will comment further on this matter in December.” So he is talking about a review that needs to conclude before he can update us with the information that he has got. “I am still committed to do this but am awaiting the completion of the business tax review before concluding this matter.” But he tells us that the business tax review will have done that work by December and he would be in a position to tell us. So, we are buying time here, and I am concerned about the amendment which the Deputy of Grouville is putting forward because it talks about changing the word in an equal ... will have an equal treatment of local and non-local businesses. What is being opposed there certainly is that. It is that equal treatment, because it may not be in a territorial tax that we treat everybody equally. I am sorry; this is what I think is the underlying message from this amendment here. The Minister can bring anything he wants to at any time he wants to any day he wants to whenever he wants to and 9 times out of 10 he will get it passed without a shadow of a doubt. So what is the problem? I am not going to be supporting the amendment to this. I think the Council of Ministers ... I sent an email to the Chief Minister asking him if he would consider the payroll tax because it had been suggested to me that that was possibly an option. It was a bad idea, and the Chief Minister told me it was a bad idea. Then I said: “Have you got any information on what else there is?” and the Chief Minister replied: “You have been circulated with the different options that we are looking at for payroll tax.” I said: “No, no. I do not mean payroll tax. I mean what other options are there for getting over this problem that we have got about treating people equally that are local and non-local?” I am not sure if he referred me to the Minister for Treasury and Resources or not, but I certainly did not get a response that I could read and understand or refer to Members and say: “Look, these are the 3 options that we are facing.” The Minister for Treasury and Resources has got a bag of options, and if this Chief Minister like the previous President of Policy and Resources, Senator Pierre Horsfall, gets a phone call from the U.K. counterpart, then there will be another headline of the *J.E.P.*: “24 hours to change and commit or else” and we will see a plethora of statements outlining the position. What I expect is that there are negotiations because we have signed to that international agreement, do not forget, with the U.K., 2006, and we had the statement from the Chief Minister read on 1st May 2007 about how we are going to work together and put across our international identity in a consultative, joined-up manner. What I think is going on is that we are being told that no, the goose is cooked; you cannot do this: “The deemed distribution is being taken in the round and Zero/Ten as a whole has got to go, and you are going to have to change your whole tax structure” which makes this policy and this Budget and this Council of Ministers look as bad as they are, because we are going to have to move to a territorial tax. They know it.

3.2.12 Senator J.L. Perchard:

I have every sympathy with the principles behind this proposition. We do know the High Streets throughout the U.K. are changing and St. Helier is changing very rapidly with Jersey businesses disappearing. Our Zero/Ten policy certainly at the very least does not slow that what seems to be inevitable change down. In fact it must only encourage it. Super-large branches, big retailers, bulk-buying, as I say, are taking over the High Street throughout the U.K. and probably the world.

As I said, our corporate tax regime will not slow this progress, or - it is not progress - this inevitable change-down. Because we do not tax a company that is operating in Jersey - a retailer or a builder, a farmer that is umpiring in Jersey - not umpiring - that is trading in Jersey. **[Laughter]** I am thinking of the cricket. In fact, Members must be clear. There are 3 levels of corporate tax: there is 20 per cent for our utility companies; there is 10 per cent for our financial services companies - those are the companies registered with the Financial Services Commission - and there is zero per cent for all other corporates. Zero, whether it is, as I say, a builder, a retailer or even a farmer: zero. What happens of course is that locally-owned companies if they make a profit - and if it is a big question these days - they may wish to pay a dividend to their shareholders and their shareholders then will be liable to be taxed on that profit.

[12:30]

Some Members may own shares in U.K. companies. I own a few shares in the company called Tesco, registered on the U.K. stock exchange; I think you can buy the shares for about £3.50 tomorrow morning. I have got a few. They will pay me a dividend, and I am taxed in Jersey on the dividend paid by Tesco. No, I am not taxed in the U.K.; I will receive a dividend - if Tesco pay a dividend - and I am taxed in Jersey on that dividend. The company will pay tax; I am not. I am taxed in Jersey; I am not taxed in the U.K. Now, a corporate trading in Jersey will be taxed where it pays its shareholders. A shareholder will be taxed where they receive their dividend. We have gone to a zero rate of corporate tax so that we do not have any harmful tax practices, that we do not discriminate between one type of business and another. We had to do this. This misinformation that is being pedalled by the Tax Justice Network and a few of their supporters within this Chamber simply is wrong. We had no choice. Jersey, if it wants to retain a financial services industry, has no choice but to have a zero rate of corporate tax. The consequences are exactly the problem that we are enduring today. The solution? The Deputy of Grouville and all of us would like to find a fair, non-discriminatory solution. It is not easy to find. That is why the Deputy's proposition has to be described as faulty because it assumes there is a solution and it gives a date by which time this solution must be implemented. While I want to support it, and I think all Members want to support it, if there is not a solution how can it be implemented by 1st January 2012? One other point - and I would ask for you to consider this - about the integrity of the second and third lines of the proposition, and that is and I will read it: "To ensure that an equivalent amount of tax revenue is raised in relation to the profits of non-locally owned non-finance companies." Well, we have just... we know that non-locally owned non-finance companies pay zero. Locally-owned companies pay zero. An equivalent of zero is zero. So I wonder if I am misreading this, but the proposition is asking us to raise the equivalent of zero. I would like to do a bit better than that.

The Deputy Bailiff:

Are you talking to the amendment or are you talking to the main proposition?

Senator J.L. Perchard:

I am talking to the main proposition; I should not be, should I? I beg your pardon. But I think we all want to support the principle behind this, but the amendment is the only way that I can go, because the proposition in my opinion does not do what it says on the tin.

3.2.13 Deputy M.R. Higgins:

The truth of the matter is, in my view, both the amendment and the actual proposition are flawed in terms of harmful tax. Looking at what the Minister is putting forward in the amendment, he mentions that ... have I got the right one here? The amended one - the Minister talks about: "To agree that a new mechanism should be put in place to ensure that an equivalent amount ..." this cannot be the amendment. Sorry. I will not read the whole thing. The part I am coming to though is the fact that he talks about certain companies. Now part of the ... turning back: "Certain non-locally owned non-finance companies trading in Jersey." But where I believe it is flawed is in 2

parts. One, if we have one ... although we were talking about fees and charges and all sorts, I still believe that would be seen as a device by the E.U. anyway, because what we are trying to do is get around the problem that we have: foreign-owned companies, Jersey companies, both do not pay tax. That is the zero part that Senator Perchard was talking about. But what we do in Jersey - as Deputy Le Claire was trying to come to was the deemed dividend - is trying to say to these companies: "Whether you pay out profits or not, we are going to claw it back from the shareholders through the deemed dividend provisions so we are getting some tax revenue." But those deemed dividends are only coming from local residents. We are not getting anything from overseas, and that is where the E.U. see an issue with us. They see deemed dividend provisions as being a device to get around the taxing. Now, if in the amendment the Minister is talking about only trying to bring in charges against certain firms or certain non-locally owned, and then we talk about non-finances. Why are we treating ... I know why we are not treating finance firms in the same way - that is where the real business is. We are trying to get at the trading companies. That is where the Deputy is coming from, the Deputy of Grouville. We wanted it stopped, this abuse in the Island whereby local companies are paying tax that are trading here, non-local ones are not paying tax. However it is tied-up with finance and non-finance. We cannot unravel this. This is the problem that the Minister for Treasury Resources and the Chief Minister have got. They have got themselves into a hole with Zero/Ten and they are digging, hoping to find - I do not know - another tunnel to get out of the hole they are in. But this will not deal with it, because again I believe it would be considered discriminatory, because you are dealing with part of the problem, not the whole problem. The bottom line is that, you know ... well, the bottom line is not to be compliant. I just see this really as a wrecking manoeuvre. It is a delay manoeuvre. I know they were saying in the statement earlier that they do not really understand what is going on. The truth of the matter is the U.K. Government have said that they will have to comply with the E.U. harmful tax code. We are going to be forced into it. I remember hearing the Chief Minister a few minutes ago saying that our constitutional position is different. I can remember being at Her Majesty's Treasury in negotiations with them regarding fund business in Jersey, all ready to be signed-up, and we were going to have it, and they delayed it. Why did they delay it? Because Jersey was not complying elsewhere. So whether it is constitutional or unconstitutional methods, if they want us to change, they are going to make us change, because they will delay things that we want. What I am trying to say is, even the U.K. Government will not even sign-up for this. This is a joke. All the Ministry is trying to do is to delay. So he is buying time so they can have their negotiations and try and find whether it be a territorial tax or some other measure to deal with the whole thing and they hope that this all goes away. I think this is a nonsense. I hate to say it to the Deputy of Grouville; I am afraid hers is flawed as well, although I have the greatest sympathy with her. This is exactly the type of problem I was trying to deal with when I brought that V.A.T. proposition: trying to tax foreign companies who are charging V.A.T. as well as not paying tax. Anyway, I think that we should reject this amendment and I leave it at that.

3.2.14 The Deputy of St. Mary:

We do need to remind ourselves that complicated as this is, there is a simple moral principle at the bottom of it. Regardless of the fact that I will also be a bit technical, never mind; the point is that it is all in the service of that concept of equality between the locally-owned trading businesses in Jersey and the non-locally owned trading businesses and where the tax ends up. I have to take issue with Deputy Le Fondré, first of all. He said the original amendment of the Deputy of Grouville talks about "tax" and that word has to come out and be turned into something else. It is quite interesting because it is a good example of the legalistic approach to these matters which tends to be adopted in Jersey. I will come back to that, as the saying goes, later. But just remember, it is an example of a legalistic approach; thinking that tax/charge/fee are somehow going to make a terrific bit of difference over there in Brussels. Now, the observation I would make on the first 2 parts of the amendment of the Minister for Treasury and Resources, where he talks about "additional" instead of "equivalent" and "certain" instead of basically "all", is he is trying to give himself

wriggle room. As we have heard from other speakers, he has got the wriggle room anyway but he is trying to write it in to make sure that we all know that there is plenty of wriggle room and that is one reason for rejecting this amendment. But the main reason is, of course, the last sentence where he gives himself enough wriggle room to drive an elephant down the hole that that the worm is wriggling in: "... provided that to do so would not jeopardise the integrity of Jersey's business tax regime or its international competitive position." Now, the problem is that it is already completely jeopardised. The whole thing is up in the air, even though the Minister for Treasury and Resources and the Chief Minister are still clinging to their blanket. It was Deputy Le Hérisssier the other day but now they are hoping or telling us they are hoping that the whole system is not in shreds. I am reminded of what Deputy Le Hérisssier said - and it is worth remembering - when he talked about the fact that the fulfilment companies, too ... he quoted an article about a mockery of the E.U. and pointed out that this is a serious issue and it will also come home at some point. It is part of the same issue about whether we are going to wait, as a jurisdiction, until that gun is held to our head or whether we are going to be like Guernsey. They have jumped already. They have said: "Zero/Ten is not going to work, so we are going to find something else and we already accept that part of the inevitable changes that are coming." We do need to take a reality check and we do need to be proactive because if we do not then we are just going to slide down the hill with lots of boulders and stuff coming after us like Buster Keaton. If people do not know the reference, never mind; but it is a very, very funny part of a Buster Keaton film where the whole hillside ends up following him down the hill. "Completely jeopardised", and we have to be aware of the scale of the disarray. Deputy Tadier earlier mentioned Richard Murphy and the back row on the other side were very exercised at this and I think there were comments to the effect: "What does he know" and: "Who is that" and so on. Now, the problem is that if you pigeonhole somebody as the enemy then you are in danger of not listening to what they say and they might be right. I have here the report he wrote for Shadow Scrutiny and if you listen to this you will see that he was exactly right and also that it is the clearest exposition of what went wrong that you would hear: "It is worth noting that Jersey and other administrations introducing similar charges think that the system they propose is not a business tax because they claim the tax is paid personally and, therefore, cannot be covered by the E.U. code, which only relates to Jersey taxation." That is exactly what we heard in answers to the urgent question. They claim the tax is paid personally: "That would appear to be wrong. Charges for which liability arises within a company and which are based on corporate profits must relate to business taxation and, whether or not the veil of incorporation is broken, this has to be the case. Accordingly, the only way in which this tax might be considered a personal tax is by deeming it to be so. Jersey is used to deeming things to be other than they are in its taxation law, as has already been noted in this report." By the way, if Members want to see the clearest exposition of how our income tax law works and the complications that were being dealt with by the Solicitor General, it is in this report: "But the E.U. code is not subject to such legal manipulation. You cannot get round it by saying: 'using this word or that word,' because it is written on the basis of legal principles, i.e. it is based on the substance of the issue and not its legal form. The difference is that the substance relates to what is happening and the form relates to what the legal words used say is happening. In this case the substance is that the tax is due on the profits of the legally incorporated business, whoever is deemed by legal form to be liable to pay it and, as such, this is business taxation."

[12:45]

Now, the point I am making is he wrote that 5 years ago - or maybe 6; I am not sure - and it was ignored and the advice of a certain gentleman from PricewaterhouseCoopers at a cost of £50,000 that was filling the ear of the Minister for Treasury and Resources and the Chief Minister was accepted instead: "The Zero/Ten company tax proposals are sensible and are acceptable to the relevant authorities." Well, we have seen that they are not. The proposals were not sensible and they are not acceptable and we are really, really in shtoop.

Deputy I.J. Gorst:

Sir, I hesitate to interrupt the Deputy in full flow. I think he was probably getting to the end of that particular point and I wonder if he would be prepared to break and we could perhaps call for the adjournment.

The Deputy of St. Mary:

I will be about one minute. I am just making the point that “jeopardise” in this context is a strange word because our entire system is broke or the Zero/Ten element of it is broke and we need a new approach and we need to sit down and listen, which is exactly what did not happen 5 years ago. This is why we are where we are, talking about this amendment; wondering whether it might or might not fit the straightjacket. We really do have to learn to listen and it is going to be a very big throwing up of all the balls to come down and settle in a new arrangement.

The Deputy Bailiff:

Deputy, can I ask, have you concluded your speech or do you intend to conclude this afternoon?

The Deputy of St. Mary:

Yes, I have, Sir.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

You have finished? Thank you. The adjournment is proposed and the States will reconvene at 2.15 p.m. this afternoon. Before rising, can I just give an indication from the Chair in relation to this amendment? It does not seem to me that it directly raises the question of deemed distribution of profits. It is concerned with the raising of revenue from non-locally owned, non-finance companies and if the debate were to continue on the lines of the deemed distribution arrangements I think the Chair would be obliged to intervene. The States now stand adjourned until 2.15 p.m.

[12:48]

LUNCHEON ADJOURNMENT

[14:17]

3.2.15 Senator T.A. Le Sueur:

I shall try to confine my remarks simply to the amendment. The amendment proposes 3 relatively simple changes, only one of which appears to be slightly contentious. The first is to change the idea of tax to a charge and that is not really in dispute. The second one: I think Deputy Jeune asked about the words “for certain” and I think it is important, if we accept the fact that there are certain non-finance, non-local companies involved in matters like energy distribution who will be paying tax already at 20 per cent, clearly this measure is not designed to cope with them. It is designed for those, at the moment, paying no tax at all. One has to have the words “for certain” in there, so that is really not an issue. So the only thing at issue is that final phrase about jeopardising the integrity of the Island’s business tax regime or its international competitive position. We seem to be arguing virtually over nothing here. Some people may disagree but even the Deputy of Grouville, proposing the amendment, said: “Obviously the Minister for Treasury and Resources cannot propose anything which is going to be internationally unacceptable.” So does this amendment add very much to what is already there? I think even the Minister for Treasury and Resources would be prepared to admit it does not add very much, providing it is clearly understood that anything we propose in the States must be proposed in the Island’s interests. So to those who say: “Well, I am going to oppose the amendment because of that phrase”, I suggest that they are opposing it for totally illogical reasons. Now, when I heard Deputy Le Claire this morning accusing the Minister

for Treasury and Resources of buying time, I would point out to him and to Members that the words “1st January 2012” appear both in the Deputy of Grouville’s amendment and in the Minister for Treasury and Resources’ amendment to it. So the Minister for Treasury and Resources is not buying any more time than the Deputy of Grouville already provides. On that basis, this amendment to the amendment is really a fairly innocuous amendment which simply clarifies certain, perhaps slightly technical, irregularities in the original amendment but simply does so in order to improve the construction of the amendment. When the Deputy of St. Mary talks about adopting a legalistic approach and making sure that the words mean what they say and: “What is in a word” I would point out that we, as an Assembly, very much have to take note of the words of the proposition and the words are important. That is why, when the words appear to be slightly wrong, it is better to put them right, as this amendment seeks to do. So, for all those reasons, despite whatever ones views may be about the main amendment itself from the Deputy of Grouville, which I accept many people will say is flawed anyway, this amendment at least tries to improve upon what is proposed in the main amendment.

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

Much of what I wanted to say has been said, so I will not repeat it. Zero/Ten, I believe, originated in the Isle of Man, which started the whole unseemly race to the bottom but, as I say, we are where we are. People that have approached me have said one thing and that is the people of Jersey would like a level playing field, which is hopefully what we will get eventually. I will be supporting the amendment and the amendment by the Minister. There are a few things that did concern me. Obviously the “from certain non-locally owned companies” I would like clarified and obviously the last line: “... provided that to do so would not jeopardise the integrity of Jersey’s business tax regime or its international competitive position” could be seen as a bit of a ‘get out of jail free’ card, although I appreciate everything must be dotted. I will wait and hear the Minister’s summing-up.

3.2.17 The Connétable of St. Brelade:

Just briefly, I empathise with the Deputy’s amendment in that I suppose, as a director of a non-financial Jersey company, it is in my interests to do so and I suppose I ought to declare conflict. But in practice I think what all people in my situation will want, as the previous speaker mentioned, is fairness. We must also be conscious that the Island seeks to diversify its economy and if those entrepreneurs are going to be unfairly taxed in relation to the finance industry, it will be a deterrent. So it is clearly in the Island’s interests to deal with this. I think, on balance, what we would like to see is an arrangement whereby those who are presently escaping, shall we say, the tax need to be put into a regime where an equivalent amount will be paid by them into the Exchequer. Provided that takes place, I think the amendment put by the Minister for Treasury and Resources is far more flexible and more likely to achieve that than the un-amended amendment. So I shall be supporting the amended proposition.

3.2.18 Deputy G.P. Southern:

I rise to speak with a tremendous, almost overwhelming, feeling of sympathy for the poor Minister for Treasury and Resources because what he is being asked today is something - amended or not- I think, which if it is not impossible it is next door to impossible. He is being asked to do the impossible and to examine why I think that one needs to examine the amendment. So to agree that a new mechanism should be put in place to ensure that “an equivalent amount of tax” is taken out and replaced by “additional revenue is raised”. So the first amendment says: “I do not like the word ‘tax’.” I am going to examine why he would prefer “revenue” in a minute but he does not like the word “tax”. It must not be a tax. Why not? Then he goes on: “... is raised in relation to the profits of non-locally owned, non-finance companies.” So second stage, it must be a tax on profits and the Minister says: “Oh, I do not like that either.” So there must be a tax: “There must be a tax on profits and I cannot have that. I am amending.” Then he puts in: “... from certain non-locally

owned, non-finance companies trading in Jersey.” Now he wishes “from certain”, only certain companies and not all companies. That must be the distinction. So cannot possibly do this for all companies. Why not: “This money is to be raised through the mechanism in place in relation to the profits from similar locally-owned companies.” So it must be raised through the mechanism in place in relation to the profits of similar locally-owned companies and, again, the Minister objects to that and we have to ask why. Well, let us pause there and say: “Well, what is in place for locally-owned companies?” What is in place at the moment is our deemed distribution mechanism. So for those companies which are locally-owned, we will set a rate of zero tax and look through and charge the individual - the shareholder - and deem 60 per cent dividend at 20 per cent rate on that tax. Now, 60 per cent deemed dividend, deemed distribution, at a 20 per cent rate, I think, works out roughly to an effective rate of 14 per cent. So in the unamended version we are talking about a rate equivalent to that charged on local companies, which, if deemed distribution goes through, is an effective rate of 14 per cent. Again, the Minister does not like that: “... and to request the Minister for Treasury and Resources to bring forward for approval the necessary legislation to give effect to this decision so that the new system can be fully implemented on 1st April 2012 provided that [he says - big amendment] to do so would not jeopardise the integrity of the Jersey business tax regime or its international competitive position.” One has to ask: what is that doing there? In order to explain why these amendments are here we have to look at the history of how we got here. Once upon a time we used to operate a regime with 2 types of company which paid very little or no tax. They were called Excos, Exempt Companies, and I.B.C.s (International Business Companies). Excos, exempt: paid no tax; I.B.C.s tended to pay a relatively low rate of tax. The E.U. looked at this and said: “This is a harmful practice. You must stop doing it.” So we came up with this wizzo plan that we were going to institute a Zero/Ten approach to our tax and we effective said then: “All right, if we cannot do that, the main plank of our tax will be a zero rate, with some exceptions.” Zero rate. It is called tax neutrality: zero rate. Zero rate for all companies that are non-finance in Jersey.

[14:30]

What are those companies? Well, we know of some of them. They trade in Jersey. They are on the High Street. There they are. We zero-rate them. What we tend to ignore is all those companies that are in Jersey. They are controlled in Jersey but they do not do any active trading. They are here. We know of them. We zero-rate them but they are here. They do not do anything. They are controlled here but they are not here. They do not pay tax here and we have no evidence that they pay tax elsewhere. That is the reality. They are here, to put it bluntly, to avoid paying tax. They are here in order to pay no tax. That is the sole reason they are here and they are backbone of how Jersey makes money. It makes money through helping companies like this avoid paying tax. That is what we do for a living. So no wonder the Minister says: “Hang on, I cannot accept this proposition. I cannot possibly do this.” Why not? Because it says: “An equivalent amount of tax. I have got to start charging them tax and a tax on profits and I do not.” Currently we do not. It has to be from certain of these companies. Hang on, if you charge some of the companies and not other parts of the companies are you not being discriminatory? Are you not then straight bang up against the E.U.: “You must be equal in your treatment of all companies”? Of course you are. You cannot do that: “... through a mechanism in place in relation to the profits of companies.” Okay, how can we get around that: the profits of companies? The answer is: we cannot. We cannot without jeopardising the integrity of Jersey’s business tax regime or the international competitiveness position it is in because if we were to do so then we would blow out of the water the entire regime. That is the reality and that is why the Minister is in such a stuck position. The fact is we cannot move on this. If we attempt to tax these companies then effectively they will go. That is the reality. They will not stay here to pay tax. We are in a position where “deemed dividend” will not work. We are stuck. The E.U. is watching us and is watching us very carefully. We cannot have a tax for some of these companies and not for others. If we try and tax them all then those that

currently do not pay tax will go. Those that are not really here but are only here to avoid paying tax, they will simply go. We are in that horrible place where we cannot move without breaking E.U. regulations or ruining what it is that we make our money from. That is the reality. No wonder the Minister is trying hard to find a way to somehow escape from this position. The reality is he cannot. We are stuck. We cannot go anywhere without breaking E.U. regulations. That is the reality.

The Bailiff:

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

3.2.19 Senator P.F.C. Ozouf:

I always attempt never to over-promise and under-deliver. This proposition, unamended, asks me to do something that I do not think that I will be able to deliver on. My amendment ensures that I can bring an appropriate measure or appropriate measures at the right time; at the same time that the Deputy of Grouville is asking but within the constraints that I can work within. So I just would respond to a number of Members' questions during the debate of: "What is the problem with the Deputy of Grouville's proposition as unamended?" If I could ask Members, if I may, just to turn perhaps to page 4 of my amendment which shows what the highlighted changes are to the Deputy of Grouville's proposition because it might be clearer if Members look at that wording on page 4. I will not go through all of them but the first issue is the equivalent amount of tax. I have removed that. What does this mean? What did it mean? Does it mean the tax that was paid before? Is it the locally-owned tax of zero per cent? I cannot work within a wording which says "equivalent" which is unclear. I have been asked about the issue of "certain companies" which Deputy Jeune and, I think, Deputy Lewis ... I cannot remember who asked me. We cannot apply a flat charge or tax equivalent measure, or whatever wording Members prefer, to all entities, to all companies, in Jersey. To do so would compromise tax neutrality and that is why it needs to be "certain entities" as opposed to "all entities"; hence carving out a group of entities that we are trying to raise additional revenue from. The outcome of the Code Group process is relevant to any likely shape of what we would ... if we are going to propose changes to our tax regime and it is relevant to the issues that are before the amendment. I have been called dreadful things during the course of this debate. I will put that down to the fact that it is Friday and Members are getting short-tempered. I am, hopefully, still going to be friendly with the Deputy of Grouville but she did call me "stupid" and I am sure that that was just in the spirit of a good debating tactic. I am trying to be helpful. I genuinely say that because I wanted to find a way of ... and she said that this meant that a Back-Bencher could not get her amendment through. As amended, if my proposition is successful, she will put the amended proposition to the Assembly and she will get what she is trying to do, which is what I was trying to do in amending it. Deputy Le Hérisssier spoke about fulfilment. He was polite about what I had done in terms of fulfilment in the judgment calls that we make. I cannot comment on other jurisdictions but I know that in this jurisdiction we have responded appropriately and I have no doubt at all that if we had not acted in the way that we did we would have lost. Effectively we would have been cast in a bad light and for all the reasons that he has raised, as controversial as it is to say that. I think one Member raised the issue of the Blampied proposals and the issue there is that there is merit in the Blampied proposals as alternatives, as part of this amendment. The problem is that we have not found a solution to the fact that Senator Le Main and others raise; that entities would be taxed twice, as opposed to being able to have an offsetting compensating arrangement. I think all the questions that Senator Le Main asked were answered with subsequent interventions and subsequent remarks. I would just ask Members to look at that last wording in terms of that last paragraph, those last few words that I introduced. I do not think it was unreasonable to bring a proposition that would commit me to not bringing forward mechanisms that would jeopardise the integrity of our tax regime and our intentional position. Some may call me cautious but that is effectively what this Assembly would ask me to do in any event. I do not think that that wording is a problem and should not be a problem to any reasonable Member that is

wanting me to behave and wanting this Assembly to behave in a way that is competitive and in terms of the integrity of our tax regime which supports our economy. So I think I have answered all of the questions. This is a difficult issue and I accept that and I also accept the frustration that other Members have in relation to trying to find a solution to this issue. The Isle of Man is in the same position and Guernsey, too, in relation to trying to find a solution. I have committed to finding a solution to raising additional revenue. I am not going to announce tax policy on the hoof in an amendment debate but, of course, I have measures that are in my mind and that I am discussing with officials in order to raise additional revenue, but I have been stalled on that process because of the processes that we have referred to earlier. I ask Members for their support. I wanted to support the Deputy of Grouville's amendment and this amendment allows Members to do so and I urge Members to support the amendment and ask for the appel.

The Bailiff:

The appel is asked for then in relation to the amendment of the Minister to the proposed amendment of the Deputy of Grouville. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 32

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 S.C. Ferguson
 Senator A.J.H. Maclean
 Senator B.I. Le Marquand
 Senator F. du H. Le Gresley
 Connétable of St. Ouen
 Connétable of St. Helier
 Connétable of Grouville
 Connétable of St. Brelade
 Connétable of St. John
 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 J.B. Fox (H)
 Deputy of St. Ouen
 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 T.A. Vallois (S)

CONTRE: 14

Senator A. Breckon
 Deputy of St. Martin
 Deputy R.G. Le Hérisssier (S)
 Deputy J.A. Martin (H)
 Deputy G.P. Southern (H)
 Deputy of Grouville
 Deputy P.V.F. Le Claire (H)
 Deputy S. Pitman (H)
 Deputy M. Tadier (B)
 Deputy of St. Mary
 Deputy T.M. Pitman (H)
 Deputy M.R. Higgins (H)
 Deputy A.K.F. Green (H)
 Deputy J.M. Maçon (S)

ABSTAIN: 0

3.3 Expenditure Proposals for 2012 and 2013 and Draft Budget Statement 2011 (P.157/2010): seventh amendment (P.157/2010 Amd.(7)) - as amended

The Bailiff:

Very well, so then we return to the amendment of the Deputy of Grouville as amended. Does any other Member wish to speak on it? Then I call upon the Deputy of Grouville to reply.

3.3.1 The Deputy of Grouville:

This should have been a very simple debate and I would like to get it back into perspective because all I am asking for here is for the Minister for Treasury and Resources to put in place a new mechanism, whatever form that takes; whatever it is; whatever the experts come up with: whether it be a tax, additional revenue, whatever. As the Solicitor General said, the Minister can bring forward whatever he wants - a charge, a tax, whatever - in the future. It is for this Assembly to decide to accept the tax in whatever form that may be. What I am trying to do here is to put a timeframe on that. I am asking for something to be done that, quite frankly, should have been done years ago and what is best for our community. Local businesses, I feel, have waited long enough. They need to know that it is being worked upon and they need to know that there is a political will there to level the playing field. We simply cannot continue as we are. What we have in the current policy actively encourages all major local companies to be owned outside this Island. It reduces any loyalty to the Island which, in turn, affects our strength in determining our own future. In other words, we are encouraging the complete abolition of local ownership, which, in anyone's mind, must be insane. It is a complicated issue but do Members seriously think that I could trade in the U.S. and not pay tax? Of course not; there are mechanisms in place. We need one here and we need it here as soon as possible. What we have is not right. It is not right for our community. It is inequitable, it is discriminatory against local businesses and it is unfair. I ask that this Assembly indicates today that there is a political will here to right the wrong and that the Treasury address this issue with urgency so that we can put in place a system which is fair to our local community by 1st January 2012. I ask for the appel.

[14:45]

The Bailiff:

The appel is called for then in relation to the amendment of the Deputy of Grouville to the Budget. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 46

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.H. Maclean
Senator B.I. Le Marquand
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. John
Connétable of St. Saviour
Connétable of St. Clement
Connétable of St. Peter
Connétable of St. Lawrence
Connétable of St. Mary

CONTRE: 1

Deputy M. Tadier (B)

ABSTAIN: 0

Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy R.G. Le Hérisier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of St. Ouen
Deputy of Grouville
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 A.E. Jeune (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

Connétable J. Gallichan of St. Mary:

I wonder if I might just ask, Sir, we have now finished the amendments as I see it. There is still obviously business to transact in the Budget itself but it might well be possible for us to finish the business today even though it may be necessary perhaps to work on a little after 5.30 p.m. I wonder if I could put Members on notice that, subject to us reaching a reasonable point in the proceedings, I will propose that we move on at the end of the afternoon. If anybody would need to make any arrangements we might like to consider that.

3.4 Expenditure Proposals for 2012 and 2013 and Draft Budget Statement 2011 (P.157.2010) - as amended

The Bailiff:

Very well; thank you, Chairman. There were 2 amendments by Deputy Southern but they have fallen away because of the result of the previous vote. That means all the amendments are complete, as the Chairman says. So we return to debate on the Budget as amended. Does any Member wish to speak?

3.4.1 Senator P.F. Routier:

Very briefly, I just want to comment about some of the capital spending which is proposed for the future. I have responsibility for the harbours and the airport and ...

The Bailiff:

I am sorry, Senator, would you forgive me. There was one matter I meant to draw to Members' attention before re-opening the debate. Members should have had circulated to them an amended summary table A which takes into account the amendment of Deputy Vallois which has been passed. So it shows the figures amended as per that amendment. I am sorry, Senator, but Members ought to be aware of that.

Senator P.F. Routier:

That is perfectly all right, Sir; thank you. In the section regarding capital spending there has, from previous years, been some changes made to the capital monies being made available to the Airport and also some capital money available to the Harbours for things like Gorey and refurbishment of the pier. I am not arguing against that in any shape or form. All I am doing is making Members aware that, with that proposal to take that money away, it will require the trading committees to re-look at the way they make charges and the way the business is organised and it may have a knock-on effect to harbour dues and to airport charges in the future. So I just wanted to make everybody aware that that is what is likely to happen.

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

I would just like to thank Members for supporting me in my amendment to paragraph (a) of the Budget to reduce the expenditure on the contingencies for 2012 and 2013. I would ask the Minister for Treasury and Resources if he is planning on taking the Budget proposition in separate parts or whether he is going to be taking it as a whole.

3.4.3 Senator A. Breckon:

Just a few points. I think it is a little bit disappointing because we have not really had a general economic debate. It is a bit like the Business Plan where you go straight to amendments and where the Minister for Treasury and Resources made an excellent speech at the start and touched on various areas of the economy and we have then gone into the detail in amendments. So we have never had a kick-about, as it were, on the generalities of it. I think that is a failure of the system and maybe P.P.C. (Privileges and Procedures Committee) could look at this. I know procedurally that we go from the main proposal to an amendment. Therefore, with most debates you have a preamble with legislation and then go into the nitty-gritty, as it were, of the article. So what we have done is the Minister for Treasury and Resources has proposed the preamble and then we have gone into the Articles without Members being able to express whether or not they were in general agreement or they had any problems with some of the things. Without testing Members' patience too much, I would like to touch on some of the issues because I think it is important what the Minister for Treasury and Resources said and to give it perhaps a little bit more attention to some of the detail, because he touched on things about perhaps retaining costs better than we had in areas like Procurement, Court and Case Costs. The other thing he said about the Business Plan, it will deliver in 2012 and 2013 some of the things that we are talking about. But the question then is we have had, again, some messy debates about business plans. They have not been inclusive; they are difficult to amend; we changed the process again this year from the last year because people were amending what colour the sky would be and how many days the sun would shine. Again, that is not the easiest thing to do. But, again, to recognise that the Minister for Treasury and Resources not only has a difficult job but we have the job, whether we like it or not, of supporting him. We will have differences but then we have to make some difficult choices but that is where we have to be. He mentioned jobs, for example, and possibly retail; there is some growth there. Then also perhaps things are looking a bit more confident in finance. He also touched on an extra 2 per cent for some above the cap on social security and what he said was: "Into a fund to help to balance the Budget." But, of course, social security contributions were never meant for this purpose. In effect it is a tax on those people and it was mentioned the other day about the consultation but if anybody was asked they would probably say they would rather not pay it. Again, although this proposal is to increase the tax thresholds by 1.1 per cent, which is the earnings index, I do not remember this being proposed when the earnings index was 6 or 7 per cent. So it is perhaps convenient to use that as a choice and not go with the Retail Price Index or something that we have used in the past. The other thing, I do remember a headline from the *Evening Post* in November 2011 and it was the former Minister for Treasury and Resources and when he was asked about the recession he said: "What recession? There are no signs." Some of the advice for that came from this financial ... they were saying that. Also our own advisers were saying that there were no noticeable clouds on the

horizon. The reason I say that is because we must temper any advice we get with an element of caution because that is where we are. I would just like to close with ...

Deputy R.G. Le Hérisier:

The Senator is a remarkable individual but is he sure he remembers a headline from 2011?
[Laughter]

Senator A. Breckon:

2008, sorry. I do beg your pardon, 2008. It is there. The date is 11th November 2008. So if I said 2011, that was incorrect. But the quotes are there and, I would remind Members, it is in the *Jersey Evening Post*. Therefore, as the saying goes, it must be true. But there we are. The advice was given at the time by the financial group and also some of our own advisers were saying we will have slower growth. So really, although we have had this debate, it is a little bit disappointing that we have not had some knock-about, as it were, on the bigger issues. Another thing that the Minister for Treasury and Resources mentioned was a financial steering group. Now, I am not sure if that is officers or political or what but I would be interested if he could say anything else. He also mentioned about savings before increasing taxes and I think we have some tension there. In this report of 2008 there was no mention of a comprehensive spending review. Spending had been an issue but perhaps we were not quite at the sharp end as we are now. I felt that it was worth making those few points. Whether others do is another issue but I think it is a shame, bearing in mind the seriousness of the situation, if we just let this drift because it is 3.00 p.m. on a Friday afternoon. Maybe that is unfortunate. Maybe it should be 8.00 a.m. on a Monday morning and we should maybe have more vigour and be challenging each other, but also supporting each other in the final analysis.

3.4.4 The Deputy of St. Mary:

I want to end up by asking the Minister for Treasury and Resources for 3 assurances as to the way forward but, before I do that, just a few words. I do think that this Budget, in adding £53 million worth of cuts to 2012 and 2013, of which £15 million were added from one week to the next, will damage this Assembly's ability, the State's ability, to do what needs to be done. We have had the word "*mañana*" bandied around quite a little bit and I do not know if it is very good Spanish but I would like to add "no can do" to "*mañana*" and bundle them together. I do fear - and we all know this is true - that we are too often a "no can do" Assembly. Just 2 recent examples. There was a gentleman standing up to his knees in water at Tesson Mill in the paper the other day saying that he had been flooded out twice. I think it was in the paper either last night or the night before. It was said that the States promised to rectify the flooding in St. Peter's Valley in 2001. That is 9 years of *mañana*. I just wonder how we can go on in that vein. We have a proposition before us due to be debated about Pomme d'Or Farm. Same timescale: for 10 years people have been living in our Island in conditions which are unsuitable. That is what the proposition says and maybe Deputy Green is in the habit of exaggerating. In terms of *mañana*, the Police Authority, which would have probably saved us quite a lot of grief, another 10 years - 10 years again - and children's care, we paid the price of not getting that right in the first place. All these chickens come home to roost. They do not cost less when you leave them. They cost more. At the heart of this programme of cuts is the fundamental error that we can make these cuts and it will not really hurt anyone out there. But it will. Now, I have made it quite clear that we can make cuts. I am sure we can get efficiencies: procurement; energy; legal fees; certain departments, for instance repatriation of prisoners. There are options but not £53 million of which, by the way, £14 million is a pay freeze, more or less. There are savings to be made in our salary costs but not £14 million, I would not have thought. We know from recent past what the effect of just 2 per cent cuts was. I do not need to rehearse the daft things that we cut in the Business Plan this year and the things that we did not feel we should do but we did. Now, to be a bit more positive, when we do get it right we put a bit of money in, we put a bit of strategic thinking in. The tobacco strategy, for example, has saved this

Assembly, has saved the States, has saved the taxpayer millions of pounds, apart from the advantages of the improved health. We voted the Sustainable Transport Policy through last session, I think it was, and that too will save a bundle of money; a bundle of money in terms of the cost of the new bus contract and in terms of land savings and in terms of improved health. So will we back it up? Will we learn the lessons of not putting things off, doing things timely and doing things that, down the line, will save us money? There is a plea in this C.S.R. (Comprehensive Spending Review) workshop document from the review group who looked into health saying: "Do not cut the easy-to-cuts. Do not cut the things that will produce savings down the line." I would add to that: "Put more into the sustainable transport policy to get bigger savings and bigger advantages back."

[15:00]

So will we learn? Will we learn these lessons? The omens are not good and I could and will point to a few examples of where the listening is not happening and where we are still in the mode of somehow a battle when it should be all of us together. The euro, not listening and £6 million: whoops, gone. Zero/Ten: not listening or listening to one advice and not the other advice; whoops, we are in really deep trouble with that. We are told repeatedly - the States is told, the public is told - that the States are profligate, that they must get a control on spending and they do not. It is slipped-in all the time. Even when we are voting on Article 11(8) requests from the Ministers, it is the States who did it. It is in the Budget on page 15. The States did those requests. Funny that; I thought it was the Ministers who came and asked us for extra contingency money. So the point I am making is that we have to get out of the silos and we have to be genuinely co-operative and we have to listen. So that is the first assurance, Minister, that I would like the Minister for Treasury and Resources to give this House; that he will learn to listen and that the ideology will be put aside and we will stop waging war; with real honesty and pragmatism and the recognition that good ideas come from all sides. It might be that Mr. W from PwC is wrong and it might be that Richard Murphy of Tax Research U.K. is right. It might be. Well, you can say: "No chance", Senator, but that is exactly the mentality which I am saying we have to leave behind for the sake of our Island. If people think they can just sit in a silo, put their fingers in their ears and not face reality, not even connect with what is going on out there, then there is no hope. So please, please, can we have that assurance with Zero/Ten? Maybe if we put our minds together we could have a new vision for the finance industry that was sustainable and honest and all right and could take us forward. Green politics is another area: save resources, save money. It is common sense. Will we have that ability to listen to each other in the future? So that is the first assurance I am seeking at the end of this debate. The second is invest to save; invest to save not just in management terms. We see that a lot in these documents; that if we, for example, backfill some posts in the Home Affairs Department then we can release some people to do the reviews, then we can get a more efficient Home Affairs and Customs. Fine, that is putting money in to save money down the line. But I do not mean that. I mean invest to save in policy, like with the transport policy; like with energy saving. Instead of endlessly pulling up the plants to see if they are growing right, I want to see policies funded upfront that will produce lasting benefits. So I would like to hear assurance on that. The third assurance is quite specific. We voted for 3 up to 5 per cent on G.S.T. with no exemptions. No exemptions on domestic fuel and I want to focus on domestic fuel. We will generate fuel poverty unless we commit to helping all those - not just a third, all those - on low incomes to achieve fuel efficiency in their homes. Now, can we not commit to that? That would be a sensible and a good way forward and it would show commitment to our own people and it would save money down the line. So I would hope that the Minister can give us those assurances.

3.4.5 Senator J.L. Perchard:

Just briefly; I will be supporting the Budget as amended and congratulate the Minister on what has been a pretty tough ride, not only over the last week but over the last several months as this Budget

has been put together. It is a tough time in Jersey and it is a particularly tough time, I am sure, at the helm at the Treasury. We have agreed to put up G.S.T. to 5 per cent. That is it for me. G.S.T. to 5 per cent: that is it for me. That is it. I am very uneasy about the proposals to put up social security contributions. I am going to need a lot of persuading on that. I think the working person is being fully stretched and we just must, as a Government, cut public spending. We need to think the unthinkable in respect of future public sector cuts. There must be no sacred cows. There simply must be no sacred cows and we must explore and adopt all measures to deliver taxpayers value for money. Raising taxes is the easy option. The tough work is yet to begin and I will be enthusiastically supporting this Budget but it will not be repeated next year. If we are looking to further reduce public spending or further improve the balancing of our books it will not come from new taxes. It must come from a further reduction of expenditure. **[Approbation]**

3.4.6 Deputy R.G. Le Hérisier:

In some respects it has been an interesting debate and in some respects it has been utterly appalling because we are incapable of handling these things. We are all proud individualists and we pretend we can run a parallel show called “working as a team” and often that comes apart and it often comes apart. The tragedy is, of course, the end result of all being proud individualists is not a cohesive approach, of course, often and so forth because of, yes, various people. What I would say - I was trying to say it in the debate surrounding the Deputy of Grouville’s point - this division in the House that there are some advisers who are kosher and there are some who are not, I think it spectacularly misses the point in the sense that I would like people to be in charge of the finances who are not, as the Deputy of St. Mary said, ideologically blinkered on either side of the fence, and I would like them to be people who are nimble of foot, who can read the tea leaves. I am going to explain this further because I think Deputy Martin has a total misapprehension of the situation. That is why, oddly enough, I said I thought Senator Ozouf had done a good job re. the fulfilment industry, because I think we are in a very turbulent world and we need people who can read the tea leaves. Yes, you can take a moral stand, and we have one or 2 Members - and good luck to them - who take a strict moral stand on offshore finance. But you have to have people in charge who can read the tea leaves, can understand the trends and can react to them. There has been far too much denial in this House in that area and I think that is what worries me about the future. This deemed distribution debate is a classic. The smoke and mirrors that has been played there and our inability to have an honest debate about that has been truly worrying because there is no doubt, as somebody was telling me at lunchtime, this is the core issue, basically. The whole edifice could come crumbling down because of its massive implications. That is what I want. I am not going to be too worried and I am not going to be ideologically a purist if that comes from that side of the House or whatever, as long as good arguments are put forward and you have people who have real insight into what is going on and can translate that insight into proper policy initiatives. Quite frankly, that is what I do not see. The reason why I was very worried about Deputy Martin’s point, I think she spectacularly missed the point because the issue with fulfilment, while it was very unfortunate there was an employment issue, the issue with fulfilment still is - even though the Minister for Treasury and Resources did buy us time and I have to be magnanimous about that - the issue is, of course, it is untenable as a long-term proposition. That is the real issue. Yes, Guernsey may have bought itself some time in the article I have distributed and I will bring over there. It may have bought itself a bit of time but it is ultimately untenable because, if you want the moral argument, we are doing to U.K. small businesses what it was said yesterday G.S.T. was doing to our small businesses. It was never intended when this concession was given to take it as an example of how you have to be so careful. It was never intended that the major U.K. supermarkets would use it to grind small independent retailers in the U.K. into the ground, but that is in large part what that is doing and we are complicit in that. So, you ought to be aware of the dynamics of the politics and the economics of these moves. That is what I would like to see with things like Zero/Ten, and I do not see that thinking. That really worries me. The same goes for, although we may look at it later, public service reform. I agree with Senator Perchard, we must go where people have never, so to

speaking, gone before, but we have to do it with consistency. I am a public sector reformer, that is why I challenge and I still do challenge Deputy Southern about his version of public sector reform. It is certainly not my version, but good luck to him. Obviously the battle will be joined on that one. But what I say is there are too many mixed messages. The people on the governing side, they are obsessed with outside experts. I have no problem with that, but they are obsessed with it. It has become routine, it has become automatic, and you cannot employ people ... I hate to go over this ground again with Health, but it is so symbolic or emblematic of what is happening. You cannot employ highly skilled people who allegedly have the vision and they are used to dealing with strategy and then immediately afterwards you say: "We are going to employ management consultants to do the job." I did not think they were monitoring the emptying of waste bins in the hospital and all that. I thought these people were really going to do high-level stuff and that is what they were here for. Until those things are sorted out, I think it gives very, very mixed messages and this is why Deputy Le Fondré on this very temporary alliance he formed the other afternoon was right, although I do not think people quite appreciated at the time just how enthusiastic he was, shall we say, about public sector reform. I think people are prepared to ... they want it, but I am not sure quite at the speed because it has perverse consequences as well. If you make too many people unemployed over a short period you are suffering in other ways, so there are all those questions to be asked. The last point I would make is the question of balance. It has come out time and time again about how should the finance industry bear its burden versus how other people are bearing their burden, and I know there is this issue of incentives. If you put bureaucratic burdens on the industry and small businesses and suchlike, you will drive away the very basis of the wealth that will enable you to pay for your social and other services. That is a legitimate argument, but I think people like Senator Ozouf have to revisit this notion that anything - anything - that is construed as attacking finance has to be resisted to the bitter end. It has really gone beyond a joke, that, and there has to be a much more balanced approach. Because part of selling taxation, we all know we have to pay it and most people out there know that, but (a) they are worried about our inefficiency, and (b) they are worried about the lack of balance in the tax system. They will pay it. They realise that the world is changing, that there are real problems with the world economy, although nothing like the Irish situation in Jersey, we must be careful there. They will do it, but they are not convinced. They are not convinced on the issue of balance and they are not convinced that the version of public services reform, that people governing this Island have really grasped what that means in terms of how you deal with the different groups. So to conclude, oddly enough, I might be more in agreement with people like Senator Perchard than he thinks. There are no sacred cows. There are no subsidised cows, or are there? We have to look into this. So, on that note, I look forward to the Minister for Treasury and Resources' comments.

[15:15]

3.4.7 Senator F. du H. Le Gresley:

I just wanted to raise the matter of the increase in social security contributions. Albeit it was intended to be a fundraising measure in 2012, it was highlighted by the Minister for Treasury and Resources in his speech as a tax proposal and I suspect we will go through the whole of this debate without even mentioning it, which would be a little bit of a shame because it is the first progressive tax-raising measure that I have seen in Jersey for ... since I do not know when. I would like to congratulate him on putting that forward, but I have a word of caution for him because if you will excuse me I am going to read his words. I have a fear he will not hold his nerve because he says: "Once again we have listened carefully to representations made by all business sectors about the impact this proposal will have on the cost of doing business in Jersey. It is important that over the next few months we continue to listen to the arguments on this proposal." I fear that he will again be lobbied by the business and the finance sector and this progressive tax-raising measure may well not appear in next year's Budget. I hope he will be able to reassure me that he will not lose his nerve.

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

I would just like to make a few observations on what we have gone through over the last few days. It has left me with a terrible sense of disappointment, the Budget that we have had to debate over the last few days. My disappointment is that it seems to me we all knew when G.S.T. was introduced that at the earliest opportunity it would be increased. That is the disappointment because we knew that we were setting ourselves on the path that would lead to the inevitable when it was introduced in 2008. I just feel so sad that we debate the Budget at this time of year. It is the season of goodwill when everybody should be full of good cheer and we should be sending out as much of a positive message to the Island as we possibly can. It seems to me that I think what we have done is let down the people of Jersey, those people who are less well-off than many of us in here, the small retailer, and I think it is very unfortunate for the Treasurer that he has found himself in the position of having to do this. But it does seem to me that we are not an Assembly with a social conscience at all. I am sure many Members will disagree with that, but having listened to the arguments over the last few days, I am afraid that is exactly how I feel. I just repeat, it leaves me with a sense of disappointment. I think to end on the positive I would like to ask the Minister for Treasury and Resources in his summing-up to do his utmost to send out some positive messages to the people of Jersey, to those on lower incomes, because from the Assembly as a whole I do not think we have done that at all. I really would like him to do his utmost to take us forward into the New Year with some positive message to everyone out there who is now facing 5 per cent G.S.T. and possible rise next year in the cost of living.

3.4.9 Deputy M.R. Higgins:

As far as I am concerned, the Budget that will be passed is not a States Budget but a Budget of the Council of Ministers. I will not be supporting it fully as it has been amended. Firstly, by agreeing to this Budget we shall be agreeing to expenditure cuts or caps in 2012 and 2013 when we have no idea of what we will be cutting in education, the hospital or elsewhere. To my mind, the C.S.R. process has been flawed in a number of ways. Firstly, not all departments have been conducting a proper top to bottom review and looking at their activities and deciding whether they should be doing them or they could do them in another way. Now, we know that the Education Department have, but I am aware that others have not. The other flaw with the process has been the timing of it. The fact that Education has not finished their review - and they started even before the C.S.R. - is one reason. Another reason why the timing was not right: Health are just starting and they are starting after we have had to parachute in experts at £800,000 extra and after we have had to inject millions of pounds of additional money into the Health Department before they even get started. So, the process has been rushed and gives me no confidence that they are going to achieve what they will. In fact, there is one Minister who I met on a plane quite a few months ago, before it all started, who said to me: "Do you think we are going to achieve these cuts?" I said: "No." He said: "That is exactly what I think." This was before the process started, so there are a lot of problems still and I am not convinced the necessary cuts will be made. I am also not happy about the fact that we are saying we are going to take £14 million out of terms and conditions before any negotiations have taken place. It will be interesting to see whether that will be done without industrial strife in this Island, which we could do without, as people seek to protect the terms and conditions that they have earned over the years. I also am not happy about the Budget ... I will not certainly be voting and, in fact, I hope the Minister will be putting it in part because there are parts that I can agree to but parts I cannot. So I will not be agreeing to the expenditure cap with not knowing what the effect will be. In part (b), when we are talking about total taxation, I will not vote for 5 per cent G.S.T. for the very reasons that I gave when we talked about freezing it for 6 months and also because of the lack of food and energy exemptions being put on. So there is no way I can support that. There are other measures that I could support but because they are not broken down in this way I will not be. Where I can agree with the Budget is the use of the Stabilisation Fund, both in parts (c) and (d) of the proposition. I think the Stabilisation Fund is something that has been extremely valuable and I would just like to make a comment about

balanced budgets in this regard. Because we talk about balanced budgets. The aim should not be to balance each year necessarily, it is balancing over the economic cycle. Now, we would not have balanced our budget this year and next year if we did not have the Stabilisation Fund. We would, if we were going for true balanced budgets, have to reduce expenditure down to the level of revenue that we have raised. That Stabilisation Fund to my mind is no real difference to the Strategic Reserve. They could both be used. It depends on how you use them. Even Senator Ozouf, in giving evidence to the Corporate Services Scrutiny Panel, has said he is not against borrowing, he is not against using the Strategic Reserve, as long as it is being used for capital items or it is for investment in the economy. That type of use of the Strategic Reserve would be acceptable. So I just want to make it quite clear from the start this is not my Budget, I cannot support it in full, I will not support the expenditure caps without knowing the savings and what they are going to be made on, and secondly, I do not support the increase, the 5 per cent G.S.T., especially - and I mean this especially - when business tax review was delayed until after this Budget so we have no idea what will come in that area, and also with the uncertainties of the Zero/Ten because I fear that the Minister for Treasury and Resources will be back before long and say: "Oh, our regional tax proposals which might replace Zero/Ten or this thing will not work and we are going to have to raise the revenue because we have this shortfall and we are going to have to raise G.S.T. again." I do forecast G.S.T. will rise in the future because it is the easy option and because they will not look at other alternatives.

3.4.10 Deputy P.V.F. Le Claire:

We do not get a chance to say Merry Christmas at the end of the day like the senior Senator, Constable and Deputy, and it is a shame that the Budget debate is sometimes acrimonious because there does start to settle upon the community at this time a spirit of Christmas and goodwill to all men. I certainly wish that to everybody. I wonder if you will be with us this time next year, Sir. I hope you will be and I hope I am. **[Laughter]** Time will see. Nevertheless, we face a very difficult period. Jersey as a whole has faced an enormous struggle in dealing with some issues that have tested us to the extreme. It has split the community and there is a lot of healing that needs to be getting on with. We have at least ... I think the figures are somewhere in the region of 1,700 people out of work that we know about. I am concerned about those people. We have a considerable number of people that do not have any homes, and I am concerned about those people. We have lost some people this year and we will probably lose some more before the end of the year. Before I lose Members on this speech, I would just like to say I offer the Minister for Treasury and Resources - and I mean it genuinely - my congratulations for taking on a very difficult job at a very difficult time. I said to him ...

The Bailiff:

I am sorry, I think we have just become inquorate.

Deputy P.V.F. Le Claire:

I was going to sing "*Jingle Bells*" as well.

The Bailiff:

Usher, could you go and summon Members from outside, please. We are inquorate. All right, I think we are now all right. Carry on.

Deputy P.V.F. Le Claire:

They are probably having their mince pies or something. Yes, I was congratulating the Minister for Treasury and Resources. I had better not stop, that was going down well. No, he has had a tough time, but I have said to him as well that just because you have a tough job to do it does not mean to say that I am going to support it. Because let us face it, during the course of the year I do bring a lot of propositions and I ask for a lot of things to be done. I generally do not get anywhere at all with the Assembly. I am normally told by the Ministers that there is no money, go away. So now

is my opportunity to tell them: “No, there is no money from me. Go away.” It is not my Budget, it is the Council of Ministers’ Budget and it is funding such things as repairs on houses in the States stock from the sale of States stock. I think that is just an absolute nonsense. We need to cut down, in my view, the Ministries, possibly down to 7 as Senator Maclean said but certainly down to 8 in my view, and I think we can do that. I certainly would like to echo the sentiments that were expressed by the Constable of St. Lawrence and the fact that we are not socially spirited in the main. I do not feel we are either. I would also like to echo the sentiments that Senator Perchard gave us, which was the fact that there should be really a job in hand now to start to tackle the areas that we should not be involved in. Unfortunately, it does not matter what we do as Back-Benchers to try to help this process because I have been standing up and saying it since as long as Senator Perchard first identified it. We are doing such stupid things like composting at £750,000 a year. I do not know how many times I have to say it: charge it. Put a charge on it or stop doing it. But no, it falls upon deaf ears. So rather than make a big longwinded speech, I just wanted to wish everybody a Merry Christmas. I am sorry that I cannot support this Budget. It is not my Budget. It is not my Budget and I cannot support it so that is that.

3.4.11 Senator F.E. Cohen:

I congratulate the Minister for Treasury and Resources on a robust, tough but most appropriate Budget, reflecting the difficulties being experienced worldwide by most communities. I am sure the Minister for Treasury and Resources would have preferred to deliver a giveaway Budget but it would not be appropriate in the current financial circumstances to do so and he has not shied away from the reality of the difficult circumstances experienced worldwide. However, we do need to engender a feel-good factor into our lives in Jersey as we have a most positive future and a delightful vision. The Budget sets up the proper responsible reaction to the worldwide difficulties and addresses them from an Island perspective. Importantly, we do need to protect those on lower incomes and those measures within the Budget that have in many cases regrettably needed to be imposed have taken into account those on lower incomes. I would cite, for example, the G.S.T. increases where £2 million has been allocated to protect those on lower incomes from the £30 million a year that eventually will be raised. We also have continued the policies associated with the Energy Savings Trust and will be continuing to increase home insulation to those on lower incomes as but one example. So, to be short and to conclude, this is a timely, appropriate and tough Budget but it is a realistic Budget that sets the foundation for a viable future.

[15:30]

3.4.12 The Deputy of St. John:

Can I ask the Minister for Treasury and Resources when he is summing up to give consideration - but not until after 1st January - to seeing the lights are turned off at Victoria College at night? **[Laughter]** I have asked the Minister for Education, Sport and Culture umpteen times over the last year, and even yesterday we see he is still wasting money in his department by sending out these calendars to people. They have to be paid for. It may only be £1,000 or £2,000 or £100 or £200, but all these thousands and hundreds add up. Somebody needs to get to grips with these things, Minister. But the feel-good factor... well, if you live out in the sticks in St. John or in St. Ouen or even parts of St. Helier where for a number of years now we have had no main drains extensions, and if the Minister wants my support in this Budget I want some words of wisdom from his lips to say that there will be money found. Because I was looking at the liquid waste strategy and, yes, there is work to be done in that area but not next year for main drains extensions for those poor people who are paying twice to have their sewage removed or the effluent removed. They pay their taxes for you and I to have our effluent removed, then they have to pay again to get the tanker up to their homes to take out their own. That cannot be just. If you want to give a Christmas gift to that 13 per cent of the population who do not have that facility, I think the Minister might be able to get my vote if he mentions that he will do something about that in 2011. I have mentioned over the last

week umpteen times now about where he can find money to fund some of these things. Probably one of the biggest areas where there is waste, where you need to put in a means testing, is in the grants, within the grants. I think means testing needs to come in. You do not give multimillionaires grants. They can afford to fund their own investments. We should not be using public money to do that, not right across the board.

Senator T.J. Le Main:

Could I ask the ...

The Deputy of St. John:

I will not give way to the ...

Senator T.J. Le Main:

No, I would like clarification from the Deputy.

The Bailiff:

I do not think he is giving way, Senator, unfortunately.

The Deputy of St. John:

I am not giving way. I am going to be brief and to the point. I am reasonably happy with the Budget. I am sorry that we lost the debate yesterday on G.S.T. on food because we were so close to winning. If one person had gone the other way, or 2, we would have got it through. But we are where we are, as they say, but there will be that argument fought again in the Chamber, I am sure, in the next year or so. That said, I wish everybody a good Christmas.

Senator T.J. Le Main:

Could I ask for clarification now, please? The Deputy keeps on about grants, giving away grants. Does he not believe that providing main drains to millionaires living in the country in their multimillion pound houses ... there are grants given for the provision of drains?

The Deputy of St. John:

I did say there are ways; in fact, I could discuss this with the former Minister at any time. I will not waste the time of the House but if he wants a debate on it, we can do that quite easily. I will bring something to the floor of the House and the Minister can do something about it, or former Minister, sorry.

3.4.13 Deputy G.P. Southern:

I too will not be supporting this Budget, primarily because what I can see is that this Budget increases the gap between the rich and poor, absolutely. It makes no attempt to do what was set out in the Strategic Plan 2 years ago to promote equality in our society. Business tax remains low while personal tax, among all types of households, go up. 1(1)(k)s have their tax reduced by the proposals in this Budget. Ordinary households have their taxes increased, and on average a household is paying an extra £900 in taxation merely because of this 5 per cent rate that has been imposed upon all of us. We will see over the next 2 years an additional 400 jobs or thereabouts going from the state sector, from the public services. We will see that, we are told, without a reduction in services. Quite frankly, I am sorry, I do not believe it. We will see £14 million at least coming out of the public sector through changes to terms and conditions, which so far has not even been broached, not even been started to be negotiated. It has been consulted on but certainly not discussed at all yet. We are told that among those changes that might be imposed the one that can be imposed yet again is a wage freeze as we have already had, with all the impact that that means, and that could be that is how to get your £14 million through the imposition of a wage freeze across 2 years. Those are the sort of measures that are being proposed. Twenty per cent tax rate remains as the central sacred cow preserved by this Minister above all else. Given the situation we are in,

the last thing this Minister for Treasury and Resources is going to do - is prepared to do - is to examine the possibility of a higher rate of tax. Why? Why? Because that might mean that we do something about the gap between the rich and the poor and a higher rate might propose that. Then we are talking about in the next 2 years £65 million worth of savings; £15 million worth has been plucked out of the air at the last minute and added; we can do this. All of these factors mean that what is going to happen is that ordinary people in our society, whether they are public sector or private sector, are going to be paying additional taxation. They are going to be poorer as a result of this Budget. So, I cannot find myself in any way, shape or form to support this Budget. I believe it is a retrograde step and would harm most households on this Island.

3.4.14 Deputy A.E. Jeune:

I am just wondering if what I have just heard from somebody who I considered was holding a very sweet apple in one hand the other day has a bunch of sour grapes in the other. I will be supporting the proposition. [Approbation]

The Bailiff:

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

3.4.15 Senator P.F.C. Ozouf:

There has not been that many speeches in relation to the main Budget debate, but that is probably a function of the fact that it is Friday and we have been at this for some 4 days. But I will respond very briefly to those things that were raised. Just very briefly, Senator Routier spoke about the capital programme. He is the Assistant Minister for the Harbours and the Airport. Treasury will work with the airport and the Harbours and Airport Department in order to find a solution to the below-ground funding. There is a solution that has to be found. There is funding that has been removed from the draft capital programme and there has to be a solution found. I accept that the money has to be spent, but the money has to be raised and there have to be some discussions about that. To Deputy Vallois, I will take the proposition in 2 parts. I propose to take it in part (a) and then (b), (c) and (d) because I think that they hang together. Part (a) is about the spending in subsequent years and (b) is about the taxation and the consequential amendments. I hope that answered her question. A number of Members have raised this issue about the social security charge which Senator Breckon did. There will be a separate debate on that issue. There will need to be consultation. There will be that consultation between the period of time when the proposals are lodged and then debated, and there will have to be consideration given to the impact on the business community, as we have already said. Senator Le Gresley congratulated me on the fact that this was a progressive tax. The overall package, I would say to him, is designed to affect higher earners more than the less well-off, but the social security charge is not a Budget measure in itself. It is something that is going to come forward in the future. Senator Breckon asked me to confirm what I said in the opening speech about the tax policy unit. That is the thing that I referred to. There is going to be a separation as of 1st January in the Treasury between the collection part of the tax office and the policy area. That is what I am talking about. It is an official issue. Now, there are going to be issues which I have learnt about during the review of tax where I think that we can have some external individuals in relation to assisting some judgments within the tax office. We have the Board of Commissioners that are very useful, but I think there is some scope for bringing some expert advice into making some of the judgment calls. At the moment, there is, if I may say, quite a lot of discretion within the tax collection area and there needs to be a clear separation between policy and collection. I think that we can do more in terms of focusing on policy to deliver revenues identifying where there are lacunas in the laws that we have and where we can put in place innovative legislation which will drive business to Jersey. That is what that Tax Policy Unit is and perhaps it would be helpful that I would send a note about how that is going to work in the New Year. It is an important issue designed to save money, not to use also a reliance on external consultants. In the same way that we did in the Economics Unit, I think that we can build

in-house competency which will serve this Assembly. The Deputy of St. Mary: I was grateful for his briefer speech in relation to the Budget summing-up, but he did ask me to give some assurances. He asked me to listen and he asked me almost in a way that we have not listened in terms of this Budget. This has been a long process in relation to where we have got to until now, and this is a Business Plan debate which reads through on the numbers in terms of spending which we had considerable discussion and consultation with Members. We have done so again with the second part of the comprehensive spending review, and there is more to do in relation to that. Just because I do not accept all the arguments that he put forward, it is not right, I think, to suggest that the Council of Ministers or I are not listening because in this system of politics I think it behoves us to listen and we listen to all sorts of individuals and listen to their views, as I have done so over the weeks in preparation of this Budget. I said about all of those meetings that I had held with all sorts of different groups from Amos to voluntary workers to union representatives to staff. Lots of people. I am listening and I will continue to listen. Senator Perchard asked me to confirm my commitment in relation to the comprehensive spending review. My view is that the £65 million is going to be difficult, it is going to be challenging, but it can be delivered and it will be delivered but it must be regarded as the second stage of the comprehensive spending review. In my view, if this Assembly is to reach its aspirations in terms of investment in public sector services in the longer term we are going to have to find ways of further economies and efficiencies over and above the £65 million to invest in other areas in order that this Assembly can make some decisions about its priorities. Deputy Le Hérissier: he and I have been in this Assembly for the same amount of time and I was grateful for his positive remarks. He said it was important to have people who could read the tea leaves. I do not drink tea, actually, I am more of a coffee person myself and have needed some during the course of this week, but he is right in terms of needing to survey the landscape, to look forward, to see what the risks are, to identify them and also to seize and identify the opportunities that exist for a small, nimble Island in terms of its opportunities in the business global world. So I was grateful for his remarks.

[15:45]

Deputy Higgins did not have many complimentary things to say. He wanted to spend the Stabilisation Fund and that is fine, I agree with him in relation to that. We have found something to agree on because it is right that we have cushioned the Island in terms of the recession to some extent; in fact, to a significant extent and, as I have said numerous times before, we have done so out of cash without bequeathing any debt on subsequent generations. We need to deliver the C.S.R. If we do not, we will see higher taxes in the future. Deputy Southern: I would respond to his comments about the 1(1)(k) regime. The immediate decision about lifting the minimum contributions for any new 1(1)(k)s is an administrative decision for the acting Minister for Housing, and I have asked him to make that. But any other changes in relation to 1(1)(k)s are matters for this Assembly and these will be debated. Perhaps it is going to be appropriate for us to debate a regime in terms of high net worth individuals and other economic activities in advance of next year's Budget debate, and I will attempt to do that. There is a consultation on this issue which must run. To Senator Le Gresley: I think I have responded to his question. I am going to conclude by responding to the Constable of St. Lawrence because she said some quite important things about being caring and about this Assembly and the message that we are sending out. So, the Deputy of St. John is I think without question one of these armchair auditors. We need them, they are good and they identify problems. I was not aware of the lights on at Victoria College; maybe I should be, I can see Victoria College from my window. There must be a function on there, that is all I would say. I know it is not the O.V.'s dinner tonight. But certainly, if he wants me to take up that as a condition of supporting the Budget debate - I will come on to his main drains in a second - then I will do so. **[Laughter]** He is a typical Jerseyman. I cannot help but look across this Assembly and remark that he definitely reuses and recycles. I have seen that tie on a number of Budget debates. **[Laughter]** As far as his comments in relation to main drains, yes, we do need to find a

solution. There is a problem in relation to that and the Minister for Transport and Technical Services, with input as appropriate with the Treasury, is going to find a solution in relation to that, but it comes at a cost. There may well be the issue that we may well have to levy charges for everybody, in the same way that there is unfairness, unfairness to a great extent for those people who are not connected to main drains who have to have their septic tanks emptied. That is something which this Assembly should commit to dealing with next year and I will commit to him to working with the Minister to find a solution to that longstanding issue.

The Deputy of St. John:

If the Minister will give way, I am asking for him as the man with the purse to do the work. Do not expect me to do it, I will scrutinise it when the time comes.

Senator P.F.C. Ozouf:

I will do the work and it is one of those priorities that we have set out and we would be failing not to do it because it is part of the Strategic Plan. It was a specific issue in the Strategic Plan and in my view needs to be done in the lifetime of this Assembly, which means that I will deliver, I hope... we will deliver on our undertaking to do that. I missed one thing out. He spoke about agricultural grants. He and I have also been in this Assembly for some time and he will remember the days when the agricultural debate ... and there was a very interesting Budget debate a few years ago in relation to agriculture. There has been a rethinking of how we support agriculture in terms of grants and just simply spending money on agriculture does not preserve it. It needs to be given a hand-up, not a hand-out. There is more to do, and there is more to do that has to be delivered, because it is in the Minister for Economic Development's proposals for his C.S.R. objectives and so there are going to have to be some changes. They are in that package of measures which are going to be brought forward to the Business Plan next year. So maybe there are some residual issues and they are going to be dealt with. I take his points in relation to that. There has been a significant amount of work, as I said, on this Budget. It does seem a long time ago since I stood up on Tuesday and made the opening speech. There are big issues for the Assembly in relation to this Budget. The big issues in politics should be those of tax and spending, and so it is right that we have had a vigorous debate in terms of issues. I am grateful for every Member's contribution because they are meant in terms of their position. There has been, I think, a classical debate. There have been high points and low points in this debate. Certainly, the Constable of St. Clement's rum baba speech was a classic. But there is an important point in relation to that G.S.T. exemption debate because it was a close vote. I did not speak in the summing-up of that vote. Maybe it would not have made any difference; perhaps Members had their minds made up. But I have certainly taken away from that debate and I was going to say that I trusted the Minister for Social Security more than I did retailers in order to direct money into the pockets of the people that needed it. But one thing that is going to have to be dealt with, I think, is a clear message that this Assembly is concerned about the impact of exemptions and not having them, and I think for that reason we are going to have to review those exemptions that we gave to make sure that they are working and they are appropriate and it may or may not be that there is going to have to be some adjustments made on that. But a good, sensitive Assembly, a good, sensitive Minister for Social Security will be looking at those issues and I will commit to working with him in relation to that. This Budget has faced up to our finances. We are making some difficult decisions in terms of spending and in terms of saving and in terms of laying - I think as Senator Cohen said - the foundations for economic growth of the future. The Constable of St. Lawrence said that this Assembly was sending out a message that we did not care about the lower income groups, that we were sending out a negative message. I am sorry that that is the case because I think that this Assembly has a track record of investing significant amounts of resources in terms of looking after those that we need to, and sometimes in this Assembly we almost debate the marginal issues. I said to one Member that almost we ... if I say 50, Members want 65, and that is a healthy debate, but sometimes we also forget the fact that we are investing millions - £99 million in terms of income support - in other

benefits. We are transferring wealth to those people who need it and we need a strong economy to continue to do so. I believe in Jersey. I believe in social justice. I believe in social mobility. I believe in investing money in order to achieve that and in order to help those that need it. I believe that Jersey is a community with a heart, but this Assembly needs to have a head. Let us turn to the New Year. Let us turn past the Christmas period I hope with a sense of confidence and hope that Jersey will continue to survive and continue to thrive. I am grateful for every Member's contribution, for a vigorous debate. I continue to ask for Members' support in this Budget proposal. I ask for their support. **[Approbation]**

The Bailiff:

Is the appel called for? Yes, the appel is called for then in relation to the Budget proposition of the Minister. He has indicated that Members will be invited to vote on paragraph (a) alone first, and then be invited to vote on paragraphs (b), (c) and (d) together. So, we will take paragraph (a) first. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 40

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.H. Maclean
 Senator F.du H. Le Gresley
 Connétable of St. Ouen
 Connétable of St. Helier
 Connétable of Trinity
 Connétable of Grouville
 Connétable of St. Brelade
 Connétable of St. Martin
 Connétable of St. John
 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 Hérisier (
 Deputy J.B. Fox (H)
 Deputy J.A. Martin (H)
 Deputy of St. Ouen
 Deputy of Grouville
 Deputy J.A. Hilton (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 T.A. Vallois (S)
 Deputy A.K.F. Green (H)
 Deputy J.M. Maçon (S)

CONTRE: 8

Deputy of St. Martin
 Deputy G.P. Southern (H)
 Deputy P.V.F. Le Claire (H
 Deputy S. Pitman (H)
 Deputy M. Tadier (B)
 Deputy of St. Mary
 Deputy T.M. Pitman (H)
 Deputy M.R. Higgins (H)

ABSTAIN: 0

The Bailiff:

Very well, then we will move to paragraphs (b), (c) and (d) together and when the Greffier is ready he will open the voting.

POUR: 34

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 S.C. Ferguson
Senator A.J.H. Maclean
Senator F.du H. Le Gresley
Connétable of St. Ouen
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
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 J.B. Fox (H)
Deputy of St. Ouen
Deputy of Grouville
Deputy J.A. Hilton (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)

CONTRE: 14

Senator A. Breckon
Connétable of St. Helier
Deputy of St. Martin
Deputy R.G. Le Hérisssier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy M. Tadier (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)

ABSTAIN: 0**The Bailiff:**

Very well, so that completes the Budget debate.

Senator F.E. Cohen:

May I make a point of information in relation to the matters raised by the Deputy of St. John? I did not want to interrupt the Minister for Treasury and Resources' summing up, but as the Planning Department's Christmas present to the esteemed Chairman of our Scrutiny Panel, I can announce that from the beginning of next year we will be introducing measures to allow bio-digesters in many cases in replacement for the requirements for tight tanks, which should in many cases alleviate the problems associated with not being on mains drains but not in all cases.

The Deputy of St. John:

I thank the Minister for that good news.

4. Draft Finance (2011 Budget) (Jersey) Law 201- (P.158/2010)

The Bailiff:

Very well. Then we move to the legislation which is necessary to give effect to the Budget which the States have just approved. So the first matter is the Draft Finance (2011 Budget) (Jersey) Law, Projet 158, and I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Finance (2011 Budget) (Jersey) Law. A Law to set the rate of income tax for 2011 and to amend the Income Tax (Jersey) Law 1961, the Goods and Services Tax (Jersey) Law 2007, the Customs and Excise (Jersey) Law 1999, the Stamp Duties and Fees (Jersey) Law 1998, and the Taxation (Land Transactions) (Jersey) Law 2009. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

The Bailiff:

Minister, do you propose the principles?

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

Yes. I think the debate has been had. I am happy to answer any detailed questions Members have on any of the legislation, but I make the proposition.

The Bailiff:

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

Deputy M.R. Higgins:

Sorry, there was a lot of noise in the Chamber when we were talking. Which Act are we voting on, sorry?

The Bailiff:

This is the Draft Finance (2011 Budget) (Jersey) Law. Deputy Tadier.

4.1.1 Deputy M. Tadier:

I understand that in passing this now we are permitting the Minister and the Assembly to enforce the votes that we have taken on G.S.T. and to do with exemptions and I think it is appropriate at this point just to reiterate why I, and I imagine other Members, will be voting against this. Because certainly I believe that the whole reason that we are faced with this problem of G.S.T. in the first place and now with the increase now is predicated on a completely flawed economic model and it is also predicated on the fact that we have a Council of Ministers with their majority here, the inbuilt majority, which is completely unimaginative, as has been said before, which is completely oblivious to the fact that we live in an economically changing world, which still tries to use the same old economic and traditional models today when these very institutions are crumbling around our ears. Now, I will probably be around to see some of the cataclysmic changes that are going to be happening in the world with the unpredictable results that are going to come on many, a few thankfully will not be around to see those and you will be able to sleep well, I am sure, because of that. But it is my generation that will have to pick these pieces up. I am thankful in one sense that I have been able to be part of a process, but I have also been very frustrated because it is quite obvious that although this has been a long and drawn-out process, one about which we should not complain, that is our job after all, it is pretty obvious that many of us should have just gone home because there has been an inbuilt majority. The voices I suspect have not been listened to because if they had really been listened to and understood, I think is the point, then we would have reached different conclusions. It is my opinion that the debate, certainly the debate on G.S.T., was won 2 or 3 times over and it is simply mathematics. I think, as Deputy Martin suggested, perhaps rather who

was bringing it, the fact that he could not lie at the last moment, he could not give an assurance to the Assembly, which obviously could not be given and those who were asking for the assurance ...

The Bailiff:

Deputy, I am sorry, nobody is suggesting that any Member should lie, are they?

Deputy M. Tadier:

Absolutely.

The Bailiff:

No, very well.

Deputy M. Tadier:

That is what I am saying.

The Bailiff:

It was not apparent that is what you were saying.

Deputy M. Tadier:

Thank you, Sir, for that intervention. Certainly, Deputy Southern was not able to give that assurance because that is not what his politics are. Those individuals who use that as an excuse not to support the Deputy I suspect were being disingenuous even with themselves.

[16:00]

I cannot even figure out why we have passed the Budget because if you add those up who were against G.S.T. being introduced at this stage in June and if you also add those to the ones who did not want the exemptions, we have a Budget here which I think the majority of us do not agree with. Nonetheless, we do rubberstamp it and I do not understand why that is the case. I think the point has been made that the Island ... the Minister talks about listening. I suspect if we listened more to the people outside and we tried to represent them as they would wish, we would have a completely different model, and that brings me to my last point. I appreciate that we all have different points of view and I would emphasise again it is imperative that we do try to listen respectfully to all sides, both in this House and to opinions outside from those who are experts or, as the Senator himself might have called them, armchair auditors. They have a valid position in our society and I am glad that Senator Ozouf and Senator Le Sueur have said that they will listen. So I invite every Member in this House and anybody who is listening on the radio on 25th January to come and listen to Richard Murphy of the Tax Justice Network at Hautlieu School [**Members: Oh!**] at 7.00 p.m. in order to practise that ethos which has been promoted just here today by Senator Ozouf. Do come along and listen to the alternatives if you will. I will certainly be going there. [**Aside**] No idea what that means. I will leave it there. Clearly, I will not be supporting this. It is necessary that it goes down on record for posterity that in Jersey in 2010 there was a resistance both within and without the Chamber. We do not endorse your economic model, which is crumbling. Whether it is Zero/Ten or whether it is G.S.T., it is crumbling around your ears. The world in the next 20-30 years will be very different and hopefully I will still be able to survive in that world, although maybe not politically.

4.1.2 Senator A. Breckon:

Just a question of the Minister. When he mentioned G.S.T. in the earlier debate he did put an indicator of what the effect would be on the Retail Price Index. I wonder if the Minister could give some indication of what the effects of these total measures will be on the Retail Price Index in 2011 because for some of the things there will be increases in January, there will probably be a manufacturer's or a trader's increase or whatever it is, and then there will be another increase in

June. I wonder if the Minister could give some indication of what that means in a Retail Price Index. A quick look to me suggests that it will be very near to 2 per cent. I wonder if the Minister could give any idea of that.

4.1.3 Deputy G.P. Southern:

Again, I remind Members that without having been amended in any significant way whatsoever, this is a full-frontal attack on ordinary working people on this Island and their families who will be made to pay for this recession. There is absolutely no question about it. Worst of all, I think, is those on a fixed income. The pensioners who are out there will not be protected sufficiently. We have 1.1 per cent which over the 2-year period, 1.1 per cent increase in the thresholds, insufficient to fully protect, as we have seen, those from the freeze last year and 1.1 per cent this year, totally inadequate to protect anyone on a fixed income. The fact is that those pensioner households will be paying between £250 and £500 additional tax in the coming year. That is the reality of this Budget and that is the reason why I cannot support it at all.

4.1.4 The Deputy of St. Mary:

Very briefly, I just want to correct what Deputy Tadier said. Richard Murphy will be speaking on Monday, 24th January, not Tuesday, 25th January. I do hope that ... and, you see, it is very interesting what the reaction was. I made a genuine heartfelt plea that we learn to engage with each other. Now, Richard Murphy, you may not like his politics, you may think he has got the wrong end of the stick with the future of the finance industry, but the fact is it is quite clear that there are massive changes around offshore finance, whether you look at the U.S. and Obama or whether you look at Merkel or whether you look at Norway or ... all of them, they are all casting their beady eyes on the world of offshore. Richard Murphy does know one hell of a lot about that.

The Bailiff:

Sorry, he knows what?

The Deputy of St. Mary:

A lot, sorry, a Hades of a lot.

The Bailiff:

Just stick to "a lot".

The Deputy of St. Mary:

He also has recently published a Plan B for Jersey. I suspect that is what he will be talking about and I think that would be of great interest to hear that, discuss it, see whether it can be taken forward.

The Bailiff:

Deputy, it is not entirely clear this has a lot to do with the principles.

The Deputy of St. Mary:

You are quite right, I think that is probably enough now.

The Bailiff:

Very well. Does any other Member wish to speak? Senator Perchard.

4.1.5 Senator J.L. Perchard:

Just briefly, I think it is important to provide some balance. This Budget has my full support because it will continue to build on the solid fiscal foundations on which Jersey stands. It will provide hope for tomorrow for our children and their children. We will not, as some would want,

have jam today but we will not only deliver prosperity for tomorrow but we will ensure that Jersey has a vibrant, solid future by being fiscally prudent at this time.

4.1.6 Senator T.J. Le Main:

I wanted to follow that and I think I said only a day or 2 ago that this Island is in the premiership. The whole Island, not only the finance industry or the financial services industry but the whole Island, wants stability. They want a plan that they know where we are going in the next 3 or 4 years. They want leadership. They know that we have some of the best judiciary, the best regulation in the world.

The Bailiff:

Senator, can I just say this ...

Senator T.J. Le Main:

Yes, but I would just like to congratulate the Chief Minister on providing Ministers leadership in that area and I am going to be supporting this Budget because I think it does all that and gives confidence to everybody in Jersey.

The Bailiff:

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

Deputy T.M. Pitman:

I had my light on.

The Bailiff:

You had your light on? I did not see it. If you had it on, Deputy, by all means speak.

4.1.7 Deputy T.M. Pitman:

I will keep this incredibly short. I just want to agree with Senator Le Main that Jersey is indeed in the premiership. Unfortunately, we are like Manchester City where all our future success has been allowed to depend on some very wealthy, but very fickle overlords. So I think we cannot take the future for granted. It just disappointed me in looking at these principles that there is this attitude to not wanting to listen. I went to a presentation, I think it was last year or the year before, with some of the people that have been mentioned. I have never met them before and I did not know any of them but I was still there to listen and it was a great shame that the Chief Minister himself did not come. Because listening, you sometimes learn new things and I think we should all be open to that. I cannot support the Budget for the obvious reasons. I stated them earlier; I am not going to repeat them again. The message I think this Budget does send out - there are some good bits in it, of course - for ordinary working people it is getting to the stage where they are going to have to decide do they want to live on their knees or are they going to be prepared to die on their feet? Because that is the way we are going, I am afraid.

The Bailiff:

Very well, I call upon the Minister to reply.

4.1.8 Senator P.F.C. Ozouf:

I think the only question that I was asked in relation to the effect of the legislation was the issue of R.P.I. (Retail Price Index) and I confirm to Members that the statistics I have from the Statistics Department is the 2 per cent increase in G.S.T. each; 1 per cent increase in G.S.T. has a 12-month impact as we have rehearsed previously of 0.63 percentage points and therefore the 2 per cent will lift the R.P.I. rate by 1.3 per cent. The only thing I would say in the context of that is obviously we are seeing at the moment quite depressed R.P.I. numbers but that is the empirical number. One never knows. That is the calculation of the full effect of the collection. What we do not know of

course is the effect to which some of that is absorbed by some retailers as has been rehearsed many times before. But that is the actual empirical number in terms of the full effect if it is pulled off. I do not have the Impôts figure with me but I will revert to the Senator as soon as I have located that in my papers. I maintain the principles.

The Bailiff:

The appel is called for in relation to the principles. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 36

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 S.C. Ferguson
Senator A.J.H. Maclean
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
Connétable of St. Saviour
Connétable of St. Clement
Connétable of St. Peter
Connétable of St. Mary
Deputy R.C. Duhamel (S)
Deputy R.G. Le Hérisier (S)
Deputy J.B. Fox (H)
Deputy of St. Ouen
Deputy of Grouville
Deputy J.A. Hilton (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 T.A. Vallois (S)
Deputy A.K.F. Green (H)

CONTRE: 11

Senator A. Breckon
Connétable of St. Lawrence
Deputy of St. Martin
Deputy G.P. Southern (H)
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy M. Tadier (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)

ABSTAIN: 0

The Bailiff:

Very well. Now how do you wish to propose the Articles?

4.2 Senator P.F.C. Ozouf:

I will propose them *en bloc*. The Articles relate to Income Tax, Goods and Services Tax, alcohol, tobacco, hydrocarbon oil, the stamp duty changes, changes in terms of immovable property and the various different court fees that have been changed as a result of consultation with the Court Service, so I maintain the Articles and of Part 2.

The Bailiff:

Are Articles 1 to 10 seconded? [**Seconded**] Does any Member wish to speak on any of those Articles?

4.2.1 Deputy T.A. Vallois:

Could I ask that the Minister takes Article 3 separately, please?

The Bailiff:

Yes. In relation to a Bill, any Member is entitled to ask that a particular Article be taken separately. Which Article was it you wanted to take separately, Deputy?

Deputy T.A. Vallois:

Article 3, please, Sir.

The Bailiff:

Does any other Member wish to speak? Yes, the Constable of St. Helier.

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

Clearly, Members are tired but it is surprising that there has been no debate, or very little debate, about the effect of raising impost duty, especially on alcohol. Members will have received representation from the drinks industry, or the hospitality industry, about the effect of a 6 per cent increase in alcohol and clearly it is a difficult one because there is the health argument on the other side. However, I am just very much aware that there are a lot of people who like to pop down to the local pub and have a pint some evenings and that pint is going to be more expensive, not only because impôts duty is going up, but because G.S.T. is also going up. So there is going to be a double-whammy on the person who is not an alcoholic, who is not binge-drinking but simply likes to use their modest income - and many of these people are pensioners on fixed income - in meeting with their friends and having a drink. There is of course the obvious effect on tourism and we have had representation about that as well. Last year was different, we had a lively debate about impost duty and indeed we froze duty on it. This year the debate has focused on G.S.T. and certainly I was lobbied to bring an amendment to the rise in alcohol. I decided to concentrate my efforts on G.S.T. because I thought that was more important and that touches far more people than are affected by the rise in alcohol prices. That attempt has failed, albeit narrowly. I am still rather perplexed by the outcome of the debate on freezing G.S.T. for next year but that is politics, I suppose. I will be voting, I think, like many Members, against the increasing of G.S.T. to 5 per cent from June next year because I think it was avoidable. I do not agree that our fiscal stability would have been prejudiced if we had done it. But let us not rehearse the debate again. I will simply record my vote against that Article. Thank you.

The Bailiff:

Can I just say this to Members, it has always been traditional in Budget debates to have the debates on the Budget when all these issues are resolved. Once the vote is taken, these are simply matters to put it into effect. Standing Orders do say you cannot re-open a matter you have already debated. Now of course people can vote against it but I do urge Members not to re-hash the debate all over again. The Deputy of St. John.

4.2.3 The Deputy of St. John:

It is not my intention to say more than a few words. I would respond in fact to the Constable. Last year we agreed a Budget where we did not put any duty on beer and the like, only to find 2 months later that the industry themselves gave a big hike. My own local pint went up by 25 pence in the local pub and none of that was duty. I like a pint a couple of evenings a week but I do not think we should be taking the views of the breweries or the Liberation Group, or whoever they are that have written to us, given what they did to the people last year. Thank you.

[16:15]

The Connétable of St. Ouen:

Presumably that is why the Deputy has not been able to buy a new tie. [Laughter]

4.2.4 Deputy G.P. Southern:

I follow on briefly from the Constable of St. Helier to point out that both impost duty and G.S.T. are indirect taxes which are both regressive and therefore I will be voting against them.

4.2.5 Deputy M. Tadier:

I will keep it brief as well. The reason I speak is that I am going to explain why I will ask for 4 and 5 to be taken separately also. Although these issues may not have been covered as extensively as the Constable of St. Helier would have liked in the current discourse that we have been having in the States, it is important I think that Members can give a clear indication of whether they are for or against these 2 duties. I have to echo the same comments that these 2 are regressive. Who is it going to hit most? It is going to hit those who smoke most, it is going to hit those who drink most, who also tend to be those on the lower socio-economic side of the ladder. So I cannot support that on that simple basis irrespective of the other arguments to do with how it is going to affect the pubs who are also retailers, and we have heard a lot said here about retailers. I should say at this point, I do not have a problem with putting taxation on to things like alcohol, cigarettes and even petrol if it is to do with changing behaviour but the point is this is not what is really being predicated here. This is purely for revenue-raising methods. We do have an alcohol strategy which we are still waiting for which I know is being drafted and which I will have a lot to say on, and I know other Members will have. But this is simply being done by stealth. It is going to affect those who are down the bottom. I do not think it is going to change behaviour because it is not joined-up. It is really just going to penalise, once again, those who smoke and drink the most who are already likely to be the ones dying younger because of that and who are down the bottom of the ladder, as I have said. So I will be opposing 3, 4 and 5 and ask for 4 and 5 to be taken separately.

4.2.6 Deputy M.R. Higgins:

I shall be asking for Article 6 to be voted on as well: excise duty on hydrocarbon oil. One of the proposals in the budget is that the fuel companies are going to be paying 20 per cent taxes on their profits which was never there before. So, the consumer is going to be hit with an increase no matter, I am sure, by the fuel companies as they try to recoup some of the money they are losing. Therefore, again, this is a double-hit.

4.2.7 Deputy A.E. Pryke of Trinity:

Well as you would expect I come with the Health hat on and I will just pick out a couple of points. Regarding alcohol, we know that alcohol consumption in Jersey is high when compared to other countries. Recent local figures estimate that 5 per cent of the population are likely to be alcohol-dependent and it obviously results in hospital admissions for that, and we all know the cost of hospital admissions will go up. Also to pick out 2 other points, and I will not be long because we have had this before, we know from research that women are particularly vulnerable to harm caused by alcohol, and local figures confirm this. Year by year we see more women in Jersey admitted to hospital for alcohol-specific conditions and more deaths from alcohol-related diseases. This trend looks likely to continue for 16 to 34 year-olds. Regarding the price of alcohol, well I saw yesterday in a chain store 4 cans of lager for £3.99. Under £1 a can. It is cheaper to buy a can of lager than a bottle of water. That cannot be right. In the New Year I should be publishing the alcohol strategy and it has 3 key areas: harm reduction; the pricing policy and also the Licensing Law. In the meantime I support the increase in tax on alcohol. This is a step in making alcohol more expensive but it is there to protect vulnerable people who are shown to be the most price sensitive such as young people and dependent drinkers. Regarding 2 - tobacco - we know that tobacco harms and can shorten life. This year the Medical Officer of Health estimates that tobacco

contributes to one-fifth of all early deaths in Jersey. Not just cancers but also those of heart and chronic lung disease on the Island. Half of two-thirds of all life-long smokers are eventually killed by their habit, and I look to my right here. It is simple: smoking is the biggest preventable cause of premature death due to lung and heart disease and cancer here in Jersey.

Deputy R.G. Le Hérissier:

Is this relevant? They are very fine sentiments but I did not think we were opening the debate.

The Deputy of Trinity:

I finish with when the price of tobacco goes up, health research shows that consumption goes down, especially in young people and those in low-income groups. It is as simple as that and I urge Members to vote for the impôts duty increase.

4.2.8 The Deputy of St. Mary:

I think it is appropriate in response to Deputy Le Hérissier, we have not spoken at all about impost duty but I will be very brief. I fully accept the reasoning behind tobacco but I remember in the last Budget debate there was a lot of talk about the alcohol duty rise and it was all around the difference between licensed premises and off-licences and the differential in possible harm, and it has all gone under the bridge. Here we are a year later; nothing has apparently changed. It is an across-the-board increase and I would like the Minister for Treasury and Resources to explain what the problem is with finding more out about where the harm is caused and trying to tackle it, if that is what this is about, more intelligently. Thank you.

The Bailiff:

I must remind Members that they have already passed paragraph (b) which refers to impôts duty. If Members regret now that they did not talk more about it at the time, that is unfortunate. But now is not the time to have a debate about it. Now, Senator Breckon.

4.2.9 Senator A. Breckon:

Just a brief point. I wonder if the Minister for Treasury and Resources would like to comment, because he is proposing to increase certain products there but he and I know there are some issues about margins there. Generally, these are passed on directly to the consumer but I think there is some element there for some of these things being carried by retailers and wholesalers. I wonder if he would like to comment on that.

The Bailiff:

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

4.2.10 Senator P.F.C. Ozouf:

I will, first of all, confirm that the duty increases for R.P.I. which is something that was referred to earlier in effect of the Articles for duty, will have an impact of 0.225 per cent on the R.P.I. I know that we have already had the debate about alcohol, but I would just remind Members of the comparison to duty rates in Jersey versus even Guernsey and the U.K., taking just a standard pint of beer. We are looking at a total duty of G.S.T. and duty in the region of 34 pence in Jersey compared to 87 pence in the United Kingdom and 34 pence in Guernsey. That was their unamended Budget increases, so our duty rates are low. I should declare I have an interest in a garage forecourt just because I am an owner of it but I have no interest in petrol. I just make that for the observation. That has not stopped me from commenting on the issue of margins and the unexplained difference on a number of products with duty, whether it be alcohol or tobacco or duty and that is the issue. The benevolence of this Assembly in the past of not increasing duties has not been passed on to consumers. It is a real issue. It has been an issue for 20 years. It was an issue last year when this Assembly, unfortunately, with regret, in my view, rejected the duty increases. I am afraid the consumers did not benefit. That is not the lobbying that one hears from various

different quarters but I think that my proposals are well judged and I ask for Members' support in relation to the duty increases and in relation to the reduced increase for petrol duty. I do not accept at all the arguments that Deputy Higgins makes in relation to the interest. Deputy Higgins criticises everything. He wants to tax companies and I am proposing a taxation measure for extending the relief. I am not going to respond. He has had his say. I do not agree with his observations in relation to that. So Members wanted me to take the individual Articles separately, which is their right to do. I think there were no other issues that I can help the Assembly with. I propose Articles 1 and 2.

The Bailiff:

Yes, Articles 1 and 2, nobody asked for those to be taken separately, so therefore the matter before the Assembly is Articles 1 and 2. Is the appel called for? The appel is called for then. So the matter is Articles 1 and 2. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 45

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.H. Maclean
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
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Connétable of St. Saviour
Connétable of St. Clement
Connétable of St. Peter
Connétable of St. Lawrence
Connétable of St. Mary
Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy R.G. Le Hérisier (S)
Deputy J.B. Fox (H)
Deputy J.A. Martin (H)
Deputy of St. Ouen
Deputy of Grouville
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 A.E. Jeune (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy A.T. Dupré (C)

CONTRE: 3

Senator F. du H. Le Gresley
Deputy G.P. Southern (H)
Deputy M. Tadier (B)

ABSTAIN: 0

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

The Bailiff:

When the Greffier is ready we will then move to Article 3, which will be taken on its own. The Greffier will open the voting on Article 3.

POUR: 26

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 S.C. Ferguson
Senator A.J.H. Maclean
Connétable of St. Ouen
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. Saviour
Connétable of St. Clement
Connétable of St. Peter
Connétable of St. Mary
Deputy J.B. Fox (H)
Deputy of St. Ouen
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy I.J. Gorst (C)
Deputy of St. John
Deputy A.E. Jeune (B)
Deputy E.J. Noel (L)

CONTRE: 21

Senator A. Breckon
Senator F. du H. Le Gresley
Connétable of St. Helier
Connétable of St. John
Connétable of St. Lawrence
Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy R.G. Le Hérisssier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

ABSTAIN: 1

Deputy A.T. Dupré (C)

The Bailiff:

Very well, then we move on to Article 4 which there had also been a request to take this separately and that relates to alcohol duty. The Greffier will open the voting.

POUR: 39

Senator T.A. Le Sueur
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator F.E. Cohen
Senator J.L. Perchard
Senator S.C. Ferguson
Senator A.J.H. Maclean
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin

CONTRE: 9

Senator T.J. Le Main
Senator A. Breckon
Connétable of St. Helier
Connétable of St. Clement
Connétable of St. Lawrence
Deputy G.P. Southern (H)
Deputy P.V.F. Le Claire (H)
Deputy M. Tadier (B)
Deputy J.M. Maçon (S)

ABSTAIN: 0

Connétable of St. John
Connétable of St. Saviour
Connétable of St. Peter
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 J.A. Hilton (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 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)

The Bailiff:

Very well, then we move on to Article 5 which is tobacco and when the Greffier is ready he will open the voting.

POUR: 45

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.H. Maclean
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
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 Hérissier (S)

CONTRE: 3

Connétable of St. Clement
Deputy G.P. Southern (H)
Deputy M. Tadier (B)

ABSTAIN: 0

Deputy J.B. Fox (H)
 Deputy J.A. Martin (H)
 Deputy of St. Ouen
 Deputy of Grouville
 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 A.E. Jeune (B)
 Deputy of St. Mary
 Deputy T.M. Pitman (H)
 Deputy A.T. Dupré (C)
 Deputy E.J. Noel (L)
 Deputy T.A. Vallois (S)
 Deputy M.R. Higgins (H)
 Deputy A.K.F. Green (H)
 Deputy J.M. Maçon (S)

The Bailiff:

Very well, then the next matter is Article 6 which is also to be taken separately. That is hydrocarbon oil and when the Greffier is ready he will open the voting.

POUR: 37

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 S.C. Ferguson
 Senator A.J.H. Maclean
 Senator F.du H. Le Gresley
 Connétable of St. Ouen
 Connétable of St. Helier
 Connétable of Trinity
 Connétable of Grouville
 Connétable of St. Brelade
 Connétable of St. Martin
 Connétable of St. John
 Connétable of St. Saviour
 Connétable of St. Peter
 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 of Grouville
 Deputy J.A. Hilton (H)
 Deputy J.A.N. Le Fondré (L)
 Deputy of Trinity
 Deputy I.J. Gorst (C)

CONTRE: 10

Senator A. Breckon
 Connétable of St. Clement
 Connétable of St. Lawrence
 Deputy of St. Martin
 Deputy G.P. Southern (H)
 Deputy P.V.F. Le Claire (H)
 Deputy S. Pitman (H)
 Deputy K.C. Lewis (S)
 Deputy T.M. Pitman (H)
 Deputy J.M. Maçon (S)

ABSTAIN: 1

Deputy M. Tadier (B)

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 M.R. Higgins (H)
Deputy A.K.F. Green (H)

The Bailiff:

Then I think there were no requests in relation to Articles 7 to 10 so if Members agree they can be taken together. Very well, so we will move to Articles 7 to 10 inclusive and the Greffier will open the voting.

POUR: 44

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.H. Maclean
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
Connétable of St. Saviour
Connétable of St. Clement
Connétable of St. Peter
Connétable of St. Lawrence
Connétable of St. Mary
Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy R.G. Le Hérisier (S)
Deputy J.B. Fox (H)
Deputy J.A. Martin (H)
Deputy of St. Ouen
Deputy of Grouville
Deputy J.A. Hilton (H)
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 of St. Mary
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)

CONTRE: 3

Deputy G.P. Southern (H)
Deputy S. Pitman (H)
Deputy T.M. Pitman (H)

ABSTAIN: 1

Deputy M. Tadier (B)

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

The Bailiff:

Very well, so that adopts those Articles. Do you propose the Bill in Third Reading, Minister?

Senator P.F.C. Ozouf:

Yes, Sir.

The Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak in Third Reading? The appel is called for in relation to Third Reading. The Greffier will open the voting.

POUR: 39

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 S.C. Ferguson
Senator A.J.H. Maclean
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
Connétable of St. Saviour
Connétable of St. Clement
Connétable of St. Peter
Connétable of St. Mary
Deputy R.C. Duhamel (S)
Deputy of St. Martin
Deputy R.G. Le Hérisssier (S)
Deputy J.B. Fox (H)
Deputy J.A. Martin (H)
Deputy of St. Ouen
Deputy of Grouville
Deputy J.A. Hilton (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 of St. Mary
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)
Deputy A.K.F. Green (H)

CONTRE: 9

Senator A. Breckon
Connétable of St. Lawrence
Deputy G.P. Southern (H)
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy M. Tadier (B)
Deputy T.M. Pitman (H)
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)

ABSTAIN: 0

[16:30]

The Bailiff:

The Minister has presented, as he is entitled to in relation to each of these pieces of legislation, a proposition to bring it into effect immediately. I will ask the Greffier to read the Act.

The Greffier of the States:

Act declaring the Finance (2011 Budget) (Jersey) Law 201- shall have immediate effect. The States, in pursuance of Article 19 of the Public Finances (Jersey) Law 2005, have made the following Act.

4.3 Senator P.F.C. Ozouf:

As you have explained, this brings into force the legislation. Only the Finance Law can be brought such with immediate effect without having Privy Council approval and I propose the Act.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on the Act? The appel is called for in relation to the Act relating to the Public Finances (Jersey) Law which has just been passed. The Greffier will open the voting.

POUR: 40

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 S.C. Ferguson
Senator A.J.H. Maclean
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
Connétable of St. Saviour
Connétable of St. Clement
Connétable of St. Peter
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 J.A. Hilton (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 of St. Mary

CONTRE: 8

Senator A. Breckon
Connétable of St. Lawrence
Deputy G.P. Southern (H)
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy M. Tadier (B)
Deputy T.M. Pitman (H)
Deputy M.R. Higgins (H)

ABSTAIN: 0

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. Draft Income Tax (Amendment No. 37) (Jersey) Law 201- (P.159/2010)

The Bailiff:

So we move next then on the Order Paper to the Draft Income Tax (Amendment No. 37) (Jersey) Law - Projet 159 - also lodged by the Minister for Treasury and Resources. I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Income Tax (Amendment No. 37) (Jersey) Law 201-. A Law to further amend the Income Tax (Jersey) Law 1961. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

Senator P.F.C. Ozouf:

May I ask for my Assistant Minister, Deputy Noel, to be rapporteur for this item?

The Bailiff:

Yes. Deputy.

5.1 Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

With the will of Members I propose that the principles of the Draft Income Tax (Amendment No. 37) that they give effect to the income tax provisions proposed in the 2010 Budget. With Members' leave I will explain it in more detail in the Second Reading of the individual Articles.

The Bailiff:

Very well, are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? Deputy Le Claire.

5.1.1 Deputy P.V.F. Le Claire:

Just a very general comment about income tax. This Draft Island Plan inspectors' report, I will read just 2 lines and then I will stop speaking: "If 50 per cent is taken as the maximum proportion of net income that should go on housing, then average income households cannot afford the price of a one-bed flat or any other housing type." Lead on.

The Bailiff:

Can I just remind Members, I think this is nothing to do with rates of taxes. This is all to do with administrative measures in the collection of tax. Deputy Green.

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

I may be bringing this up at the wrong time but the Minister did mention in his speech some reference to income tax and the fact that the ordinary worker pays a year in arrears. I just wondered if the Minister would give some thought and look at whether there is any way that we can move that on. Because it is very difficult for ordinary working folk, when they retire they still owe a year's tax. I know that people say: "You should plan for that" but that is not easy when you have not got much disposable income. So I would be grateful if the Minister for Treasury and Resources could indicate that he is working on that.

5.1.3 Senator P.F.C. Ozouf:

I will just respond to Deputy Green. He raises an important point which is part of the income tax simplification system that I want to put in place next year. There is a lot of work that needs to be done to deal with some issues of people paying on a current-year basis and a prior-year basis. It does create hardship when people retire, when mothers want to have a family, and that is something I want to deal with. I hope that it will not be this time next year; that it will be before then we will be able to at least start discussing some proposals. Thank you.

5.1.4 Deputy G.P. Southern:

Just to focus on that, it has certainly been the intention of the previous Minister for Treasury and Resources to harmonise the way in which we pay income tax. I would like to hear from the Assistant Minister now whether we are going to move towards paying current-year income tax. Because it seems to me that that is the way to go rather than otherwise. It is not clear from what the Minister said which way he was going to go: whether it was all going to be previous year or all going to be current year.

The Bailiff:

I am not sure myself that that relates at all to what is in this particular law but nevertheless it is up to the Assistant Minister obviously as to what he deals with. Does any other Member wish to speak on the principles of this law? Very well, I call upon the Assistant Minister to reply.

5.1.5 Deputy E.J. Noel:

I would just like to give some assurance to Deputy Southern that people can change their I.T.I.S. (Income Tax Instalment Scheme) rates so they do end up paying on a current year. It is optional. I would just like to remind the Deputy that all new taxpayers are automatically paying on the current year. It is one of the tax measures that we have got under consideration and we will be looking at it in due course. I maintain the principles.

The Bailiff:

All those in favour of adopting the principles, kindly show. Those against. The principles are adopted. Assistant Minister, there is an amendment that you have lodged to Articles 2 and 3, I think, so they had better be read when we get there. Do you want to propose Article 1 then and we will get to Articles 2 and then 3 which you can propose as amended?

Deputy E.J. Noel:

Yes, Sir.

The Bailiff:

Very well. Article 1 is proposed. Is that seconded? **[Seconded]** Does any Member wish to speak on Article 1? All those in favour of adopting Article 1, kindly show. Those against. Article 1 is adopted.

5.2 Draft Income Tax (Amendment No. 37) (Jersey) Law 201- (P.159/2010): amendment (P.159/2010 Amd.)

The Bailiff:

Then in relation to Article 2 there is an amendment, so I will ask the Greffier to read the amendment. The Greffier has pointed out that it is a 2-page amendment. Are Members content to take the amendment as read? Very well. Assistant Minister, do you wish to propose Articles 2 and 3 as amended?

5.2.1 Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

I do, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on either of those 2 Articles? Very well, all those in favour of adopting Articles 2 and 3 as amended, kindly show. Those against. Those Articles are adopted. Do you wish to propose the rest of the Articles *en bloc* and take questions, Assistant Minister?

Deputy E.J. Noel:

I would like to do that, please, Sir.

The Bailiff:

Seconded ? **[Seconded]** Does any Member wish to speak on any of Articles 4 to 24? Very well, all those in favour of adopting Articles 4 to 24, kindly show. Those against. They are adopted. Do you propose the Bill in Third Reading, Assistant Minister?

Deputy E.J. Noel:

I do, Sir.

The Bailiff:

Seconded ? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Bill in Third Reading, kindly show. Those against. The Bill is adopted. Do you wish then, Minister or Assistant Minister, to propose the Acte Operatoire? Who is proposing it?

Deputy E.J. Noel:

I do, Sir.

The Bailiff:

Then I will ask the Greffier to read it, first of all.

The Greffier of the States:

Act declaring that the Income Tax (Amendment No. 37) (Jersey) Law 201- will have immediate effect. The States, in pursuance of Article 19 of the Public Finances (Jersey) Law 2005, have made the following Act.

5.3 Deputy E.J. Noel:

As with the previous Act, this is to ensure that we can bring the legislation in straight away. Thank you.

The Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak on the Act? All those in favour of adopting the Act, kindly show. Those against. The Act is adopted.

6. Draft Goods and Services Tax (Amendment No. 3) (Jersey) Law 201- (P.160/2010)

The Bailiff:

Then we come next to the Draft Goods and Services Tax (Amendment No. 3) (Jersey) Law - Projet 160 - lodged by the Minister for Treasury and Resources and I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Goods and Services Tax (Amendment No. 3) (Jersey) Law 201-. A Law to amend further the Goods and Services Tax (Jersey) Law 2007. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

This proposal is for an amendment to the Goods and Services Tax. I will come to the Articles in turn.

The Bailiff:

Can you help Members? Is it to do with the rate or is it to do with administrative measures?

Senator P.F.C. Ozouf:

Administrative measures, Sir.

The Bailiff:

Very well, is that seconded? **[Seconded]** Does any Member wish to speak on the principles? All those in favour of adopting the principles, kindly show. Those against. The principles are adopted.

6.2 Senator P.F.C. Ozouf:

I will take the Articles *en bloc*, if I may. Article 1 provides for the implementation of amendments to the primary law and to the G.S.T. 2007 Law. Articles 2 and 3 clarifies the treatment when a business is transferring as a going concern. Article 4 reduces the surcharge payable in cases of failure of G.S.T. or to provide a G.S.T. return on time. Article 5 increases from £10 to £100 the minimum value of a gift made by businesses if the gift is to be treated as a supply for G.S.T. purposes and Article 6 shows that this measure be cited as the Goods and Services Tax (Amendment No. 3) and will come into force on 1st January 2011. I propose the Articles.

The Bailiff:

Are the Articles seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles? All those in favour of adopting all the Articles, kindly show. Those against. Articles 1 to 6 are adopted. Do you propose the Bill in Third Reading?

Senator P.F.C. Ozouf:

Yes, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Bill in Third Reading, kindly show. Those against. The Bill is adopted in Third Reading. Do you wish to propose then, Minister, an Acte Operatoire in relation to this legislation?

Senator P.F.C. Ozouf:

Yes, please, Sir.

The Bailiff:

Then I will ask the Greffier to read it.

The Greffier of the States:

Act declaring that the Goods and Services Tax (Amendment No. 3) (Jersey) Law 201- will 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 propose, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on the Act? All those in favour of adopting the Act, kindly show. Those against. The Act is adopted.

7. Draft Goods and Services Tax (Miscellaneous Amendments) (Jersey) Regulations 201-(P.161/2010)

The Bailiff:

Then we come next to the Draft Goods and Services Tax (Miscellaneous Amendments) (Jersey) Regulations - Projet 161 - lodged by the Minister for Treasury and Resources and I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Goods and Services Tax (Miscellaneous Amendments) (Jersey) Regulations 201-. The States, in pursuance of Articles 21, 37, 43, 52, 59 and 100 of the Goods and Services Tax (Jersey) Law 2007, have made the following Regulations.

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

This is, again, not about the rate. These draft Regulations clarify some provisions of the G.S.T. 2007 Regulations and increase certain fees set out in the Goods and Services (International Service Entities) Regulations 2008. I move the principles.

The Bailiff:

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles? All those in favour of adopting the principles, kindly show. Those against. The principles are adopted. How do you wish to propose the Regulations?

7.2 Senator P.F.C. Ozouf:

En bloc, Sir. Regulation 1 modifies Regulation 15 of the G.S.T. 2007 Regulations. They are in relation to import tax on supplies of services that take place before a person is registered for G.S.T. purposes. Regulation 2 introduces an exemption to Regulation 19 which requires G.S.T. accounts to be adjusted when the consideration for a supply is varied. Regulation 3 ensures that an existing Regulation will apply in future to all supplies of second-hand goods. Regulation 4 is concerned with the International Services Regulations increasing £100 to £200 a component of fees involved in the registration of International Service Entities. Regulation 5 names the regulations. They are technical regulations that have been subject to the normal procedures when we are looking at amendments in the Budget time with the law. I propose the Regulations.

The Bailiff:

Seconded? [**Seconded**] Yes, Deputy Higgins?

7.2.1 Deputy M.R. Higgins:

I was just going to ask the Minister would he explain Regulation 3 a bit further about second-hand goods. His explanation was not terribly full there.

The Bailiff:

Do you wish to elaborate now or in reply, Minister? In reply. Does any other Member wish to speak?

7.2.2 Deputy A.T. Dupré of St. Clement:

Yes, I am just interested about the second-hand goods. Because if it is for a charity shop, are they going to have to pay G.S.T. on the second-hand goods?

The Bailiff:

Does any Member wish to speak on any of the individual Regulations? Very well, I call upon the Minister to reply.

7.2.3 Senator P.F.C. Ozouf:

If I would draw Members' attention to the explanatory note in respect of these Regulations and they will see that there is an explanation there that it presently only applies to supplies of second-hand goods of motor vehicles and this will in future apply to suppliers of second-hand goods.

[16:45]

The explanation is that the disposal of goods that a financier repossesses or an insurer takes possession of neither a supply of goods nor a supply of services. There are certain changes which I am advised to make by the G.S.T. I do not believe that there is any consequential amendments, as I have understood, in relation to the second-hand entities. I hope that makes the clarification clear.

The Bailiff:

Very well, all those in favour of adopting Regulations 1 to 5, kindly show. Those against. The regulations are adopted. Do you propose the regulations in Third Reading, Minister?

Senator P.F.C. Ozouf:

Yes, please, Sir.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak in Third Reading? The appel is called for in relation to the regulations in Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 34

Senator T.A. Le Sueur
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator T.J. Le Main
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Senator S.C. Ferguson
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
Connétable of St. Saviour
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 of St. Ouen
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy K.C. Lewis (S)
Deputy I.J. Gorst (C)
Deputy A.E. Jeune (B)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)

CONTRE: 7

Senator A. Breckon
Senator F. du H. Le Gresley
Deputy S. Pitman (H)
Deputy of St. John
Deputy M. Tadier (B)
Deputy T.M. Pitman (H)
Deputy M.R. Higgins (H)

ABSTAIN: 0

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

8. Draft Income Tax (Amendment No. 36) (Jersey) Law 201- (P.121/2010)

The Bailiff:

Very well, we now come to the Draft Income Tax (Amendment No. 36) (Jersey) Law - Projet 121 - lodged by the Minister for Treasury and Resources and I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Income Tax (Amendment No. 36) (Jersey) Law 201-. 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.

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

I propose the principles.

The Bailiff:

Again, can you just assist Members? Is it to do with rates or administrative matters?

Senator P.F.C. Ozouf:

Administrative matters.

The Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? Very well, all those in favour of adopting the principles, kindly show. Those against. The principles are adopted. How do you wish to propose the Articles, Minister?

Senator P.F.C. Ozouf:

En bloc but I will run through them. I am afraid I have my papers confused. I do apologise. Part 1 amends the principal law and proposes the standard rate of 20 per cent for 2010.

The Bailiff:

No, I am not sure that you have right notes, Minister.

Deputy E.J. Noel:

Perhaps I could help my Minister out here.

Senator P.F.C. Ozouf:

Yes, please do.

Deputy E.J. Noel:

I think we have our line of communications confused because I thought I was doing this one.

The Bailiff:

That would probably explain why the Minister could not find his notes. **[Laughter]**

8.1 Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

It has been a long day. What was that about recurring nightmares? Just as a bit of background for Members, this change to the Income Tax Law is designed to line Jersey with international standards and providing certainty to the funds and securitisation industries and how their products can be taxed in Jersey. Again, as with Amendment No. 37, I will explain and propose in more detail should Members wish so, but as I said this amendment needs to be introduced so exemptions can be

put in place to bring Jersey's tax regime with regards to funds and securitisation vehicles in line with other jurisdictions such as our sister Island.

Senator P.F.C. Ozouf:

I am indebted to my Assistant Minister. Thank you.

The Bailiff:

Does any Member wish to speak on the principles? All those in favour of adopting the principles, kindly show. Those against. The principles are adopted. How do you wish to propose the Articles then, Assistant Minister?

8.2 Deputy E.J. Noel:

I would like to take them *en bloc* and I can go through them hopefully quite rapidly. There are about 15 or so. Article 1 is the interpretation. Articles 2 and 3 insert a definition for an eligible investment scheme and eligible participation into the principal Law. Article 4 amends Article 20B of the principal Law so that a registered person who is exempt from income tax on their investment income is not required to send a company return to the Comptroller. Articles 5 to 10 amend the principal Law so that the deemed dividend provisions apply to a person who is exempt from Schedule D income tax. The amendment means that an individual resident in Jersey that owns more than 2 per cent of the shares of a company which is exempt from Schedule D income tax is still subject to deemed dividend rules. I hope I still have everyone with me. Article 11 amends the principal Law so that the company which is exempt from Schedule D income tax will be treated as a company subject to full attribution for the purposes of the shareholder taxation rules if it falls within that definition. Article 12 requires an eligible participant to apply to the Comptroller to be registered. Article 13 clarifies that the registered person exempt from Schedule D income tax is not charged to tax at zero per cent under Article 123C. Article 14 ensures that each provision is brought into effect for the year of assessment 2010 and Article 15 is the closing citation. I propose the Articles.

The Bailiff:

Are the Articles seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles? Yes, Senator Le Gresley.

8.2.1 Senator F. du H. Le Gresley:

Only a very small question. Could the Assistant Minister tell me under Article 12 what the fee would be? It says: "... accompanied by such fee as the Minister may prescribe by Order." Could he tell me what the fee will be?

The Bailiff:

Does any other Member wish to speak? Very well, I call upon the Assistant Minister to reply.

8.2.2 Deputy E.J. Noel:

The annual fee will be set at £500 which will be used to cover the administration processing costs incurred by the Comptroller of Taxes.

The Bailiff:

Very well, all those in favour of adopting Articles 1 to 15, kindly show. Those against. They are adopted. Do you propose the Bill in Third Reading, Assistant Minister?

8.3 Deputy E.J. Noel:

I do, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Senator.

8.3.1 Senator A. Breckon:

I do not know if the Assistant Minister can answer this or if it is a legal question. It says in Third Reading that it shall have immediate effect as if this declaration were the registration of a law passed by the States and sanctioned by Her Majesty in Council that was to come into force on registration. I wonder if the Assistant Minister can explain how that process is when normally we have to go through a thing ... in Social Security's case, this takes many months and in this case we can do it if that is in the principal Law, or is that something that could be done for other measures. I wonder if the Assistant Minister ...

The Bailiff:

Perhaps I can assist from the Chair. It all arises out of the Public Finances Law, so that financial matters which come under the Public Finances Law ... Any taxation draft. Does any other Member wish to speak? Senator Routier.

8.3.2 Senator P.F. Routier:

I note this is probably the last item with regard to the Budget and everything we have been discussing over the last 4 days. I would just like to take the opportunity to congratulate the Minister for Treasury and Resources and his team on **[Approbation]** steering us through this very difficult debate. I believe he has done a tremendous job and my only request would be that perhaps... I think the Assistant Minister mentioned our sister Island. When I got home on Wednesday evening I saw on Channel Television they had just completed their Budget on their monthly meeting in one day. I just hope that we could copy one of the other things that they do in Guernsey. Congratulations, Minister.

8.3.3 The Deputy of St. John:

For those Members who did not footstamp, I would still like to congratulate the Minister and hopefully next year it could be somewhat a littler clearer so that we do not have to have too many amendments and take 4 and a half days to cover the work. Like the previous speaker, let us hope we can do it in a day. Thank you.

The Bailiff:

Very well, I call upon the Assistant Minister to reply.

8.3.4 Deputy E.J. Noel:

The length of the Budget debate is purely in Members' hands.

The Bailiff:

The appel is called for in relation to adopting Projet 121 in Third Reading. I invite Members to return to their seats and the Greffier will open the voting. I sense an end-of-term spirit. **[Laughter]**

POUR: 42

Senator T.A. Le Sueur
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator T.J. Le Main
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Senator A. Breckon
Senator S.C. Ferguson
Senator A.J.H. Maclean

CONTRE: 2

Deputy P.V.F. Le Claire (H)
Deputy M. Tadier (B)

ABSTAIN: 0

Senator B.I. Le Marquand
Senator F. du H. Le Gresley
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. John
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 of St. Ouen
Deputy J.A. Hilton (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 A.E. Jeune (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

The Bailiff:

Then, Assistant Minister, are you going to propose an Acte Operatoire in this case?

Deputy E.J. Noel:

I am, Sir.

The Bailiff:

Very well, I will ask the Greffier to read it.

The Greffier of the States:

Act declaring that the Income Tax (Amendment No. 36) (Jersey) Law 201- will have immediate effect. The States, in pursuance of Article 19 of the Public Finances (Jersey) Law 2005, have made the following Act.

The Bailiff:

Assistant Minister, do you propose the Act?

Deputy E.J. Noel:

I propose it.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on the Act? All those in favour of adopting the Act, kindly show. Those against. The Act is adopted. So that does indeed conclude all matters on the Budget, Minister. **[Approbation] [Laughter]**

Senator P.F.C. Ozouf:

I would just like to thank Members for their compliments but also for their own work in relation to a gruelling debate that we have had. I do not want to end the Budget without recognising just a very small amount of people. There is a tremendous amount of work, not only that this Assembly does but in the preparation before that. I would like to thank all Ministers and Assistant Ministers who have been part of the preparation, all of their staff and their Treasury teams, the Finance teams in the department. To the Treasury team led by the interim Treasurer, the Treasurer designate, the Director of International Tax, the Comptroller of Income Tax, the C.S.R. team, the tax team, all in the Treasury who have done so much in order to bring all the legislation before Members. But also to the Law Draftsmen, to the Greffe, to the Chair, to the Law Officers, to everybody that has contributed to the debate, I am very grateful. There has also been an involvement in Scrutiny, as appropriate, and I thank all those people who have been part of it. I am grateful for their forbearance.

9. Draft Magistrate’s Court (Miscellaneous Provisions) (Amendment No. 10) (Jersey) Law 201- (P.155/2010)

The Bailiff:

Very well, we come next to the Draft Magistrate’s Court (Miscellaneous Provisions) (Amendment No. 10) (Jersey) Law - Projet 155 - lodged by the Chief Minister and I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Magistrate’s Court (Miscellaneous Provisions) (Amendment No. 10) (Jersey) Law 201-. A Law to amend further the Magistrate’s Court (Miscellaneous Provisions) (Jersey) Law 1949. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

9.1 Senator T.A. Le Sueur (The Chief Minister):

Something completely different. There is an anomaly at the moment that summonses for the Magistrates Court are sent out normally by registered post and Members will know that if you are not at home when the postman comes along, the postman leaves a card in your letterbox saying to come and collect it from the post office. If, of course, you do not collect it from the post office, the summons has not been delivered and that is at present a valid defence in the court for saying: “Since the summons has not been delivered, the charge cannot be heard.” That is not in the interest of justice. This amendment seeks to change the arrangements so that we no longer have to send it by recorded delivery. It can come by first class post, or whatever other means may be appropriate, in order to ensure that the summons is validly delivered. Those are the principles of the Regulations and I propose the principles.

The Bailiff:

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

9.1.1 Senator B.E. Shenton:

The Chief Minister said: “As Members will well know” is he implying that we all receive summons regularly?

9.1.2 Deputy P.V.F. Le Claire:

I just wondered, will there be a defence in the future if the defendant says that he did not receive the letter? Because there are instances where mail goes astray. It may be in there; I did not see it.

9.1.3 The Deputy of St. John:

I just wonder if this is the right moment to be doing this, given that the post office service is talking about only delivering mail 3 to 5 days a week in the future. Given if it is only short periods of time like that, is this the right time to be doing this or should we be looking at an alternative method of delivering the summons?

[17:00]

9.1.4 Senator B.I. Le Marquand:

This is of course very much to my knowledge in this particular area, there was always a potential difficulty in the existing law if a Magistrate were to interpret it in a narrow way. The Magistrates in the past, though aware of the existence of this provision, tended to take the view that provided it was served procedurally by registered post, it was not necessary to have proof that the person had received it. Now if a person does not receive a summons and does not turn up in court, then what normally happens is the court will order their arrest, but will for minor matters provide a sum of money by way of bail so that they are not in fact incarcerated but merely have to provide money to ensure that they do turn up on the appropriate occasion. What seems to have happened here is that one of my successors seems to have taken a different view of the law to that which had been taken by numerous Magistrates before, thus creating a situation in which it was necessary to clarify the position. But the Chief Minister has not in fact explained it quite correctly, because the effect of the law is not to specify any particular method of service, but to make the decision on the matter of the method of service in future; a matter for rules of court. In other words, that would be decided by the superior number with appropriate advice in future as to how the service is to take place in the future. But, as I say, this is not a matter of guilt, if I can answer Deputy Le Claire's question on behalf of the Chief Minister. This is not a matter of guilt. This is simply a matter of a means of commencement of proceedings. When we are dealing particularly with summonses in relation to parking matters which are essentially administrative in their nature, there has to be a relatively easy and not overly-costly system for commencing proceedings and getting them into the system in the first place.

The Bailiff:

Does any other Member wish to speak? Very well, I call upon the Chief Minister to reply.

9.1.5 Senator T.A. Le Sueur:

I am grateful to Senator Le Marquand for explaining to Deputy Le Claire the situation. As far as Senator Shenton is concerned, I was talking about the generality of recorded delivery rather than the likelihood of us all being law-breakers. Just to pick up the point from Senator Le Marquand with his knowledge of being a Magistrate. Yes, it is quite right and this explains the Deputy of St. John's point. The proposal is it should now be done by rules of court and rules of court can be flexible to cope with matters such as a change in the postal delivery arrangements and so on. The intention as stated in the report is that at the current time it is likely that we shall adopt something similar to the U.K. which is delivery by first class post. That would not be part of the law; that would be up to the rules of court at the time. With that affirmation, I maintain the principles.

The Bailiff:

All those in favour of adopting the principles, kindly show. Those against. The principles are adopted. Senator Ferguson, do you wish the Corporate Services Panel to review this?

Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel):

No, thank you, Sir.

The Bailiff:

Very well, then Chief Minister, do you wish to propose Articles 1 to 3?

9.2 Senator T.A. Le Sueur:

Articles 1 to 3 *en bloc*, Sir. I will answer any questions that Members want to pose.

The Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak on any of the individual Articles? All those in favour of adopting Articles 1 to 3, kindly show. Those against. They are adopted. Do you propose the Bill in Third Reading, Chief Minister?

9.3 Senator T.A. Le Sueur:

Yes, Sir.

The Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak in Third Reading? The Deputy of St. John.

9.3.1 The Deputy of St. John:

I would reiterate what I have already said earlier about the method of delivering these summonses and whether or not greater use should not be made of the honorary system within the Parishes if we are going to be delivering summonses. Historically that happened in St. Helier when I was a Centenier and it worked very well.

The Bailiff:

Does any other Member wish to speak in Third Reading? I call upon the Chief Minister to reply.

9.3.2 Senator T.A. Le Sueur:

I am sure the Royal Court which makes the rules of court will take note of what the Deputy of St. John helpfully says. I maintain the Bill in Third Reading.

The Bailiff:

All those in favour of adopting the Bill in Third Reading, kindly show. Those against. The Bill is adopted in Third Reading.

10. Draft Social Security (Amendment No. 19) (Jersey) Law 201- (P.163/2010)

The Bailiff:

We come next to the Draft Social Security (Amendment No. 19) (Jersey) Law - Projet 163 - lodged by the Minister for Social Security and I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Social Security (Amendment No. 19) (Jersey) Law 201-. A Law to amend further the Social Security (Jersey) Law 1974. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

10.1 Deputy I.J. Gorst (The Minister for Social Security):

We have just had the Budget proposals and Members hopefully will recall the Minister for Treasury and Resources' opening speech earlier this week where he said that he would be asking me to introduce a contribution above the ceiling from 1st January 2012. Although that might sound a relatively simple project, it is quite complicated to initiate these new contributions and I expect it to take probably around 12 months to implement. To help with that very tight timetable, I am

proposing this amendment to the Social Security Law. The Social Security Law controls the collection of contributions and the payment of pensions and benefits. The Social Security Fund and the Social Security Reserve Fund are ring-fenced funds established under that Social Security Law. It dates back to 1974 and while contribution rates have been increased and new benefits added since then, the basic structure of that law has remained unchanged. That structure is inflexible and there is little provision in the law for amendments to be made. More modern laws, as we all know, incorporate much greater flexibility within their structure to allow for changes over time. This amendment creates that flexibility by creating powers for the States Assembly to make changes to the Social Security Law by regulation. This will speed up the reform of the law as individual amendments will no longer need to be referred to the Privy Council for approval. The amendment spells out the separate areas in which the law will be able to be changed by regulation. There are, of course, some areas that will not be included and they will continue to need to be referred to Privy Council should changes wish to be made in due course. Examples of those are the management of the Social Security Fund and the Reserve Fund, the need for actuarial reviews at tribunals, powers of inspection, *et cetera*. Also to ensure that we continue to protect the Social Security Fund, it is proposed that only the Minister will be able to propose regulations under this amendment. Although this amendment has been drawn up to initiate the charge above the ceiling, it also covers other areas under the law because, as Members will be aware, the old Social Security Law is long overdue and a review has been, I think not only in the previous Strategic Plan but also in this one, and therefore it will allow us once that full review is in place to come forward to make changes again by regulation. I propose the principles.

The Bailiff:

Are the principles seconded? [**Seconded**] Senator Breckon.

10.1.1 Senator A. Breckon:

Just a few points. When I saw this, it caused me some concern and I say that because recently the Minister for Social Security brought forward amendments so that he could help the Minister for Health and Social Services out with about £12.5 million, or whatever it was, and the reason the principal law is designed to make it difficult for anybody to take funds out is for exactly that reason, so that it cannot do a merry-go-round to help out Health or anything else and I did have some concerns that the protection was there for a reason and although the Minister might find it expedient to do this, it does concern me that it becomes ... because it says in there that this House will be supreme but, there again, if there is pressure on everybody, Health has spent the money so we need to give them something. Again, it does concern me that there will be another dipping-in and that is the reason why this principal law was going back to the Privy Council so that there was an arm's length from us, if you know what I mean; none of us could readily access this and that includes the Treasurer and cheques are made payable not the Treasurer of the States but to Social Security, or it used to be the committee and it is now whatever it is, but it is ring-fenced and separate for a reason. It does concern me, that is, we are taking down the barriers then the dipping into must be the rarity not: "Well, we can fall back on this because we have got this, that or the other fund that can help somebody out." It does concern me if there is some sort of "Kitchen Cabinet" that is doing this behind the scenes and then putting pressure on us as a House to rubber-stamp the stuff when it comes forward: "It must be done because it is for family nursing" for example, that does concern me. When I saw this, that was my feeling and I know we do not have anything before us about who will be dipping-in, when and what for, although I can understand the Minister wanting it simply to do it, it does concern me that he does not have, or anybody else does not have, too-ready access to it.

10.1.2 The Deputy of St. John:

I am very concerned, so much so that in the one that was dealt with a couple of weeks ago on the 1967 Law, I wrote to Privy Council because I believe although we had advice from the Crown

Officers, that we were doing something which is in the grey area, and I am totally opposed to taking money out of ring-fenced areas that have been set aside, it is not there to bail out funds, as it has been used for, it will be £6.13 million out of that fund to bail out the Health Department. The Health Department, until the laws are changed, should be getting the funding from the tax, not from the people who have paid into Social Security. I am worried, like the previous speaker, that we are taking the Privy Council out of the equation. That is the belt and braces that we need in this Chamber, when you have got a strong Council of Ministers who are going ahead and doing things and they have got their Ministers and their Assistant Ministers and, shall we say, the Members they have managed to get on board - whether it be the Planning Committee that the Planning Department have managed to pull together - and get a lot of these people on board to vote with them. I have got real concerns that we are overstepping the mark in a number of areas. I cannot support this because I think, until we have our own independent Island, which we are not at the moment, I believe we should leave the Privy Council in place so that the likes of myself ... if I am not happy with what goes here, I can ask for a judgment from the Privy Council, that is the reason why I wrote to them several weeks ago on that last issue, and I am very unhappy that we would put the sovereignty in this Chamber at this time because, having seen what we have done once within that previous proposition, they are coming back again next year for another £6.13 million which equates to £12.26 million, and I am not at all happy, if that comes off, that is the right thing to be doing. Therefore, I will be voting against this proposition because I think Members need to take note that we are taking away some of the barriers, that ring-fencing, it is important that that ring-fencing is there and we do not want to be used to bail out other ministries that have not really got their act together, not through any fault of the current Minister, but through a period of time where checks and balances have not been put in place. It is not to be used for that, therefore I cannot support anything that is taking, this time, the Privy Council out of the equation.

10.1.3 Deputy G.P. Southern:

I think I share some of the concerns expressed by the Deputy of St. John there and what I wonder what is happening and whether it is happening is that, in a similar way, we have just raised G.S.T., which certainly in my view will be a permanent change, as we have said: "What goes up will not come down" it is a permanent change, it is in response to a temporary problem. It seems to me, yet again, the issue here is: "Oops, we need some more revenue."

[17:15]

One way of doing that, and the one we have hit on, is additional social security funds to reduce the need for supplementation in order to meet the crisis that we have got in terms of our revenue now, which hopefully is temporary, but we are going to make a permanent change in the law to remove what effectively is a check. If we want to change our Social Security Law then we have to go through: "Right, it is the long way, we have to go through Privy Council" and that is the check and balance. So what we have got is a permanent change which makes it, it seems to me, far easier for us to mess with - for want of a better word - the Social Security Law in order to meet a temporary need which we have got this year, as it were. It seems to me that while in principle, especially in the light of what we have just done which is ignore the ring-fence around the Health Insurance Fund and arrange to give money to the Minister for Health and Social Services, I think perhaps we are taking a step too far and my concerns may mean also that I will not be voting for this. The other issue that I wish to raise is whether in fact this will make it very much easier to reorganise the Social Security system such that we have more than one class of contribution. At the moment, and I know it is a problem, but I am wondering again whether this should stay with what I call the long route, keep the Privy Council involved in it in terms of reorganising our Social Security system because at the moment we have only, basically, one class of contributions: we have class one contributions and "the rest" who are not class one. It seems to me that that issue is something that

needs addressing and I am not sure that it needs addressing by regulation and that we thereby avoid involving the Privy Council. I would like that addressed, please.

10.1.4 Deputy P.V.F. Le Claire:

There has only been one instance in my time in the States where we thought it might be a wise idea to go and lobby her Majesty through the Privy Council and the bottom line from that was basically: “Do we want the United Kingdom Government to be deciding upon our affairs and what kind of a precedent will we be setting in that instance?” I think we are moving towards a more mature jurisdiction if we start to try to do these things and I am not as concerned as the Deputy of St. John or Deputy Southern, this is possibly something they could pull for Scrutiny if they are that concerned. But I am wondering if the comfort that I see does not meet their concerns on page... sorry, I have forgotten my glasses, I think it is page 5, when it says: “The Minister will be permitted to propose regulations under these powers and the States must approve each regulation to bring it into force.” So in a way, any changes after this will be coming back to the States on every occasion, as far as I can see, and at that stage we will have the opportunity to look those over. I am not as concerned as they are and I just think maybe the Minister could allay our fears there, if I am correct in interpreting that in that way.

10.1.5 Deputy M.R. Higgins:

I hope the Minister can also explain a bit further the 2 further powers that are specified in the proposition, first of all, there is 51(d) and 51(e)(ii). The first one says: “This section deals with benefits and allows for changes to the nature of benefits, eligibility conditions, the value of any benefits and how benefits can be backdated.” The second, 51(e)(ii): “This covers the use to which a fund can be put.” I would like to have much further clarification on those 2 areas, please, from the Minister.

The Bailiff:

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

10.1.6 Deputy I.J. Gorst:

It does sometimes surprise me, Ministers are either castigated for taking too long; in this instance we are being told that trying to speed things up and amend legislation so that this Assembly can decide things in a more timely manner is inappropriate and: “We would like to have the backstop of somebody else deciding if a democratic decision by this Assembly does not go the way that we want.” Two of the primary speakers have constantly criticised me for taking so long about things and yet now are saying that I should not be amending legislation so that future Assemblies and future Ministers can do things in a more timely manner. When I have said that things take time, the law is old-fashioned, it always requires primary law change, they have doubted me and said I just need to get on with things and do things quicker. Now when I try to do that, they criticise me for doing that, so I am not really sure which is the right road that they expect the Minister to take. Senator Breckon talked about the Health Insurance Fund and read across directly to the Social Security Law. That is not correct, they are governed by 2 separate laws. One of the criticisms when I brought forward the transfer from the Health Insurance Fund was the length of time it was going to take and it was taking a long time because that law had to go to Privy Council and is now on the route to the Privy Council to be approved and we cannot move forward until that is returned and obviously registered in the Royal Court. That is how the Health Insurance Fund currently stands, I have given a commitment together with Health to come forward with amendment to that law so that we can change it in the future, that of course is taking time. This is the Social Security Fund, I do not think any Member who has had contact with the Fund over the last number of years cannot help but recognise that, yet again, here we have an old piece of legislation which does need updating and does need us to put in there provisions which will allow this Assembly to make timely

decisions. I have absolutely no intention of transferring this money to Health, there would be no reason to do so: it is not the Health Fund, it is the Social Security Fund which pays out pensions and sick benefits. While I am Minister that will not happen and I do not for a minute believe that this flexibility amendment, which is what it is, will allow for that anyway. Should in the future a Minister come forward to do such a thing, I believe that this Assembly would roundly kick it out and they would be right to do so. I have throughout my time of Minister, and will continue to do with the full support of my Assistant Minister, protect the value of the Social Security (a) Pension and (b) Reserve Fund, and that is what we will continue to do. This does not remove the ring-fencing of this Fund, the Fund will remain ring-fenced; nor will it remove it later, I am afraid while I disagreed with the Deputy of St. John with regard to the Health Insurance Fund transfer, I must disagree with him again because this is a completely different fund, it is a completely different scenario and a completely different set of circumstances. This is ring-fenced and I cannot reiterate that strongly enough. I must say that sometimes - perhaps it is because it is a Friday afternoon and it is running up to Christmas - I find Deputy Southern's arguments illogical, because Members might remember, I think it is probably merely a month ago, that he himself had lodged a proposition asking me to amend the law to allow for contributions above the ceiling because he wished to eliminate supplementation. I am coming along now asking for the flexibility to come back in the future to do ... I will not be proposing that but I know that we will no doubt be amending at that time. He proposed that and now, for some reason, he does not seem to think that it is an appropriate way to go. I find that extremely illogical, if I might use that term but as I say, perhaps it is because it is a Friday afternoon and all our arguments do not stand up as strongly as they might at other times. He also made some criticism suggesting that it was appropriate to have only one class. I am sure it is not news to him that there are already 2 classes of contributors within the Social Security funding and I, in my White Paper for the long-term care have suggested that there should be other classes of contributors, perhaps a third; we are talking about those who are retired and I believe that it is appropriate that this Assembly is able to decide whether the current categorisations of income are appropriate or whether they might wish to make changes in due course to that. This law will allow Members to make those decisions appropriately and in good order and I have got to say in my opinion, in this place, which is where it is right and proper that those decisions are made. I could deal with Deputy Higgins now, perhaps that will be appropriate, although he is talking about the specific Articles. He asks about the powers for further benefits, here we are talking about eligibility conditions and how benefits can be backdated. As I said, the primary law, not only is it all, but I think in certainly places it is not fit for a purpose. I have a number of letters asking me to make decisions which are outside of the law for the way that people live today. If we take for example the maternity pay, there are very strict criteria about the number of quarters that a lady or husband has had to pay back in order for them to access maternity pay. Unfortunately, in the way we currently live, perhaps people work longer and then might have 2 children in very close succession or might be doing some part-time work and therefore do not have the appropriate contributions and the appropriate quarters to the appropriate levels. The law does not then allow me or the department to give that maternity pay in those instances. I do not believe that is fair, I believe that that needs to be changed and I think that most Members would agree with me. These are the areas that we need to address that my department will be reviewing and will be coming forward and making suggestions and bringing forward regulations to allow us to consider these and make changes. We also have a very strict regime around the short-term sick note; if one is signed-off as short-term sick, which can be up to a year, one is not allowed to work so that is not appropriate. We need to change those laws, they can be changed by regulation to allow us in due course after a person has been signed-off for a period of time ... sorry, Sir, I get ...

The Bailiff:

I think you are getting into quite a bit of detail, Minister.

Deputy I.J. Gorst:

Yes, I do apologise, I see it is late in the day. I do enjoy Social Security; as you will see, Sir, I am getting into the detail of it. There are areas there that we need to change, this is going to allow us to do that. It is right that it takes place here and if Members do say that I should not do this then it is going to take me longer to change the law, we are going to continue to be criticised for a law that is not fit for purpose, it is not meeting the needs of our community. We have a choice to make.

The Bailiff:

Very well, is the appel called for? The appel is called for in relation to the principles of Projet 163. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 44

Senator T.A. Le Sueur
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator T.J. Le Main
Senator B.E. Shenton
Senator F.E. Cohen
Senator S.C. Ferguson
Senator A.J.H. Maclean
Senator B.I. Le Marquand
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
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 G.P. Southern (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 K.C. Lewis (S)
Deputy I.J. Gorst (C)
Deputy M. Tadier (B)
Deputy A.E. Jeune (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

CONTRE: 3

Senator A. Breckon
Deputy S. Pitman (H)
Deputy of St. John

ABSTAIN: 0

The Bailiff:

Deputy Southern, this is a matter which falls within the purview, I think, of the Health, Social Security and Housing Scrutiny Panel. Do you wish to have it referred to the panel? Very well, then Minister, do you wish to propose the Articles *en bloc*?

10.2 Deputy I.J. Gorst:

If I could do, Sir. I will not say very much about them because I will be tempted to get into extreme detail, I hope Members have read them and agree that this is an appropriate way to go forward.

[17:30]

The Bailiff:

Are the Articles seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles? Senator Breckon.

10.2.1 Senator A. Breckon:

I have just a couple of questions, if I may, of the Minister. On paragraph (e) it says in respect of the Social Security Fund: "Rules for calculation of amounts to be allocated to the Health Insurance Fund before contributions are paid into the Security Fund." I wonder if the Minister could give us some idea of what he has in mind that clause means, that is clause (e)(i). Also, at (f)(ii) it says that this is payment of money into the Security Fund by the States. Paragraph (ii) says: "So as to remove any obligation for the States to make payments into the fund." I wonder if the Minister could explain what the consequences of that might be, bearing in mind it was supposed to be a 3-way agreement to start with between employer, employee and the State, what the consequences might be for the other 2 parties if that were to happen.

The Bailiff:

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

10.2.2 Deputy I.J. Gorst:

Yes. It is my understanding, if I understand Senator Breckon correctly, he is talking about 51(e), the split is currently in the primary legislation and this will allow us to change that split by regulation on agreement of this Assembly. I think the second point that he made was with regard to 50(f)(ii). As he knows, he is quite right that it is virtually a third for supplementation. If I had a pound for every time somebody in this House has criticised the department for the way that supplementation operates, which is in the face of this primary piece of legislation, I would be a rich man. This regulation will allow us in this Assembly going forward in future to be able to make a decision to change that. As Members know, as I have already alluded to, Deputy Southern did have a proposition before the Assembly, which is now withdrawn, which asked me to eliminate supplementation. That needs this change to take place in order for us to do that, whether we do it wholly or in part.

The Bailiff:

Very well. The appel is called for in relation to Articles 1 to 4 of Projet 163. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 44

Senator T.A. Le Sueur
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator T.J. Le Main
Senator B.E. Shenton
Senator F.E. Cohen

CONTRE: 3

Senator A. Breckon
Deputy S. Pitman (H)
Deputy of St. John

ABSTAIN: 0

Senator S.C. Ferguson
Senator A.J.H. Maclean
Senator B.I. Le Marquand
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
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 G.P. Southern (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 K.C. Lewis (S)
Deputy I.J. Gorst (C)
Deputy M. Tadier (B)
Deputy A.E. Jeune (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

10.3 Deputy I.J. Gorst:

Yes, if I could, Sir, please.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? The Deputy of St. John.

10.3.1 The Deputy of St. John:

Just to reiterate by adopting this and taking the Privy Council out of the equation, I think the Island is going to be worse off.

10.3.2 Deputy R.G. Le Hérissier:

I saw the Deputy of St. John almost cheering and suggesting it was good to show, if I may use the vernacular, 2 fingers to the U.K. that we should not allow them to intrude into our affairs. The consistency of his views eludes me.

10.3.3 Deputy P.V.F. Le Claire:

I would just like to say Merry Christmas again, Sir, to cheer everybody up a bit. **[Laughter]**

The Bailiff:

Very well, I call upon the Minister to reply.

10.3.4 Deputy I.J. Gorst:

Yes. I must reiterate what I said earlier, this is completely different from the debate that we had earlier this month. I have got to say I do not agree with the Deputy of St. John in this instance, I believe that we as the elected representatives of this community should be making democratically-decided decisions in this Assembly, so I am afraid I cannot agree with the Deputy of St. John. Perhaps I could just say a special thank you to one of my officers who has returned early from his Christmas lunch to be on standby should I have any difficult questions. Thankfully, I have not so I hope that now he will rejoin the other officers and enjoy his Christmas.

The Bailiff:

Very well. All those in favour of adopting the bill in Third Reading, kindly show. The appel is called for in relation to the Third Reading of Project 33 and the Greffier will open the voting.

POUR: 44

Senator T.A. Le Sueur
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator T.J. Le Main
Senator B.E. Shenton
Senator F.E. Cohen
Senator S.C. Ferguson
Senator A.J.H. Maclean
Senator B.I. Le Marquand
Senator F. du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
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 G.P. Southern (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 K.C. Lewis (S)
Deputy I.J. Gorst (C)
Deputy M. Tadier (B)
Deputy A.E. Jeune (B)
Deputy of St. Mary

CONTRE: 3

Senator A. Breckon
Deputy S. Pitman (H)
Deputy of St. John

ABSTAIN: 0

Deputy T.M. Pitman (H)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

The Bailiff:

Now it is 5.30 p.m., Chairman of P.P.C., there are 3 matters left, I think. Is it understood, Deputy Gorst, that you do not wish to proceed with Projet 143 at the moment?

Deputy I.J. Gorst:

Sir, I am in Members hands. I have indicated that I would be prepared to transfer it over, it should be now straightforward, I have had my kicking as it were, so perhaps Members will accept it. But I am happy to leave it to January, Sir.

The Bailiff:

Do Members wish to take Project 143?

Deputy I.J. Gorst:

In the spirit of Christmas, Sir, I will defer it to January so that we can get to the Christmas messages.

11. Draft Community Provisions (Mortality in Oysters) (Amendment) (Jersey) Regulations 201- (P.165/2010)

The Bailiff:

Very well, Project 143 is deferred so that means we come next to Projet 165 - Draft Community Provisions (Mortality in Oysters) (Amendment) (Jersey) Regulations - lodged by the Minister for Planning and Environment and I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Community Provisions (Mortality in Oysters) (Amendment) (Jersey) Regulations. The States, in pursuance of Article 2 of the European Communities Legislation Implementation (Jersey) Law 1996, have made the following Regulations.

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

Sir, the Assistant Minister will act as rapporteur, please.

The Bailiff:

Very well. Assistant Minister, Deputy Duhamel.

11.1 Deputy R.C. Duhamel of St. Saviour (Assistant Minister for Planning and Education - rapporteur):

Members may recall that the Community Provisions (Mortality in Oysters) Regulations 2010 were adopted in July to administer and enforce the E.U. Commission Regulations 175/2010. This regulation lays down control measures for an emerging disease of specific oysters caused by a specific herpes virus. When adopted, the Commission regulation applied until 31st December 2010. This was therefore reflected in the provisions which necessarily are due to expire on 1st January 2011. In November the Standing Committee of the Food Chain and Animal Health Unit

unanimously agreed to extend the regulation until 20th April 2011. The amending regulation before the Assembly today therefore is required to remove the expiry date, so to speak, on the Jersey regulations. This enables our continued administration and enforcement of the E.U. legislation as we are obliged to do under the Protocol 3 to the Act of Accession of the United Kingdom to the European Communities 1972, to trade animals and animal products with E.U. member states. Members should note that the Jersey Regulations cannot have effect beyond the life of the European legislation. It is therefore expedient to leave our regulations with no stated expiry date rather than to return to the Assembly on each occasion that the Standing Committee decide to extend the provision. I therefore propose the adoption of these amending regulations to ensure our continued compliance with the current controls.

The Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? Very well, all those in favour of adopting the principles, kindly show. Those against? The principles are adopted. Senator Ferguson, do you wish this matter to be referred to your Scrutiny Panel? It is down here as being yours but it must be somebody else's. The Deputy of St. John, you do not require it. Very well, then Assistant Minister, do you wish to propose Regulations 1 and 2?

Deputy R.C. Duhamel:

I do so, Sir.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on either of the regulations? All those in favour of adopting the principles, kindly show? All those against? Regulations 1 and 2 are adopted. Do you propose it in the Third Reading, Assistant Minister?

Deputy R.C. Duhamel:

I do so, Sir

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak in the third reading? The appel is called for in relation to the 2 regulations of Project 165 in the Third Reading. The Greffier will open the voting.

POUR: 44

Senator P.F. Routier
Senator T.J. Le Main
Senator B.E. Shenton
Senator F.E. Cohen
Senator A. Breckon
Senator S.C. Ferguson
Senator A.J.H. Maclean
Senator B.I. Le Marquand
Senator F.du H. Le Gresley
Connétable of St. Ouen
Connétable of St. Helier
Connétable of Trinity
Connétable of Grouville
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. John
Connétable of St. Saviour
Connétable of St. Clement
Connétable of St. Peter

CONTRE: 0

ABSTAIN: 0

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 G.P. Southern (H)
Deputy of St. Ouen
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 T.M. Pitman (H)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)

12. Draft Sex Offenders (Jersey) Law 2010 (Appointed Day) Act 201- (P.175/2010)

The Bailiff:

We come to the final matter on the Order Paper of Public Business which is the Draft Sex Offenders (Jersey) Law 2010 (Appointed Day) Act 201- Project 175 - lodged by the Minister for Home Affairs and I will ask the Greffier to read the Act.

The Greffier of the States:

Draft Sex Offenders (Jersey) Law 2010 (Appointed Day) Act. The States, in pursuance of Article 32 of the Sex offenders (Jersey) Law 2010, have made the following Act.

12.1 Senator B.I. Le Marquand (The Minister for Home Affairs):

This Act will bring into force the important and long-awaited Sex Offenders (Jersey) Law, an important piece of legislation which provides significant improvement in the protection of children and vulnerable adults against the risk represented by sex offenders. But this provision will cost money and in the Appointed Day Act I have set out in some detail the latest estimations of the cost of implementing the law. When I presented the proposition for the law I explained in detail the estimates which I then had that there were going to be annual costs for staffing of £431,000 whereas we only had in Budget £247,000 and there was going to be an increase of £184,000. I also set out in detail the estimates which are contained and set out again on page 4 of the costs for court and case costs, that is the case costs here in the sense of court orders for costs in favour of lawyers of individuals involved in different aspects of matters. Unfortunately, my advisers have now reviewed the estimates and although the £184,000 figure remains the same as first presented to the Assembly last year, the estimate for court and case costs has gone up. The calculations in relation to that are contained on page 11 and needs a little explanation because they are hypothetical calculations based upon a round number in order to achieve a round number per case and the round number is a hypothetical 25 applications with a cost of £550,000, that is, £22,000 per application. That figure then has to be applied in the table, which is lower down on page 11 - the bottom table - and rounded-up it now means that whereas previously we thought we would have costs of £600,000

for the first couple of years then dropping to £131,000, we now think that we are going to have a much higher level of costs ongoing and Members will see that the estimations at the bottom of page 11 are that: "Court and case costs will be of the order of £700,000 for the first 3 years, dropping to £650,000 for the fourth year and then £500,000 thereafter." This is purely based upon, now, a rethink by the people advising me in relation to this as to the numbers of cases that would be involved on an ongoing basis. Members must remember that because we have chosen- and rightly chosen - to bring in the law upon the basis of allowing people who have committed offences prior to the law coming into effect, but who represent a danger to children, being brought into the process that there are 2 elements: there is a catching-up element which is retrospective in the bottom table, and there is a new element of case ongoing. I have to report the details of the additional costs to Members. Ideally, in response, there is one detail to deal with before I go on and that was the question asked by Deputy Le Hérisier when I answered questions of Deputy Lewis, it seems a long time ago now, but whenever I answered those questions. But the assumption being made with the number of appeals and the answer is 60 per cent, the assumption being made is 60 per cent of cases go through appeals, which I think is slightly on the high side but that is the assumption that has been made. I also explained in answer to questions how this was going to be financed, that in reality the financing for a 2011 is not a full provision but there are some under-spends from Home Affairs which can be used and the money will have to be cobbled together somehow, bearing in mind that the additional costs do not arise within Home Affairs, they arise within the Probation Department and in the Children's Services so, together, we are going to have to come up with the monies, and the court and case costs figure, for which there was no specific provision, will have to come out of court and case costs for next year and, if necessary, will have to come out of the central reserve which was agreed as part of the 2011 figures.

[17:45]

But for the years after that, namely 2012 and 2013, the Council of Ministers has agreed in principle that these additional sums will be treated as a growth bid. Obviously, that is subject to approval of the 2012 and 2013 Budgets in due time. I need briefly to explain why there has been such a long delay between the passing of this Law on 8th October 2009 and it coming into force now on 1st January 2011. Firstly, there was a longer delay than usual in relation to this being considered by the Privy Council so that it was not, in fact, registered by the Royal Court until 13th August of this year and thereafter there has been a further gap because it was necessary for the Royal Court to put in place, and for the Court of Appeal to put in place rules of court, specifically rules of court relating to appeals, before the law could come into effect. But that has now occurred and so it is possible for the law to come into place on 1st January. Finally, it is right that I draw to the attention of the Assembly that, although this was approved by the Privy Council, and this may support of course the Deputy of St. John's argument on such matters, they did point out that there were certain areas in relation to which they had concerns and in relation to which they recommended that amendments to the Law take place as soon as possible. It is my intention to bring to the Assembly as soon as possible, and the law draftsmen are working upon it, some amendments in those areas. But those amendments are not, in my opinion, significant and certainly do not prevent the Law from coming into force on 1st January but nevertheless it is right that I point out there were those concerns and reservations and assure the Members of the Assembly that they will be dealt with as soon as possible. I finish by saying that this is an important piece of legislation and, notwithstanding the additional costs, it is vitally important that this now come into effect and I therefore move the proposition.

Deputy G.P. Southern:

Sir, can I seek clarification from the Minister?

The Bailiff:

One moment, Deputy. First of all, is the Act seconded? Yes. **[Seconded]** Very well then, Deputy.

Deputy G.P. Southern:

Can I seek clarification from the Minister as to what those amendments concern because it is all very well to say: “I do not think they are serious” or: “We should stop the progress of this proposition”, nonetheless, I think Members should know what the concerns are.

The Bailiff:

I think you probably could deal with it in reply, then.

Senator B.I. Le Marquand:

If Members are content with that, Sir, yes.

12.1.1 Senator B.E. Shenton:

The message from the Minister seems to be that we cannot afford it but we are going to bring it in anyway. From the Public Accounts Committee point of view we looked at the Public Records Law that was brought in some decades ago and never properly financed and we are still asking questions about the Public Records Law and how it is going to be financed. We will be debating next year the Freedom of Information Law which, again, the financing for is not in place. It seems a very strange way to run your affairs, you cannot afford something so you are going to bring it in anyway. I would like the Minister for Treasury and Resources to comment on how we are going to fund this and the Public Records Law and the Freedom of Information Law as well, which are all similar types of legislation where the financing is not in place but we are going to pass that as an Assembly.

The Bailiff:

I think, Senator, the Minister can certainly speak but I think he should confine himself to speaking on this particular piece of legislation today. But I have seen the Connétable of St. Ouen next.

12.1.2 The Connétable of St. Ouen:

I just have a question for the Minister. Am I correct in my understanding that, despite the large increase in costs highlighted in the proposition, that there is still going to be a very large Honorary Police involvement in whole system?

12.1.3 The Deputy of St. Mary:

I have 3 points but first I would like to thank the Minister for a very clear, well-presented report. I think this is how it should be and everything we need is in here. The second point, I want to pick up on what Senator Shenton has just said and it was a classic case of the cost-cutting agenda coming up against reality. I was under the impression that this was an urgent piece of work. This is about sex offenders, how we help them, how we make sure that they are not a danger to society and then Senator Shenton gets up and says: “Well, how can we do it if we have not got the money?” Now, I just want to emphasise to Members what the report said about the importance of getting this right: “There will be an expectation by the courts and the public that assessment and enforcement procedures will be undertaken efficiently and in accordance with best practice.” The service regularly inspects its work and any criticism of inadequate work could seriously undermine the confidence of courts and the public alike, emphasising the importance of adequate staff resourcing and training. He has put the case there for doing public services right, for not skimping, for having adequate staff and training and backup, and it is all in here and the sums are presented, as they should be, quite clearly. He makes the case for getting this right and not getting it wrong. I do just have to emphasise that: if you are going to have a Draft Sex Offenders Law, then you do have to accept the financial implications. The third point, which in a sense goes the other way, is to challenge the Minister on the court and case costs on page 11 and even on page 4. These are substantial; they go up from page 4 to page 11. I just want to ask him whether the work that is put

forward in the C.S.R. workshop about reducing legal costs and about making sure that we procure legal services as efficiently as possible, whether that is incorporated in these figures because they do seem, some of those figures, very high and you have to blink at the figures there, and I want the Minister to tell us whether that incorporates the procurement refinements that are in the workshop review or whether they do not.

12.1.4 The Deputy of St. Martin:

I gave my support and I think most of us did to this legislation and I think the Deputy of St. Mary is highlighting some concerns. In fact, this seems to be very much about the financial concerns rather than I would like to speak about the human costs as well, but not to speak to defend the guilty, but really to protect the innocent and also remind Members, the scale of it in Jersey. I am aghast really to think that we have got 38 applications waiting to go to court as soon as this kicks off, 15 are high risk. We also have another 112 people in the Island who are considered to be medium to low-risk, and it is quite a high number. What I would call for here is really for ... they really would be Human Rights issues and we have got to look for a sensitive approach both by the police, and indeed the Children's Services, to ensure that we are not making criminals out of people who might become criminals through malicious, frivolous or mischievous allegations and really, while I give my support to this piece of legislation, I would ask certainly both the Minister for Health and Social Services and the Minister for Home Affairs to ensure that this particular Law is going to be dealt with or policed with a certain amount of sensitivity. I am concerned that we are going to make criminals out of people on the basis of innuendo and frivolous comments.

12.1.5 Deputy K.C. Lewis:

One of my questions has already been asked so I will say that this bit of legislation has been a very long time coming but I know that the Minister wanted to make sure everything was in place before he went ahead with it. I would just like to congratulate the Minister and his colleagues for getting this through.

12.1.6 Deputy G.P. Southern:

I think again I echo the sentiments stated by the Deputy of St. Mary. It is fundamental to the whole of this process that it should be properly funded because if it is not properly funded, and we run the risk of including people who should not be on the list, or not including people who should be on the list worst of all, that we get it right. If it is not right then we are letting ourselves in for a whole lot of trouble. It seems to me that the funding for next year, certainly, has been relatively simply brushed over and, yes, we can do it. It is an assurance again and we can get the funding, we can make it work but that funding is essential, we need some guarantees that the funding will be in place and they can be made to work properly.

12.1.7 Senator P.F.C. Ozouf:

We have just approved this afternoon a Budget which has a significant cost-saving programme and Home Affairs is taking full part in that in terms of costs savings but the Budget that we have approved is also providing for some growth which has been set out in the documentation that Members had. One of those issues for growth in 2012 and 2013 was this issue of sexual offenders' registration and the Sex Offenders Law. It was difficult, of course, this has had to be looked at from a financial aspect, but the arguments have been made within the Council of Ministers and it is clear that no one who has been affected by sex offences could not agree with the protection for those people that have been affected, and that is what this is about. The funding has been agreed, of course, it is subject to States approval in terms of next year's Business Plan, it is approved, it is provided for in the limited amount of growth for 2012 and 2013. Having made that decision at the Council of Ministers, then the question was should this wait for a further year for the funding for 2011. I was satisfied there has to be some flexibility in terms of budgets, there has to be sometimes good reasons for bringing something forward, and this one certainly had my full support in terms of

the need for bringing it forward, and I will work with the Minister for Home Affairs on the issue of carry forwards. I certainly intend to deal with this from what I know to the extent that I can with using next year's funding for carry forwards and not using the contingency, which should not be used for issues like this, in my view, my intention is to fund it from carry forwards and there obviously have been some discussions between Home Affairs and the Treasury in order to be able to do that, and so it has my full support, this is an issue which should be supported.

12.1.8 Deputy A.E. Jeune:

Just one thing I would like to say is that I would like some reassurance from the Minister that he is satisfied that putting a law such as this in place that he will have the resources to manage those persons appropriately on any such register.

12.1.9 The Deputy of Trinity:

I will be brief. Obviously as Chair of the Childrens Policy Group and the Minister responsible for children's issues, I consider that this Draft Sex Offenders (Appointed Day) Act is essential. The main aims here are the safeguarding of the interest of the most vulnerable in our community, most specifically our children and young people. Listening to what the Deputy of St. Martin said, if he looks on page 3 it says: "The main purpose of the Law is to require people who have been convicted of certain sexual offences" so it is looking at putting on the list people who have been convicted. There is an issue with ongoing funds but I am committed to the 2 posts and I know the Minister for Treasury Minister, as he has said, is going to look ahead for future funding.

12.1.10 Deputy M. Tadier:

In a similar vein to Senator Shenton but perhaps from a different angle, what I would like to ask the Minister is how he prioritises which laws he passes. We all know that the Sex Offenders Law is a very necessary law for the reasons that have been already stated, both for protection of society and also for the rehabilitation hopefully in cases, where possible, of those offenders. But how does the Minister prioritise for example when it comes to the Discrimination Law, is it perhaps because it is not so politically charged, and does he acknowledge that the latter is also a big issue for many and simply because it does not produce as many emotions does not mean that it does not have implications. That is all I really wanted to ask, so if the Minister could clarify that, it would be helpful.

[18:00]

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

Although strictly, this is to do with enforcement and monitoring, *et cetera*, one must not forget that there is an important role of prevention and reducing the risks and also the looking after of the victims through Victim Support, so it is also necessary to make sure that we do not have funding cuts that will prevent the other side of the coin, if you like.

The Bailiff:

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

12.1.12 Senator B.I. Le Marquand:

I start with the question of the Connétable of St. Ouen in relation to the role of the Honorary Police, this is quite technical but both the Connétables and the Comité des Chefs de Police are interested parties under Article 28.1. This means that under Article 28.6(b) that of course those 2 groups are interested parties, that they are in the group in which the appointed officer and the Chief Officers may seek their help and advice and there are a whole lot of different interested parties who may get involved. Really, it is going to be a decision in individual cases as to who needs to know for the purposes of ensuring that people are complying with orders made by the court and so on, but that will be very much an individual-case basis. In relation to the question of the recommended areas of

change, most of these lie within Article 5, now Article 5 deals with the period for notification requirements and there are a number of suggestions for improvement. Once a person comes into the system and becomes subject to a notification requirement, that then triggers other things which may happen. The route into notification requirements is either having committed a previous offence within the categories or committing a new offence within the categories. The first point is that the court has to set a period of time during which they will be subject to notification requirements unless there is an exceptional reason. The word “exceptional” reason was thought by the advisers to be too strong and that that should be reduced to “reason”, thus a very technical point. The second point relates to changing of the criteria for deciding the length of period for notification requirements and it was thought that it should be made clear in the statute that the primary consideration was the risk to the public and so that is a slight amendment there also. The third point was in relation to Article 5.5, which is an application for removal of notification requirements. As the Law was drafted, a person could only apply after the expiration of the period and only the individual involved could apply for removal of notification requirements. It was thought that, in fact, there is a duty upon the state under Human Rights to ensure that this is monitored from time to time and that therefore not only should there be such a duty but there should be a power of the Attorney General to apply and a duty of the Attorney General to apply when notification requirements were no longer necessary. So again, that is a technical point which, frankly, is only going to come into play after a number of years. The fourth point also under Article 5.6 was the criteria for not lifting notification requirements. The Law said that the court should only lift notification requirements in certain circumstances and the circumstances were thought to be too strong and unnecessarily oppressive and therefore again it recommended that there be a variation to that but, again, because that will only happen at the end of a period of years, we have got plenty of time to put in place the amendment before it happens. The final area was in relation to Article 18.3 where there has been a specification as to whether particular applications were criminal or civil and some applications have been specified as being criminal which, in the view of the advisers should now not be criminal but should be civil, in fact, the recommendation is that a particular sub-Article be removed. But as long as it is clear to the courts when they are considering this matter that they are not imposing a punishment upon people but imposing an order by way of protection, then there is not a real problem. So those are the areas, they are all minor in nature, but they are recommendations for those changes and there is nothing there in my view, as I have said before, which would prevent the Law coming into force immediately. The question in relation to court and case costs was asked - I am not sure by whom, I think it was Deputy Wimberley, yes - in fact, this is a situation if Members who were interested would turn back to page 11, you will see that the categories of cases are where orders for costs would be made in favour of defence lawyers. There are 2 categories: there are certain categories of case where defence lawyers get a certain amount of money even if the application or the appeal is not successful; and there is another category in which they get a higher level of money if they are successful. That is not within the remit of the C.S.R. work, this is in the remit of the amount of costs and the rate of costs which lawyers should get in relation to such matters and the provision for them to get costs is statutory and already exists. All we are saying is: “Here is a new category of application which is going to come before the courts under which lawyers might get costs.” So it does not fall within the C.S.R. process for that reason. The point of the Deputy of St. Martin about not unnecessarily criminalising people, of course, the vast majority of people who come into this process come in by virtue of having a criminal conviction already, either a previous one or a more recent one. There is one category of case which is different from that where they can be brought in by virtue of very strong reasons to believe that they represent a risk. When I first took the proposition for the Law to the Assembly, I was at pains to say that I had thought very carefully about whether that was appropriate and was satisfied that there were appropriate safeguards in relation to that so that orders would only be made on the application of the Attorney General and by the courts and after deciding that certain important facts existed. In relation to the issue of resources, I think I have already explained the situation to this. This is a priority and the resources

will have to be found and I am very grateful for the support of my colleague, the Minister for Treasury and Resources. In relation to the question of Deputy Tadier as to priorities, how I prioritise which laws that go forward, that is a very complex question upon the basis of the importance and value of the law, but also the ability to deliver his particular concern; that is in relation to the discrimination law. You may be pleased to know that I have recently met with the members of the **[Interruption]** Community Relations Trust, and we are now working again on this and seeking to find a way of delivering what we want to deliver but more cheaply and they believe they can help us in this. I am going to work with them; they have offered their assistance to me and I am very grateful to them for that. So hopefully we will, after all, make some progress earlier than may have appeared otherwise. So I hope I have answered all the questions and I maintain the proposition.

The Bailiff:

Very well. All those in favour of adopting the Act kindly show? Those against? The Act is adopted. So that completes Public Business.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Bailiff:

So we then come finally to M, Arrangement of Public Business for Future Meetings and I invite the Chairman for P.P.C. to speak to it.

13. The Connétable of St. Mary (Chairman, Privileges and Procedures Committee):

At last. The arrangement is as per the lavender sheet with the following changes. Firstly, on 18th January 2011, I would like, before I forget, to bring forward, if I can, to the first item of business P.179, which is the Canons of the Church of England in Jersey, lodged by the Chief Minister. There has been a request to bring that forward, for the Dean to deal with first. Then the following to be added: first of all, carry forward the Draft Employment (Amendment No. 6) (Jersey) Law from today's sitting, in the name of the Minister for Social Security; add P.180, the Jersey Bank Depositors Compensation Board: appointment of members, from the Minister for Economic Development; P.131, Samarès Nursery Sites, St. Clement, in the name of the Constable of St. Clement has been moved to the 29th March sitting; P.136 and associated comments, Esplanade Quarter Deferment of Works and Endorsement of Development Agreement has been withdrawn - I believe it will be re-lodged; the sitting of 1st February remains unchanged; on 15th February we have, indeed, the re-lodged Esplanade Quarter: deferment of works, in the name of the Deputy of St. John, P.181; and on the 29th March sitting, as I have said, P.131, the Samarès Nursery Site, St. Clement: removal from Draft Island Plan - petition, in the name of the Constable of St. Clement. Thank you.

The Bailiff:

How many days, Chairman, do you envisage the States needing to sit on 18th January?

The Connétable of St. Mary:

I would envisage at least 2 full days. We do have some quite important business there, quite a lot. Possibly 3.

The Bailiff:

That sounds rather optimistic.

The Connétable of St. Mary:

Yes, but I am also thinking that Christmas is coming and people may be thinking about changes or whatever. There may be some amendments to that. But as it stands, we could well run into 3, but perhaps Members would be wise to set aside 3 and I will advise if anything does drop out.

13.1 The Connétable of St. Helier:

Can I ask whether the Minister for Transport and Technical Services is intending to debate Speed Limits - P.167 - at the first sitting? I understand some Members are thinking of amendments and it may need to be referred to the Scrutiny Panel. Also, would the Minister for Planning and Environment indicate whether he is going to take the North of St. Helier Masterplan at that sitting or whether that may also be deferred again?

The Connétable of St. Brelade:

I am not in receipt of any amendments at this moment, so at this moment in time it stands that all these things are subject to change during the holiday period.

Senator F.E. Cohen:

At the moment I propose to leave it at 18th January. Thank you.

13.2 Deputy P.V.F. Le Claire:

On 1st February I am down for debating the Ministerial Offices, but I also believed that I was debating the Shadow Boards. On my purple sheet I have got a comment, but I do not have my proposition, so I just thought I would make the point that that is not there. So I take it that my proposition on the Boards will be the first item, is that correct?

The Connétable of St. Mary:

Yes, it does seem to have been missed, so it would be the first item, P.170.

The Bailiff:

Yes, P.170. Very well. Any other comments? Deputy Tadier.

13.3 Deputy M. Tadier:

I just wanted to ask about P.179, the Canons of the Church of England. I will be considering over the Christmas period whether or not to bring a proposition to dis-establish the Church of England in Jersey. [Members: Oh!] As such, I would ... A bit of decorum, please, from Members. So I would just like to ask if there would be any scope of liaising over that period because it might be wise not to bring it forward if my proposition does go ahead with the 7 signatories.

The Connétable of St. Mary:

I have been requested to bring it to the first item of Order of Business and I put it to the Assembly that that should be maintained.

Deputy I.J. Gorst:

I wonder if the mover of that possible proposition could give us an indication of the proposed wording of that proposition?

The Bailiff:

I do not think so, not [Laughter] ... I think ...

Deputy M. Tadier:

I will be waiting for divine inspiration over the Christmas period.

The Bailiff:

Very well. No other comments? So, do Members agree to take on the 18th the matters listed with the changes mentioned by the Chairman of P.P.C.: so that is P.131 is out, P.136 is out, but P.143 and P.180 are added? Do Members agree to take those? Very well, thank you.

CHRISTMAS GREETINGS

Senator T.A. Le Sueur (The Chief Minister):

I know it is late in the day, but I would just like to say a few words. Having been in the States now for over 20 years, one gets some sense of predictability on certain occasions. I have been used to thinking that Christmas speeches were done in the last short week after the Budget debate when we plan for a shorter sitting. But that uncertainty is trivial, I suppose, if you compare it to the uncertainty of the first Christmas when Mary and Joseph were travelling to a foreign destination in poor conditions with Mary very pregnant. At the end of the day, the trials and tribulations that they may have faced was nothing compared with the joy and satisfaction at the birth of Christ. I think we too at this time can look forward to a new beginning and a New Year.

[18:15]

I hope that in the year to come we too will put things into perspective and perhaps forget some of the discord that seems to have crept into this Assembly from time to time. I shall remember more happily my involvement in the Tour de Bretagne, the Tour des Ports de la Manche and the Liberation Celebrations, both here and in Bad Wurzach. I would like to express the hope that over this Christmas season we can take time to pause and question the true values of life as we take a few weeks' break. On behalf of my fellow Senators, I should like to extend Christmas greetings to you and Mrs. Birt, to the Deputy Bailiff and Mrs. Bailhache, to the Attorney General, the Solicitor General and their families. I am sure we all appreciate the efforts you all go to in assisting us in our States duties. **[Approbation]** Equally, I am sure that Members would want to join me in extending greetings to the Lieutenant Governor and Mrs. Ridgway in their last Christmas with us. **[Approbation]** I offer seasonal greetings to the Greffier, the Deputy Greffier and the staff of the Greffe, for their unfailing advice and help. **[Approbation]** To the Dean, whose occasional words in this House are always well chosen and thoughtful. **[Approbation]** To the ushers who rush around tending to our needs **[Approbation]** and to our tea lady and her wide-ranging supply of biscuits. **[Approbation]** To the ladies and gentlemen of the media who do their best to make sense of what we are saying **[Laughter]** **[Approbation]** and to the cleaners and everyone else that I might have missed. **[Approbation]** Of course, finally, to my political colleagues in the other parts of the Chamber. **[Approbation]** So on behalf of all those on the Senatorial benches, I wish everyone a happy and a holy Christmastide and I look forward to coming back next year refreshed and revitalised. Season's greetings to one and all.

The Connétable of St. Ouen:

On behalf of the Comité des Connétables it is my pleasure to offer the season's greetings to all involved in the good running of this Chamber and the service to the public offered by the States as a whole. If I hesitate in reading my speech it is because the ink is starting to fade; it has been so long waiting to be presented. **[Laughter]** As the Chief Minister mentioned, the highlight of 2010 was undoubtedly the 65th Anniversary of the Island's liberation from 5 years of German occupation. That we should continue to mark this important moment in Jersey's illustrious history is vital in ensuring our younger generations do not forget what their parents, grandparents and great grandparents endured during those difficult years. It is extremely important that the knowledge of the suffering and austerity of the past reminds us all of the fortunate times we live in today. I say fortunate because we are fortunate, despite the financial pressures that are on us. The Connétables were eager to hold celebration events in all of the Parishes and these, together with those organised by yourself and your team, led to a momentous and memorable weekend of festivities.

[Approbation] A weekend that culminated in an extremely successful Bailiff's tea party at the R.J.A and H.S. (Royal Jersey Agricultural and Horticultural Society) on the Monday afternoon. This brought together over 1,300 Islanders, the greater majority of whom had experienced those occupation years. This event was a truly fitting culmination of the Island's commemorations and served to reunite again so many old friendships lost over time. All thoroughly enjoyed the ambience and camaraderie of the occasion, all the entertainers, and the brilliant band of the Royal Marines. Many were touched by the fact that you, the Lieutenant Governor, and the First Minister, together with your wives, made the effort to circulate and greet as many as possible personally. The afternoon certainly led to so many untold stories being brought back to mind, so many reminiscences and so much joy and laughter. I would like once again to offer our thanks to you for that event. **[Approbation]** I think that one of my own elderly parishioners summed up the whole event perfectly when she said: "This is how Jersey does it best." Can I wish you and Mrs. Birt, the Lieutenant Governor and Mrs. Ridgway, the Dean and Mrs. Key, the Deputy Bailiff and Mrs. Bailhache, the A.G. (Attorney General) and Mrs. Le Cocq, the S.G. and his partner, Caroline, the Greffier, the Deputy Greffier, the Assistant Greffier, together with all the staff in the Greffe and in the Law Officers' Department, to the ushers and Melody, our tea lady, who serves us with such courtesy and good humour, all our colleagues on the Senator Benches and all those on the Deputy benches, together with the media, who are still here - obviously on overtime - our very best wishes for a happy and restful Christmas break and a healthy and hopefully prosperous 2011. **[Approbation]**

Deputy R.C. Duhamel:

For those of us who are still here in our seats and have managed to last, of course, we have certainly learnt or at least re-learnt the truism that a week in politics is a very long time. **[Laughter]** But that said, I think in our second year together what I have noticed is a comradeship, a camaraderie that is beginning to break out between both sides of the House. We do not always agree and indeed it is not right that we should do, but I think as evidenced by a number of the debates that we have had this week and the very closeness of those debates, I think the value of the debating process in this Chamber has been shown and long may it be that way. In thinking of things to say, I raced through quite a few of them and I thought I had a few suggestions: one was to see if I could regain my longest speech but I thought: "No, that is probably not the thing to do otherwise we would all be dead by the end of it." I also thought that perhaps I should give a song or perhaps lead in the rendition of a Christmas carol or something, or perhaps even make up a new one. I had ideas like the 12 Senators or the 12 Constables at Christmas and you could probably think of the words. But in order to set the scene, I thought in this electronic age rather than send all of you a ringtone which can be easily delivered that I would just pick up some of the words of a public artist. For those who do remember Sir Cliff Richard - you have to pitch it about right - and he sang this to much public acclaim in some bygone and distant era, I thought I would just like to mention a few of his words, which do set the scene before I wish everybody the best wishes for the season. His Christmas carol, Mistletoe and Wine: "At Christmas time, mistletoe and wine, children singing Christian rhyme, with logs on the fire and gifts on the tree, a time for rejoicing in all that we see. A time for giving, a time for getting, a time for forgiving and for forgetting. Christmas is love, Christmas is peace, a time for the hating and fighting to cease. Christmas time, mistletoe and wine." I think those words are probably fairly good to ... quiet in the Back-Benchers. I think those words do set the scene in many different ways. On behalf of the Deputies and the Chamber I would like to express our best wishes for the season to you and your wife, to the Deputy Bailiff and his wife, to the Lieutenant Governor and his wife, to the Solicitor General and Attorney General and their wives or partners, to the Dean and his wife, the Greffier, Deputy Assistant Greffier, the Viscount and all the court officers. Notably, to the Senators and indeed the Constables on the other benches, the court ushers, the tea lady, the media and the press. I wish you the very best at this time of the year, to go away and, as some other Members have said, to recharge our batteries and to come back reinvigorated for what next year is going to represent another challenge. It is election

year next year, as you have probably realised, and times are a changing. All the best. Thank you very much. **[Approbation]**

The Bailiff:

Well, thank you very much to Senator Le Sueur, to the Connétable of St. Ouen and to Deputy Duhamel for their good wishes on behalf of Members. I was half expecting Deputy Duhamel to break into song halfway through that **[Laughter]** but having not ever stood next to him when he sings I am not sure whether I am glad that did not happen or sorry that it did not happen. 2010 has had its highs and its lows. On the high side, so far as I am concerned, was the fact, as the Connétable has mentioned, the Island celebrated the 65th anniversary of our liberation. As the Connétable has mentioned, I had the honour of hosting a teatime reception at the R.J.A. and H.S. for those who were here in the occupation, including deportees, those who left in order to fight in the armed forces, and those who worked through it. I have to say, as the Connétable said, it was a heart-warming occasion to meet so many people who had lived through those dark times. My wife and I felt really very privileged to be there. On the negative side, there have of course been the tragedies; the earthquake in Haiti and the flood damage in Madeira. But on both occasions, Islanders responded magnificently and once again showed their generosity and their sense of fellowship with communities who had suffered so much. In addition, there has been the continuing hardship caused to our own community as a result of the adverse economic situation which is around the world. In this Assembly it has once again been a busy year, although some would say, possibly thankfully, not quite as busy as last year. The States has sat on 49 days this year compared with 60 last year and 51 in 2008. However, there were 482 written questions compared with 419 last year, so that went up. Oral questions were almost exactly the same, 337 compared with 339. But as Members will appreciate, such a level of business places a great strain upon the Greffe and I would like to pay tribute to the staff of the Greffe. **[Approbation]** They are under the excellent leadership of the Greffier and the Deputy Greffier and they have performed, in my view, outstanding work. It never ceases to amaze me how quickly they can turn matters around and how efficiently they deal with all things possible. **[Approbation]** I would also like to pay tribute to the ushers; they go discreetly about their work. They are essential to the smooth running of the Assembly and I am glad that the usher here present today has had his recent moment of fame **[Laughter]** **[Approbation]** but we are not going to have any drums in the Assembly. **[Laughter]** As ever, the States have had to wrestle with many important issues, including, as we have just seen for the last few days, choosing what financial course to set for the next few years in view of the current economic climate. The debates of the last few days do show how difficult such matters are and how much responsibility rests on Members shoulders. So, Members deserve a break from their endeavours and Christmas is the time to relax with family and recharge your batteries, ready for the year ahead. So on behalf of the Deputy Bailiff, the Law Officers, the Greffier, the Viscount, the ushers and all those who work in and around this Assembly, I thank you for your good wishes and I wish all Members in return a very happy Christmas and New Year and I look forward to seeing you when we all return. **[Approbation]** So that brings matters to a close and the Assembly will now close and reconvene on a date which escapes me at the moment in January. **[Laughter]**

ADJOURNMENT

[18:30]