

# STATES OF JERSEY

## OFFICIAL REPORT

FRIDAY, 18th JULY 2014

### STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY .....4

#### 1. The Minister for Treasury and Resources - statement regarding the Draft Budget 2015.....4

1.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):	4
1.1.1 Senator S.C. Ferguson:	8
1.1.2 Senator S.C. Ferguson:	9
1.1.3 Deputy G.C.L. Baudains of St. Clement:	9
1.1.4 Deputy J.A.N. Le Fondré of St. Lawrence:	10
1.1.5 Deputy G.P. Southern of St. Helier:	11
1.1.6 Deputy T.A. Vallois of St. Saviour:	11
1.1.7 Deputy R.G. Le Hérisier of St. Saviour:	12
1.1.8 Deputy J.A. Martin of St. Helier:	13
1.1.9 Deputy J.G. Reed of St. Ouen:	13
1.1.10 Deputy J.H. Young of St. Brelade:	14
1.1.11 The Connétable of St. Lawrence:	14
1.1.12 Deputy M.R. Higgins of St. Helier:	15
1.1.13 Deputy S. Power of St. Brelade:	15

### PUBLIC BUSINESS – resumption .....16

#### 2. Maternity leave: rights of employees (P.104/2014) - resumption .....16

2.1 Deputy S. Pinel:	16
2.1.1 Connétable S.A. Rennard of St. Saviour:	17
2.1.2 Connétable P.J. Rondel of St. John:	17
2.1.3 Deputy S.Y. Mézec of St. Helier:	17
2.1.4 Deputy J.H. Young:	18
2.1.5 Senator A.J.H. Maclean:	18
2.1.6 The Deputy of St. Ouen:	20
2.1.7 Deputy J.M. Le Bailly of St. Mary:	20
2.1.8 Deputy R.G. Le Hérisier:	20
2.1.9 Senator P.F. Routier:	21
2.1.10 Deputy G.C.L. Baudains:	21
2.1.11 Deputy G.P. Southern:	21

#### 3. Draft Employment (Amendment No. 8) (Jersey) Law 201- (P.109/2014) .....24

3.1 Senator F. du H. Le Gresley (The Minister for Social Security):	25
3.1.1 The Deputy of St. Ouen:	26
3.1.2 Deputy J.P.G. Baker of St. Helier:	28
3.1.3 Deputy M. Tadier:	31

3.1.4 Deputy A.E. Pryke of Trinity:	34
3.1.5 Senator L.J. Farnham:	34
3.1.6 Deputy G.C.L. Baudains:	35
3.1.7 Senator A.J.H. Maclean:	35
3.1.8 Senator P.F. Routier:	38
3.1.9 Deputy S.G. Luce of St. Martin:	38
3.1.10 Deputy A.K.F. Green of St. Helier:	39
3.1.11 Senator F. du H. Le Gresley:	40
3.2 Senator F. du H. Le Gresley:	42
3.3 Senator F. du H. Le Gresley:	43
3.3.1 The Deputy of St. Martin:	44
3.3.2 The Connétable of St. John:	44
3.3.3 Senator F. du H. Le Gresley:	44
3.4 Senator F. du H. Le Gresley:	46
3.4.1 Deputy J.H. Young:	46
3.4.2 Senator F. du H. Le Gresley:	46
3.5 Senator F. du H. Le Gresley:	46
3.5.1 Senator L.J. Farnham:	47
3.5.2 Senator F. du H. Le Gresley:	47

**LUNCHEON ADJOURNMENT PROPOSED.....48**  
**LUNCHEON ADJOURNMENT.....48**

**4. Draft Social Security (Amendment of Law No. 8) (Jersey) Regulations 201-  
(P.106/2014).....50**

4.1 Senator F. du H. Le Gresley (The Minister for Social Security):	50
4.2 Senator F. du H. Le Gresley:	50
4.3 Senator F. du H. Le Gresley:	50
4.3.1 The Connétable of St. John:	51
4.3.2 Senator F. du H. Le Gresley:	51

**5. Draft Charities (Jersey) Law 201- (P.108/2014).....51**

5.1 Senator P.F. Routier (Assistant Minister for Home Affairs - rapporteur):	52
5.1.1 Deputy M.R. Higgins:	54
5.1.2 Deputy J.H. Young:	54
5.1.3 Deputy S. Power:	55
5.1.4 The Deputy of St. Ouen:	55
5.1.5 The Connétable of St. John:	56
5.1.6 Deputy S. Pinel:	56
5.1.7 Senator A.J.H. Maclean:	58
5.1.8 Senator S.C. Ferguson:	58
5.1.9 The Deputy of St. Martin:	59
5.1.10 Senator P.F. Routier:	59
5.2 Senator P.F. Routier:	61
5.2.1 Deputy M.R. Higgins:	62
5.2.2 Deputy S. Power:	62
Mr. H. Sharp Q.C., H.M. Solicitor General:	62
Deputy J.A.N. Le Fondré:	63
5.2.3 Senator P.F. Routier:	63
5.3 Senator P.F. Routier:	63

5.3.1 Deputy M.R. Higgins:.....	63
5.3.2 Senator F. du H. Le Gresley:.....	63
5.3.3 Senator P.F. Routier: .....	64
<b>6. Draft Criminal Justice (Life Sentences) (Jersey) Law 201- (P.113/2014).....</b>	<b>65</b>
6.1 Senator B.I. Le Marquand (Assistant Chief Minister - rapporteur): .....	66
6.2 Senator B.I. Le Marquand:.....	67
6.3 Senator B.I. Le Marquand:.....	67
6.3.1 Senator L.J. Farnham:.....	67
6.3.2 Senator B.I. Le Marquand:.....	67
<b>ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS .....</b>	<b>69</b>
7. Connétable L. Norman of St. Clement (Privileges and Procedures Committee):.....	69
<b>STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY .....</b>	<b>69</b>
<b>8. The Minister for Economic Development - statement regarding Condor .....</b>	<b>70</b>
8.1 Senator A.J.H. Maclean (The Minister for Economic Development):.....	70
8.1.1 The Deputy of St. Martin:.....	70
8.1.2 The Connétable of St. John: .....	70
<b>ADJOURNMENT .....</b>	<b>71</b>

[9:30]

**The Roll was called and the Greffier of the States led the Assembly in Prayer.**

**STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY**

**1. The Minister for Treasury and Resources - statement regarding the Draft Budget 2015**

**The Deputy Bailiff:**

The Minister for Treasury and Resources has indicated that he wishes to make a statement, which is on Members' desks I hope. It would seem to be convenient to interrupt the debate before we get moving on the resumption of the debate on maternity leave if Members to so agree to have this statement, but I am in the hands of the Assembly.

**Deputy M. Tadier of St. Brelade:**

I know the Chairman of P.P.C. (Privileges and Procedures Committee) is not here. I have had indications from certain Members that they think it is poor etiquette to interrupt a proposition in the middle of it and that they would like the statement taken after, but obviously it is for the Assembly to decide.

**The Deputy Bailiff:**

It is for the Assembly and we have frequently interrupted a debate at the beginning of a session, but it is a matter for Members.

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

All I would just say is that there is a plan to release, this morning, of all of the documents associated with the Budget, so that is why I requested if it could be made the first item. There is a whole series of reports that are going to be made public that are planned this morning and I would be grateful, as has been in the past, if I could make the statement first thing.

**The Deputy Bailiff:**

Do members agree to take the statement first thing, kindly show? The appel is called for. I invite the Greffier to open the voting. The vote is on whether to take the Minister for Treasury and Resources' statement now.

<b>POUR: 30</b>		<b>CONTRE: 10</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Senator A. Breckon		Connétable of St. John
Senator P.F.C. Ozouf		Deputy R.C. Duhamel (S)		
Senator S.C. Ferguson		Deputy G.P. Southern (H)		
Senator A.J.H. Maclean		Deputy of St. Ouen		
Senator B.I. Le Marquand		Deputy S.S.P.A. Power (B)		
Senator F.du H. Le Gresley		Deputy M. Tadier (B)		
Senator L.J. Farnham		Deputy T.A. Vallois (S)		
Senator P.M. Bailhache		Deputy G.C.L. Baudains (C)		
Connétable of Trinity		Deputy J.H. Young (B)		
Connétable of St. Clement		Deputy S.Y. Mézec (H)		
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.G. Le Hérisier (S)				

Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				
Deputy J.P.G. Baker (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

**The Deputy Bailiff:**

So we will now go to the Minister for Treasury and Resources’ statement.

**Senator P.F.C. Ozouf:**

I am grateful to Members. Since the onset of the financial crisis, this Assembly has faced many different types of challenges, and Budgets of the last 3 years have reflected them. In 2011 we faced an extremely difficult Budget, where Members were asked to take tough decisions to address the deficit, make savings, reduce our public finances and protect Jersey’s economy. The 2012 and 2013 Budgets that followed were focused on stability and targeted investment in infrastructure and particularly jobs and health. Last year, in the 2014 Budget we were able to start giving something back. Islanders will feel the more than £8 million financial benefit of the lower marginal tax rate and help for children at university in their pockets in 2015. This year’s Budget has to consider one of balance. Balancing the continued support for the economy, jobs and business, balancing the need to continue to fund the unprecedented planned increase in health spending, while continuing to fund the tax cut in addition to fund the significant cost of the benefit deferral Long-Term Care change while introducing the benefit this year. Confidence in the global economy is now growing. There is renewed optimism locally, but Jersey’s economy also remains under pressure. Business confidence is rising and earnings is growing unlike places are higher than inflation and I welcome this morning’s announcement of the latest R.P.I. (retail price index) figure of 1.6 per cent. Higher earnings than inflation puts more money in people’s pockets, which is why inflation control is so important. While our public finances, particularly our balance sheet, remains strong, continued weakness in the labour market, low interest rates and the consequences of the financial crisis, have resulted in the Independent Tax Forecasting Group revising their 2012 estimates further. This is not unexpected. While in 2013 this was offset by an improved business tax position, it would not be prudent to rely upon that for 2014 and 2015. While confidence is returning to the economy, interest rates are only expected to increase at a gradual rate next year. Notwithstanding this forecast, the Council of Ministers is determined to maintain capital spending and the planned increases in spending in particularly areas such as Health. At the same time the Public Finances Law rightly and prudently requires the Budget to balance the Consolidated Fund. The Fiscal Policy Panel were clear in their advice last year that, should the economy need it, all available resources from existing funds should be deployed to support spending. We should continue to be spending more than we are taking out of the economy to help economic growth. We propose to do just that. In addition, as I briefed Members yesterday, and this is set out in the reports that Members have, we plan to, not only raise more revenue where we can, but building on the success of the Comprehensive Spending Review. I am extremely grateful for the Corporate Management Board for now being able to deliver better services, improved efficiencies, which are also contributing towards the savings that will be delivered in future years. Before I turn to the tax measures for

2015, I would like to say that none of this would have been possible without the outstanding performance of the Treasury team and colleagues across the financial family and the managerial family across the States over last 3 years. In particular, and I am pleased that she is in the public gallery; I want to pay a particular tribute for the incredible hard work of the Treasurer of the States, Laura Rowley over the last 4 years. **[Approbation]** If I could stamp my foot, I would as well. As Members are aware, the Treasurer has taken the decision to return to the U.K. (United Kingdom) and I would like to take this opportunity to thank her personally, on behalf of Members, for all her hard work and the exceptional results that she has achieved. She leaves with my, and I am sure clearly this Assembly's, thanks and very best wishes for the future. Taking each of the measures in turn, I will start with the marginal rate. The marginal rate will be maintained at 26 per cent. The Long-Term Tax Policy report, which will be published in September, will signal the goal of continuing to attempt to reduce that marginal rate to 25 per cent in the longer term. The income tax exemption increase is proposed at 1.7 per cent. The Medium-Term Financial Plan originally had an increase of 3 per cent because of inflation, and this represents about a £2.1 million improvement against the previous plan. We propose to freeze tax allowances. Today we are launching a major consultation on property tax. A well-functioning housing market, as we have been debating in the Assembly over the last few days, needs supply across all tenures. We also need a tax system that is joined-up and balanced. The Green Paper is an important document, which I hope will catalyse an informed and useful debate. One of the distortions that is identified is mortgage interest tax relief. While undoubtedly well-intentioned, this has helped offset the mortgage interest costs of house purchasers, it does nothing for renters and it does little to help those home owners at the lower end of the income scales. The advice is that it worsens the situation in the longer term by inadvertently boosting house prices. The measure proposed in the 2015 Budget seeks to take a first moderate step to flatten that inequality by proposing a cap on tax relief of the 5 per cent of the £300,000 mortgage interest tax relief, which is £15,000. This is above the current fixed and standard variable interest rates cost and, even with the expected rise in interest rates, this will remain so. This cap is a modest one.

[9:45]

It will have an impact on a very small number of home owners and, while not removing mortgage interest tax relief together, that is not a policy that we are endorsing, it does send a signal that we need to look at it. It is of vital importance that there is an informed debate as to the merits of maintaining this relief or the alternatives. To accompany this proposal, I would like also to change stamp duty on the cost of registering a mortgage. It seems to be unfair that a buyer of an average price with a mortgage pays more stamp duty than a cash buyer. For this reason I propose to remove mortgage stamp duty on properties under £400,000. After careful consideration, I propose to remove all duties on qualifying properties; that is properties at £400,000 or below, on the first £300,000 completely and to apply the lower rate of 2.25 per cent on any borrowing between £300,000 and £400,000. This will remove the burden of borrowing and will support the average homebuyer. To fund this, I have reviewed stamp duty on properties worth over £1 million. The second stamp duty proposal will be therefore to increase the rates of duty collected on higher-value properties and will affect properties with a transaction value of more than £1 million. I propose to increase stamp duty at the rate of 4 per cent on properties purchased between £1 million and £1.5 million; 5 per cent at properties between £1.5 and £2 million; 6 per cent on properties between £2 million and £3 million; and 7 per cent on properties above £3 million. These increases are modest and, as set out in the report that Members have, is designed to raise approximately £850,000, which is more than that of the cost of eliminating stamp duty mortgage relief. As Members will see from the report, the duty rates in Jersey still remain very significantly below those of the U.K. and other countries. Today I am publishing the Treasury's conclusion on how the States should pay rates and how that should be funded. Local taxpayers assessed at the marginal rate currently do not receive a

double tax credit. We have identified this as an unfairness and we are seeking in this Budget to remove it at the cost of £500,000. Turning to impôts. I propose to increase spirits, wines and strong beer at the rate of 1.7 per cent; I propose to align the cider duties to those for beer; I propose to increase the duty on a standard packet of 20 cigarettes by 4.7 per cent or 22 pence per packet; and I propose to put a penny on a litre of fuel and increase V.E.D. (Vehicle Emissions Duty) increase of 1.7 per cent. I am delighted that we are delivering the legislation for all of the modernisation and the simplification rules on pensions. These rules will give greater flexibility to pension savers and give Islanders greater confidence in the future pension provision. Taken together with the reform of P.E.C.R.S. (Public Employees' Contributory Retirement Scheme), this Assembly I think should be very proud of the significant changes that have been made on pensions during this term of office. Confidence is returning to the local economy, but it continues to need our support. Securing capital projects is now delivering better value for money. Included in the capital programme are: the second phases of the additional primary school accommodation; the infrastructure for the sports strategy ahead of the Island Games; and the second phases of the hospital project and the Liquid Waste Strategy that we recently approved. Members will recall the significant success of the Housing Bond in recent weeks, securing 40-year money at 52 basis points over U.K. gilts has been one of the proudest moments of my Treasury team's term of office. This will not only enable us to accelerate the refurbishment strategy with Andium Homes, but also deliver new homes on the sites that we approved in the last few days. I undertook to bring to the States the rules in this Budget for the Housing Development Fund and these are set out in Appendix 6 of the Budget report. I also committed to confirming the definition of the capital on the fund for the Strategic Reserve and also how that should be managed. We are proposing that the Strategic Reserve balance of over £651 million, which was the balance at 31st December 2012, should be defined as the Reserves' capital value. In future years that capital value should be maintained in real terms by using Jersey's R.P.I.Y. (retail price index excluding mortgage interest) for the inflation factor. In my report to the Fiscal Policy Panel's report of the 2014 Budget, which was laid before the States in January 2014, I made a commitment to set out clearly the rules for the Stabilisation Fund. These rules are set out in Appendix 6 of the Budget report for Members' approval. I am also publishing today the Economic Unit report on the Fiscal Framework. Members will, I hope, forgive me for repeating the mantra that, while good politics is not always good economics, in my view good economics is always good, sound and sustainable, long-term policies. I commend the Fiscal Framework published today to Members. I am extremely proud of the work that has been done over the last 3 years and the work that is ongoing to modernise and improve our tax and spending. The principles that have guided previous Budgets have I believe proved their worth. The principle of balance, which underpins this Budget, now builds on a solid foundation for the next Assembly to build and improve upon. This Assembly should be proud that it has been one of the boldest, most reforming and innovative, and made decisions to plan for Jersey's future. The fallout of the global economic crisis is still in evidence and we need to do all we can in the coming year to secure and propel economic growth. I would like to thank warmly my Assistant Minister, Deputy Eddie Noel, for his unswerving and unstinting support, and also to my colleagues on the Council of Ministers, and especially the Chief Minister, for the support they have shown. So, we are putting money back into the economy; we are supporting low and middle-income tax payers; we have helped hundreds of people to get back into employment; we have provided the means for significant improvements in housing and healthcare and we have put significant funding into our infrastructure. I am proud of these achievements and I believe that this Budget maintains the position of strength and will help secure growth and I commend the statement to the Assembly and look forward to the debate in September. **[Approbation]**

**The Deputy Bailiff:**

Thank you. I give notice to Members that it should be on Members' desks, the Draft Budget Statement 2015 - P.129 - lodged by the Minister for Treasury and Resources, and I am informed that copies of the accompanying Budget Statement Report will be delivered to Members later today.

**Senator S.C. Ferguson:**

I thought we would have question time.

**The Deputy Bailiff:**

We are just about to, but I have not announced it yet. We now come to 15 minutes of questions, starting now, and starting with Senator Ferguson.

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

Excuse me, if I may, you just said that we have come to 15 minutes of questions. I think few can argue the importance of the Draft Budget Statement and I understand that we have a Standing Order, which allows me to propose that question time be extended to 30 minutes.

**The Deputy Bailiff:**

We certainly do, Connétable. I was expending somebody to make that proposition, but I wonder whether we might see how the first 15 minutes goes because you may find all questions are answered.

**The Connétable of St. Lawrence:**

I appreciate that. However, I understand that the Standing Order allows question time to be extended up to a total of 30 minutes and clearly, if Members do not have enough questions to extend it to 30 minutes then that is their option. However, if questions could be 20 or 25 minutes.

**The Deputy Bailiff:**

Very well, if you want to propose if you are entitled to do that and is it seconded? **[Seconded]** Those Members in favour of extending it to 30 minutes kindly show? Those against? Extended to 30 minutes. Senator Ferguson.

**1.1.1 Senator S.C. Ferguson:**

The income forecasts in the draft Budget show significant reductions in income for 2014 to 2015 with a reduction of just under £100 million for the period 2013 to 2016 compared to the Medium-Term Financial Plan, and a reduction of around £27 million compared to the 2013 Long-Term Revenue Plan. This raises questions about the accuracy of the forecasts. Were they too optimistic and would the Minister for Treasury and Resources like to confirm which set of forecasts the Standard and Poors rating was based on?

**Senator P.F.C. Ozouf:**

Rightly, income tax forecasts and estimates of our future growth in income are not decisions of Ministers; they are decisions of the Income Tax Forecasting Group, which consists of a number of the senior officials, including the Treasurer, Comptroller of Income Tax, the Chief Minister's International Adviser, Head of Tax Policy, and the Chief Economic Adviser. Members will know that there is a high level of transparency and these evolving income lines have been amended without any political interference, and rightly so, over the last 3 years. I think what Senator Ferguson is saying is that the income growth that was expected in 2012 has not materialised in the strength that we thought and frankly, when one looks back to 2012 and one considers that at that time we thought that the global economy was going to be growing, we thought that the financial crisis was coming to an end, interest rates were going to rise, and that did not happen. So, in fact,



this is not unexpected from my point of view. We have taken measures clearly in line with the F.P.P. (Fiscal Policy Panel) advice that, if income was to continue to show stress, then one would not cut back on spending, rather that one would spend more. Spending more is what you do in a downturn and that is what we are doing. I just say one other thing, because this is the important side, there is also another side to the effects of the global economic crisis on our spending and that is that inflation rates were expected to be at 3 per cent by 2014 and 2015 and we have seen much lower inflation rates. That means that we can make some sensible adjustments in terms of Budget because of low inflation rates. I commend the Income Tax Forecasting Group for their work, they are prudent, and that is what we should be relying upon.

**1.1.2 Senator S.C. Ferguson:**

Yes, but surely the Minister takes responsibility. Last year, my panel, and particularly my advisers, advocated caution with regard to this year, but it does not seem to have been complied with. What caution is the Minister going to apply this year?

**Senator P.F.C. Ozouf:**

Caution, when economic growth is under stress, caution means that you realise that the economy needs further assistance and that means you do things like tax cuts; that means that you do things like the marginal rate tax; you do put more investment in infrastructure; you do not defer capital spending; and you stick to your plans. The F.P.P., now fortified by 2 new members, will produce their report next week. I am interested to know what they will be saying about the economic situation. I think that, even if I would have known these forecasts 12 or 24 months ago, I do not think many of the things we would have done would be any different. We are delivering tax cuts, more money in people's pockets, maintaining spending, and improving areas, and I have mentioned health care a couple of times. Ministers that say you cannot increase healthcare spending without consequences are not talking about reality. Senator Ferguson, I do not think agrees with that, and that is fine, we can agree to disagree. I think it would be wrong to now start cutting spending because income has not quite met the forecast, particularly when we can make those adjustments as set out in the Budget. So, notwithstanding lower income forecasts, we can still balance the books. That is a great position to be in. As far as Standard and Poors, they will make an annual assessment; they will have the income tax forecast adjustment, which is going to be published; and they will continue to do their credit rating. If anything, I think Jersey's credit rating is on the up, not on the way down.

**1.1.3 Deputy G.C.L. Baudains of St. Clement:**

I congratulate the Minister for Treasury and Resources on his presentation but I have 2 queries. Would he first of all confirm that the Housing Bond will, by maturation, have cost us in the region of £600 million, and would he also tell us his plans for G.S.T. (Goods and Services Tax), because I do not see a reference to it, if there is one I have missed it.

**Senator P.F.C. Ozouf:**

The Housing Bond, I have set out in this report for Members' approval, has strict rules about the way the Housing Development Fund will work. So it is ring-fenced. All of the facilities that are given primarily to Andium Homes have a repayment profile. Having secured that 40-year money means that we are able now to deliver. The Minister for Housing will be looking at Andium's business plan; it will be published as I understand it, and with Treasury support, and that means that we can recycle those repayments as they come in from Andium and we can deliver more in terms of refurbishments and improvements. Locking in that 40-year money at such a spectacularly low rate, which I believe will be regarded in many years to come as a very wise long-term decision, there is widespread acclamation for the fact that we have managed to secure that at such a low rate,

means that we have the confidence to deliver the housing and affordable housing issues that we have been debating.

[10:00]

In terms of G.S.T. there are a number of administrative changes in G.S.T. but there are no radical changes in terms of G.S.T. What I have done is I have signalled to Members the fact that a *de minimis* level should be looked at, which is exactly in conformance with the Economic Affairs Scrutiny Panel report and I have communicated to Members on that. No decisions on that, but a sensible review, fairness on retailer, and off-Island, must be achieved in the longer term. But how you do it is really something that we need to see the development of how they deal with low-value consignment relief in other countries and that process is underway.

#### **1.1.4 Deputy J.A.N. Le Fondré of St. Lawrence:**

I do not know what reality the Minister for Treasury and Resources lives in but his definition ... I think he said income forecasts have not quite achieved what we were aiming for. "Have not quite" is to the tune of £95 million. That is not "has not quite"; that is a significant miss of every target we have been working on. To say: "If I had known in 2012 or 12 or 24 months ago", last night when I had fractionally calmed down after seeing the results, I dug out the Scrutiny Reports from S.R.18/2012. There is a question coming, Sir: "Expenditure proposals in the draft M.T.F.P. (Medium-Term Financial Plan) rely too heavily upon income and economic forecasts. There are doubts as to whether these forecasts will be realised, particularly in respect of 2014 and 2015. These doubts have been apparent for some time." That is 2012 and yet the Minister for Treasury and Resources has decided not to amend the draft M.T.F.P. despite downgrade of forecast for 2013. One of the other advisers: "Key assumptions integral to the M.T.F.P. should be stress-tested against the accounting concept of prudence. This is particularly relevant for economic growth assumptions where this may prove to be politically unpalatable." This has been coming for a long time. How can the Minister for Treasury and Resources even remotely justify the fact that he did not know about it 12 or 24 months ago and what we have done is spent to the hilt of over-optimistic forecasts. How does he respond?

#### **Senator P.F.C. Ozouf:**

He responds with, as he normally does, with a disagreement with Deputy Le Fondré. Perhaps he has calmed down from his rather enthusiastic criticism, which has been a persistent theme of the last 3 years. I am not an economist. I take a great interest in economics and I rely upon economic advice. If Deputy Le Fondré thinks he is right and it would have been right in the last 3 years to put more tightening in place, if he believes that it would have been right not to make necessary investments in health care, if he is right, as I see an email went around, that we should have been doing even more savings reductions and taking even more money out of spending, then fine, he is entitled to that opinion. He stood for Minister for Treasury and Resources 3 years ago. I have pursued a policy with the endorsement of this Assembly and with the backing I think broadly of the F.P.P. The F.P.P. are strong independent economists, some of the best economics brains of the United Kingdom and elsewhere. Let us see whether or not they think that his policy of tax and spending is correct or whether this is a carefully-judged appropriate economic response to the worst financial crisis. I do not know whether or not his crystal ball was better than mine, but in 2012 I doubt that anybody would have seen the scale of contagion and low interest rates environment. I would remind the Deputy that at the end of this term we are faced with a balance sheet that is stronger, we have one of the best positions in terms of public finances, and we also have one of the best planned future tax and spending policies with the issues document that will be in the Long-Term Revenue Plan. Never before has an Assembly seen such good long-term planning and

preparing for all eventualities. There are political differences, but let us see what the economists say next week.

**Deputy J.A.N. Le Fondré:**

Can I respond? The point ...

**The Deputy Bailiff:**

No, Deputy. It is question time, not a debate. Not for response. Deputy Southern.

**1.1.5 Deputy G.P. Southern of St. Helier:**

Measures to address the Consolidated Fund balance in 2014 and 2015, I note a 2 per cent proposed savings from all departments pay budgets. Is this another pay freeze or are we reducing staff or what are we doing to produce that?

**Senator P.F.C. Ozouf:**

I am grateful for the Deputy to identify this particular table as it is an important one. I should first of all say that the difficulty I suppose that the Treasury has is that we need to put a Budget which balances the Consolidated Fund. The experience of recent years has shown that we have exceeded income, but we always take, and I think the Income Tax Forecasting Group would take a middle, if not cautious, line. I mentioned earlier the lower inflation number compared to that was expected, so we can make some appropriate adjustments in terms of spending because of low inflation. I think we really need to reflect on the success of the Comprehensive Spending Review and the modernisation programme. He, I hope, went to the Hotel de France last week. We have thousands of public sector workers now engaging and making decisions themselves to deliver better services for the public. There are numerous examples of these and so there are some departments that can deliver some savings and they are real efficiencies and we should recognise that good work; we should recognise that our public sector workers are now doing more with less, and these planned reductions in Budget are possible and we are also, and I hope that he would welcome, the substantially similar, in fact increased, capital spending on infrastructure, which is giving the facilities improvement in terms of housing, healthcare, liquid waste, *et cetera*.

**Deputy G.P. Southern:**

Will the Minister please answer the question, which is what sort of savings are these, are they a pay freeze or what?

**The Deputy Bailiff:**

No, I am not going to require the Minister to answer that question. Standing Orders require that question time is on the contents of the statement and at the moment I cannot see anything in the statement that deals with pay freezes or anything else of that kind.

**Senator P.F.C. Ozouf:**

Sir, it is a legitimate question because I refer to it. All it is, is effectively it is a reduction where previously there has been pay estimates ...

**The Deputy Bailiff:**

Senator, sorry, I have ruled the question out of order and it is not for you to respond to that. Deputy Vallois.

**1.1.6 Deputy T.A. Vallois of St. Saviour:**

The Minister mentioned the capital expenditure with regards to the Budget and stated that we have increased the spending and managed to spend. But we were advised that there was £100 million

unspent. Could the Minister explain the exact reasoning behind that and whether we have fulfilled our obligations during the recession in Jersey?

**Senator P.F.C. Ozouf:**

I think the Deputy is referring quite rightly to the carry forward of allocated capital spending, which is, as has been the case for a number of years, about £100 million of allocated but not spent capital. I think there is a case to be looking at the rules about the way we do allocate capital spending but we are in the uncomfortable position... it is a very prudent approach to be allocating all of the money up front for projects that then inevitably, because they take time for planning, for example the Clinique Pinel changes, those were budgeted for and then the project took some time to deliver because of the decanting arrangements and I am sure many Members have seen Clinique Pinel. We have been doing an awful lot to try and accelerate capital spending. That has been one of the key efforts that we have been trying to do following the very successful fiscal stimulus. Some departments find it easier than others. T.T.S. (Transport and Technical Services) can be much more responsive; housing can play their part, but some of the more complicated capital programmes are difficult to deliver and there are also political issues when we have, for example, large allocations for a police station and we ended up with the longer-than-planned arrangements there. I can assure the Deputy, and give her the breakdown if she wishes it to be, capital spending, it is vital that we get on and we do everything we can to unblock where blockages exist. We have better reporting and I want to see capital spent, not sitting in the investment account that the Treasurer is getting a much better investment return on, but I want to see that with shovels in the ground, but we will give a breakdown.

**1.1.7 Deputy R.G. Le Hérissier of St. Saviour:**

I congratulate the Minister but I wonder if the Minister could tell us and confirm the sceptics who say, despite the gloss put upon the Budget, essentially we are in a long-term decline as regards income because of the kind of international pressures we are facing? Could he give his analysis of why he thinks we are not and where does he think that extra income will come from?

**Senator P.F.C. Ozouf:**

I think that I have some long-term planning up in the gallery; I know my niece is up there. Long-term planning is really important and the work that we have been doing on the financial framework and on financial services does, I think, give us real cause for some optimism. The future for financial services, which has really almost been the engine, as many Members would know, not exclusively, we need diversification and I will come on to that in a moment. The financial framework sets out a real hard analysis and change programme for each sector of the financial services industry and we are winning business. We are going to see jobs declining in terms of the never-ending change of technology, jobs of today are going to be in the ether tomorrow and we need to plan for that. We need to be creating jobs faster than we are losing them to technology and we need to reflect the changes that are happening in terms of the necessary compliance on tax. We are making a statement the week after next on our position on aggressive tax avoidance. I am confident, I am in fact more optimistic and, the Chief Minister is not here today, but I hope that the Minister for Economic Development, we are all in agreement that the outlook for financial services is growing. We are getting more 1(1)(k)s here now, a good pipeline of people bringing their businesses, bringing their wealth to Jersey. But it is going to be a different future, more smaller firms - boutique firms - operating in the niche areas, and taking advantage of our fiscal stability, our great trusts law, our good services, and our infrastructure. But we need to be vigilant and we need to do more. Middle East, Africa, opportunities in Europe, changing fund regimes: all of that has its role to play, and the work on the digital economy must continue with even more vigour than before, and that is why the Minister and I are doing a joined-up approach in working out what the digital

strategy should be together with the regulatory strategy and eGovernment, and that is important. Income forecasts, they are not ours, they are our advisers, and they are there and you will get some more information on them.

**The Deputy Bailiff:**

Can I say to Members that the purpose of question time is to ask questions on this statement. It is not an opportunity for a debate on a Budget, which is to come, and it is not an opportunity for questions or any sort of debate upon the general economic situation, let alone the economic situation next year or the year after. It is question time on this statement.

**Deputy M. Tadier:**

Is it possible to ask why certain things have not been included in the statement?

**The Deputy Bailiff:**

Yes, I suppose it is. You could ask almost anything, it appears, Deputy, but that is not the purpose of the question time. Deputy Martin.

**1.1.8 Deputy J.A. Martin of St. Helier:**

The Minister states there was an underspend of millions for a massive capital programme. Can the Minister answer, is there a budget under this to re-skill the local unemployed to work in the construction industry and, if not, how many local licences are they planning to give out?

**Senator P.F.C. Ozouf:**

I had to cut the statement because I could have spent 45 minutes doing some more granular detail on it, so, yes, the Deputy is right that one of the things I refer to in the statement is about the construction sector and getting better value for money. I also refer to back-to-work and I commend the work that the Chief Minister and the Minister for Social Security have been doing in relation to back-to-work, together with the Population Oversight Board, of getting people prepared. We are going to be spending a lot on capital. We are getting good value for capital projects, which is why we need to get on with spending it, as Deputy Vallois quite rightly says, and we need to skill as many of those people that are unemployed to prepare for that capital spending, to reduce in turn the requirement to bring in people, and that work is underway. If the Deputy wants more information on it, we will happily provide it as a joint Ministerial team.

**1.1.9 Deputy J.G. Reed of St. Ouen:**

I would like the Minister to explain how this Budget helps the many small businesses on the Island?

**The Deputy Bailiff:**

Do you mean the Budget or do you mean something in his statement?

**The Deputy of St. Ouen:**

His statement claims it is a balanced Budget that is aimed to develop the economy.

**Senator P.F.C. Ozouf:**

Because it delivers construction projects, over £76 million of construction projects. It keeps the Minister for Economic Development's budget, notwithstanding the fall in revenue. It keeps the Minister for Economic Development's budget, it keeps the Minister for Social Security's budget to help people get back to work and give firms the people that they need to employ and skill them. That is why it is good. It sends a consistent message, we are in a good position, strong balance sheet, we can afford the tax cuts that we have given and we can afford to maintain our Zero/Ten

rate with no signal of an increase in G.S.T. Tough decisions in the future, but that is not unlike other places. That is why it is good for business; it shows confidence.

**1.1.10 Deputy J.H. Young of St. Brelade:**

I congratulate the Minister on his very slick presentation. The statement, paragraph 17, says: “We are continuing to be spending more than we are taking out of the economy.”

[10:15]

Is that coded language that we are now adopting a long-term policy of running on a deficit in view of the declining forecasts, as we heard in your answers earlier of up to £100 million decline? If so, how does that square with balancing the books? Where does the shortfall come? How is he doing it please? Can he tell us?

**Senator P.F.C. Ozouf:**

Those are excellent questions and when the Deputy has a chance to read under section 12 of the Budget report, which underlines this statement, there is the additional analysis provided by the Treasury on the total economic spending. In short, what we are doing is we are funding capital from existing resources. We are taking some of the uplift in the Strategic Reserve and deploying that in order to fund the £22.7 million. So, I have never been against investment spending, what I am absolutely against is long-term structural imbalance of income and expenditure on an annual basis. That is what I look for and that is why it is right to spend some more money because of getting people back to work, investing, we are doing all the improvements in health care, but this is not leaving with a structural position that is a problem for the future. There are certainly challenges in the ageing society, but investing now, bringing forward capital, is the right thing to do and of course the analysis in the Budget shows exactly how that is being funded. There are certainly some good ways that we are funding capital, like the redemption of the Jersey Waterworks preference share; that is the right thing to do. Fiscal Policy Panel said: “Use all levers, all available resources, to get capital spending and infrastructure spending”, and that is what we are doing.

**Deputy J.H. Young:**

Can I ask for clarification of the Minister’s answer? Can he then confirm please, to be specific, that we are not running a structural revenue deficit in this Budget? Can he confirm that specifically?

**Senator P.F.C. Ozouf:**

Over the last period of time, in the recession, we have been running a deficit. The Fiscal Policy Panel was critical that we probably did not spend enough last year and I want to secure and propel economic recovery. I do not want to see any further contraction in the scale and the size of the construction industry. It is appropriate to run deficits if they are funded, not by borrowing, in terms of economic downturn. I look forward to the vigorous debate that we should have with the Fiscal Policy Panel to see whether or not we have this balance right. It is good questions. I cannot really do it justice just in 30 seconds.

**1.1.11 The Connétable of St. Lawrence:**

I was not expecting to be called. The Minister said that he was going to cap mortgage interest tax relief I think at £15,000. Can he tell us how many families may be affected by that?

**Senator P.F.C. Ozouf:**

I do not have the number, I think it is about 250 families out of a total of 8,400 mortgage interest tax relief claimants. Mortgage interest tax relief is a really important tool. It has been very successful in getting people into home ownership. The difficulty is that it has the unintended consequence of allowing people to borrow more and that has been at the heart of the debate in the

U.K. in cooling house prices. We are not at that position now, yet, but if we do see a return to growth we need to signal that we are going to take out some of the distortions of the housing market and this is a first step, it is putting a 5 per cent on the £300,000 cap, nothing more. There is a debate about whether or not we continue mortgage interest tax relief in the longer term. It costs the Treasury about £12 million. Is there a better way of helping people into home ownership than doing that? I think we all want to do more. I want to de-friction the housing market, I want it to work better. I think there are ways of dealing with registry arrangements, a centralised registry that allows, not only transactions in the Royal Court, if I may say, every Friday. There is a whole range of initiatives that need to happen to make a well-functioning property market work better and I hope the Green Paper informs Members about some of the policy options that could be done. It is also not designed to raise more revenue, just raise revenue better.

**1.1.12 Deputy M.R. Higgins of St. Helier:**

I must admit I am pleased to see the conversion of the Minister for Treasury and Resources to Keynesian economics over the last 6 years, especially when he was totally against borrowing and investment and so on, even borrowing for investment and so on, in the past. My question concerns the spending of money on building projects and so on. If we are injecting so much money in the economy, there is a danger, as private sector building projects come on board as well, that the economy will overheat in that particular area. What is the Minister for Treasury and Resources going to do to prevent the excesses of the past and make sure it is a measured increase in demand rather than just a free-for-all, which will be highly inflationary and also would draw additional workers into the Island because we cannot cope with the needs of the construction industry?

**Senator P.F.C. Ozouf:**

I sometimes think that the Minister for Treasury and Resources is in a juxtaposition, I have a Hayek supporter to my right and in front I have Deputy Higgins who is a Keynesian. Keynes was right, you should invest in a downturn, and I have never been against that. I have never been against borrowing for investment and that is what we have been doing. That is what the whole of the policy of the last few years has been. The Deputy is right about overheating in terms of the construction industry. That is what we must be absolutely alert to and we need to be now preparing for the capacity. We have lots of building to do. It is funded, it is financed, it is planned, and we need to make sure that we do not overheat and we put too much demand in the construction industry. I do not think that putting the hospital off is the right decision. We need to prepare for the capacity for that building. We have people out of work. We are going to have to see some limited import of short-term licences I think in the longer term, in discussion with the Property Holdings Department on that issue. This is an important debate and I understand why the Deputy is raising it and that is appropriate to have some proper vigorous debate in advance of the budget debate and of course right the way through next year. We need to plan now for that capital so that we do not see high building costs as we did so many years ago. Building costs are low, they are affordable, but we must not see any more contraction in building and contract suppliers. That will just mean prices go up.

**1.1.13 Deputy S. Power of St. Brelade:**

I think my observation on the Budget based on yesterday's briefing that it was probably more significant for what was not in it than what was in it, but this is my question and it is brief. The Minister for Treasury and Resources has mentioned 4 times how strong our balance sheet is. How long does he think it will last, a strong balance sheet, when we continue to spend more than we are taking out of the economy, which is another way of talking about deficit budgeting?

**Senator P.F.C. Ozouf:**

I think we need to be quite clear. We are setting a very strong rule on the Strategic Reserve. The Strategic Reserve, if Members approve the strategy - if I explain the statement briefly on that - is that we are fixing a capital value of the Strategic Reserve. We are then applying the inflation rate above it and the hospital will only be able to be funded by the amount above that over the planned period. So that is making sure that our balance sheet is being maintained in real terms. Gone are the days when there were calls on the Strategic Reserve every time there was a problem, and some Members of this Assembly said when we needed to put tax increases, they said: "No, do not do tax increases, take the money from the Strategic Reserve." They said: "No, do not do spending cuts, take the money from the Strategic Reserve." This Assembly backed those proposals. We prepared well in the downturn. We have not wasted the recession like lots of other places and that is why we are in a positive position. The investment returns from the Strategic Reserve have been spectacular. That meant Social Security is in a better position, our public sector pension is in a better position. That is a growing balance sheet, not a constraining balance sheet. If I may just point out, we are a jurisdiction with 100 per cent of G.D.P. (gross domestic product) on our balance sheet, most countries have the opposite.

**The Deputy Bailiff:**

That brings the questions on the extended question time to an end. We accordingly now are about to return to the agenda. But, perhaps before I do so, we sometimes are capable of forgetting, I am sure Members do not, but we are an Assembly for the whole of the community and speaking for myself I think it has been delightful to see, not only the past, but the future up in the gallery. **[Approbation]** Including, although I understand he has now gone, a future Greffier who would like to follow after his grandfather. **[Laughter]**

**PUBLIC BUSINESS – resumption**

**2. Maternity leave: rights of employees (P.104/2014) - resumption**

**The Deputy Bailiff:**

We return to P.104, the debate on the maternity leave, rights of employees, and I would ask if any Member wishes to speak. Yes, Deputy Pinel.

**2.1 Deputy S. Pinel:**

Fourteen years have passed since the States first decided that family-friendly legislation should be introduced in Jersey, P.99/2000. New employment protections have perhaps not been introduced as quickly as was expected at that time, but it is important that we do not overcompensate for the passage of time by taking an excessive leap forward. We should follow the tradition of Jersey's employment legislation, which is to lay a minimum foundation of new rights to protect employees, but without being unmanageable for employers, especially in the large percentage of small businesses in Jersey. I have sympathy with the view that we could have gone further, but it is important that the law has a broad base of support and is accepted by businesses across the Island. Given the concerns that employers have expressed about our proposals for an 18-week maternity leave period, with a qualifying period, it seems unlikely that employers would say that they would tolerate 26 maternity weeks' leave with no qualifying period. A forum consulted widely on this issue and decided that a maximum of 18 weeks is the appropriate starting point. We must see it as just that, a starting point to build upon with a 26-week period as the next goal. Using Social Security data, it is estimated that 75 per cent of women had one year's service or more and 55 per cent of women had 2 years' service or more, so the majority of working women would qualify for the additional 10 weeks' leave. To emphasise what the Minister said yesterday, family-friendly legislation is extremely overdue. If Deputy Southern's proposition is agreed the law will have to



return to consultation and redrafting. With a new Government in October, it may not receive the priority it deserves and more years would pass before we had the maternity and paternity protection that we urgently need. I ask Members to reject this proposition.

### **2.1.1 Connétable S.A. Rennard of St. Saviour:**

I will be very brief. I had a lady call me last night and she said: "Please do not vote for this." She said: "I already work for a very small firm where I am the secretary, I answer the phone, I make the teas and I am quite happy and I am allowed to do job-sharing, I can do flexi-hours, and please allow me to make my own arrangements with my employer, and I do not think this is going to help women get or keep women of child-bearing age in the workplace." So I can just say what the lady phoned me about last night. She is just a little bit concerned that if this happens women will not be able to stay in the workplace because men or companies will not employ women because of these restrictions, and now we know that ladies can have children up until the age of 40, 45, it is going to take it even further. So I am just repeating what one of my parishioners has said. Thank you. So I will not be voting for this.

### **2.1.2 Connétable P.J. Rondel of St. John:**

Over the years, I have run a number of what I call small businesses; I think the maximum number of people I employed was 40. Those businesses in fact would not have been able to survive because there is only so much money in the pot in any business and we have seen in particular over the last few years, and I am aware of 4 companies, small businesses that were employing between 8 and 16 people, some with just one or 2, who have gone to the wall because everything has been pared to the bone. To try and put in more legislation that will take money out of a business, we will see more of these small businesses - because the Island is run on small businesses - going out of business and there will be no winners. We have put so much legislation in place over the last 5 to 10 years that it is crippling many companies. I am aware of a small plumbing business that had half a dozen plumbers and the owner, in his middle-40s, decided to call it a day and gave the business to his staff. But at the same time he had to hand out something like £100,000 in equivalent to redundancy money. He walked away after that and then he spent the last couple of years doing part-time work and is just setting up a little business, a one-man band now, when he was giving employment to half a dozen people before. Really, it is all well and good going down the road of ... it is fine possibly for the big finance houses who can pass on their costs within the finance industry, but the Island is run on small businesses and I would ask that the House do not accept any additional legislation in this area. Thank you.

[10:30]

### **2.1.3 Deputy S.Y. Mézec of St. Helier:**

Here we are again debating a basic social democratic principle that people across Europe take for granted, many countries even surpass what Deputy Southern is proposing here. Jersey absolutely must have a Maternity Leave Law, because to not have one in the 21st century is completely unacceptable. But, the Maternity Leave Law we have has got to be fit for purpose and has got to do what it is meant to do. The law that is being proposed by the Government, with a paltry 2 weeks paid leave, does not even come close to achieving what a modern Maternity Leave Law in a rich jurisdiction like Jersey should achieve. When the prospect of this first came up I remember having a conversation with my dad, who had just got back from a business trip to Macedonia. He had been there with the company he works for, setting up a branch over there. Macedonia is a former Communist country that many people probably could not even point to on a map. They have 9 months maternity leave at 100 per cent pay. I have got a list here of other countries and what they have. Norway has got up to 46 weeks. Albania has got a whole year. Bosnia and Herzegovina has got a whole year. Canada has got a year as well. Croatia has got a year. All of these countries go

far further than what Deputy Southern is proposing. Yesterday we had the Minister for Social Security saying that we have got to go slowly, so I looked at the U.K. to see how slowly they went. They first introduced a maternity grant in 1911, over 100 years ago, and there were periodic updates to that law after that. They had their first maternity leave legislation in 1975, which was then expanded by Margaret Thatcher in 1980. Then, finally, in 1993, when I was just a toddler, all working women were covered by maternity leave. That is over 20 years ago the U.K. has had this and I just think, if the Minister wants us to go any slower, we will just be going backwards, frankly. The whole of Europe has Maternity Leave Law. They have much better than 2 weeks in most other cases. Jersey is one of the richest places in the world. We can absolutely afford to do this. There are plenty of safeguards that can be put in for small businesses. Other countries manage and they have not completely collapsed all of their small businesses. It will not be doomsday if we go ahead with this. It is not a financial necessity. It is a political choice and so I ask Members to make the right choice today.

#### **2.1.4 Deputy J.H. Young:**

I have had 5 years managing a small to medium-sized law firm, around 50 people, and I think there are real issues of difficulty regarding medium-sized and small businesses in how they manage the absence of their key female employees during pregnancy. I think it is right that there is a long-term objective of moving towards having a decent period of entitlement to leave. Even if the proposal here, part (a) of this proposition, is without pay, in my reading it is still an objective, but I think there are real concerns about potential unintended effects. For example, it could happen that an employee that has not achieved 26 weeks employment announces they are pregnant and then that results in a dismissal because the employer simply cannot keep that particular job open for them to go back exactly into the same job at the end of the time, because there is a lacuna in the law. We have got that provision in the law, Article 67 of the Employment Law, at the moment, but the Minister has never got round to bringing the Regulations and so anybody bringing an unfair dismissal on grounds of dismissal for family reasons of pregnancy or childbirth who has not got 26 weeks would fail. I think that gap must be corrected, but there is also the situation that even for those that have longer periods of employment trying to guarantee, as the proposition requires, that they can go back in exactly that self-same job, that makes it extraordinarily difficult for managers in those businesses to ensure that they can keep their services going. I certainly know and I have certainly seen how profitability is often pretty marginal these days for small businesses. Yes, this Island has got rich capital, but businesses here have got very high costs. We have a really high cost of living here, which means that wage levels are way over the U.K.'s, and huge regulation, which impacts on them severely. I do not think it is easy at all for small and medium-sized businesses. With great regret, I cannot support (a). I think it is a long-term objective and I am not very content at the moment with what I am seeing in the Minister's law that we are going to debate afterwards, but I will save those remarks for then. On the question of part (b) of this proposition, maternity allowance is obviously going to be Social Security funding. I think if you are going to do that, to have a statutory maternity payment paid by the States, we would be looking at contribution rates into the fund of a U.K. level of something like 12 per cent and so on. We do not have that. That is a choice. If we have lower contribution rates then you are not able to pay those sorts of benefits. I agree that in an ideal world, a Utopian world, we could do this at one go, but I think the right approach is the step-by-step. Whether or not the Minister's proposals go far enough when we get on to that item, doubtful at the moment; so I put the flag up there, but this particular one I do not think I am going to be supporting.

#### **2.1.5 Senator A.J.H. Maclean:**

We heard this morning the statement on the Budget from the Minister for Treasury and Resources. A moment ago we heard Deputy Mézec say that we can afford this. I think it is fairly clear from

the fiscal position that we have challenges ahead. There is £100 million of revenue shortfall over the next 3 years. There is still, as the Minister for Treasury and Resources pointed out, weakness in the labour market - that is clear to Members here - and, as such, the impact of this type of legislation on small and medium-sized businesses is particularly relevant to Jersey. Members, I am sure, are aware that 90 per cent of businesses in Jersey employ 10 or less people. Three-quarters of businesses in Jersey employ 5 or less people, small businesses, and they are the ones ...

**The Deputy Bailiff**

Can you talk while Senator Ferguson finds her place, Senator?

**Senator A.J.H. Maclean:**

Talk of the devil, Sir. [Laughter]

**Senator S.C. Ferguson:**

Unkind, very unkind.

**Senator A.J.H. Maclean:**

I will just invite Senator Ferguson to take her seat and I will proceed. As I was pointing out, the impact, clearly, of legislation of this nature on small and medium-sized businesses, particularly in a jurisdiction like Jersey where there is such a heavy reliance on those types of business, is going to be that much more significant. It is very easy to quote examples from around the world. Deputy Mézec used Macedonia and the generous benefits that are available in that particular state and there are other examples. Sweden: 480 days paid per child, any time up until the child is 8 years old. I can pick up lots of examples on that side. Equally, I could pick out, for example, Swaziland, which may not be Members' best choice, or Papua New Guinea that do not provide, probably not surprisingly, the sort of protection that we in this Assembly and we in this Island would expect. What is surprising, perhaps, is that the United States does not offer maternity leave protection. They have, from an economic point of view, been a powerhouse. I think we need to look into the future. I think we certainly need to be providing the right protection and, indeed, maternity leave is, without doubt, a key element in eliminating discrimination in the workplace. I think Members here would agree with that point. My concern, and it remains my concern and I will talk more about this on the main proposition of the Minister, is about the timing now, as we are hopefully coming out of a recession, but the economy is, without doubt, in a very fragile state. The impact on small businesses: I am concerned about the effect that it would have on those. We have to be in a position, surely, if we want to see a sustained recovery, of encouraging business, of encouraging enterprise, of ensuring that enterprise and businesses and the very heart of our economy, which is small businesses, are incentivised to employ people, to maintain employment and employ new people. Laying more and more and heavy regulation is obviously going to have a detrimental effect. That is why we have seen, in the United Kingdom, the Chancellor in 2011 sweep away a whole raft of regulations from small businesses in particular, recognising the disproportionate impact it has on those types of businesses. We have seen in Germany a good example of, again, liberalising the market; removing regulation; giving businesses in that economy the chance to flourish. From their very difficult position in 2005, the German economy has again returned to being the powerhouse of Europe. How have they done that? They have put the power back into the hands and the incentives to business to drive the growth of their economy, to employ people. That is exactly the sort of lesson that we need to take notice of if we are going to have a long-term and sustained recovery here in Jersey. I would urge Members to consider the timing of this proposal from Deputy Southern, the extent of it. I understand the sentiment behind it and he is right, we do need to consider appropriate rights and protections for employees, but we need to do it at the right time and we need to do it in a proportionate manner so that we do not derail the very

fragile recovery that is coming and drive more unemployment, which is obviously what Members, I am sure, would not want to see.

#### **2.1.6 The Deputy of St. Ouen:**

While our advisers were undertaking a review of the family-friendly legislation we did ask them to briefly look at the amendments that were being brought forward by Deputy Southern and debated today and I think I would just like to make a couple of comments. First of all, it is recognised that ultimately a 26-week period is likely to be brought in. However, I think there is a need to start somewhere and perhaps the most important thing is that there is a going to be a cost to this. The advisers not only questioned the financial matters that Deputy Southern raised but, equally, point out that there is going to be a need for increased Social Security contributions going forward in any event. So we are not just talking about a cost to businesses here. We are talking about an additional cost for every individual of working age, which needs to be properly understood. I think, for that reason, it would be wrong to support Deputy Southern's amendment at this point of time because not only do employees need time to adapt to the introduction of any new legislation, but a detailed analysis needs to be undertaken of maternity rights to identify exactly what the financial implications are and a debate to be had on how they are provided for.

#### **2.1.7 Deputy J.M. Le Bailly of St. Mary:**

If a mother is employed by a large organisation, either private or indeed the States, then this proposition is great. It will have very little effect on that organisation because there will be someone available to fill that absent person's job, as cover needs to be provided to account for holidays and sickness anyway. Alternatively, a temp is brought in.

[10:45]

The concern here is for the small business. They have no one to fill the gap. They will be forced to employ a replacement. That will have to be short-term because that is what will be expected by the person taking maternity leave, as they will want their job available when they decide to return to work. It may be that the replacement is better suited to be the job or even more efficient. Maybe they would want to keep her. Then what does the owner of a small business do? Sack her - then he will be taken to a tribunal for unfair dismissal - or do they dismiss the previous employee? They will probably be taken to the tribunal anyway and also have to pay a redundancy package. The Deputy's proposal is well-meaning, but he has never run a small business. He is not familiar with the implications of this. Many of the Deputy's propositions fall into this category. He constantly complains with regard to zero hours, but fails to understand that many of his proposals and increased legislation have caused zero hours to happen. Small businesses, as an example employing certainly 10 or less people, should not be subjected to all the legislation which, at the moment, applies because it is not practical or affordable. If we were to reduce the legislation we would increase employment. On behalf of all small businesses, I shall not be supporting this proposition.

#### **2.1.8 Deputy R.G. Le Hérisier:**

It is a great pity and, so far, there do not appear to be grounds for compromise because I am going to ask Deputy Southern, as I think was asked yesterday by the Minister for Social Security, why he is running this proposition and why did he not basically seek a major amendment to the Minister for Social Security's proposition. I think that would have led to a better debate because I think, tactically, the result of how this has been sequenced is going to be that his is going to fall dramatically and yet, sadly, it is not going to bring, in my view, the necessary pressure upon the Minister for Social Security to deal with what, quite frankly, are somewhat timid proposals. I do realise he is boxed-in by businesses interests, so eloquently expressed from the depths of St. Mary by the Deputy of St. Mary. There is no doubt that there is a major sticking point, which was

addressed in the Scrutiny Panel's conclusion. Let us go significant parts of the way with small business, but let us see the areas in which we may need to compromise. Now, whether these compromises are temporary ones or whether they are permanent is a big issue, but they would, in my view, have to be temporary while the issues were analysed further. I would have wanted that to happen. Now, I know it brings in the danger of a 2-track approach and it does not suit people like Deputy Mézec who see that there should be an instant, almost absolutist approach to the issue. I would want to see a lot more done. I think we have dragged our feet, but I am really stuck between a rock and a hard place simply because the Deputy has not sought to bring major amendments to the proposition of the Minister. It would be good if there could be further thought. Whether it could move the parties along I do not know, but I would so much have liked the Minister to say: "Look, I am prepared to take a fundamental look at these issues to see whether I can move then along further." I do have this terrible feeling there is going to be a major rejection of Deputy Southern's, but I do not think that will solve the problem of the, quite frankly, timid approach.

#### **2.1.9 Senator P.F. Routier:**

Members will be aware that I was a previous Minister for Social Security and was involved in bringing forward some of the employment legislation that exists today. I know that introducing employment law is a very tricky issue and we need to bring the community along with us because there are certain things which need to be improved for employees, but we also need to recognise that employers are the ones who are providing the jobs. It is not the employees who make the jobs available. It is the businesses and we have to ensure that the environment is right for the businesses. There was a claim - I think from Deputy Le Hérisier - that the Minister for Social Security may have been intimidated by business interests. The forum itself which the Minister has to take regard to is made up of employers and employees and it is a balanced approach that they look at. They look at all the issues regarding employment matters and I believe that they have proved themselves to be of value to our community and to the Minister and also to us as an Assembly. I am unable to support Deputy Southern's proposition because there has been no consultation on this particular matter, in contrast to what the Minister is doing. He has looked at all the fundamental issues. If you look at his proposition very carefully, it covers all the areas in relation to family-friendly working and I would urge Members to reject this proposition and I will be supporting the Minister in what he is doing, which is an improvement in matters of looking after families and their children and others in the way forward, and I hope Members will follow suit.

#### **2.1.10 Deputy G.C.L. Baudains:**

I get concerned with this sort of proposition. It is obviously well-intentioned, but it does seem to me that those leaning towards socialism do not seem to be able to understand the more you impose on employers the more you risk the employee's job. For argument's sake, if this proposition was successful, then no employer would want to employ a woman of child-bearing age. Why would he run the risk of damaging his business? I also ask: why should employers and taxpayers suffer because someone has chosen to have a child? As I said a moment ago, this is a socialist-type agenda and I recall a comment that Winston Churchill once made that capitalism was the unequal sharing of prosperity but socialism was the equal sharing of misery. **[Laughter]** I do not want to go down the road that countries like Greece did by going too far. It is all very well helping people, but there is a limit to how much you can help people before you do more damage than good. I cannot support this.

#### **The Deputy Bailiff:**

Does any other Member wish to speak? Then I call on Deputy Southern to reply.

#### **2.1.11 Deputy G.P. Southern:**

When I read in the paper about the Chamber of Commerce's reaction to the possibility of the introduction of statutory maternity leave, which was that workers could use their holiday pay, I thought I had drifted back from the 21st century into the world of Dickens, but then I realised that in Dickens' time they did not have holiday pay anyway. Listening to the debate today, quite frankly, I think I am in Dickens' world. I have introduced this not as an amendment but as a stand-alone to get a debate on the principles and it appears that what we have got is a defence of the small businessman who could not possibly tolerate women having babies and still wanting to return to work at some stage, and I am very disappointed with the quality of this debate. Now, yesterday Senator Le Gresley said that acceptance of this proposal would mean that everything has to go back to the drawing board, we would have to re-consult over everything and start again and there will be, inevitably, maybe years of delay. I do not believe that for a second. We could accept the principle of 26 weeks. We could accept the principle of, if employers are not going to pay for that, the States should step in and do that and we can afford to do that using the Social Security Fund. Those people - and there were a few - who talked about not being able to afford it have not looked at the Social Security Fund. The Social Security Fund in 2012 received £28 million more contributions than it paid out. It paid out £191 million of which £3.4 million was in maternity benefits. I am proposing to increase that by £1.5 million. It is affordable. The reference that Senator Le Gresley made yesterday to the sad case of Guernsey that cannot afford it is irrelevant because we can. The issue that we need to examine the Social Security Fund anyway and the contributions to it is one that we have to do anyway. With the age of society, with increased pension payments, we need to look at that in a serious light anyway and we are going to. The actuary is going to come in and look at our Social Security Fund and report for 2016, but that is a separate issue. We need to do that anyway and we are going to do it. We could, if we chose, give a clear signal to say: "26 weeks and the States will fund it." Deputy Pinel called this move an excessive leap forward and unmanageable and referred to the fact that most people would be able to claim 18 weeks, but the fact is if it is statutory you have to look at what we are proposing for everyone is an entitlement to only 8 weeks and, as yesterday, I ask you think about just what that means, giving up your contact as a mother with an 8 week-old baby. That is not a recommended process. The Constable of St. Saviour said that the result of introducing maternity leave would be that workers would not employ women, but that is why this is supposed to be introduced with a discrimination law, to prevent that particular way of avoiding. I remind Members, my proposition and Senator Le Gresley's, which comes later, both say that we are imposing minimal costs on the employer. It is the States that will pick up the bill through maternity allowance. Deputy Young, again reluctantly, cannot bring himself to support this and talked about being unable to afford it. I think that is a disappointment. The Minister for Economic Development again put the case for the small and medium enterprises: "Cannot possibly afford this." Small business talks about the masses of red tape. We are the least regulated economy in terms of employment protection probably in the world. Maybe Guernsey competes with us but certainly we have got minimal employment protection in Jersey. To say that that will cause a loss of jobs, as the Deputy of St. Mary was saying, was unbelievable and then he launched into the usual justification for zero-hours contracts as a way to get round what little employment law we have. That is very disappointing to hear. I remind Members that this has been on the agenda for 20 years. Senator Routier received that first consultation back in 2008. Nothing has happened since, though we are 6 years on in this and we are only just now getting around to it. Finally, just referring back to Senator Le Gresley, who said that the J.A.S.S. (Jersey Annual Social Survey) surveys suggested that maternity leave was not a priority for people, he failed to state, I think, that what they talked about in the J.A.S.S. surveys was unpaid maternity leave and is not helpful.

[11:00]

In fact: “What is the main reason that prevents you from returning to work?” Parents said: “I want to raise my children personally.” Presumably that includes the period when they are a baby. That was 4 in 10. That was the major reason why people suggested they would not be returning to work, because they wanted to look after their children. That is the reality. I have been asked whether I can take these propositions in parts. I do not know if they hang together separately or not and whether I can do that. I am perfectly willing to do that if it is possible.

**The Deputy Bailiff:**

They do not necessarily have to be taken together.

**Deputy G.P. Southern:**

So (a) and (b) separately.

**The Deputy Bailiff:**

It is your choice.

**Deputy G.P. Southern:**

Yes, Sir. I maintain the proposition and call for a vote on part (a) and part (b) separately.

**The Deputy Bailiff:**

Also part (c) separately if necessary. Do you call for the appel? The appel is called for. I invite Members to return to their seats. The first vote is on part (a) of the proposition of Deputy Southern of P.104 and I ask the Greffier to open the voting.

<b>POUR: 6</b>		<b>CONTRE: 35</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F. Routier		
Deputy G.P. Southern (H)		Senator P.F.C. Ozouf		
Deputy M. Tadier (B)		Senator S.C. Ferguson		
Deputy M.R. Higgins (H)		Senator A.J.H. Maclean		
Deputy N.B. Le Cornu (H)		Senator B.I. Le Marquand		
Deputy S.Y. Mézec (H)		Senator F. du H. Le Gresley		
		Senator L.J. Farnham		
		Senator P.M. Bailhache		
		Connétable of St. Helier		
		Connétable of Trinity		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Mary		
		Connétable of St. John		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. Saviour		
		Deputy R.C. Duhamel (S)		
		Deputy R.G. Le Hérisier (S)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy G.C.L. Baudains (C)		

	Deputy J.P.G. Baker (H)		
	Deputy J.H. Young (B)		
	Deputy S.J. Pinel (C)		
	Deputy of St. Mary		
	Deputy of St. Martin		
	Deputy R.G. Bryans (H)		
	Deputy R.J. Rondel (H)		

**The Deputy Bailiff:**

We then have the vote on part (b). I ask the Greffier to open the voting.

<b>POUR: 9</b>	<b>CONTRE: 32</b>	<b>ABSTAIN: 0</b>
Senator A. Breckon	Senator P.F. Routier	
Deputy R.C. Duhamel (S)	Senator P.F.C. Ozouf	
Deputy R.G. Le Hérisssier (S)	Senator S.C. Ferguson	
Deputy G.P. Southern (H)	Senator A.J.H. Maclean	
Deputy of Grouville	Senator B.I. Le Marquand	
Deputy M. Tadier (B)	Senator F. du H. Le Gresley	
Deputy M.R. Higgins (H)	Senator L.J. Farnham	
Deputy N.B. Le Cornu (H)	Senator P.M. Bailhache	
Deputy S.Y. Mézec (H)	Connétable of St. Helier	
	Connétable of Trinity	
	Connétable of St. Clement	
	Connétable of St. Peter	
	Connétable of St. Mary	
	Connétable of St. John	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of St. Saviour	
	Deputy of St. Ouen	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	
	Deputy E.J. Noel (L)	
	Deputy T.A. Vallois (S)	
	Deputy A.K.F. Green (H)	
	Deputy G.C.L. Baudains (C)	
	Deputy J.P.G. Baker (H)	
	Deputy J.H. Young (B)	
	Deputy S.J. Pinel (C)	
	Deputy of St. Mary	
	Deputy of St. Martin	
	Deputy R.G. Bryans (H)	
	Deputy R.J. Rondel (H)	

**3. Draft Employment (Amendment No. 8) (Jersey) Law 201- (P.109/2014)**

**The Deputy Bailiff:**

We now come to P.109 - Draft Employment (Amendment No. 8) (Jersey) Law - lodged by the Minister for Social Security and I ask the Greffier to read the citation of the draft.

**The Greffier of the States:**



Draft Employment (Amendment No. 8) (Jersey) Law. A Law to amend further the Employment (Jersey) Law 2003: The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**The Deputy Bailiff:**

Minister, do you wish to propose the principles?

**3.1 Senator F. du H. Le Gresley (The Minister for Social Security):**

I look forward to presenting my very timid proposals. Of all the Employment Law reforms in recent years, for me this is perhaps the most important. This new package of family-friendly rights will make a real difference to employees in Jersey and represents an important step forward in our social policy agenda. It is long overdue. Try telling one of our visitors - a newly-arrived worker - that Jersey has absolutely no provision for maternity leave and watch their reaction. You will see shock and even disbelief that a civilised society does not provide for this very basic right. Wherever you travel in the world you will be in a country that makes more provision for maternity leave than we do. It does not matter whether you are in Scandinavia, Eastern Europe, Africa, South America, Asia or an island in the Pacific. There is only one exception that we have found and that is Guernsey which, as yet, has no right to maternity leave, but they are planning to put that right soon. Therefore, so must we. This is not about trying to keep up with the rest of the world, nor is about placing further burdens on employers in order to introduce new rights for employees. It is more fundamental than that. This law is about the rights of the child. We want to give every child born in Jersey the best possible start in life. This amendment will help us to do just that. For the first time in Jersey the law will guarantee that a woman can take a period of leave following the birth of her child and then return to the same job. It is important not to underestimate the importance of allowing a mother to spend those first few weeks with her child without having to worry about how she will find another job. Those weeks are vital for early bonding, which can make a lifelong difference to the health and welfare of both mother and child and help establish a pattern of breastfeeding that can be so important for the health of the baby, but this is not just about health. It is also about making the most of the talents and skills of the female workforce. Without a clearly-recognised right to take maternity there is a danger that women who are pregnant will be forced to leave work and re-enter the job market at some time later. There is a danger that the talents of new mothers are lost to the workplace. These new rights will support parents in their choices relating to work and family as well as increasing financial independence through the right to return to the same job and the same pay after a period of leave. Members will be aware that I am also proposing some changes to statutory maternity benefit, which will be debated next. This will bring a number of improvements to create a more appropriate package of protection for women, in particular that more women will be able to claim the full 18 weeks of maternity allowance rather than the current average claim of 15.5 weeks. As well as maternity, adoption and parental leave, this amendment introduces 2 other key rights: the right to take paid time off work to attend antenatal appointments and the right to request - and I stress the word "request" - flexible working. Good-quality antenatal care is a vital public health issue and pregnant women must be able to attend the appointments that are recommended by a medical practitioner without worrying that they are putting their job at risk. To be meaningful, this time off has to be paid. This new right amounts to no more than a few hours over the course of the pregnancy. I hope Members will agree that a woman should not be forced to decide whether to sacrifice her pay for either her own health or that of an unborn baby. The right to request flexible working has been very successful in the U.K. and it should have real benefits in helping employees in Jersey to balance their work and family life. Flexible working options can often benefit both the employer and the employee and the process helps both sides to work out a practical solution. Enabling employees to change their working hours to provide caring duties for another adult could also encourage more people to provide

support to family members and friends to assist them in living independently. The right to request flexible working does not necessarily have a cost for employers, but some of these new rights do bring a small cost, but women are already working, having babies and taking time off work. Pregnancy and maternity already bring costs for the employer both in terms of the administration costs of replacing staff, whether temporarily or permanently, and the loss of key skills. I know that some of the business community, as heard in the earlier debate, are worried that this adds to the burden upon them. Much of Employment Law is about proportionality. I believe that these minimum entitlements are appropriate irrespective of the size of the employer. In my view, a small business exemption from these rights is unacceptable, but Members may wish to reconsider this as part of a general review of employment legislation. We know that small employers struggle most with new laws, so we will do everything we can to make sure that all businesses in Jersey are well prepared. Training and guidance will continue to be provided at no cost by the Jersey Advisory and Conciliation Service. Of course, many employers will already have provision for maternity, parental or adoption leave for their employees that meets or exceeds the minimum standards that we are proposing. Even those who do not have any such contractual arrangements will have a full year to prepare. Our Scrutiny Panel presented its report to Members on 11th July and I would like to state on record that I am very grateful to them for completing the process in such a short period of time to enable this debate to proceed today. I was pleased with the positive reaction to my proposals and that the advisers to the Scrutiny Panel felt that the majority of this law change is fit for purpose. The panel's comment sets out a number of recommendations. I took the advice of the Law Officers and the law draftsmen and Members will have seen my detailed comment in response. The Scrutiny Panel may have been disappointed that I was not able to accept any of the suggested amendments except for one small numbering error. However, their expert advisers were very thorough and it gave me the opportunity to reaffirm that my proposals are fit for purpose. As the Scrutiny Panel has noted, changes can be made by Regulation in many aspects of these new rights. It is possible that this might be necessary when we review the amendment in 2016, as I am proposing, or when we prepare the Sex Discrimination Regulations next year. So far we have received 150 responses to the White Paper on sex discrimination and I will consider these carefully preparing law drafting instructions. It is important that the 2 laws come into force on the same date and so I am proposing that this should be 1st September 2015, i.e. next year. I was also pleased to receive the comment from the Minister for Health and Social Services as she recognises that this is an important first step forward and I would agree that our offices should work together to build on this in the future. Today we have an opportunity to provide a strong set of minimum entitlements that supports working parents and facilitates young mothers to return to the workplace. We may still have a long way to go, but this amendment is important and a major step forward and I hope it will find widespread support in this Assembly today and going forward. I propose the principles.

### **The Deputy Bailiff:**

Are the principles seconded? **[Seconded]** Before I open this for debate perhaps I could mention that the Bailiff has expressed the view that, as there has been a debate already on Deputy Southern's proposition, it would be undesirable for the Assembly to debate the maternity parts of that proposition, as it were, again in the context of this debate. Therefore, I would ask Members to bear that in mind when they come to speak. Does any Member wish to speak?

### **3.1.1 The Deputy of St. Ouen:**

First of all, the Minister is right that the Health, Housing and Social Security Scrutiny Panel has undertaken some scrutiny of this particular piece of legislation. Because of the extremely tight timescale and recognising that we did ask the Minister if it was possible to allow us a longer period of time, but unfortunately a decision was taken that this needed to be debated this week, we decided to engage advisers who were experienced in this field, local advisers, and we are extremely grateful

to Ogier Legal for supporting us in considering this particular piece of legislation. The Minister is equally right that, in general, our advisers found that the legislation is fit for purpose, but they did raise a number of issues which they believe should and do require further consideration. The Minister has equally said that, yes, he has provided a response to the panel

[11:15]

Again unfortunately, because time has not allowed, we have not been able to test those comments through the normal process and ask our advisers for their comments on the response. There is quite an element of trust involved in the approach that the panel is taking. We are grateful that the Minister sat down with us and gave us a number of assurances which spelt out the fact that the legislation would be subject to review once a period of a year had passed. That gives some comfort to us and indeed to businesses. However, the issue still arises as to what impact this legislation will have. We fully recognise that family-friendly legislation needs to be introduced. That is a given. The issue is in introducing these rights what impact could it have not only on businesses but people's job opportunities. One of the issues that was brought to our attention was already businesses are feeling the pressure of conforming to new legislation that is being introduced. Equally, our advisers reminded us that Sex Discrimination Regulations are going to be introduced and there is a relationship, either direct or indirect, with this particular family-friendly and the impending Sex Discrimination Regulations that are going to be introduced. Not only are businesses required to deal with the matters that currently face them, but will be required to further address the other issues. It is all very well trying to compare us with other countries, but we have quite a special makeup of businesses on the Island and a lot of them are small businesses. When you look at the bigger picture, we want to encourage economic growth. We want to encourage these businesses to employ more people, but a lot of what is coming back and the comments received from businesses and the business community as a whole, whether it is I.o.D. (Institute of Directors), whether it is Chamber of Commerce and the like, is that some of this legislation could have a negative impact on the ability and encouragement of businesses to employ more people. One other fact that came to our attention was how businesses may choose to deal with the practical implications of this particular legislation. It could be that they seek to utilise agencies to provide the staff because it then allows them, as I understand it, to maybe avoid physically dealing with some of the consequences that would arise if you were employing a permanent member of staff. Now, again, as I say, I do not know whether this is true or false, but if we are on the one hand encouraging businesses to take on staff but then they are required to deal with the consequences, quite rightly so many would argue, we need to be aware that they could look at their practices and adjust them to suit. That may mean that they do not take on so many employees. It may mean that they do not take advantage of the opportunities that are being presented by the Minister for Social Security himself about taking on extra trainees and the like. That is why we do flag-up the fact that specifically small businesses need to be taken care of and I think that is the message that we want to give: taken care of. It is all very well to believe that all the businesses are going to be able to accommodate all of this legislation, but they need help. It is not just a case of handing out a printed piece of paper or putting it on a website. They are going to need help. They are going to need to understand all of the implications and that does take time. I believe that most of the small businesses would and do support the introduction of this legislation, but they are fearful of how they deal with it. They are fearful of the consequences. They are fearful of how it might impact on their business, which will put them off seeking to develop their business, taking on the extra people and the like. Although we fully recognise and in fact the panel absolutely agrees that the legislation is important, there are further considerations that need to be given, as we seek to introduce this legislation, that these small businesses are helped and indeed I put it the other way equally that employees need to be helped to understand the implications to them, because it is a partnership ultimately. Any business relies on their staff to develop their business and any employer will tell

you one of the key aspects of their business, core to the business, is the staff. Those are the messages, I suppose, that I would like to convey from the Scrutiny Panel as a result of the relatively short but I hope focused review that we have undertaken on this matter.

### **3.1.2 Deputy J.P.G. Baker of St. Helier:**

It is a pleasure to follow the Deputy of St. Ouen's very measured and balanced comments, I thought. I have to start by saying that Members should be aware that P.104 and P.109 are much more similar than perhaps they realise in terms of the end result and I would also maybe not take issue, but certainly disagree with the Minister for Social Security's remarks that Jersey and Guernsey are, I think he said, the only 2 places in the world that do not have this type of legislation. I would say that is not correct and I am not sure where he got his advice from. One country that I have been to, funnily enough, is Macedonia. It just so happens that Deputy Mézec said this earlier. I was there for a mere 36 hours and the incentives that the Government is offering there, rightly or wrongly, aside from zero per cent tax are no employment laws and no social security contribution. I am not suggesting that is the answer, but if Members are unsure do not be persuaded that we are completely out of step, because we most certainly are not and the unintended consequences of this are significant. Unemployment now is higher than at any time during my lifetime or probably any of our lifetimes on the Island and this legislation will play a part in exacerbating this stubborn affliction. So I am surprised that there is as much support, if there is much support, for this in the Assembly. Now, there is no rational counterargument to suggest that mothers should, if possible, be available as much as practicable after the birth of their child, but that is a parent's choice. It is a choice I made and it should not be a primary consideration for small businesses. It is something that the parents must take responsibility for and accept the cost and potential loss of income. I am not sure why it has become or indeed should become a taxpayer's direct or indirect responsibility to fund this phase of parenthood. It makes little sense and, looking around the Assembly, those of us that are parents, I am pretty confident unless I have missed anyone out, survived without this statutory support and took our own responsibility for the process. Is it really right that we demand an employer and/or the State in different proportions to increase the already onerous task of these associated requirements? I do have some sympathy to those that put forward the argument that they would struggle to afford to enter parenthood, but it is a very recent phenomena that this should become somebody else's problem and I am afraid I disagree with it. The Assembly rarely shows that it has much understanding of what life is like for smaller employers outside of here - the Deputy of St. Ouen's speech excepted - nor generally do they accept the wider consequences of the social policy that we have introduced. I accept that some larger companies do have the ability to have some of their workforce off work and they can pay them and hold jobs open for them for an extended period, but the idea that a small employer is supposed to hold this position for an extended period and expose themselves to Employment Law issues from day one, with the very real fear of losing everything, is to me a complete nonsense. Frankly, if they can survive for 18 or 26 weeks without that individual then I am afraid, to me, they probably should not have that role in the first place. I did raise this matter before and I was commented on by the then Mr. Mézec, now Deputy Mézec, and he was quite clear that I was talking complete - "twaddle" may be the right word - rubbish. That is a rough translation, I think. I am not sure how much evidence people need to understand the inverse correlation between so-called employee protection and unemployment itself, particularly with small businesses and small enterprises. If Members keep going with this agenda there will come a point - and I would argue that we are already there - that employees work out that more harm is being done to them than good. In fact I am confident that we are already there in terms of awareness. Those that are looking for work, and there are many of them at the moment, know that they have become disadvantaged and viewed as a threat from day one, thereby reducing their chances of finding gainful employment. To me, so-called employee protection is stopping people getting work and there are plenty of examples of what I am talking about. There

was a very good article in the *Financial Times* last Monday, I think, which I read while E.D.D. (Economic Development Department) was in London and I sent a copy of it to the Chief Minister. I am not sure if he read it - I did not hear back - but it was about an Italian fashion house, not something I know anything about, and they had relocated to Germany in order to avoid the onerous employee rights within Italy. This is a company whose roots and loyalty to Italy was unquestioned, but they were forced to take this dramatic step. France and Spain, near neighbours, are 2 further clear examples where employee protection is contributing to an exacerbating problem of unemployment. There was another article that I read, and I cannot remember the publication, that talked about Spain's unemployment statistic. Again, I forget the number. This author was suggesting that 60 per cent of Spain's unemployment at the moment is caused by the onerous labour laws. This is happening here, to a certain extent, along with the very simple and straightforward reality of businesses simply not hiring. That was touched on again earlier. It is not for me to mention names but I think the Minister for Economic Development would agree that we have had meetings and been briefed by well-known businesses, flagship businesses no less, and they are not hiring. It is common knowledge. Unemployment figures, some figures were released recently and again in the Strategic Review Report yesterday, may in theory be lowering at the margins, but this is not the whole picture. In order to be part of that statistic you do not simply need to be jobless. You need to be registered and the Minister for Social Security has rightly made this a tougher process than it used to be, but one of the unintended consequences is that less people are claiming and are registered than are out of work. Now, it is anyone's guess what the real number is but I think the current figure is quoted at around 1,600. I do not think it is unreasonable to suggest there are another 1,000 people out there who are not working. Yes, they may not be a statistic but that is a huge number for a small economy. To me, the best and clearest example of how to deal with it properly and in a balance fashion - because it is about balance - is Germany.

[11:30]

To some lucky Members I have circulated an excellent report the U.K. Government undertook assessing how Germany has managed to do so well in recent years and the answer was clear and it is particularly relevant to us in a number of areas. The clearest and most relevant was the small business exemption. Germany has an option for businesses that employ less than 10 people to be exempt from the need to provide a cause when dismissing an employee. The only reason required is the business owner's judgment. The judgment of the person that is paying the bills and surely this person must be best placed to make this decision. I accept Germany, with a population of 80 million people and an area of around 150,000 square miles does have a different macroeconomic profile than we do, but this exemption at a different level is needed here and I know others have picked up on it. There is nothing hidden. There is nothing untoward. It is all very clear and there is a fair spread of risk. It encourages employment rather than penalising it. For some reason we seem to think employers should soldier on with the wrong employee, and again I cannot follow that. I cannot follow that logic and see how we can condone that sort of damage that is done to businesses, and of course other employees within the organisation. Now I am sure or rather I am hoping that Deputy Le Cornu might come back and lambast me with a Harry Potter-esque speech because his speeches so far have been entertaining. But the fine members of Reform and 2 of them I think have spoken... I know Deputy Tadier's light was on earlier so I am sure he is going to have a pop. But they are reducing the chances of people getting work. That is a fact. If you doubt that, do not speak to them or speak to me because maybe they are biased or maybe I am biased, but go and speak to a coffee shop owner or a hairdresser or someone in the construction industry, a garage, a small business owner. Go and engage positively with them and talk about what it is like employing people. Now perhaps my views and the reality is just not quite as exciting as Reform Jersey's, but this is the reality. Members need to get rid of the perception that has crept in over recent years, and my toes have curled up during many debates in this Assembly, that business

owners are the bad guys. Business owners are not bad guys. They are risk takers and they will risk everything and ultimately they are the only contributors that we have. These are the guys that lie awake at night. They worry about paying bills, not just their bills, but I.T.I.S. (Income Tax Instalment Scheme), Social Security, G.S.T., regular suppliers, bank charges, regulators, insurances, credit cards, whatever. Of course the bills that they pay go on and support other families and other generally smaller businesses. But with the stress and risk can come of course success, which we should applaud, and also inevitably failure. That is the reality of being a business owner or a sole trader. It is hard. It is very hard. The line between success and failure is often very fine. They do not have large draws marked "spare cash". Juggling credit cards, delaying payments, remortgaging your house, risking your home, selling your metaphorical crown jewels is all part of taking this risk, and the people that do it should be commended, they should be supported and helped to grow and contribute. That is something that we used to do here quite well. After I left the Army I ended up on the dole in the U.K. It was not quite where I thought I would be, contrary to my expectation there was not an abundance of jobs for former fine Army officers who were good at jumping out of planes or fighting wars in jungles. It was not a particularly high point in my life. I was out of work, I was on the dole and I needed to get on. I sold all I had left and the last thing I hung on to was my motorbike, but eventually had to sell that. Between juggling the sale of my motorbike I managed to get a credit card and with my dole payments I launched my first business and since then I have enjoyed some success but also some pretty unpleasant failures. That is life. But I therefore consider myself quite well equipped to deliver a real and balanced view of the ups and downs of life as a business owner. The reason I say that is because sadly Jersey is probably no longer a place that I would choose to start and run a business. I say the tipping point has come. I say that as a Jerseyman, and I say it with something of a heavy heart. Entrepreneurs are mobile and they want to be somewhere where the Government recognises efforts, it treats contributors as customers and are pleased that they are there and they offer the understanding and support that they need. This does not need to be some exotic Island in the Pacific, although tempting as it may be, it might be nearer. It might be some parts of the U.K., it might be in Ireland, Germany is already mentioned, it might be America, some parts of Canada, anywhere that ... or any of the countries, I think, that want, that understand and support business. Something that I say we used to do. We used to be pro-enterprise. It is also worth looking at ourselves in context and understanding why we are different, we are not one of the European countries, and why it is harder here than elsewhere. First of all, we are tiny. We are the size of a single farm in some parts of the world. But we are however self-sustaining. We do not get central E.U. (European Union) funding which helped Macedonia fund their - I have forgotten the time - but how they fund their maternity leave because if they have zero per cent tax then it has to come from somewhere. But we have been self-sustaining for, I think, 800 years although I stand to be corrected, and I think that is commendable. In fact, it is remarkable for an Island of just 45 square miles to support 100,000 people in very much a first world way without any external support is, I think, and I stand to be corrected, unsurpassed, which is certainly commendable. So let us stop bashing those that do create the wealthy, those that have created jobs, those that have kept our Treasury coffers full to date, and stop assaulting those that have provided for all of us here. There are, as I mentioned, plenty enough hurdles for anyone to overcome here by having such a small market. But historically people have created jobs and in turn given this Island the high quality of life, and I mean all of us, relatively to enjoy both employers and employees alike. We should be proud of being self-sustaining but this will not continue without some changes. The business model is not bust. Some people say it is bust: I do not think it is bust. But I would agree it is not sustainable. If Jersey, like any business, decides to increase hurdles and their income falls to put prices up, restore revenue in the short term, the market will re-establish itself and volumes will ultimately fall, and the business will then become unsustainable. The only way Jersey can sustain itself, as other Members have mentioned, is to reduce its expenditure and start to grow its top line. Raising taxes further, raising

Social Security, or any further increase in expenditure will not work and it is unsustainable. We need growth and we need to welcome business owners and make it easier for them, as employers, and therefore ultimately for their employees. If you do not believe me, I set you a challenge. Leave this cushy rarefied atmosphere, this bubble, go and deliver something meaningful outside of here. Give up your salary, which I think for 3 years or 4 years next time is effectively set in stone, and go and feel how cold it is out there. Set yourself a goal. Go and say: "I will employ 5 people." Build a business, go and battle Regulation, go and engage positively with the Business Prevention Department - that is many areas of our States. Go and make a difference. This place sometimes is quoted as being a sideshow and I would have to agree. It does kill enterprise and it does not represent what is going on out there. It is also worth considering what our forefathers would say to where we have reached and what they would say to today's proposition P.109. Where would our ship builders, our fishing fleets, the fine cod trade with the U.S. (United States), our farmers, bootleggers I perhaps include in there, the knitwear manufacturers, tourism and more recent financial industry. Would they have enjoyed the success and growth they have had if these type of propositions came in, in a small island. So when P.109 first appeared on the radar it did have a number of discussions with the Minister for Economic Development and we discussed its impact and we were receiving a lot of negative feedback from industry. It was balanced. It was measured but it was undoubtedly negative and we discussed exemptions, which I understand he took to the Council of Ministers. I was not there. He came back saying: "The advice is that it is not human rights compliant." I am afraid I do not buy that because there are a number of examples, Germany being one of them, within the E.U. and elsewhere in the developed world that it works. It is a matter of leadership and of shirking responsibility, I would suggest. Not of the Minister for Economic Development but collectively the Council of Ministers. They must take account of our tiny land mass and our finite resources and they must align these resources with a policy that supports enterprise. The only way I see achieving that is by having a small business exemption, perhaps not 10 like Germany, I would suggest 10 but I accept that that would be somewhat unpalatable, but maybe 5. Work needs to be done on this. If we want to see employment back up near the 100 per cent that we have enjoyed through most of my lifetime, we have to step away from the world, in theory, and show that we are not a sideshow so that we are proud and supportive of our contributors and listen to the business community because there is a lot of well thought-through reasoned feedback. If you decide not to and P.109 is passed, then I would suggest we are further down the path to see more businesses close. The Constable of St. John mentioned 4 or 5 that he knew. This leaves more people out of work, whether they are claiming or registered or a statistic or not, and it sends, most importantly to me, another clear message to local business owners that we are not interested in supporting you. **[Approbation]**

### **3.1.3 Deputy M. Tadier:**

I hope that all those who have spoken in the same vein as Deputy Baker ... I congratulate him on the quality of his speech, it may well be his swansong, I am not sure, but that is not for me to say. I hope that there is a significant number of people who vote against this proposition to show the public out there just how backwards Jersey is and how many reactionaries there are in this Assembly, which does not reflect society, which has 50 per cent of women. Last time I looked at it, it does not have 50 per cent of women in this Assembly and it is no surprise that we get some of these kind of views. I am not going to have a go at Deputy Baker and I think it is important to put a few things on the record because Reform Jersey is being mentioned more and more in this Assembly and not by us, which shows that we must be making some impact and getting under people's skin. For my personal story I have come from a very limited, if you like, business background both where I have worked in the private sector but also had my own company, and I do share some of the frustrations that Deputy Baker says, and it is something that I had to basically leave to come into politics. I did not have the time and the person who I would have liked to have

taken it over, let us say my partner, would not have been locally qualified although she was the best person perhaps to take on that job and run it very successfully because it was not particularly onerous. So that business has gone to the wall. But I do not have a problem with that, this is my calling, is politics. We have seen some false dichotomies I think here. This does not need to be an either/or and to suggest that anyone who is bringing these kind of propositions, whether it is from our 4 members or from the Minister, is some kind of closet Communist. It is quite frankly an over simplification and it is simply not true. What I think we need to do in this Assembly, and what I think it is good that the Minister is bringing this, even though we are critical of it for not going far enough. We need to establish the principle that in our society it is not right to discriminate that women do not choose to have children - it is the way that the world works - and that in a civilised society we have seen that we are surrounded by countries who have this basic legislation in place, is that we need the principle that it must be absolutely right that women, once they have had a child, can take a period off work where they can be close to that child, the very young child, and it also needs to apply to parents so that they can bond because that is good for the mother, it is good for the father, it is good for the child, and ultimately it is good for society. Hopefully we can all agree to that as a principle. The question is then, how do we do that? I do not know if I have already lost Deputy Baker or some of the other hard-line financial libertarians who probably do not want to see any State interference and might even be happy to get rid of Government if we are following the tea party line, but if we can agree to that basic principle that we do need to look after women when they have had children the next question is: who pays for it? If it does have a negative impact on small businesses, which it may, what is the solution? We need to round the square - I am mixing my metaphors there - we need to find a solution if there is an issue. Square the circle, I think, is the usual one. I do not think it is insurmountable so I would like to hear positive news from who is the Assistant Minister for Economic Development. He is basically, apart from taking a couple of potshots at Reform Jersey, been taking potshots at his own department which he has been working for, for the last 3 years. I would say if he thinks that the States of Jersey's economy and all the red tape, *et cetera*, and the Minister and the Council of Ministers have got it so fundamentally wrong what is he doing on the Council of Ministers as an Assistant Minister?

**Deputy J.P.G. Baker:**

Sorry, I am not on the Council of Ministers.

**Deputy M. Tadier:**

No, but he is an Assistant Minister with the Economic Development Department and if he is so fundamentally opposed to the direction Jersey is going in with this, at some point you need to try and make some influence on that. I would hope that we could work with the Deputy's valid concerns, and that is why I took time to go and see the Minister for Social Security and said: "Look, the direction we need to be going in is to provide meaningful leave for women, 26 weeks is what we need, and it needs to be paid leave and it is not fair for small employers to pay that.

[11:45]

You need to come up with a solution in order to fund this from the States." It will mean that you have to do it via the contributions system in the most equitable way possible. So I do not think we are that far away but if you do agree that, the principle there needs to be done. The concern I have got with this, speaking more directly to the proposition before us, is that my concern about the 2 weeks' compulsory leave, which is paid, and then the 6 weeks additional unpaid and then even more if you have been employed for 15 months, is that there will be many women who simply cannot afford to take more than 2 weeks off work even though they will be getting an allowance, possibly, if their contributions are up to date. So I think we are going to see many women going back to work after 2 weeks and the 6 weeks and the 8-week period after that, and 18 weeks simply



will not be used anyway. I think this is not going far enough by any means. I have asked the Minister about why the 15-month service needs to be the period, and I was told that it is because it is 6 months, which is your probation period, plus 9 months, therefore if you become pregnant at the end of the 6 months that is after your probation period. But there is an issue there of course because you can have a shorter gestation period and still have a relatively healthy baby, which can survive, so even if you give birth after 8 months the baby will normally survive and that does question why you need a 15-month period, because a 14-month period in that case would be the correct maths to employ. So I do not know if the Minister can address why he has chosen 15 months. Those are really the only comments but one more is to say that at the end of the day if small businesses do not want to opt into this then that is fine but you could argue that they should not be able to employ anybody who has been given birth to by a woman. That is fundamentally what this is about. All of us, the staff that are employed by these companies, were all born, and they were born and usually given birth to by a woman. **[Aside]** I will not give way, the Senator can speak. That is obviously a self-evident truth. That is how society works. There is a social contract that needs to be entered into and if women said: "If you are not going to look after us, the basic rights, we did not choose to have children, we did not choose this biology, we did not choose the biology" is the society in which any animals have children in order to procreate. It falls to women in order to do that.

**The Connétable of St. Saviour:**

I refuse to be called an animal.

**The Deputy Bailiff:**

I am sure it was not mean in any pejorative way although all of us are of the animal kind.

**Deputy M. Tadier:**

I was not specifically calling the Constable of St. Saviour an animal but we are animals. We are biological beings and if we cannot agree on that basic principle that shows why there is so much confusion and this Island is in such a mess.

**The Deputy Bailiff:**

It is purely a matter of language and definition, Connétable.

**Deputy M. Tadier:**

It is biology, it is basic. So the point is, if women were to go out on strike and say: "We are not going to be providing any more humans for you" we would find very quickly that businesses would go to the wall because there would not be any next generation to perpetuate the economy and the civilisation which we take for granted, so there is a social contract there. I could quite easily say, in the same way as Deputy Baker, why should I be paying taxes for children that are not mine? There are people who use that argument. Why should I be forking out for hospitals, for schools, because if I do have a child I will send them to a private school? I will only have the one child. I will make sure that he or she is very well educated and that they get all the perks in life and I do not want to be spending money on other people's brats. But fortunately that is not how the majority of right-thinking, rational people think. They see not just the economy of it but they see the community of it. That we all have to pay into a pot and it is like a family. Sometimes if you are a family you can be flexible. You realise that you cannot have hard and fast rules. I would say that this is very modest. It is not going far enough. It barely keeps our toe in the water when it comes to the rest of the civilised world. It is something that we absolutely need to do. It does not go far enough but by all means the future Minister - whoever that is - needs to come up with a proper funded solution because this is a social piece of legislation and quite rightly, I am happy to agree with the former speaker, that the burden should not fall on businesses which cannot sustain it. It is something that

should be funded, I suspect, either from direct taxation or from Social Security contributions, which will need to increase in order to pay that, but not increase the majority of those who can most afford to pay it, for the benefit of all society.

#### **3.1.4 Deputy A.E. Pryke of Trinity:**

How do I follow that one? I shall start really with - we are being quite personal here - and take some of the remarks that Deputy Tadier has just said about a woman. As a woman, and there are only 11 of us here, and I think all of us are mothers, and I think it is a privilege to be able to have carried a child, new growth, for 9 months and go through the pains of birth. As a past life of being a midwife I can tell you that every child I have helped bring into this world has been an absolute miracle. Each one is so, so different. I am sorry I digress, but it is something that is so important even though they have been called all the names under the sun for 9 months, when they are born they are a person in their own right, and it is a miracle. So going back to this proposition. Going back to brass tacks. This is about mothers and their children and the fundamental human rights. The proposition from the Minister for Social Security is essential and it is an important first step in securing the health and wellbeing of mums and their babies. There is ample evidence that demonstrates that a child's best start in life comes from the early attachment in parental bonding. I have many times stood here, have spoken about early intervention regarding families. This is it. First and foremost, this is it. There is no doubt that Jersey has lagged behind in international practice on this very important issue. While this proposition goes only so far in setting the minimum level of maternity protection it really is the important first step in providing a better standard on which to build essential support for women, children and our families. I have had many discussions with the Minister for Social Security over this, saying it is not far enough, how we can improve this, whatever. It does not go far enough but it is a first step. It could go further in providing support for mothers to continue to breastfeed for babies once they return to work. It is pure fact that women do need time to recover from birth. I am sure the 11 of us will agree with that. But of equal importance it is a need for women to be able to be supported in establishing breastfeeding as part of the early bonding and attachment for your child. It is well evidenced, and I can go on for ages about the long-term health benefits that are gained by breastfeeding babies. These benefits ultimately reward everybody in terms of creating a healthy island and supporting the long-term economy of Jersey. I did feel very important about this law, that I did issue some comments and I hope people have had time to read that. On page 3 of it I give the economic benefits too of supporting mothers and supporting breastfeeding. I will just read a couple. It strengthens women's attachments to being part of the workforce. It facilitates more access for women to join the workforce. This is just not me saying this, there is a lot of evidence behind that, that shows that. We all need to ensure that the health benefits for women, children and our society as a whole can be considered in balance with the needs of business and Island's economy. I understand that. It is a fine balance. In summary, this proposition is a small but very positive step in the right direction. The Minister for Social Security has given his undertaking that he will do a review of it in a year's time. I very much hope that Health and Social Services will be part of that review so that the wellbeing, the benefit of it, of maternity rights and of the breastfeeding is fed into that review because it is vital. It is early intervention in the right place. I really encourage Members to vote to support this proposition and also to hold the next Minister for Social Security to account that this will be reviewed in a year's time. Thank you.

#### **3.1.5 Senator L.J. Farnham:**

I should not think there are many businesses, large or small, that would disagree with the principles of what the Minister for Social Security is trying to introduce. Where the problem and the concern is, is a fact that a consultation on this sort of thing is now just seen by businesses as a going through the motions exercise because whatever they say is largely ignored. I would say to the Minister for

Social Security, who I have tremendous respect for, I may add, that he has to bring people with him, with these sorts of things. A consultation, in my opinion, and the opinions of business - and I am sure the Minister for Economic Development will have something to say on this a little later in the debate - have been largely ignored. The comments of the Scrutiny Panel have been largely ignored. That is as concerning because businesses should be listened to because this 50 or 60 new or amended Regulations going into the Employment Law, is something that businesses large and small have to get to grips with, especially in the tourism industry and agriculture, all aspects of commerce and the economy that have very small businesses. As well as having to, as Deputy Baker alluded to, worry about running a business and paying the bills and paying the wages you now have to almost become a legal expert to make sure you are on top of all of this because the penalties and the consequences of not can often be just too much for small business. So, yes, of course, I support maternity leave. I think it is probably a bit too early for other types of family friendly regulations, but I do recognise it is not if, it is when. I just do think it is a shame that with all the good intentions of the Minister for Social Security, the work he has done, it is just a shame he has not managed to engage more closely with the business community and bring more people with him on this. It is about the timing, and I think that is slightly out. I am not sure whether I am going to be able to support it. I will listen with interest to the rest of the debate.

### **3.1.6 Deputy G.C.L. Baudains:**

First thing this morning we heard the Minister for Treasury and Resources outlining the processes by which he was going to or hoping to stimulate the economy, obviously supported by the Minister for Economic Development, and I find it somewhat ironic that now we have the Minister for Social Security proposing something which, to some extent, will undo that work. It occurs to me that if we had less regulation and less bureaucracy the cost of living might just be low enough that women with children did not have to go to work. But here we are talking about basically the first few weeks of a child's life and what immediately springs to my mind, what about later on where mother and child are separated when the child goes to a child minder so mother can go to work to make ends meet? What about later on when we have the unfortunate incidence of what is known as latchkey kids. Deputy Baker in his speech referred to his personal experiences. Mine was when my wife and I had children we agreed she would give up her reasonably well-paid job and stay with the children until they went to the primary school and I would work harder to cover that shortfall, and it seems to me it is a pity that that particular attitude appears to be becoming old fashioned. Deputy Tadier complained that this proposition does not go far enough. In my view it goes too far and I shall not be supporting it.

### **3.1.7 Senator A.J.H. Maclean:**

You were very quick off the mark, Sir, I had not pushed my button, but I will speak.

#### **The Deputy Bailiff:**

Well, I certainly was not pushing your button, Senator.

#### **Senator A.J.H. Maclean:**

Glad to hear that. This is in many respects a difficult debate. Difficult because there are, like in many cases, 2 sides to the story.

[12:00]

There is wide agreement around this Assembly that appropriate protection, as I mentioned earlier today, for maternity and other measures that are included in this proposition are, and should be, brought forward. I think I should start my comments by first of all congratulating Senator Le Gresley, who, like Senator Farnham, I have the greatest respect for. I think he has done a splendid job in Social Security during his tenure and we always have good and healthy debates on matters.

He always is prepared to listen, does not always agree, and that is fine. We have a slight convergence of opinion on this particular issue. Not in the thrust, as I hope I have emphasised to Members, but I do believe it is right, it is the appropriate direction to go in, as I mentioned this morning; it is the timing that concerns me most. I do not want to repeat the points I have made about the challenges we face economically in the coming months and next few years, and how employment has been and remains a top focus for the Council of Ministers. As the Chief Minister has said on numerous occasions, it is about jobs, jobs and more jobs. I listened with interest to the radio this morning. There was an interview by the chairman of the Citizens Advice Bureau who was talking about the Budget and the expected proposals. He made a comment. He said: "I hope that there is something in there for small businesses." He went on to explain in his view, and I concur, with the importance of small businesses to not just an economy but a community I have used various statistics this morning about the numbers of small businesses in Jersey. The Chamber of Commerce who have 185 businesses employing 6 or fewer, that is 81 per cent of businesses in Jersey. So it is a significant amount. As I was mentioning, the Citizens Advice Bureau chairman was saying that he was hoping there would be something in the Budget to support that important part of our economy and our community, and indeed there were some measures mentioned by the Minister for Treasury and Resources, which I was pleased to hear about. But on the other hand, we have the legislation before us now, which runs, in many respects, contrary to that particular position because whichever way we like to look at it, regulation and protection on the one hand, which is necessary, does have of course unintended consequences. Those unintended consequences are cost as far as small or medium-size enterprise is concerned or in European terms, a micro business, that is 10 or less people. We can spend some time perhaps debating the exact break as to what a small business is. I think the Chamber of Commerce's balance of 6 or fewer is probably fair in that respect. It was because of that that I felt it was appropriate that there was some consideration given in this legislation to the protection of small businesses. I think it is interesting to note that the States of Jersey, as an employer - one of the largest employers - has, as Members would expect, appropriate rights for employees that maternity leave is awarded and we have to say that most businesses, large businesses, and particularly those that are branches of or their parents are U.K. or international businesses operating in Jersey apply the legislation of their home jurisdiction, and in the case of most of them who come from the U.K. they apply the appropriate U.K. maternity leave and other benefits to their employees here in the Island. So large businesses are already looking after their employees in this way, and indeed the cost for them so to do is much more palatable. They have H.R. (Human Resources) Departments and the necessary support mechanisms to be able to do so, and they act responsibly. I have no doubt that small and medium-sized enterprises in Jersey also, in the majority of cases, act responsibly and it is a comment that the Chamber of Commerce make in their submission to the limited consultation that was undertaken recently. They make the point that they support and actively promote good employment practices, and businesses that are members of that organisation, indeed those small enterprises that are not. I am aware of many that do so on a voluntary basis, but without the imposed cost of a legislative framework. I appreciate, and Members will be aware, that the Minister has gone to great lengths to make the proposition before us as palatable as possible. He did refer, when he stood up, I believe, I do not wish to quote him incorrectly but I think he referred to these proposals as "my timid proposals". Certainly they were not meeting the satisfaction of Deputy Southern, as we noted earlier on. But the Minister has gone to the extent that he can to do that. I note, for example, under "Flexible Working" which is a concern for many businesses, the Minister emphasised that under the legislation it requests - "requests" being the operative word - that businesses consider flexible working for employees in these areas. I think that is a very positive, pragmatic and fair response to make. What I am concerned about is that under these proposals, maternity leave, antenatal care and such like, there is no qualifying period included under any of those, under the proposal before Members here, and I think that in particular, where we are trying to encourage businesses, small

businesses, to take the risk of employing people, and it is a risk. I use the term “risk” simply because 1, 2, 3, 4, 5-man or women businesses are putting their own money on the line in many cases. They want to grow and expand their business but it is their money and their risk in so doing. Consequently added cost on to the business makes it much more difficult for it to be justified and for people to be encouraged to have either the desire to employ, the ability or the willingness, as I have said, to take that particular risk. I think we need to concentrate and focus on doing all we can to provide as much encouragement and as much incentive to the S.M.E. (small and medium enterprises) community. Those small businesses are the ones that we want to see taking on the extra person or 2 and growing, and helping to assist our reduction in the unemployment levels that we have currently got in the Island. I just feel that although the Minister has made it plain and Members will be aware that this particular law will not come into force until September of next year, 2015, in conjunction with the Sex Discrimination legislation which is currently under consultation. The Minister made the point that that gives time for businesses to prepare in the intervening period. The preparation, and indeed the training through J.A.C.S. (Jersey Advisory Conciliation Service) that is offered, I think free of charge, if I remember correctly, is fine, but it is taking, again with small businesses, people away from the front line. In a small business of 2 or 3 people those individuals with the greatest will in the world have not got the same level of time to go through training courses and such like, and the resources to commit to the ongoing maintenance of such a regime. We have seen, and my Assistant Minister referred in his excellent speech earlier about the way in which other jurisdictions have dealt with trying to support S.M.E.s. Germany was a good example. I think it was Deputy Tadier who said: “Well, why has he not done something about it?” In fact, we have had a great deal of dialogue with regard to the cost of doing business in Jersey. It is not just in this respect but in many respects an issue and it is all about the competitiveness of our economy, the need, for example, to recognise that we have largely an export economy and consequently our cost base is absolutely critical for businesses here being competitive on a global basis. Deputy Baker and I therefore have commenced some work within Economic Development looking at the cost of doing business across the piece in Jersey, and that piece of work will be taken ultimately to the Council of Ministers for consideration. But of course, employment legislation is an important element in that and getting the balance right, is the term I use often in this Assembly, is important. I said it at the beginning, I will repeat it again, ensuring that we protect the rights of employees and get the balance right with the cost of the business is something that I think we need to strive very carefully towards. I do not think we always hit that particular balance, and indeed the need for ensuring we have a competitive economy. I was interested in the speech of the Deputy of St. Ouen. Clearly sitting on the Scrutiny Panel, the - I was going to struggle for a moment - the Health, Social Security and Housing Scrutiny Panel, it is a bit of a mouthful, responsible as they are for looking at the social security element and indeed this piece of legislation. I noted with interest the comments that they produced, quite a weighty document, and in fact it is remarkable and they should be commended for producing the comments they have in the time that they had available to review this legislation, because they have only had a relatively short time, and that was a matter that was of some concern to me. Something as important as this that we are considering today should be properly considered, properly scrutinised. The panel clearly have done a good job in the time available and indeed they employed, I think it was Ogier Legal, to look, it appears, at the legal aspects of the legislation. The comments both that the panel have made, articulated by the Deputy earlier on this morning, and indeed the comments that Ogier Legal made as their appointed representative, seem to me to be very similar and they both bring out the point that I have been labouring this morning, and other Members have also laboured, about the potential impact on S.M.E.s and something that needs to be looked at more. The concern I have got is that if we pass the legislation today, okay, we have a year in which to look at it but I am not sure that is necessarily the appropriate way, and I would have liked to have seen the recommendations that the Scrutiny Panel raised to have been adopted. I think it is

disappointing that the Minister for Social Security did not adopt any of the recommendations within this comments document, this report. I think that is regrettable and I do believe a piece of work is required to look at the important area of the impact on small businesses. I will not continue any further. I think the point is made about concerns on economy. I am struggling with this particular proposition. I would like, in many respects, for it to have gone back to Scrutiny for a proper review to have been done of it. I can see from the shaking of the head of the Deputy of St. Ouen that he would not want a hospital pass of that nature. I think that is a regrettable situation in some respects, but I do believe, whatever the outcome today, that a considerable amount of additional work needs to be done, otherwise the unintended consequences are going to be a potentially significant impact on the development of our S.M.E. sector within the Island, within the economy, which is so key to a society within Jersey. Using comparisons between Jersey and the U.K., for example, is not fair and reasonable. The makeup of the economies is entirely different. We need to, if we are going to consider the impact of this type of legislation on a small jurisdiction like Jersey, use comparable jurisdictions to draw conclusions and make sure that the legislation, whatever regulatory legislation we introduce, is appropriate and proportionate to ensure that we can stimulate our economy and ensure long-term sustainable growth and jobs for all the people within our community. My concerns are that this legislation, if it is not amended prior to implementation, will have a very negative effect on the economy and that would be a very regrettable situation.

**Deputy R.J. Rondel of St. Helier:**

The previous speaker said everything I wanted to say, Sir.

**The Deputy Bailiff:**

Well, 3 ticks for that. [Laughter] Senator Routier.

**3.1.8 Senator P.F. Routier:**

The previous speaker did not speak for me. We have heard from many people who are concerned about the effects on small businesses. I, myself, have been in business since I was a young man, 23 years ago as an entrepreneur, and established a business and employed many people during that time.

[12:15]

I understand that businesses have concerns about the introduction of social employment legislation. I fully appreciate that. But when considering what this piece of legislation is attempting to do, and hopefully will do, is that it will protect that real special time when children are born. It is a special time for parents. It is a special time for children. It is time we should cherish and encourage people to spend together. I cannot accept that we should put pressure on families to get back to work in those early times. Perhaps that is the wrong thing for me to say, it is probably unintended for me to say it that way, but certainly it is something we should encourage mothers and fathers and children to be together in those very early days. The Minister for Economic Development talked about getting the balance right, getting the economic balance right. I think we need to get the balance right with regard to social issues. We need to get that balance right to ensure that our children and families are looked after carefully and appropriately in those early days. I will be supporting this measure which the Minister for Social Security is bringing forward because I think this is a time that this Assembly, every one of us, should put its social conscious hat on. The balance needs to be put in favour of families and we should support mothers, fathers and children.

**3.1.9 Deputy S.G. Luce of St. Martin:**

I have 2 words that might get Members' attention. Sunday Trading. That has made you look up if nothing else. [Laughter] One of the reasons I voted against the Minister for Economic Development when he brought the Sunday Trading trial was this. My concern was that it may be

all very well to go back to the *status quo* after 18 months after the Sunday Trading trial, but the small businesses that went out of business during that time would not come back when the *status quo* returned. Do we appreciate the bond between mothers and children in the early days, weeks and months? Absolutely. Do we respect the human rights of those mothers and children and families? Absolutely. Do we know that it gives children the best start in life to have a significant time with both their mothers and their fathers in the early months? Yes, we do. Do we want to protect the special time that the Assistant Chief Minister referred to in his speech just now? Yes, of course we do. But Deputy Baker is absolutely right. We are an island of entrepreneurs. We are an Island that is full of small and medium enterprises, the problem is that this proposed legislation the greater the effect of it is on the smaller business. The smaller your business, the greater the effect this legislation will have. I am not convinced that we have really worked out the best way to deliver what we are really trying to achieve here. Putting small and medium-sized enterprises out of business is not a good start when it comes to saving jobs. Jobs for all of us, jobs for women, and specifically jobs for women who want to return to work after they have had children. I say to the Assistant Chief Minister, when he talks about getting the balance right, that I do not think we have got the balance right here. Just like those Sunday Trading businesses that might go out of business. Once small businesses have gone it is too late to revert to this legislation and say: "We will tweak it" and expect those small businesses to come back because they will not. So I say to the Minister, you have got a year up your sleeve and, in the same vein as the Minister for Economic Development, I would say use that time to go away and have another think and come back with some legislation which can help small businesses to keep employing those people you are seeking to protect.

### **3.1.10 Deputy A.K.F. Green of St. Helier:**

I would like to just take a slightly different perspective. Of course it is about balance, balance of ensuring that people have work, that we have a vibrant economy and that also our workforce is looked after and well protected, but the stance that I would ask Members to look at, when I first took up politics if anyone had said to me about looking after children at a much younger age ... I will get to the point. I used to think that it was vastly important that we took action with children aged 5, 6 and 7 and worked with primary school teachers who could identify the potential, if you like, youth offenders in the future at 5, 6 and 7 until I attended a conference. I think it was a conference organised by the Minister for Health and Social Services but it may have been organised by another department. About 5 years ago I attended a conference called the 3Ds. That convinced me that we need to be taking action to ensure that children are properly supported, properly bonded, not at birth but almost before conception, if you are going to prevent some of the antisocial behaviour of some youngsters. I sat on the Youth Court panel for 6 years. I sat alongside the Magistrate and I know there are other Members in this Assembly that have done the same. I believe that it is no accident that the Youth Court hardly has a sitting these days because of the severe reduction - the good reduction - in Youth Court crime. That is no accident. That is a part of the work that is done by our Honorary Police, by the work that is done by Health and Social Services in creating that bond, that closeness between the parents. This is going to support this still further. There would be some that would argue that the work needs to be started much earlier but I think this is so important, that you need to balance that against the difficulties, and I do understand the difficulties that some small businesses may have. For me, I think it is right to support this and maybe the Minister could have a look at in that year, whether there is anything he can do to support smaller businesses, but that particular time with the child is so important. Okay, my family did not have that. Well, they did, my wife gave up work, but my father, when he first started work only got a week's leave. Was that right or was it wrong? We have changed, we have moved on. We need to move on but we need to move on in a balanced way, but it is for the good of the community as a whole.

## **The Deputy Bailiff**

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

### **3.1.11 Senator F. du H. Le Gresley:**

I think the reaction of those in the main who have spoken was not unexpected by me because we had this debate in the Council of Ministers and we had the Minister for Economic Development and others feeling that this was going too far, affecting small businesses, affecting the economy. And we had the other side of the argument, which we have heard today, particularly from the Minister for Health, that we are not doing enough to establish this bond between a new born child and the parents. So it is an argument that I am sure is played out in homes and in businesses across the Island because these are the issues about bringing in legislation to give basic protection rights to young mothers and workers in general. I am sure back in the 1970s when the U.K. debated these issues the tensions were there as well. We know that businesses are the source of prosperity for the Island and therefore they need to be nurtured and encouraged but I still find it quite amazing that I am standing here trying to justify why we should have statutory maternity leave for young mothers. I find it quite amazing and why I say that, and I am going completely off my speech, but in 1992 when I joined the Citizens Advice Bureau, the Sex Discrimination Working Party, I think they were called - I do not have the exact details in front of me - were looking at the very issues that we are talking about today and they produced this guidance *Maternity Entitlement in Employment: Code of Good Practice* and was brought by Senator Corrie Stein to this Assembly and was approved; Special Committee on Sex Discrimination. That was approved in 1993 so that is 21 years ago. Members are telling me that a code of practice, and if you read this code of practice what I am proposing is not a lot different from this code. It is almost the same: flexible working, time off for antenatal appointments, all these things are in that code. We have survived with a code for 21 years and Members are saying that that is still going to be adequate going forward. I find that quite amazing but I am not immune to the arguments that have been put forward by particularly Deputy Baker and the Minister for Economic Development. What we have here, and it has been mooted, the whole reason for this law change being brought in now is because it is primary law and we all know, we are all Members of the States, we understand what primary law means. It means that it has to be approved by the Privy Council. We enter into a period of new elections, new Ministers being appointed. If this had not been debated today we would not be looking to achieve our target of introducing these rights from September 2015 to coincide with rights to be not discriminated on the grounds of sex or gender. We have made provision in this law change for Regulations to change or adapt various aspects of these law changes, and it is quite acceptable for the new Minister to take cognisance of what people have said today and to work with groups, and I have to stress that the Scrutiny Panel took advice and consulted with a very limited group of organisations, none of which was an employee representative group, and I think that was an omission which unfortunately probably skewed some of the comments in their adviser's report. But it would be up to the next Minister to engage with the Minister for Economic Development, engage with small businesses, but also engage with the Unions as to what is the best way forward if we were to have small business exemption for some of these rights. Personally ... does it really matter what I think, but personally I do not see why small businesses should have an exemption. But if that is the wish of the Assembly, that the new Minister should go away and consult on small business exemption possibly for other aspects of the Employment Law, and I did allude to that in my speech, it may be that there are other things in the Employment Law that could be relaxed slightly but there is time. There is time to do that by Regulation and that may be what Members are telling me, that the basic principles are acceptable but you want small business exemption. So if that is the message I think the law can still be debated today and there is ample time for further review and for small business exemption to be considered. I do not know the outcome of that. It may be the Unions and other groups will be absolutely against it but, as a number of people have said, it is about balance. I think



my proposals, which were based on the Employment Forum recommendations back in 2007 and approved by the then Minister in 2010 - our Chief Minister - they are very moderate; they really are. Two weeks compulsory leave, once you have had a baby, 2 weeks. I find it quite amazing that people should think that women should even have ... I mean do we want women to go back to work the next day? Is that what we are saying? I do not think so. I am going to maintain the proposition because I do think people maybe understand that these are minimum rights and if they really believe that small business exemption should be brought in at the same time, the U.K. tried it for a while but they got rid of it I think about 1994, if they really believe that is the way forward then they need to make it quite clear to the next Minister that that is what needs to be consulted on.

[12:30]

There is time to bring in Regulations to bring in such an exemption. So with that, I am not going to go through everybody's speeches because quite clearly the views have been put out there and I maintain the principles.

**The Deputy of St. Ouen:**

Just as a point of clarification, the Minister made a statement that no employee representatives or organisations were invited to submit comments to the panel. That is untrue. We, because of the short time, undertook a call for evidence, but due to the shortage of time the panel wrote and received responses from the following: the Citizens Advice Bureau, Jersey Chamber of Commerce, J.A.C.S., Jersey Childcare Trust, Jersey Farmers Union, and the Institute of Directors. The panel also wrote to Unite and the Prospect Union but due to the tight timescale and deadline neither felt able to respond. Thank you very much.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. The vote is on the principles of the Draft Employment (Amendment No. 8) (Jersey) Law and I ask the Greffier to open the voting.

<b>POUR: 26</b>		<b>CONTRE: 7</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Senator A.J.H. Maclean		Deputy of St. Martin
Senator A. Breckon		Senator L.J. Farnham		
Senator B.I. Le Marquand		Connétable of St. John		
Senator F.du H. Le Gresley		Deputy S.S.P.A. Power (B)		
Senator P.M. Bailhache		Deputy G.C.L. Baudains (C)		
Connétable of St. Helier		Deputy J.P.G. Baker (H)		
Connétable of St. Clement		Deputy of St. Mary		
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of Trinity				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				

Deputy R.G. Bryans (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mézec (H)				

**The Deputy Bailiff:**

Deputy of St. Ouen, does your panel wish to scrutinise this legislation? Can I just explain that for a second? You clearly filed a detailed report, but you may or may not on your panel have had the opportunity of considering amendments in the timetable, so it is against that context that you are asked whether or not you wish to scrutinise the report.

**The Deputy of St. Ouen (Member, Health, Social Security and Housing Scrutiny Panel):**

Normally, I would consult with my other fellow panel members but I am unable to do so. However, if I draw Members’ attention to the comments on the report, page 3, it clearly says that the panel was able to meet the Minister and has been given assurances that the matters raised within the report by Ogier Legal will be considered. The panel has also been assured that the amendment will be reviewed one year following its introduction to look at the overall impact and any areas that may need to be amended can be done through future Regulations. The panel has also agreed that within its legacy report it will strongly recommend that the next Health, Social Security and Housing Scrutiny Panel follow up on these assurances and ensure that the necessary scrutiny is undertaken given the issues raised by our advisers. **[Laughter]**

**The Deputy Bailiff:**

That is a no?

**The Deputy of St. Ouen:**

That, in short, is no. **[Laughter]**

**The Deputy Bailiff:**

Minister, do you wish to propose the particular Articles of the law? How do you wish to go about this?

**3.2 Senator F. du H. Le Gresley:**

Yes. It could take some time to go through the Articles. I would propose to do Articles 1 to 5, Article 6 on its own because it is the biggest Article and brings in a lot of the new family friendly rights, and then Articles 7 to 14 if that was acceptable.

**The Deputy Bailiff:**

Very well, would you like to propose Articles 1 to 5, please?

**Senator F. du H. Le Gresley:**

Articles 1 to 5 provide the right to request flexible working, protection against detriment, and an unrelated change to the rest day entitlements. Article 1 provides that the relevant law for the purpose of this amendment is the 2003 Employment Law. Article 2 defines what constitutes an uninterrupted rest period for the purpose of the existing right to a weekly rest period. This amendment is not related to family friendly rights, but the opportunity has been taken to clarify the position as recommended by the Employment Forum last year. Article 3 inserts a new part 3A into the Employment Law, which gives employees who have 15 months’ service - and I would stress that - the right to request a change to their hours, times or location of their work in order to allow them to provide care for a child or an adult. The employer must hold a meeting with the employee to discuss the request and then reach a decision within 6 weeks. The employer will have the right

to refuse the request but this must be for a genuine business reason. The law sets out a list of the business reasons that can justify refusal. The law also makes provision for a complaint to the tribunal and appropriate remedies, which are that the tribunal may order the employer to reconsider an application and it may also award compensation of up to 4 weeks' pay. Article 4 amends Article 31 of the Employment Law so that the existing protection against detrimental treatment by the employer is extended in relation to family friendly rights. Article 5 provides that compensation for detriment is limited to 4 weeks' pay. I propose Articles 1 to 5.

### **The Greffier of the States (in the Chair):**

Are the Articles seconded? [**Seconded**] Does any Member wish to speak on any of Articles 1 to 5? All Members in favour of adopting those Articles kindly show? Any against? Those Articles are adopted. Do you wish to propose Article 6 in isolation, Minister?

### **3.3 Senator F. du H. Le Gresley:**

Yes. Article 6 inserts a new part 5A into the Employment Law, which introduces the other new family friendly rights. It is split into separate chapters that provide time off for antenatal appointments, maternity leave, parental leave, adoption leave, and complaints to the tribunal. I will briefly deal with each of the chapters. Chapter 1 provides for the interpretation of part 5A of the law, including the meanings of "expected week of childbirth," "adopter" and "partner." It also allows the States to amend by Regulation any of the definitions and any of the periods specified in this part and to amend this part so that it applies to other people or to other classes of people. Chapter 2 provides that a pregnant woman is entitled to be permitted to take paid time off work during her normal working hours to attend an antenatal appointment. The law provides the method of calculating hourly pay for this purpose. There are a number of conditions, including that the appointment must have been recommended by a medical professional and the employer may request proof of the appointment. Chapter 3 introduces the rights and obligations relating to maternity leave. Firstly, the law provides for compulsory maternity leave. An employee must not be permitted to work for the 2 weeks immediately after childbirth. If the employee would normally have been required to work under her contract of employment during those 2 weeks, the employer must pay her full pay subject to the deductions of any maternity allowance received. All of her other terms and conditions of employment continue during this period of leave. In addition to the 2 weeks' compulsory leave, a woman is entitled to a further period of ordinary maternity leave, so she may take 16 weeks' leave if she has 15 months' service or more, or 6 weeks' leave if she has less than 15 months' service. To be entitled to ordinary maternity leave, the woman must notify her employer of her pregnancy and intention to take leave by the 15th week before the expected week of childbirth unless it is not reasonably practical to do so. She must produce medical evidence of the expected week of childbirth if requested, and she must notify the employer when her ordinary maternity leave period will start. The law sets out some provisions to deal with unplanned situations. However, in the majority of cases, the arrangement of the maternity leave period will be straightforward for the employer and employee. During ordinary maternity leave, a woman is entitled to her normal terms and conditions of employment other than remuneration. She has the right to return to the same job and she may work for an employer on occasional days without bringing the maternity leave to an end. These are known commonly as "keeping in touch days." The new chapter 4 provides a right to adoption leave, and this is essentially equivalent to maternity leave. An employee is entitled to adoption leave if they are the child's adopter, which is defined as a person who has been matched with a child for adoption. Where a couple jointly adopt, either of the adoptive parents may take the leave. The adoptive parent can take either 8 or 18 weeks' leave depending on length of service. There is no period of compulsory paid adoption leave given that there is no requirement for a period of recovery after childbirth. The timescale to give the employer notice of the adoption leave start date is different from maternity leave because an

adoptive parent may find that having waited for years to be matched to the child the placement can happen quickly. Chapter 5 gives employees the right to 2 weeks' unpaid parental leave to care for a child or to support the child's mother or adopter. The 2 weeks' leave may be taken as separate or consecutive weeks and must be taken within 8 weeks of the birth or adoption. To qualify, the employee must either be the father of the child or the civil partner or partner of the child's mother or adopter and must have or expect to have responsibility for the child's upbringing. The employee must give the employer the required notice; in the case of childbirth 15 weeks before expected week of childbirth, and in the case of adoption notice must be given within 7 days of being notified of a match with a child for adoption. Chapter 6 makes provision for employees to bring a complaint to the Employment Tribunal if the employer has contravened any of the new rights. This chapter provides the method for calculating the date from which the 8-week time limit for complaints starts to run. As with other complaints under Employment Law, J.A.C.S. will conciliate and disputes will often be resolved before they reach a full tribunal hearing. If the complaint does reach the tribunal, it may award any amounts that an employee is owed by their employer, such as 2 weeks' pay for compulsory maternity leave, and may also award compensation of up to 4 weeks' pay. That concludes all the rights proposed under Article 6.

**The Greffier of the States (in the Chair):**

Is Article 6 seconded? [**Seconded**] Does any Member wish to speak on Article 6? The Deputy of St. Martin.

**3.3.1 The Deputy of St. Martin:**

I was interested to hear the proposed Regulations about adoption. I noted that the period that a person adopting a child has to give to the employer would be 7 days after they are notified of the adoption. Can the Minister give the Assembly any indication of how short that period might be? Is it not impossible that an employer might only have literally 2 or 3 weeks in order to arrange for that person's replacement?

**3.3.2 The Connétable of St. John:**

I can understand in part having time off because of the parent breastfeeding and everything else, but time off to complain to the tribunal, surely that is an excess. The 18 weeks for adoption, time out, I thought the idea was that it was so that parents or the mother in other areas would get closer to her child and have breastfeeding and the like, but 18 weeks for an adoption, it seems totally out of proportion. Maybe the Minister will be able to answer those 2 areas.

**The Greffier of the States (in the Chair):**

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

**3.3.3 Senator F. du H. Le Gresley:**

Yes, if I may. Adoption, I am told that only 7 adoptions on average take place in Jersey a year, so the likelihood of this affecting many employers is pretty rare, I would suggest. I would also suggest that a person who is planning on adoption would have been planning this for many years due to possibly the inability to have a child and, therefore, they would almost certainly have discussed this with their employer. I doubt very much that this would suddenly occur without the employer being aware of what the intent is of the woman or the man who is their employee. The position is that - and I am not an expert in this area - when the adoption team inform potential parents of a child for adoption, it all happens quite quickly. They are matched fairly quickly and they have to react quickly. That is why unfortunately the 7 days is required, but I firmly believe that any employee would have informed their employer some time in advance that they were on a list and that they were hoping to adopt. As to the Constable of St. John saying 18 weeks, why should they have the same period - bearing in mind, of course, that if they have not been employed

for 15 months it would not be the full 18 weeks - it is felt generally that bonding with a young child who is adopted, whether it is a young child or even a child under school-leaving age, there is a period when the mother or the father needs to spend time with that child because if they attend school there are periods of absence when they are not bonding with that child.

[12:45]

It has been felt - and I hope the Minister for Health and Social Services would support me on this - that the 18 weeks is appropriate for adoption as well as for post-maternity. With that, I maintain Article 6.

**The Connétable of St. John:**

The time off for complaint, please?

**The Greffier of the States (in the Chair):**

Yes, the time off for a complaint to the tribunal?

**Senator F. du H. Le Gresley:**

I did not say that, but obviously if an employee is going to a tribunal then they would need time off work to attend. There is no other time other than attending the hearing.

**The Greffier of the States (in the Chair):**

All those in favour of adopting Article 6 kindly show? The appel is called for on Article 6. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 24</b>		<b>CONTRE: 4</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. John		
Senator A. Breckon		Deputy S.S.P.A. Power (B)		
Senator A.J.H. Maclean		Deputy G.C.L. Baudains (C)		
Senator B.I. Le Marquand		Deputy J.P.G. Baker (H)		
Senator F. du H. Le Gresley				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy S.Y. Mézec (H)				

**The Greffier of the States (in the Chair):**

Minister, do you anticipate Articles 7 to 14 being controversial? Do we need to adjourn or do you wish to try before lunch?

**Senator F. du H. Le Gresley:**

I would love to try before lunch and then we can talk charity after lunch.

**The Greffier of the States (in the Chair):**

Are Members content to take the remaining Articles? Very well, do you want to propose Articles 7 to 14?

**3.4 Senator F. du H. Le Gresley:**

Very briefly, Articles 7 to 14 make provision for automatically unfair dismissal relating to family friendly rights, Regulation-making powers, which I mentioned earlier as being important, provision for the calculation of a week's pay, and a number of unrelated amendments to the Employment Law. If I could just address those very briefly, Article 7 requires an employee with less than 26 weeks' service to give a minimum of one week's notice to their employer when terminating employment. That currently does not apply. Article 8 clarifies that the mean average earnings figure applies for the purposes of calculating a redundancy payment. Article 9 ensures that where an employee has received insolvency benefit following a redundancy situation, their length of service is broken and the employee would not be entitled to a statutory redundancy payment in the future that includes that same period of service. I propose Articles 7 to 14.

**The Greffier of the States (in the Chair):**

Are those Articles seconded? **[Seconded]** Does any Member wish to speak on any of those Articles? Deputy Young.

**3.4.1 Deputy J.H. Young:**

Article 10, I just wanted to highlight the importance of this. The replacement Article 67 - "Automatic unfair dismissal for family reasons" - absolutely right because it is a considerable improvement over the law at the moment. The current Article 67 is effectively in the law but not implemented due to no Regulations. This I think, if the Minister can confirm if I have read it right, puts it right. Can he also confirm that this new Article 67 applies to those who have been employed under 26 weeks? All those rights seem to be very strong. In replying, I could not help noticing at the end of the Scrutiny Report zero-hours contracts are not included in the law and they need to.

**The Greffier of the States (in the Chair):**

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

**3.4.2 Senator F. du H. Le Gresley:**

Deputy Young is absolutely right, this is the Article required to put right what he pointed out before about the ability for women to be dismissed on the grounds of being pregnant. Of course, it has to be matched and that is why we are matching the 2 pieces of legislation with sex discrimination rights at the same time. I did hear him say, and I hope I have this right, that he thought these rights did not apply if you had been employed for less than 26 weeks, but most of these rights are from day one of employment, so he did not have that correct. With that, I maintain Articles 7 to 14.

**The Greffier of the States (in the Chair):**

All those in favour of adopting Articles 7 to 14 kindly show? Any against? They are adopted. Do you propose the draft law in Third Reading, Minister?

**3.5 Senator F. du H. Le Gresley:**

Yes. I will say very little other than to thank Members who have supported this proposition. I am very aware of the comments that have been made about small businesses and I will certainly, if I can leave a legacy for the next Minister, advise them to look into this carefully. With that, I maintain the proposition.

**The Greffier of the States (in the Chair):**

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

**3.5.1 Senator L.J. Farnham:**

For the avoidance of doubt, I do support the introduction of statutory maternity leave but was unable, regrettably, to support this in its current format given the comments of the Scrutiny Panel and the report by Ogier Legal and my perception of the lack of timely consultation with industry. One final point as an observation: I was slightly surprised that given Standing Order 20, paragraph 3, which states a proposition cannot be in the same or substantially the same terms as a proposition which the States have previously debated and voted upon unless 3 months have elapsed, while I understand there was a slight difference ...

**The Greffier of the States (in the Chair):**

That is a point of order, Senator. That refers to a proposition being lodged but no debate has taken place ...

**Senator L.J. Farnham:**

The point I am trying to make, the observation I am making, the principles were identical to P.104. The only difference was 18 and 26 weeks and I do feel that Standing Orders are not applied consistently at times.

**The Greffier of the States (in the Chair):**

I must take issue. The propositions were perfectly correctly ... Standing Order 20 is about lodging a proposition. There had been no debate. Nothing had been rejected when the propositions were lodged. Standing Order 20 cannot apply.

**Senator L.J. Farnham:**

I stand corrected in that case.

**The Greffier of the States (in the Chair):**

If a Member applied to the Bailiff this afternoon to lodge a proposition that is identical to Deputy Southern's, clearly Standing Order 20 would apply. Do you wish to reply, Minister?

**3.5.2 Senator F. du H. Le Gresley:**

Yes, only to say that I understand where Senator Farnham is coming from on consultation. Two things that have happened during my time as Minister is the Chief Officer and myself have quarterly meetings with the Chamber of Commerce, which was something that has not been done before, I believe, so we are in regular discussion with the Chamber in particular. But what we do have, and this has just come to my mind as we get to the end of this debate, is the Employment Forum, of course, is the organisation we have set up by the States to do consultation. The Minister has at any time the right to ask the Forum to consult on any legislation that might be proposed and there is no set agenda for next year for the Employment Forum. This would be the ideal opportunity to ask them to consult on exemptions from certain aspects of the Employment Law for small businesses, so I would suggest that that is exactly what the next Minister should do. With that, I maintain the whole proposition. I would like to thank Members. I would like to thank

particularly the law draftsmen because it has been quite a complicated piece of drafting, particularly the Policy Officer at Social Security who has been working on this for about 3 years. I thank Members.

**The Greffier of the States (in the Chair):**

The appel is called for in Third Reading. If Members are in their seats, the Greffier will open the voting.

<b>POUR: 24</b>		<b>CONTRE: 4</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Connétable of St. John		Deputy of St. Martin
Senator A. Breckon		Deputy S.S.P.A. Power (B)		
Senator B.I. Le Marquand		Deputy G.C.L. Baudains (C)		
Senator F.du H. Le Gresley		Deputy J.P.G. Baker (H)		
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy S.Y. Mézec (H)				

**The Greffier of the States (in the Chair):**

I can just notify Members before the adjournment that as part of the budget measures the Minister for Treasury and Resources has also presented this morning 3 reports, which I understand are in Members’ pigeon holes: R.101 - Property Tax Review: publication of Green Paper; R.102 - Updating Jersey’s Fiscal Framework; and R.103 - Property Rates and the States; and also lodged the Draft Income Tax (Amendment No. 44) (Jersey) Law - P.130.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Greffier of the States (in the Chair):**

Yes, the States will reconvene at 2.15 p.m.

[12:54]

**LUNCHEON ADJOURNMENT**

[14:15]

**The Bailiff:**



Usher, summon more members as we are inquorate. Very well, you had better call the electronic vote please, Greffier. The electronic vote indicates there are 24. We will adjourn for 5 minutes.

**Present:**

Senator P.F. Routier  
Senator A. Breckon  
Senator B.I. Le Marquand  
Senator F. du H. Le Gresley  
Senator P.M. Bailhache  
Connétable of St. Clement  
Connétable of St. Peter  
Connétable of St. Mary  
Connétable of St. Brelade  
Connétable of St. Martin  
Connétable of St. Saviour  
Deputy R.C. Duhamel (S)  
Deputy J.A. Martin (H)  
Deputy J.A.N. Le Fondré (L)  
Deputy S.S.P.A. Power (B)  
Deputy K.C. Lewis (S)  
Deputy M.R. Higgins (H)  
Deputy A.K.F. Green (H)  
Deputy G.C.L. Baudains (C)  
Deputy J.P.G. Baker (H)  
Deputy J.H. Young (B)  
Deputy S.J. Pinel (C)  
Deputy of St. Mary  
Deputy of St. Martin

[14:23]

**The Bailiff:**

It is disappointing, I think, and members of the public would regard it as disappointing if, on an agenda as full as this, Members cannot return sufficiently early after a lunch which is more than one hour in any event. **[Approbation]**

**Senator S.C. Ferguson:**

Yes, we regret it very much, but some of us have had meetings over lunchtime that were arranged a long time before the sitting was arranged.

**Connétable J. Gallichan of St. Mary:**

May I just advise you that the Connétable of Trinity is attending the Royal Court very briefly at 2.30 p.m. and that is the reason for his not being here?

**The Bailiff:**

Very well, thank you. It is a shame we could not count His Excellency as one of the numbers for the quorum, but His Excellency clearly is looking forward to this afternoon because he has returned for this Friday afternoon session. **[Approbation]** I can inform Members that a report has been presented by the Minister for External Relations - Implementation of European Union Legislation: response to the Minister for External Relations.

#### **4. Draft Social Security (Amendment of Law No. 8) (Jersey) Regulations 201-(P.106/2014)**

##### **The Bailiff:**

Very well, we come next to the Draft Social Security (Amendment of Law No. 8) (Jersey) Regulations - Projet 106 - lodged by the Minister for Social Security. I will ask the Greffier to read the citation.

##### **The Deputy Greffier of the States:**

Draft Social Security (Amendment of Law No. 8) (Jersey) Regulations. The States, in pursuance of Article 50(1)(d) and (4) of the Social Security (Jersey) Law 1974, have made the following Regulations.

##### **4.1 Senator F. du H. Le Gresley (The Minister for Social Security):**

This proposition will align the provision of maternity benefit under Social Security Law with the family friendly policies in Employment Law which we have just agreed. There are 4 main changes. At the moment, counting back from their expected due date, women must start their benefit claim 11 to 6 weeks before the baby is due. In practice, many women start their claim much closer to the due date and, as a result, lose benefit entitlement. I am proposing that we change the timeframe for commencing benefit payments to 11 weeks right up to the actual date of birth. Claimants will also be able to attend work for “keeping in touch days”, which we have just talked about, without losing benefit. These Regulations change the way the benefit is calculated so we move from being an 18-week benefit to a benefit which pays for 126 days. In practice operationally, this will make the benefit more flexible to actual events. Finally, claimants whose baby is more than one week late will be able to receive additional benefit irrespective of how long their maternity benefit period has left to run. I propose the principles.

##### **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. Do you wish to propose the Regulations *en bloc*? Although before that I ought to ask any representative of the Health, Social Security and Housing Scrutiny Panel whether they wish it to be referred to their panel. Is any member of that panel here? Right, well, it is too bad, it will not be referred to them. **[Laughter]** I invite Senator Le Gresley to propose the individual Regulations.

##### **4.2 Senator F. du H. Le Gresley:**

Just to give you some crumb of comfort, they did review these in reviewing the family friendly legislation so they have been basically reviewed. I am going to propose them *en bloc*, as you suggested, and just take questions.

##### **The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on either of the 2 Regulations? Very well, all those in favour of adopting Regulations 1 and 2 kindly show? Those against? They are adopted. Do you propose the Regulations in Third Reading, Minister?

##### **4.3 Senator F. du H. Le Gresley:**

Yes.

##### **The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak in Third Reading? The Connétable of St. John.

**4.3.1 The Connétable of St. John:**

I may have misheard a couple of weeks ago, but did I hear the Minister say he had given us all the legislation he was going to give us as Minister for Social Security at that time, and yet we have had some more this morning. Is there any more to come, Minister?

**The Bailiff:**

Are there any other contributions? I invite the Minister to reply.

**4.3.2 Senator F. du H. Le Gresley:**

This Minister does not stop working. **[Laughter]** There may be more to come. I will keep everybody on their toes, but nothing this side of September. Thank you, that is it.

**The Bailiff:**

The appel is called for in relation to the proposal to adopt the Bill in Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 29</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. John		
Senator A. Breckon		Deputy G.C.L. Baudains (C)		
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.J. Rondel (H)				

**5. Draft Charities (Jersey) Law 201- (P.108/2014)**

**The Bailiff:**

Very well, we come next to the Draft Charities (Jersey) Law - Projet 108/2014 - lodged by the Chief Minister. I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Charities (Jersey) Law 201-. A Law to establish a commissioner and register of charities, to impose duties on governors of charities, to regulate use of the term “charity” and for related purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**Senator B.I. Le Marquand:**

This is going to be dealt with by Senator Routier who this afternoon is my Assistant Minister.

**5.1 Senator P.F. Routier (Assistant Minister for Home Affairs - rapporteur):**

It was back in 2008 that this Assembly voted overwhelmingly in favour of a proposition calling for the investigation into the establishment of a Jersey Charities Commission, a proposition that was brought by Deputy Gorst of St. Clement, which echoed the recommendations made by the Jersey Law Commission in 2004.

[14:30]

They repeated that again in 2009. Those recommendations included the development of a Charities Law and the establishment of a charities regulator in order to provide greater protection to our community charities and especially the public that supports them. It has taken time. However, before Members today is the Draft Charities Law, which will be Jersey’s first Charities Law, a law which the Corporate Services Scrutiny Panel - who I would like to thank for all their exceptionally hard work - have called: “An excellent basis for commencing the regulation of the charities sector.” The law will put in place an up-to-date, modern definition of charity, one of which does not include major areas of charitable activity such as sport and health, unlike our existing customary law definition, which dates all the way back to Elizabeth I. The law will set up a public register of charities and establish the Charity Commissioner. The commissioner’s key role will be to determine which organisations should or should not be placed on the register. That is right because the public should have assurance that a commissioner steeped in the knowledge of charities makes these determinations. The new register will provide the public with access to information about the charities they support, whether through financial donations or through volunteering activity. We know through our extensive consultation process and through research conducted in other jurisdictions that transparency is key. People want information about charities to be in the public domain. It builds public trust and confidence in charities, which in turn supports those charities to flourish. The law touches on a diverse and wide-ranging group of organisations, from small unincorporated community groups to household name charities, to private trusts set up by wealthy individuals who wish to support good causes, to charitable trust structures used primarily in the financial services industry. In developing the law, we have had to continually balance the different needs of these very different organisations and in doing so we have had to hold true to what we want to achieve. That is a modern, legal framework that, first and foremost, supports Jersey charities to flourish, but that in doing so supports the growth of the philanthropic wealth management market in Jersey. Wealth management can seem to some like a dirty word when raised in the same sentence as charity, but that is wrong. Philanthropic wealth management, which has been identified as a key growth market, will bring funds to Jersey. It will help support economic growth for the benefit of Islanders and help ensure that more charitable funds are managed here. That potentially benefits local charities. Striking the right balance between the needs of different sectors has been a challenge, but we believe, as do most of our key stakeholders, that we have achieved that through this piece of primary legislation. Registration is voluntary. Small community organisations and financial services structures that do not want to register do not

need to register. They will not be able to call themselves a charity or receive all charitable tax reliefs, but as things currently stand many of them already do not. The register will include 2 key sections, a general section for all public charities that raise funds from the public, and a restricted section for private charities, those who do not raise funds from the public but use their own private money. The general section will allow the public to find out the name of the charity, what it does, who runs it and where they can be contacted. The restricted section will in contrast only include information about what the charity does. It will protect the privacy of those who use their own private money to run their own charity. Charities on the restricted section will, however, be required to pass the charity test, just like those on the general section. They will have to demonstrate to the commissioner that they truly deliver public benefit and should, therefore, receive the benefits of registration. The charity test, which requires an inevitable degree of subjective judgment in relation to public benefit, only applies to those that register. This draft law is a simple piece of primary legislation. It paves the way for secondary legislation in the form of Regulations and Orders and, as stated by the Scrutiny Panel, the devil lies in the detail of the secondary legislation. The consultees have clearly stated and we know it to be true that there is still much work to be done. We must ensure that the secondary legislation continues to strike the right balance. It must protect the concept of charity and safeguard the benefits of registration while at the same time it must not place a disproportionate burden on any organisation. If it were to do so, we would have failed in our aim to support charities in all their forms to flourish. It is also important to recognise that primary law is only intended as phase 1 of a 2-phase project. Once phase 1 has come into effect and the charity registration is under way, we will commence work on phase 2, which will see the introduction of regulatory standards for charities. It is phase 2 that will deal with the issues relating to financial governance, including the provision of annual accounts. Earlier this year when the draft law was issued for consultation, it created a great deal of interest through meetings, stakeholder groups and written consultation responses. It provided feedback and set out some observations. Issues have been addressed either through amendments to the draft law or through a commitment to address in secondary legislation, or even through detailed explanation. Concern was raised about whether the draft law would place an overly onerous burden on small organisations. The draft law has been amended to give the Minister power to lessen the information requirements on small organisations if it is thought necessary to do so in the future. Plus the law clearly states that the commissioner's duties include a responsibility to support the sector and ensure that any burdens placed on it are proportionate. Observations were made about the power being vested in a single commissioner as opposed to a commission. The law proposes the introduction of a multi-eyed tribunal process, which will hear appeals of the commissioner's decisions and also through a requirement for the commissioner and the tribunal to lay an annual report before the States. These changes help ensure transparency while avoiding the disproportionate expense of a multi-person commission. We were asked about the annual cost of administering the law, a cost that will not be passed on to charities but will be borne by the public purse. This is important because our charities make a unique and important contribution to our Island, a contribution that can be measured in lives enhanced, in services delivered and, ultimately, in savings to the public purse. It is vitally important that we invest in this sector, its growth and its governance. We do not hesitate to invest in the private and public sector and we should not hesitate to invest in the voluntary and community sector. They deserve our support. During the consultation, anxieties were expressed about the law defining the duties of charity governors, more commonly called trustees or board members. The draft law has been amended to clarify that governors must simply seek in good faith to ensure that their charity does what they said it will do and acts in accordance with the law. The question is can that be considered an overly onerous requirement for charities that receive public monies in the form of donations and tax relief and, more importantly, receive a tremendous amount of public goodwill. In addition to listening to the issues raised, we have also learnt from lessons of others. As a result, we believe our law provides

greater flexibility. It allows for charity governors to be paid, recognising that our local charities can be expected to make the right decisions for themselves about payments. But if they do, they must declare these payments on the charity register. I believe that this draft law provides us with a strong basis for supporting development of our charitable sector. I know that many other key stakeholders share the same view. The Corporate Services Scrutiny Panel themselves state: "There is no reason why this primary legislation should not be adopted by the States." With that support and that of the voluntary and community sector, together with the finance sector, I wholeheartedly recommend this draft law to Members and make the proposition.

**The Bailiff:**

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

**5.1.1 Deputy M.R. Higgins:**

Like many Members, I have been struggling to read this law at short notice with all the other legislation that we have been going through. There is one area that does and has concerned me for quite some time regarding charities and it is the misuse of what I believe is the name "charity" by corporations. Just glancing at the most recent document, the addendum to the report, P.108/2014 Additional, it refers to a section, testing in relation to the treatment of non-registered entities, and also talking about amendments to the Foundations Law and Trust Law. My concern in the past has been that many firms are charitable trusts and they name a designated charity in their formation documents, but they do not consult with that charity. They may use their name - in the past, it has been things like the British Red Cross or whatever - as a beneficiary under the law, but just before the trust is wound up there is another provision they use which enables them put money anywhere else. So it has been a vehicle that has been misused in the past, giving charitable status to something that really is a phony charity and there was no intention other than to give a very miniscule amount to a charity at the end of it. Can the Minister tell Members what provisions have been incorporated in this law that will prevent that activity happening or are you allowing it to continue but in another guise?

**5.1.2 Deputy J.H. Young:**

I, too, as with Deputy Higgins, have struggled to keep up with the plethora of laws, but I think this is a very important one and I think it should not just be nodded through because it is clearly a long overdue reform. I am conscious of the fact that to me, having some experience in the past of working with charities, it seems we have 2 types in a way: those that are involved in fundraising to raise money and those that run operational or provide services. I know from experience that often those bodies that are running those services pretty well have to run on a shoestring. They are having to make commitments to employ staff, to spend money, without always being totally secure in terms of grant aid or what funds are going to be coming in to pay for it. It is almost a hand-to-mouth existence. I know that where you have unincorporated charities, unincorporated bodies, there is always anxiety, if things were to go wrong in those bodies when you are trying to form committees and bodies that run them, about whether or not the liabilities would be shared out or imposed on all of the individual members jointly and severally, as it were. I know that in the past there were ways of getting round that. I think you could register as a *fidéicomis* or something like that, which gave you some protection. I would like to know, please, from the Minister: does this law change the current situation in any way? Does it improve it? Because I see that there are obligations now of the governing bodies, which I suppose are the committees, of unincorporated bodies and it sets down, quite rightly, a very high standard of governance and duties required of those. I ask: does this law in any way affect that?

[14:45]

Does it improve? Does it provide any safeguards, practical ones, which would help those bodies who find themselves running on a shoestring, not having to be overly anxious about what would be the situation if things were to go wrong. It might be, for example, that they were anticipating a grant and somehow that grant has either not come or it fell short and so on, because that would worry me. Incidentally, I did notice as well, flicking through, on page 10 it says there that an entity cannot be a charity if it permits a States Member to act as a governor of the charity. Does this mean that if any of us as Members privately, in our own private life, would be responsible for excluding that charity? That body could not be a charity because that strikes me ... **[Interruption]**. Thank you. I am being given the answers to it. Those are my points. I think those are the only points I can pick up, but obviously the whole principle of having a proper registration and knowing what is a charity and what is not, right across the piece, whether it is foundations, trusts, unincorporated bodies or whatever, is absolutely right.

### **5.1.3 Deputy S. Power:**

I know we are at the principles stage, but I do seek clarification perhaps from the Senator. In the area of part 5, which is the governors of registered charities, I am not clear. I know we are going to go through the Articles and the parts in some detail, but at this outset could I ask this question? It says on page 14, which is the explanatory part, and the top of page 15 that where a matter is reported, the commissioner, which is the charities commissioner, will determine whether a governor is a fit and proper person to act as a governor or the commissioner may ask the court to determine the matter. The action that the commissioner could take includes refusing registration. My question is: if a charity selects or elects to appoint a trustee or a governor and that candidate has in the past made mistakes or has broken the law in some way but has paid his or her service to the community, how far back does this go? How does a commissioner value judge? Is it a current offence? Are previous offences taken into account and how does it work? Because there are many examples in the U.K. of persons who have served, say, a prison sentence or have done something very bad. They come out afterwards and set up a charity to counsel people against the mistakes they made. So we would need some advice on that as to whether Jersey would allow a person such as that to be a governor or even to set up a charity.

### **5.1.4 The Deputy of St. Ouen:**

As one of the members of the panel that reviewed this particular draft Charities Law, there are a couple of things that certainly impressed us. The first was the way the consultation process was undertaken. We have all been involved and all seen consultation happen in all sorts of different areas, but in particular with regard to the consultation that took place around this draft Charities Law not only was it meaningful consultation but the department that was involved in developing the law was listening. It was very evident from the evidence that was provided by witnesses and the evidence that we saw first-hand that this was not only appreciated but it has ensured that we have a better draft law in front of us today than we would have had if that had not been the case. One of our recommendations is that this particular form of consultation process should be used as a blueprint across all departments because it really did engage with the people and, as I say, the consultation did have meaning because the comments and concerns that were raised were dealt with or at least the issues explained to the individuals that were raising the concerns. We did also say that the Chief Minister must provide further guidance on the definition of charitable purposes prior to the registration period, again because there is still some uncertainty around that. Indeed, the draft law must be widely publicised before it is implemented to encourage all charities to register. Finally, I think the words that the Assistant Minister used in his opening speech were that the devil is in the detail. Because of that, the consultation process cannot be allowed to stop short at this particular stage. It needs to engage and the department needs to continue to engage with the voluntary and community sector and others as they develop the Regulations that will fit under and

sit under this particular matter. Finally, one other area that did seem to come out of our review was the lack of clarity in the law as to what constitutes poverty, education and religion. Again, I accept all of these matters will be dealt with within the development of the Regulations, but these are quite important matters. If we are going to ensure that our local organisations, regardless of what area they come from, can benefit from this law, these matters need to be clarified. On those points, as I say, I am happy to support the draft Charities Law as it stands.

#### **5.1.5 The Connétable of St. John:**

As a former trustee and chairman of a charity, I think this is an excellent first step within the framework that we are going to have to put on at a later time. I was so pleased to hear the Deputy of St. Ouen when he mentioned the review that had been carried out, how helpful everybody was with coming forward to the Scrutiny Panel to assist in putting all this together. The only thing I would say is bringing this forward as one of the last items after a busy schedule like we have had over the last 5 weeks, it is a shame that this could not have been brought forward several months ago or later on after the summer recess when we could probably have given it a lot more time. Because a document like this, which only comes out in the early part of June, along with equivalent documents every day since then and more, you do not get time, even taking it to bed with you and picking it up several times at night, to inwardly digest everything. I sincerely hope the Chief Minister's office at the end of the next 3-year term manage the work that has to come to this Chamber because these types of documents, which are excellent work, more work needs to be done. I will be supporting this but I hope the Chief Minister's Office will pick that up.

#### **Deputy J.A.N. Le Fondré:**

It is not to speak; it is to ask you just to confirm that none of us who are involved in any charitable situations need to make any declaration of interest.

#### **The Bailiff:**

No, I would not have thought so. It is a very indirect interest, is it not? Yes.

#### **Deputy J.A.N. Le Fondré:**

Thank you.

#### **5.1.6 Deputy S. Pinel:**

Thank you, just as well because I am starting as chairman of Brig-y-Don. For some considerable time, I have long been aware, as have other States Members, of the necessity of legislation in the form of a Charities Law. I very much welcome this law for a number of reasons. Firstly, we as an Assembly have a duty to protect the reputation of the Island and the trust of the people we serve. It is a matter of surprise that we do not have effective regulation of the charitable sector in Jersey to protect the volunteers who work in it, to ensure that potential sponsors and donors have confidence that their generous donations are used properly for the propose intended and, above all, there is a system in place to prevent potential abuse or fraud. I would qualify that by saying I am not aware there is any financial abuse in the charitable sector, but without a legal definition of a charity, charitable purpose and public benefit, we do not know. In effect, it would be like buying a car but not having the insurance policy for it, not least for the protection of the public. Instead, perhaps we have relied on the fact that Jersey is a small place. We know what most but not all of these charities do and we know most of them that run them. Any serious concern would be brought to light very quickly by our media, but that is not an efficient insurance policy. Secondly, the charitable sector itself has given its overwhelming support to the law. They, too, recognise that a well-regulated charitable sector will give sponsors and donors greater confidence and is likely to increase donations. The many thousands of volunteers, too, will have greater confidence and perhaps even a greater sense of pride and commitment by operating under this law. The public will



have greater confidence and trust in the organisations they wish to support and we in this Assembly will have promoted and supported our charitable sector in a very significant way as well as having the insurance policy we need. To echo the Deputy of St. Ouen, I would like to pay tribute to the way in which the consultations on the law have been carried out. The officers responsible in the Chief Minister's Department have been assiduous and dedicated in consulting with all interested parties for over a year. They have taken best practice from the U.K. and Scotland, largely from the Scottish model which has been much more successful than the English model, for example, and then tailored it to meet our own Island circumstances and culture. What is most interesting is that they have taken on board those likely to be affected and adapted or changed the law to meet those concerns where it was reasonable to do so. The officers ran endless briefing sessions and should be acknowledged for their ability to reconcile the apparently irreconcilable and for their intellect in making sure we did not end up with a miserable compromise which was not fit for purpose, for example, as designed by a committee. I would also pay tribute to the many individual charitable organisations that have been fully engaged in the consultative process for over a year now. The numbers that attended the briefing sessions would put shame to the paltry numbers we manage to engage in most public briefings or workshops. I believe the overwhelming majority feel their concerns have been listened to and more importantly addressed. The Association of Jersey Charities and the Jersey voluntary and community sector in particular have been extraordinarily supportive and helpful in being a voice of the sector without in any way reducing the ability of individual organisations to express their own views. They have helped find solutions to many of the concerns raised and have been constructive and courteous critical friends. It would also be an appropriate moment to thank the extraordinary number of volunteers who give hundreds of thousands of hours each year to supporting our community through their several hundred charities. Without their selfless work many of the services and support available to our community would simply not be there. We, the States, do not acknowledge this voluntary work often enough or loudly enough. This debate gives us another opportunity to record our huge thanks and congratulations to the thousands of volunteers in our community. **[Approbation]** Thank you. I believe that the consultation process that has taken place over this law has been a model and we should seek to follow it in future consultations and a shining example of how to get it right in contrast with some other fairly recent consultations which seem to be going through the motions with little listening or positive reaction. The key concern over the charitable sector was not the principle of regulation but that regulation should be light touch, appropriate and proportionate to the sector. I believe that concern has been comprehensively addressed in the law. However, as has been mentioned, the devil is in the detail so I fully support the 2-phase approach set out in the law. How can you introduce regulations when you do not even know how many charities there are, how big or small they are, how they raise money or even what they do? Phase 1, defining charitable purpose and public benefit. Setting up a charities register will not only achieve this but will also introduce greater confidence in the public, sponsors and the volunteers themselves. However, the charities have raised concern about what the regulations will look like, how onerous and bureaucratic they may be.

[15:00]

How time consuming and costly they will be and will they drive many organisations into extinction. The Chief Minister has promised full consultation over the Regulations which are some 18 months to 2 years down the road. I believe that is entirely appropriate and hope that consultation follows the excellent model already set for the law. Above all, let us ensure those Regulations are appropriate, proportionate to the charitable sector, perhaps with different thresholds for different size or type of charity and fully supported by the sector. It is interesting that work on this law has, in my view, exposed an anomaly in our financial sector; that is the existence and purpose of the private charitable trusts set up under the Trusts (Jersey) Law 1984 and the

Foundations (Jersey) Law 2009. I understand there are several thousand of these but I have no idea what charitable purpose or public benefit they deliver, if any. I hope that under this law and perhaps by reviewing other relevant laws we will improve transparency in this area too. I will conclude by saying I fully support this law and so do the overwhelming majority of charities affected.

#### **5.1.7 Senator A.J.H. Maclean:**

Just briefly, after that excellent speech from Deputy Pinel, who has covered just about everything that you could imagine needed covering on this. I just wanted to say a couple of things Members may not know because this is the largest ever report produced in a document, it is quite substantial. It is framework law and I think, as the Deputy was pointing out, the Regulations are yet to come. They are, I think she said, 18 months or so down the road. I know from the interactions that I have had that there has been some concern within the sector about the detail and of course the devil is in the detail, as Members will appreciate, and a lot of work will need to be done between now and then to ensure that what is in the Regulations is proportionate. It is essential for a sector that is quite diverse, lots of different sizes of organisations that the approach is light touch and that the Regulations are not too onerous in terms of red tape and bureaucracy, a point that I am always very keen to stress. I am sure that process, based on the way we have got to this particular point, will continue in the same vein as we have seen. I think it is to be congratulated to the Scrutiny Panel the comments made by the Deputy of St. Ouen. It is very encouraging to hear that Scrutiny have engaged with the Chief Minister's Department in the way that they have and the outcome has been so positive. It sounds like, as I think was mentioned, a model that could be used yet again. The one other point, or 2 other points, I would just quickly make, the lottery proceeds which are awarded on an annualised basis to the Association of Jersey Charities, that is a membership organisation, Members may well be aware, but it is not regulated. Obviously under a future law of this nature that will change and will make it a very much more acceptable opportunity for future funding as far as the charitable sector is concerned and I think that is very positive. I would also say that opportunities as far as philanthropic pursuits, an area that was identified by McKinsey when they did their review of financial services opportunities and a matter that was picked up as being a tremendous opportunity for the Island, will also be opened up as a result of this. I think that is a very positive point from the economic perspective. I am very supportive of this framework law and of the work that is now going to be undertaken over the coming 12 to 18 months in order to develop the Regulations and I very much welcome it.

#### **Deputy M.R. Higgins:**

Could I seek clarification from the last speaker? He mentioned at the very end there, I think it was the McKinsey Report, being a very positive opportunity for the Island. Could he elaborate on that? Is this the non ...

#### **The Bailiff:**

Well, I do not think, if I may say so, that is a matter for clarification, it is a matter of asking for further information from the speaker which ...

#### **Deputy M.R. Higgins:**

Well, that may be the case. I will leave it to the Assistant Minister to answer these questions.

#### **5.1.8 Senator S.C. Ferguson:**

I would thank my Vice-Chairman for acknowledging the interest that we had in this particular review and the admiration we had for the way the consultation was run. It made for a very interesting review. Members will know that one of the things I am particularly enthusiastic about are accounts where public money is concerned. Anybody collecting public money should account

for it to the public. Now, in actual fact the officers dealing with the consultation did manage to persuade me that it would be more appropriate at the Regulation stage and therefore I have not brought any amendments about accounts or anything to the law. I would emphasis for those people connected with charities who might either be listening or who were in the Assembly that it need not be an onerous exercise. Basically you can start with an income expenditure statement but it is absolutely essential that there should be accounts when you have members of the public giving you money. One of the good things, I think, about having this register will be, as Deputy Pinel so eloquently said, a knowledge of the sector because one of the things we did come across when I was first elected and worked on the Health Committee for charities was the scope for amalgamations in the sector where you have 2 very similar small charities. Sometimes they have more impact if they amalgamate. The other thing which we were working on which was looking into the scope for shared facilities for charities, which is something that will fall out of the better knowledge of the sector because if you can share an office and your photocopier and things like that you can cut down your running expenses, you can cut down your rent. I know that at one stage Property Holdings were in in fact looking at buildings which would do for such a shared office facility and I hope that Deputy Noel will continue that work. So, yes, I support this law entirely and I look forward to the Regulation.

#### **5.1.9 The Deputy of St. Martin:**

I will be brief. Senator Routier may remember back in 2012 when I went to the Chief Minister's Department to seek a way of increasing income for certain types of charities and his response at the time was: "We have no knowledge of what effect this will have on the Treasury." I stood back at that time and I thank him for keeping me up to date with how this law has progressed because I have been waiting for it for some time. We have many wonderful century-old traditions in Jersey and the top of my list would be the honorary system that we have in our 12 Parishes. It would be my view that it is this system that is the bedrock for the huge number, many thousands of people in Jersey, who do honorary unpaid and charity work, the work that Deputy Pinel referred to so eloquently so I thank the Minister and his team for all this work and I look forward to supporting it.

#### **The Bailiff:**

Does any other Member wish to speak? Then I invite the Assistant Minister to reply.

#### **5.1.10 Senator P.F. Routier:**

I would like to thank all those Members who have been very supportive of what has happened over the period of developing this law. It has been, I have to say, a pleasure to be involved with the officers who have been leading the way and doing a lot of the consultation and I take my hat off to them. They have been absolutely superb. The comments, I will just pick on some of them. Deputy Higgins was interested in the financial vehicles which he was aware of. The law itself does not do away with charitable trusts as such but it does put restrictions on them which will be required to be met. They will not be able to call themselves a charity. If they were wanting to call themselves a charity they would need to register and the type of vehicle, which the Deputy has been describing, it would be unlikely that they would be able to be registered as a charity and be able to operate in that way but certainly as things go along the commissioner will be looking very closely at how those organisations do operate. That will come, obviously, at a later stage with the Regulations. It is something that we are aware of and we need to keep a close eye on. Deputy Young spoke about the support for some charities who may be, perhaps, getting into difficult times and what assistance can be given to them. Part of the commissioner's role is to support charities with their governance and to help to ensure that they are able to operate efficiently. As Senator Ferguson mentioned a few minutes ago, she became aware of when there are charities that could be working together, very similar organisations, there may be opportunities which the commissioner may become aware of

which would help organisations which are getting into any difficulty. It will be a requirement to make an annual return to the commissioner for registered charities and hopefully during that time there will be some dialogue which will help to identify if there is an issue. The other point which Deputy Young spoke about was the States Members' roles. He had picked up that a States Member could not be a governor. What it is; is that if a constitution of an organisation specifically states that there is a States Member as part of that organisation well that bars them from being a charity but it does not stop any States Member from being a governor of any organisation. There are many of us in this Assembly today who are involved with charities and we can continue to do that. That certainly will be the case. Deputy Power was concerned about governors who had, perhaps, past offences. It will be in line with the Rehabilitation of Offenders (Jersey) Act but if an application is made to the commissioner he can look at it closely and make a decision but it will be in line with the current Rehabilitation of Offenders. The Deputy of St. Ouen, I have to say I am very pleased to hear the comments he made and the things he put going forward which we need to consider to ensure that it is widely publicised. The Deputy is quite right that we need to ensure that when the introduction of this comes in it needs to be publicised very carefully. The guidelines, which the commission is going to have to publish about how poverty is looked at and how religion is looked at, it is all guidelines which the commissioner will need to publish. The Constable of St. John, thank you very much for the support of the issue with regard to the workload that comes to this Assembly towards the end of a sitting, it is always very difficult but certainly we felt that it was important to get this done as soon as possible because it has been worked on by so many people as has been identified in the consultation process. We would be letting people down if we had let this slip. The Minister for Economic Development was concerned about there needs to be appropriate Regulation. It must not be onerous and it has got to be light touch. We certainly endorse that. It is certainly something which we want to ensure does come forward when we get to the devil in the detail. The Deputy of St. Martin, I wholeheartedly agree with him about the Parishes. I think, as he says, it is the jewel in our crown of our Island. We need to ensure that people recognise that and use the opportunity to support our island community. Finally, Deputy Pinel, I could not have said it better. Thank you very much for the support. It was an excellent speech. I think this is an opportunity for this Assembly to show our wholehearted support for the voluntary and community sector and I maintain the proposition.

[15:15]

**The Bailiff:**

All those in favour of adopting the principles kindly show. The appel is called for then in relation to the principles. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 36</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier				Senator P.M. Bailhache
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator L.J. Farnham				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				

Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy G.C.L. Baudains (C)				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

**The Bailiff:**

Very well ...

**Senator A.J.H. Maclean:**

Perhaps I might just say at this point that it should lay to rest, hopefully, the misfortune that I had some years ago. **[Laughter]**

**Senator L.J. Farnham:**

Get another part though as a result.

**The Bailiff:**

Senator Ferguson, do you wish this matter referred to your Scrutiny Panel?

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

Well, we have done a report on it so I do not ...

**The Bailiff:**

Very well, so then how do you wish to proceed, Assistant Minister?

**5.2 Senator P.F. Routier:**

Well, with such a resounding vote of confidence I just wonder if I could test the Members wish to...

**The Bailiff:**

Well, propose them *en bloc* but take any questions and of course any Member may ask for any Article to be voted on separately if he or she wishes.

**Senator P.F. Routier:**

I propose them *en bloc*.

**The Bailiff:**

Are they seconded? [**Seconded**] Now, does any Member wish to speak on any of the individual Articles or schedules?

**5.2.1 Deputy M.R. Higgins:**

I am still coming back to my earlier one. In Article 5, the charity test and in 5(1)(b): “In giving effect to those purposes it provides (or in the case of an applicant provides or intends to provide) public benefit in Jersey or elsewhere to a reasonable degree.” It is this phrase “to a reasonable degree” and again it is in relation to the non-registered entities, the extent to which they are obliged to do with charitable purposes. Because again, as I stated earlier, the abuse was the fact that these charitable trusts never had any intention of doing any charitable business whatsoever because they always had a provision which enabled the beneficiary to be changed at the end. Very often these organisations, right at the very end, had it been the British Red Cross, for example as a charity, suddenly was changed and they may have got a few pounds, they may have got nothing, but the money went elsewhere. I want to know, this term “to a reasonable degree” what it means. If the Assistant Minister cannot answer the question perhaps the Solicitor General will.

**5.2.2 Deputy S. Power:**

I go back to part 5, governors of registered charities, and I draw the Assistant Minister’s attention to Part 19(1)(f): “If an individual has a conviction, whether or not spent.” I am not quite sure ... “For an offence under this law.” I presume that this is the new law rather than any other law. Can the Assistant Minister confirm that somebody who has spent convictions, serious or otherwise, under what he referred to earlier as rehabilitation of offenders, can he just give an assurance to me that that person could not be excluded or precluded from being a governor of a charity having spent or having served that conviction? I just want to be absolutely certain.

**The Bailiff:**

Does any other Member wish to speak? Then I invite the Assistant Minister to reply unless you would like to hear from the Solicitor General first, Assistant Minister?

**Senator P.F. Routier:**

I think the Solicitor General might be able to answer it better than I can.

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

There are 2 questions I believe. The first question relates to Article 5. If I invite Members to look at 5(1)(a) one can see that an entity is only going to pass the charitable test if all of its purposes are charitable purposes. So the answer to Deputy Higgins’ question in my view is, if there is some sort of device which means that there is some purpose that is not charitable then the simple reality is it will not be an entity that can register for the purpose of this law. So I hope that is helpful. Deputy Power’s point about Article 19. The position is that if a person has a conviction, even a spent conviction, that is relevant in determining whether or not that person is fit to be a governor within the purposes of this law and for my part one sees that in other areas of law where the person is going to be in a position of trust. To give a very simple example, one sees it in curatorship applications, if the person has a conviction - even a spent conviction - that may be relevant to deciding whether or not that person should become a curator and put in a position of trust but it all turns on the facts of each case.

**Deputy M.R. Higgins:**

Can I just follow up slightly? Could the Solicitor General also explain to us the meaning of the phrase “to a reasonable degree”? I always find words like that “to a reasonable degree”, so woolly and vague, almost deliberately vague. In the context of 5(1)(b), will he explain what it actually means “to a reasonable degree”?

**The Solicitor General:**

The Deputy might not like this answer but I was going to suggest giving it its ordinary meaning. The purpose of that, as I read it, is that there has to be some public benefit, either in Jersey or elsewhere to a reasonable degree, i.e. not some *de minimus* effect to a handful of individuals perhaps but literally to a reasonable degree and I would just give it its ordinary meaning.

**Deputy J.A.N. Le Fondré:**

Can I just seek a further point from the Solicitor General? I was just really trying to follow up on the question, I think, from Deputy Power which, if I have got it right, was 19(1)(f) about conviction and offence under this law. The fact this is a new law; presumably if somebody who may have been involved in a charity now but may have had some past history, I shall put it that way round, from some other law does that mean they can carry on?

**The Solicitor General:**

What this law means is that that person, assuming their entity is registered, that means their position would no doubt be considered and it may be they can carry on but that would really depend on the facts of the case.

**The Bailiff:**

Very well, do you wish reply then, Minister?

**5.2.3 Senator P.F. Routier:**

No, I am satisfied with the Solicitor General’s answer [**Laughter**] and I maintain the Articles and the schedules.

**The Bailiff:**

All those in favour of adopting the Articles and the schedules kindly show. Those against. They are adopted. Do you propose the Bill in Third Reading?

**5.3 Senator P.F. Routier:**

I do.

**The Bailiff:**

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

**5.3.1 Deputy M.R. Higgins:**

I forgot something earlier, what I was going to ask the Minister. It mentions in the addendum to the report on page 3, and I think the Assistant Minister may have mentioned it also, that the existing Jersey Trust and Foundation laws stay in place. The Assistant Minister mentioned they were aware of this particular type of activity I was describing and that steps will be taken to deal with it. Could I ask the Assistant Minister if they have started any work on that and what timescale they expect that to take place because it does seem to be that if the abuse exists at the moment, it may not exist under the new law, but it is not acceptable to allow the abuse to continue under the existing 2 laws and Jersey customary law. So could the Minister tell us when we can expect proposals to bring those in line as well?

**5.3.2 Senator F. du H. Le Gresley:**

I listened very carefully to what Deputy Pinel said in her very good speech and she used the words: “It is important to ensure that donor money is used for the purpose intended”, and I could not emphasise how much that is important to the public. I have to say, and I have voiced this opinion before to the Chief Minister’s office, that the delay in production of annual accounts for public inspection, which comes in phase 2, in my opinion is unfortunate because I do think that is the test of public benefit. People do need to know that the money they donate, and in some cases money they could probably ill-afford, is used for the purposes intended. I see the Scrutiny Panel in their recommendations also believe that in maintaining public trust and confidence the Chief Minister must ensure that accounting requirements for all charities are introduced during phase 2. We congratulate quite rightly the Chief Minister’s office and the staff there for bringing this legislation today but we will still not have a proper check on charities operating in this Island until phase 2 comes in. I recall, and I look across to Deputy Green because he seconded a proposition, that I brought to the Association of Jersey Charities some 10 years ago at their annual general meeting that at least the members of that association should agree to publish their accounts on the association website and I was heavily defeated. I was surprised because I would have thought member charities would have been only too willing to publish their accounts. So that reluctance has given me an air of suspicion, shall we say, as to why charities in Jersey do not see the need to publish their accounts. I hope that phase 2 will come in relatively quickly and that once we have a register that the public will be able to check how the money is spent.

**The Bailiff:**

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

**5.3.3 Senator P.F. Routier:**

Deputy Higgins used the word “abuse” in his description of these financial services vehicles. I cannot endorse the use of that word because we do not know if that is the case. Certainly those vehicles do exist and we know that perhaps they have been giving minimal donations to philanthropic purposes but it is not an abuse because it is vehicles which can be used at the present time. I am not saying that I endorse that but I am just saying it is a possibility for these structures to be there and currently they are able to utilise those vehicles. Obviously the development of philanthropic vehicles in the future will be a matter for the Economic Development Department and the Treasury Department to bring these sort of laws in to place to ensure that the right sort of vehicles are there. So I hope that covers off that issue. Senator Le Gresley, I appreciate the comments he made about the need for accounts. We know that the majority of organisations do have accounts but there are some that do not and we need to encourage them eventually to have those accounts and they should be publicly available. Specifically if they are collecting money from the general public the public needs to know that the money is being used appropriately. So there is no reticence on my part to progress this along but we need to know the size and the makeup of the voluntary organisation around the Island and that is what we are doing in this first phase and hopefully we will get to a stage where we can give assurance to the public that everything is in order with regard to charitable organisations. I would just like to finish by a very big thank you to the Assistant Director for Social Policy in the Chief Minister’s Department who has been absolutely fantastic in leading a lot of the consultations and I thank her. Also I would to thank the voluntary and community sector generally because they have been very encouraging in bringing this forward and I maintain the proposition.

**The Greffier of the States (in the Chair):**

All those in favour of adopting the law in Third Reading kindly show. The appel is called for in Third Reading. Members are in their seats. I will ask the Greffier to open the voting.

<b>POUR: 37</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
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Senator P.F. Routier				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy G.C.L. Baudains (C)				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

## **6. Draft Criminal Justice (Life Sentences) (Jersey) Law 201- (P.113/2014)**

### **The Greffier of the States (in the Chair):**

We come now the Draft Criminal Justice (Life Sentences) (Jersey) Law 201- lodged by the Chief Minister. I will ask the Greffier to read the citation.

[15:30]

### **The Deputy Greffier of the States:**

Draft Criminal Justice (Life Sentences) (Jersey) Law 201-. A Law to make provision for a minimum period of imprisonment to be ordered by a court when a person is sentenced to life imprisonment and for review of such a person's detention and release from prison on licence. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**The Greffier of the States (in the Chair):**

Deputy Chief Minister, I understand you are presenting this item. If the debate is to proceed today, I understand you need to ask the States to reduce the lodging period for the amendment that was lodged last week. Do you wish to make that application?

**6.1 Senator B.I. Le Marquand (Assistant Chief Minister - rapporteur):**

I do indeed. I do need to do that because if the States decide otherwise then it would have to go back to a later agenda. My colleague, the Chief Minister, discovered some points; that there was one Article and frankly there are some words there which do not make any sense, it is simply a typographical error. Also there is an ambiguity in another Article and it was necessary to seek to amend that second Article simply so that it was clear that in relation to cases of life sentences provided that the person had not been sentenced before the law came into effect that the law would apply. These are both very minor amendments and part of the process. I think the public interest test was simply the public interest in us getting through the public business. I cannot say that there is a massive urgency in the matter as between now and a September date but nevertheless it is desirable in my view that we get through the business and I ask Members to agree to a reduction of the lodging period simply for the amendment. The proposition is within time.

**The Greffier of the States (in the Chair):**

Is that proposition seconded? **[Seconded]** Does any Member wish to say anything on that position? All those in favour of allowing the lodging period to be reduced kindly show. Any against? Very well, the amendment will be taken today. Deputy Chief Minister, do you propose the principles of the draft?

**Senator B.I. Le Marquand:**

I do indeed. This is a law which one hopes will never be needed but one knows sadly it will be needed. It deals with cases in which there are either what are called mandatory life sentences, that is in the case of murder, or a life sentence otherwise imposed by a court. The history of the law and judicial decisions and decisions of the European Court of Human Rights are set out in the report and this can be summarised as follows, that where there is either a mandatory life sentence - that is for murder; or a discretionary life sentence - that would be mainly for manslaughter but sometimes for other very serious offences - the sentencing courts should set a minimum period of the sentence to be served and secondly that there should be a system in place for consideration of the release of such a prisoner on licence. Although the 2005 Law provided for the first part a minimum sentence to be served in murder cases, it did not provide for that in other cases and that created a problem in the - apologies to Polish friends - Rzeszowski case where the Royal Court wanted to impose a life sentence but in fact did not feel it could do because there were not the necessary provisions, instead had to impose a 30-year sentence. Nor did the 2005 Law provide for a release on licence system but this law does. I will briefly go through the parts. Part 1 is just definitions. Part 2 provides for the sentencing court in relation to mandatory life sentences with a method of determining the starting point for the minimum period to be served. A starting point in judicial sentencing parlance is a sentence which would be given if there were neither mitigating - that is factors making it less serious; or aggravating - that is factors making it more serious - so it says where the range is. Part 2 then goes on to set out both the aggravating factors and the mitigating factors. Part 3 brings in minimum periods of imprisonment for discretionary life sentences which I said was not dealt with before and that was the problem in the Rzeszowski case. Part 4 provides for the setting up of a panel consisting of a Bailiff and 2 Jurats who would be making the decisions as to whether or not a person should be released on licence and in relation to the terms of that licence and so on. Then it goes on to deal with the provisions under which the person would be released and requirements for a case to be referred to the panel by the Minister for Home Affairs after certain time periods have

been passed. There is also in part 4 a power to release temporarily on compassionate grounds. Part 5 deals with all the other matters, transitional provisions, saving provisions, Regulation-making powers and states that the Law would come into force 7 days after registration in the Royal Court. That is a very brief résumé so I move the Law in principle.

**The Greffier of the States (in the Chair):**

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? No. All those in favour of adopting the principles kindly show. Any against. They are adopted. Senator Ferguson, does your panel wish to ...

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

No, thank you very much.

**The Greffier of the States (in the Chair):**

Minister, would it be convenient to propose the Articles as amended by ...

**6.2 Senator B.I. Le Marquand:**

I think so and I think having given a résumé, I simply invite questions.

**The Greffier of the States (in the Chair):**

Very well. Perhaps in the interests of good order I was going to ask the Greffier just to read the amendment but I will ask her to do that.

**The Deputy Greffier of the States:**

Article 22, delete the words “bail or a guilty plea”. Article 23, for the words “before this law comes into force” substitute the words “before the date that this law comes into force or to a person who, having been charged with an offence regardless of the plea entered has not been sentenced before that date.”

**The Greffier of the States (in the Chair):**

So, Minister, you propose the Articles as amended together. Is that seconded? **[Seconded]** Does any Member wish to speak on any of the Articles? Not. All those in favour of adopting the Articles kindly show. Any against? They are adopted. Do you propose the law in Third Reading, Minister?

**6.3 Senator B.I. Le Marquand:**

Yes, I do indeed.

**The Greffier of the States (in the Chair):**

Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading?

**6.3.1 Senator L.J. Farnham:**

Just briefly. I just wondered if this sort of housekeeping exercise, for want of a better word, was brought upon by the tragic case as mentioned in the report of 2012; was that the catalyst for this? I just wondered.

**The Greffier of the States (in the Chair):**

Do you wish to reply?

**6.3.2 Senator B.I. Le Marquand:**

I did not work on this, of course it was in fact the Legislation Advisory Panel, but my understanding is it is partly brought on by that. That is the part in relation to the discretionary

sentences but it is also my understanding that the other part was also needed. I am looking towards Senator Bailhache for confirmation but I think we needed the other parts as well independently of that.

**The Greffier of the States (in the Chair):**

The appel is called for in Third Reading. Members are in their seats. I will ask the Greffier to open the voting.

<b>POUR: 32</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
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Deputy A.K.F. Green (H)				
Deputy G.C.L. Baudains (C)				
Deputy J.P.G. Baker (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

**The Greffier of the States (in the Chair):**

The Assembly would normally come finally to the item in the name of the Deputy Tadier but I notice Deputy Tadier is not present in the Assembly.

**Deputy R.J. Rondel:**

Deputy Tadier has had to leave and he did say that he would be happy to take it in September.

**The Greffier of the States (in the Chair):**

Well, I think we will have to therefore so ...

**Deputy J.H. Young:**

Just to add I understand that Deputy Tadier is having to see to an urgent constituency matter. He was due back and obviously we have sped up quickly so I do think it is an important proposition and I do not know what the rules say, whether it falls away or just gets deferred on.

**Deputy N.B. Le Cornu of St. Helier:**

Deputy Tadier just sent me a SMS to indicate he is 5 minutes away. He is coming back but ...

**The Greffier of the States (in the Chair):**

We have to proceed with public business. If he is not here the matter will have to be deferred to September.

**The Connétable of St. John:**

Can I propose the adjournment?

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**The Greffier of the States (in the Chair):**

Well, that does conclude the public business. We now come to the arrangement of future business. In the absence of the Chairman and Vice-Chairman of P.P.C., the Constable of St. Clement ...

**7. Connétable L. Norman of St. Clement (Privileges and Procedures Committee):**

Before I raise the matters of the future business could I, on behalf of the Privileges and Procedures Committee, congratulate States Members and indeed our 3 presiding officers over the last 4½ days **[Approbation]** for getting through an agenda which many of us thought would have been impossible in that time. So I thank the presiding officers on behalf of P.P.C. Items for future business, our next sitting is on 9th September. The items recommended are as per the list on the Consolidated Order Paper plus the item which has been deferred from today, the kerbside recycling proposition, and the 3 propositions relating to the petitions lodged by Deputy Tadier and I would recommend those and suggest that Members should allow 2 days for that sitting.

**The Bailiff:**

Does any Member wish to say anything in relation to future business? Are Members content to adopt the future business then as laid out by the vice chairman? Very well.

**The Connétable of St. Clement:**

Then could I add to 22nd September there is the additional business of the Budget and associated legislation?

**The Bailiff:**

Very well, that concludes the business. The Vice-Chairman has stolen my thunder because I was going to similarly congratulate Members on getting through the agenda. This was a frightening Order Paper. It had every indication that we would fail to do the business and I do, therefore, endorse the congratulations. Members did, in my opinion, exercise restraint, spoke nevertheless, and debates were fierce and strong, as they should be, but nevertheless the Assembly worked efficiently and effectively so I do congratulate all Members. **[Approbation]**

**STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY**

## **8. The Minister for Economic Development - statement regarding Condor**

### **Senator A.J.H. Maclean:**

If I may I would like to seek Members leave to make a very short update on the Condor situation, if that was appropriate at this stage. A number of Members have asked me if I would say a few words about the incident that occurred recently and I would like to do that if that would be acceptable.

### **The Bailiff:**

Do Members agree that?

### **8.1 Senator A.J.H. Maclean (The Minister for Economic Development):**

It will be very short. Members are aware that the Condor Clipper had an incident just off Guernsey recently. It is currently in the U.K. undergoing survey and repair – planning - work. The cause of the incident is of course under investigation. Members will be interested to know that all those members of the public that were booked on the clipper are being rebooked on the high speed services at no extra cost. Condor have also prioritised perishable and urgent freight shipments and maximising load factors on the Goodwill service. I can tell Members that there is a backlog of less urgent freight which is currently running at 2 days but we are told that this would be cleared by the end of the weekend. Also in process is the fact that Condor are securing a replacement charter vessel to deal with freight in the coming weeks. The period of time for the repairs at this stage is unknown. Members of the public and businesses that have any queries should of course contact the company themselves directly.

### **The Bailiff:**

Well, being a statement, Members have the opportunity to ask questions if they wish to.

### **8.1.1 The Deputy of St. Martin:**

The Minister will be aware through the large number of emails and text messages and others between myself, himself and his department that I have taken a keen interest in this matter. It is my expectation that Condor, hopefully, will give an extensive press announcement on Monday to update not only the travelling passengers but those many businesses on the Island that are affected by the shortage of freight capacity and I will be hopeful for a press announcement on Monday to update all Islanders.

### **Senator A.J.H. Maclean:**

I understand that Condor will be making a public announcement of the latest position on or before Monday, as soon as more information is available.

### **8.1.2 The Connétable of St. John:**

I thank the Minister for doing this at the 11th hour and 59th minute because it was of concern to a number of people.

### **The Bailiff:**

Very well, I think that does then conclude the Assembly's business.

### **Deputy M. Tadier:**

First of all can I apologise for not being in the Assembly. I had an appointment which I could not get out of but I was quite happy for that to be adjourned anyway until September and I would have asked for that. I take it we are arranging public ...

### **The Bailiff:**

All done, I am afraid, Deputy.

**Deputy M. Tadier:**

Can I thank whoever did that?

**The Bailiff:**

Very well, then it remains only to close the business, say that we will reconvene on 9th September to wish everyone a very happy recess. **[Approbation]**

**ADJOURNMENT**

[15:45]