

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 21st JULY 2010

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

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

The Greffier of the States (in the Chair):

Just before the Assembly resumes Public Business, the Bailiff was given notice yesterday within the due time that the Minister for Economic Development wished to make an official statement. This may be a convenient time to do that, Minister.

1. Statement by the Minister for Economic Development regarding the West Show

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

I would like to invite Members to join me in congratulating all those involved in the organising of last week's very successful West Show. The show committee, under the chairmanship of Constable Vibert, should be justifiably proud of the success of the event. A very special thank you must go to all the volunteers who gave their valuable time and without whom such events quite simply would not be possible. The West Show has grown into one of Jersey's premier rural events showcasing local agriculture, environmental issues and the countryside, as well as being an entertaining day out for the whole family. The 15,000 plus visitors to last week's show enjoyed great weather with a varied array of stands and entertainment, including a whole section on genuine Jersey produce, which can only enhance awareness of local businesses. The West Show has become a regular feature of the events calendar and I look forward to it going from strength to strength in the future, with the continued support of the community and a number of very generous sponsors. [Approbation]

Connétable K.P. Vibert of St. Ouen:

I would just like to thank the Minister for his compliments. Thank you, Sir.

1.1.1 Deputy R.G. Le Hérissier of St. Saviour:

So will the Minister be promoting an East Show? [Laughter]

Senator A.J.H. Maclean:

Of course a very good question that comes from the Deputy, and I am sure opportunities for shows of this nature in other areas will always be considered if indeed the local community can get behind them, which I am sure is quite possible as demonstrated by the great, fine West Show we have just seen.

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

Did the Connétable get all the necessary permits that were required? [Laughter]

Senator A.J.H. Maclean:

I would have thought so. Having seen the smile on the Connétable's face, he was clearly very happy and understandably so. It was a fine show, well attended, good weather, and I have to say I enjoyed it myself when I attended.

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

Not to take away from the appropriate praise of such a wonderful event, I would just like to ask the Minister why it is today that he is congratulating him and he did not do it at the beginning of business, and will he be congratulating the Fish Festival tomorrow?

Senator A.J.H. Maclean:

I think if appropriate and if Members are prepared I am more than happy to congratulate many of the fine events we have around the Island. I think we are extremely lucky to have as many good events as we do and have such a tremendous involvement with the community in many of these events which frankly would not be possible without the volunteers that put so much work into

them. His earlier question about this particular statement, I had intended to make it on Tuesday, we were just trying to clarify one or 2 points before so doing to make sure that we were accurate before the statement was made.

1.1.4 Connétable J.M. Refault of St. Peter:

I would just like to add to the Minister's thanks and to expand to the staff of T.T.S. (Transport and Technical Services) who assisted quite significantly in developing the road traffic plan through St. Peter, avoiding many, many delays, and also the Honorary Police of the 4 western Parishes that spent 2 whole days out there controlling that traffic plan. **[Approbation]**

PUBLIC BUSINESS - resumption

2. Draft Taxation Relief (Arrangements with the United Kingdom) (Jersey) Act 201-(P.83/2010)

The Greffier of the States (in the Chair):

We now return to Public Business and come now to the Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act. I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act. The States, in pursuance of Article 111 of the Income Tax (Jersey) Law 1961, have made the following Act.

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

Members may recall that last year as part of the series of Taxation Information Exchange Agreements, we concluded one with the United Kingdom and one of the notable features of that T.I.E.A. (Tax Information Exchange Agreement) was an intention to change the arrangements regarding the taxation of pensions. What this Act before us today does is to put in legislation the principles that we agreed at that time, which is effectively that people receiving a pension in one jurisdiction would only repay tax in one jurisdiction and not in both. This is a vast improvement for a number of people and it will benefit not just residents who have previously been suffering taxation twice, but in particular it would also improve the revenue that the Island gets in respect of taxation of pensioners in the Island. So those are the principles act and I propose its adoption.

The Greffier of the States (in the Chair):

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

Deputy F.J. Hill of St. Martin:

I think I ought to declare an interest, I do receive a pension from the U.K. (United Kingdom).

2.1.1 Senator A. Breckon:

If I could just ask the Chief Minister, in there it says that this amendment provides, among other things, that: "Pensions and other similar remuneration paid to an individual who is resident in one of the territories shall be taxable only in that territory." I, with a number of other Members, have had letters from people who work for Flybe and I wonder if we are signing this what it is worth if that can go ahead. It is of concern to people if they are, for all intents and purposes, local residents and then because of the nature of the business means spending some time in the U.K. on that business and for no other purpose, how they can be taxed. I wonder if the Chief Minister could expand on that.

Deputy J.B. Fox of St. Helier:

I need to declare that my wife receives a small pension from the U.K. Does that require me to leave?

The Greffier of the States (in the Chair):

No.

Deputy A.E. Pryke of Trinity:

I would like to declare that I receive a pension too, albeit small.

2.1.2 Deputy P.V.F. Le Claire:

A welcome move, obviously, but I just wanted to ask, as this is an arrangement with the United Kingdom, which is a member state of the European Union, at what stage does the Minister think it would be appropriate to arrange these things *en bloc* with the European Union? Can he also indicate when he replies, because I would be quite interested to know, what other member states does this sort of agreement exist within?

2.1.3 The Deputy of St. John:

Earlier in the week I put questions to the Minister re Flybe and staff having to pay tax in the United Kingdom. How will this affect them?

The Greffier of the States (in the Chair):

I call on the Chief Minister to reply.

2.1.4 Senator T.A. Le Sueur:

In response to Senator Breckon, the words “pensions and similar” would refer to other means of obtaining a pension, such as an annuity. It does not apply to ordinary remuneration. But for that, in response to Senator Breckon and the Deputy of St. John, I would remind them that the double taxation relief arrangement remains in place with the U.K. and that there are alleviating measures. It is not as good as the situation for pensions and, as I said to the Deputy of St. John earlier in the week, it is something we can continue to negotiate with them, but at this stage they have got the existence of the double taxation arrangement which is the best we can rely on at this stage. In respect of Deputy Le Claire, the arrangements for double taxation treaties are very much in their infancy and we have only signed at the moment one, we are looking to sign others, but at this stage the E.U. (European Union) have been reluctant to sign them with us and instead have resorted to the use of T.I.E.A.s. As we demonstrate our ability to be global players, there is a greater willingness to sign more D.T.A.s (Double Taxation Agreements) and I am hoping that will be done to a greater extent in the future. It is unlikely to be done *en bloc*, it will need to be done country by country, but the objective remains there. So at this stage, yes, we are continuing to go through with the E.U. countries and indeed our side of the E.U. as well. I hope that deals with the questions raised and I maintain the Act.

[9:45]

The Greffier of the States (in the Chair):

Those Members in favour of adopting it? Against? The Act is adopted.

3. Human Rights Law: statements of compatibility (P.84/2010)

The Greffier of the States (in the Chair):

We come now to the Human Rights Law: statements of compatibility and I will ask the Greffier to read to the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion (a) to agree that Article 16 of the Human Rights (Jersey) Law 2000 should be amended to require Ministers to state what articles of the

European Convention on Human Rights, if any, are affected in relation to the legislation being brought forward and the reasons why the Minister considers that the proposed legislation is or is not compatible with the convention rights, and (b) to request the Chief Minister to bring forward the necessary amendment to Article 16 to give effect to the proposal.

3.1 The Deputy of St. Martin:

The proposition we are debating should, in normal circumstances, have no difficulty being approved because it makes sense, however, that is the problem. Because it makes sense it may well run into difficulties, but I would hope not. In the year 2000 the States, after great fanfare, agreed or gave in principle approval to this Jersey Human Rights Law, but it did not come into force until December 2006. Now, despite all the fine words of how important it would be to the lives of everyone in Jersey and, in particular, to our reputation outside the Island, in my opinion the law has not been taken seriously and in fact there is no official committee either on the Executive or on the Scrutiny side with any oversight for human rights. Yet, Jersey considers itself to be an international player in the financial world. Yet, again, nothing has been done to rectify that omission. Two years ago I tried to establish a body for oversight in human rights law and I shall not be trying again, not at present, simply because I do not think States Members really want to take it seriously enough. But what I am attempting today I believe is one small step in the right direction. When seeking approval 2 years ago I asked Members to approve a committee for oversight, whether that was on Scrutiny or indeed Executive. But, again, it was also tied-in with my amendment to Article 16 which we have today, but unfortunately I did not receive sufficient support for the panel for oversight, therefore, the second part of my proposition fell away. Again, I am going try again today because all I am asking for is to amend the law to allow Ministers that when they have their statement of compatibility to show what the law really says, why is it human rights compliant and what articles are compliant. It is quite simple. It is unfortunate that Deputy Noel, who is sitting in front of me, has 3 times had the problem. It is unfortunate because the only 3 laws that have come of recent time have been involving ones in which Deputy Noel has had to come forward, and I have asked him the question each time ... no, the Deputy is putting his fingers up, just 2, not to be rude to me. **[Laughter]** But I will remind him there was a third and that was a little while ago and that was the Data Protection Law which indeed was deferred that day on the day of the debate after I did ask, and Deputy Noel, I gather, did take on a Scrutiny issue. So I can possibly say 3 occasions. Now, I have always believed that the House, on all sides, should know why a proposed law is human right compliant. Indeed, if it is deemed to be so important for Ministers to state that a particular law that is human right compliant then it makes sense for us to know why. How can you question something if you are not given the information? One, of course, assumes that Members of Scrutiny themselves should be requiring that information. Now, at present one assumes that when Ministers are given that relevant information they should be able to include that already on their proposition and one wonders why. Therefore, indeed I think we had it yesterday when the Minister for Treasury and Resources got up to defend the rapporteur. What I am saying is that if there is the information supposed to be there, why it cannot be given to us. It must be there already so why the difficulty in not including it on the proposition, it makes sense. Indeed, if Members or the Ministers are telling the truth it should be there already so I do not see the problem. Two years ago when I tried to get this proposition through the States I did attend Westminster to discuss human rights issues there with the chairman and members of the joint select committee on human rights, and I was told there was increasing pressure from all sides of Parliament for Ministers to provide more human rights information when proposing new laws. The reason for that was quite simply is because human rights issues were coming up more and more when laws were being debated. In fact I think we are starting to see that even now, again yesterday when we were looking at the regulations that the Minister for Home Affairs was bringing forward. There again we looked at possible human rights violations there. Now what I am pleased to say is that Westminster have beaten us to it. Westminster now whenever they do propose a law there is a statement of compatibility now along with all their laws and that is what I am seeking for today.

Can I add that there is no need to recruit any more officers to do that, because quite simply they were doing that already but the only thing they were not doing, the information they were giving to the Ministers was not included on the proposition or in their draft Bill. So there should be no extra staff. Now, again, I would hope that we will have no difficulty with Members here agreeing to what I am proposing today. Now, Members will have received comments from the Chief Minister and I am getting to the stage really when I feel that when the Chief Minister receives any proposition from the Deputy of St. Martin he sends it along to his department of misinformation and says to them: "Look, draft some explanation will you, it does not matter what it is because we are going to oppose it."

The Greffier of the States (in the Chair):

Just in case Members are confused, Deputy, the comments are from the Council of Ministers, not the Chief Minister.

The Deputy of St. Martin:

Well, from the Council of Ministers, sorry. But, again, I do believe this time the Council of Ministers are scraping the barrel when they seek to oppose something which basically really makes sense. I cannot see why and I would ask Members to look at the comments which are on page 2 of the Council of Ministers' comments. If one looks way down under 2 where they start giving the information, it says: "It is not clear what level of detail would be envisaged under the proposed amendment." Well, I would have thought that was quite common sense. It is one thing they could have checked with Westminster and said: "Well, what are you doing on your Bill?" So, again, I would not have thought there was any problem there again. It goes on further: "Furthermore, it is unclear that any additional benefit would be attained by providing detailed analysis of the legal position." Well, what rubbish. I would have thought any information that is given would assist Members on both sides of the House. If we look at the next one: "At present the Attorney General and the Solicitor General attends States meetings and are available during the debates to provide advice to the Assembly in response to specific questions on human rights compatibility." Well, we have already found that in the 3 debates we have had now with Deputy Noel, again yesterday I asked and at no time did Deputy Noel look across to the Attorney General. In fact the proposition about a month ago the Deputy had an opportunity to get that information during the lunch break because there was a break during the debate. Again, that was not working, so again it is not working now and why should the Attorney General be asked to stand up and give an answer when that information should already be included on the proposition? If we look at the next: "In addition, the existing scrutiny process provides an important and effective opportunity for Scrutiny members to consider any legislation proposals before it is brought to the Assembly." Well, again, if the Scrutiny Panels are not given that information how can they do so? They have got to ask for it so why should it not be there in the first place? I ignore the next 2 paragraphs because that is stating the obvious, because once they have really gone past the House and gone to the Privy Council one would have assumed that everything then is human rights compliant. But then again if we look again: "Since the law came into force in 2006 and previously when voluntary statements of compatibility were made, there was no indication that the present form of compatibility statement had caused any problems or that the position would be improved with more extensive statement." Well, again, I maintain that any information which is in the interest of Members has got to be a help and again that is a lame, lame excuse. I will really go to take issue here about the resource implications. In broad numbers, the States considers around 35 principal laws each year, well one assumes that the Minister has already received that information for 35 laws. So, again, what is the problem of giving that advice which the Minister has received, and they say the proposition is compatible; why should that not be put in the proposition at the moment? This is really where I think we are scraping the barrel, it talks about: "In addition, the workload involved is estimated to require up to one additional legal adviser in the Law Officers' Department with associated costs." Again, that information should already be there. It should have been given to the Minister,

otherwise how can the Minister make that statement of compatibility? It just does not stand up and one wonders. Recently Deputy Higgins brought forward a proposition. I remember making a comment to the Chief Minister saying he must have a wry smile, because here we have the Chief Minister opposing Deputy Higgins' proposition and using a human rights argument. In actual fact, when I looked at the human rights article, and I did query it with the Attorney General, it was, again, open to interpretation. I think it is very important that we do get this information before us. So, again, my proposition is quite simple. It makes sense, it is a commonsense approach. The information should already be there, given to the Ministers, and all I am asking for is that when propositions containing laws - bear in mind this is only when laws come to the House - that that information is given to us. All I am asking for is why a particular law is human right compliant and what articles are affected. I propose the proposition.

The Greffier of the States (in the Chair):

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

3.1.1 Senator T.A. Le Sueur:

I know that the Deputy of St. Martin has a particular interest in this matter and, as he said, he brought a similar proposal to the States a couple of years ago because he remains of the view that Article 16 needs amendment to provide additional levels of detail. He suggests in his opening remarks that we do not take the Human Rights Law seriously and I refute that remark. I think we all have a duty and we all do take the Human Rights Law very seriously, and we have to ensure that our legislation is indeed compliant. But, to come back to the proposition, I think there are at least 3 good reasons why this proposition is unnecessary and should be rejected. First, the proposition is unnecessary because it implies that there is some defect in what we are currently doing and I suggest that there is no implication and no evidence that we are defective in what we are currently doing. Secondly, it might be suggested that there is any evidence that law is other than fully effective. At a time when really we are trying to do things more efficiently, is this a good time to be spending more money, or should we in fact be trying to find better value for money? Really, I suppose, in order to help Members work out whether this proposition is worth supporting I need to explain in more detail the way in which law starts from an idea in some Minister's mind and ends up on the statute book. I would need to indicate the involvement of the Human Rights Law in that process. At the outset, there will be a decision in principle to consider the creation or amendment of a particular piece of legislation. In some cases that may involve the production of a Green Paper or a White Paper and perhaps a debate in the States on the principles of that legislation. But the next step, if that is approved, is for the Minister to produce a law drafting brief to the Law Drafting Department to produce suitable legislation. It goes without saying that the law drafting brief will expect the law draftsman to produce a law which is human rights compliant.

[10:00]

When that draft law is presented to the Minister it is then for the Minister to ascertain whether in his view the draft law is indeed human rights compliant, and to make a statement to Members on the face of the draft law stating that in his view the draft legislation is compatible with the convention rights. Before coming to that decision, the Minister will normally choose to seek legal advice, since that statement he makes is in accordance with a legal obligation. The legislation then comes to the States for debate and at that time either the Attorney General or the Solicitor General will be present in the Chamber and that Law Officer is able to answer any questions of compatibility that any Member might choose to raise. Having debated the principles of the legislation, it is then up to the relevant Scrutiny Panel to decide whether or not they want to look at it in detail. If that panel itself has any concerns about human rights compliance, they can then ask to review the legislation and to obtain whatever legal advice they require to satisfy themselves that it is human rights compliant. After scrutiny, if any, then the articles will be debated and again one

of the Law Officers will be in the Chamber in order to deal with any concerns Members may have. Ultimately, the legislation will be adopted, perhaps with amendments. But that is nowhere near the end of the matter. The approved legislation then has to go before the Privy Council for ratification and that process gives further opportunities for human rights compliance checks. Once the legislation has been passed by the States it is the duty of the Law Officers' Department, and perhaps Members do not realise this, to submit the legislation to the Ministry of Justice, along with transmission to the Privy Council. But in addition to submitting the law, the Law Officers' Department also has to submit a commentary on that law, including its acceptability under the human rights requirements. So the next step is that the Law Officers have to submit that report and it is the legal advisers in the Ministry of Justice itself who will further review that report and review the legislation and satisfy themselves that it is human rights compliant. If they are satisfied it then goes to the Privy Council for approval and ratification and the Privy Council itself has another chance to look to see whether in their view it is human rights compliant. So I make that at least 6 hurdles that have got to be overcome before any draft legislation reaches the statute book, 6 or more opportunities for expert review - and I say expert review - of human rights compliance. Yet, the Deputy apparently wants more. He does not just wish to be assured that the legislation is human rights compliant, he wants a detailed analysis in each case of what articles of the convention might be involved and the actual reasons why the draft legislation is indeed human rights compliant. Now, that is where there are resource implications, despite what the Deputy says. Because it is a relatively straightforward matter for a trained legal professional to determine, on the face of past experience, together with a knowledge of European Court law, whether a piece of legislation is compliant or not. It is what you might call a gut feeling. On the other hand, it is a far more detailed piece of work to review and analyse each and every article of legislation to confirm why it complies with each relevant article of the European Convention. Not only would that cause delay, but I am advised that it would require the full time attention of one employee in the Law Officers' Department with no spare capacity. Accordingly, there would be resource implications and we all know that Law Officers are scarce and expensive. That estimate of additional staff is not my estimate, it is not the estimate of the Council of Ministers, it is the estimate of the Law Officers' Department who are the ones responsible for looking at these matters. So what would be the benefit of employing another well-paid employee in the Law Officers' Department, when we already have a whole variety of ways of ensuring that legislation is human rights compliant? The answer is none that I can see. It is simply spending additional money, using additional resources for no additional benefit. I ask Members at this time when all ought to be considering simplifying and doing things more efficiently, do we want to spend more money? Do we want to engage more resources for absolutely no additional benefit? As I said from the outset, we do take the human rights obligations seriously, there are numerous checks to ensure that our legislation already is human rights compliant. We do not need to do anything more, we do not need to spend any more money, we do not need to approve this proposition.

3.1.2 Senator S.C. Ferguson:

I have heard the Attorney General explain on a number of occasions how he reviews laws for human rights compatibility. Each law can be affected, as the Chief Minister has said, by a number of human rights and there is also the proportionality. It is an art, I think, to analyse as much as a science and it is very much like - I am not insulting the Attorney General - servicing a car. A really good mechanic can tell by the sound of the engine what is wrong with it, and there are so many factors that the Attorney General has got to consider all at the same time, each of the human rights, are they proportional or is there proportionality. As I say, I think it is an art. Members will be aware that I am concerned and continue to have concerns that the Human Rights Law is only too often used as an excuse to avoid doing something. Members may not be aware that the origins of the Human Rights Law, after World War 2, were based on the intention to extend to European countries the benefit of such customary practice and laws as the 1689 Bill of Rights in the U.K. or the U.S. (United States) Constitution. In the U.K. and U.S. customary law in practice and

legislation, as I understand, I think there are probably some legal nuances there that as an engineer I will not understand. But human rights are an integral part of the legal systems and customary practice in the Anglo-Saxon countries and by extension, I assume, to Jersey. Human rights is, for our system, an additional layer of icing on the cake and this was not the general case in Europe, as I understand it. There was no provision in the sort of customary practice or common law and no specific provision had to be made in statute. This particular proposal - as the Chief Minister says - seeks to impose yet another layer of beaurocracy on to our system. I ask Members to vote against this overly beaurocratic and red tape approach.

3.1.3 Deputy M. Tadier of St. Brelade:

We will go from red tape to red herrings, I think. First of all I should declare an interest because I am a member of the Jersey Human Rights Group. That does not mean I am an expert, I am not at all and, as has been said already, human rights is an area of great difficulty, it is not always black and white. I think this is a reason for supporting this proposition and I will go on to explain what I mean for that. I do regret that this proposition has not been accepted and I will, if Members permit me, just re-read what part (a) of the proposition says. It is: "To agree that Article 16 of the Human Rights (Jersey) Law should be amended to require Ministers to state what articles of the European Convention on Human Rights, if any, are affected... and the reasons why the Minister considers that the proposed legislation is or is not compatible with the Convention rights." There is nothing of rocket science there. I think most Members reading this before the comments of the Chief Minister would have said: "Okay, that seems quite sensible, there is no reason we should not all get behind that." The point I want to make first of all is that we are not here to debate whether we like human rights or not, we have already heard from the Chief Minister and the Council of Ministers that we all agree - well, certainly the Council of Ministers and the bringer and supporters of this proposition - that human rights are important; we agree that the European Convention on Human Rights is also something that Jersey is signed-up to and which we take seriously. So while it is quite valid, and I respect Senator Ferguson's questioning of human rights, this is not the forum to do that. If, for example, we do not agree with human rights that is another proposition for another day, although I suspect it would be very difficult for Jersey at this point to get out of its international obligations. That is certainly not something that I would want to see. I do not think that would be beneficial for Jersey as a society or as an international jurisdiction. Nor are we here today to debate whether or not there should be a statement of compatibility, that is up for debate but it is not here, this is not the place. We already have a statement of compatibility which is brought forward by the Minister. There is an argument to be had, of course, that Back-Benchers when they bring propositions should also have to make the same statement of human rights compatibility, but that is for another day. So let us look at the arguments why it is sensible, I think, to have a little bit more detail as to why a law may or may not be human rights compliant. I would suggest it is a red herring that it is going to cost any extra money or any extra resourcing. I think the extra input would be negligible, we have already had a manpower and financial implication statement from the Deputy that there should be no additional manpower or cost implications, and I am sure the Deputy will go into further detail when he sums up. The point is, when a Minister makes this statement, he is not an expert on human rights. He will have had to take legal advice from the Law Officers and from the Attorney General. So, presumably the research has already been done in the background, I think the analogy of a car is probably slightly unfortunate. The Attorney General, as we have heard on many occasions, does spend time weighing-up the decision and it is not acceptable and I do not think it is fair to put that kind of pressure on the Attorney General with an *ad hoc* question which often needs a lot of research. Because, as we know, while some of the human rights articles are absolute, there are many of them which are subject to exemptions. The information already has been out there, it is quite sensible to want to know which articles come into play. I would suggest that Members should get hold of a copy of the E.C.H.R. (European Convention on Human Rights) even if it is just to try and refute some of the arguments of the Deputy of St. Martin or myself when we stand up and say: "I do not think this is human rights compliant." Because ultimately it is for

us, as Members of the States, to make the decision and so it is quite sensible, I would suggest, that the articles at least that come into play be given during the statement. I do not want to labour the point so I will simply say that the advice has already been given, it is simply a case of writing that advice into the proposition, saying what has been taken into consideration. These are grey areas and it is up to us as States Members to decide whether we are happy or not that the correct information has been given. I would ask Members to support this proposition, it makes sense, we should not need a long debate on something fairly straightforward and logical as this. So I hope Members can get behind the Deputy of St. Martin.

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

I remember this when it last came up and on that occasion I was not convinced by the Deputy of St. Martin sufficiently in order to vote for it and I am shocked now when I think I back that I did not at that time.

[10:15]

I should have. The Chief Minister has given us a long litany about how rigorous our system is, taken us through the 6 stages, the 6 hurdles to get over, all of which I think flow from the first hurdle. As the previous speaker stated, articles of law - and certainly human rights - are rarely black and white. I can assure him I think they are never black and white, there is never a clear breach. What we are asked to do is to weigh up a sort of a balance, a margin of appreciation is given to the Government in order to allow it to govern properly, without infringing the individual rights of individuals, and that is a balancing act. The fact is, one never knows in particular circumstances whether an article will be deemed to be in breach of the particular article until it is tested in the courts. Of course, so far since 2000 when the law came into force, I do not believe a single case has been brought in Jersey to test the boundaries of what we do. I believe one or 2 should have been, but that is another matter for another day. So it is not straightforward, it is not black and white, it is always a grey decision. In the balance between the rights of the government to govern, the margin of appreciation for the government, and the individual human rights, where does the balance lie? Now, it seems to me that any lawyer examining a particular law must consider it against a particular article. This relates to articles, let us say 6, 8 and 10 - 6, that seems okay; 8, that seems okay; 10, and 10 is a bit iffy, it is a bit close to the mark, is it? Let us have a look. That work has to be done. Let us have a look at the precedent. What is European law saying and how close does ours come to that? Take, for example, the recent decision in the European Courts that the blanket ban on denying the vote to all prisoners is a breach of their human rights. That does not say you cannot stop some prisoners having the vote. It says you must not just apply that to everybody and take away one of their rights. It seems to me that if you were examining that against the right to vote it is a fairly clear cut case, and one can come to a decision that one knows clearly what are the articles one is considering and the way in which they have been considered. On balance one can say: "I think it is safe" or: "It is not" or: "There is some doubt." That work has to be done. If it is not being done, we are not doing the job properly. All this proposition says is, fine, that work is done, write it down and tell us about it and if there is an issue for Scrutiny or whatever it is flagged-up there, it is sitting there. We are talking about Article 6, or Article 10, of the Human Rights Law. Bear that in mind when you push this through. It is a balance and it is not proven one way or the other until a court - the Royal Court, in our case - says one way or the other, the Government has exceeded its human rights obligations, it has gone too far, that is where the line is. It is not just based, as the Minister said, on precedent. It is an individual case, what is the practice for individuals and how does it apply to their lives? That is where the line gets drawn, but only by the courts. Everything else prior to that is mere legal opinion. It may be very safe legal opinion, but it is absolutely safe, or not. Or it may be in a grey area that says there may be an issue around what we are doing. The point is the work has to be done, it is being done, and I do not know if it ends up scratched on a little note pad somewhere, but it gets written down. Let us see

that, in print, in front of us when we come to pass the law. I think that is a point that, as Members, we should have a right to see and a right to make up our opinion on. So I urge Members to support this proposition.

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

It seems to me that the Council of Ministers, in opposing this, are making a mountain out of a molehill. Because the issues are really quite easy, quite simple, and I am not sure why they are making out that it is all so difficult. So, a few points - I will be going through some of their arguments like on the Scrutiny Panels and the Ministry of Justice and so on, just to basically refute each one. But the first point and possibly the most important is the one about information and I think the Deputy, in his opinion remarks, said: "How can you question something if you are not given the information?" That is absolutely fundamental to this proposition. How can you question something if you are not given the information? Now, if we have these statements - fuller statements than just: "This law is human rights compliant" - if we have the fuller statement of which articles are affected and how it is that the law is deemed compliant, this allows us, the States Members, to decide, given that information, whether to check, whether to ask questions, whether to fire off an email to the Attorney General or even to raise in the debate if it goes that far. But we have the information in advance, we can test the information. The Chief Minister in his remarks said: "There is no evidence that it is currently defective" and that is a direct quote from what he said. No evidence that it is currently defective. Now, what that seems to suggest to me is that there has not been a challenge, there has not really been serious questions asked, although they are raised in debates, and I will come to that later, because the information is not there. The information is not there so we do not know what there is to test or question so, of course, we do not ask the questions. But what we do know is the effect of States Members not having information so that they do not ask questions, and I go back to my special subject which is the incinerator. The Members at that time in 2008 were not given information about the cost of hedging and the cost of dealing with that possible currency fluctuation. Because they were not given that information they did not challenge it because the information was not there. They did not test, they did not say: "How much? Gosh, this is a lot extra, what are the risks?" and so on, because the information was simply omitted. Here we are in the same position, if we do not have the information we cannot check; that is fundamental. So the only issue then is, is it worth it? Is there an additional cost? Is there some problem with providing this information? Which brings me to my second point: if the declaration is genuine, that this law or these regulations are human rights compliant, then what is the problem? Because there is no extra work, as other speakers have pointed out, beyond the printing of the opinions and the background work of the Law Officers. How can this involve an extra person? It is already being done and, as we have heard, not only has it been done but the statement or something pretty well like it has to go to the Ministry of Justice later on in the process. So how it can involve an extra person when the work is already being done, I simply cannot understand. The system at the moment, people have said: "Oh, well, the Attorney General and the Solicitor General attend States debates so they can provide the information as we go along." Well, I would suggest to those who are cost conscious that is quite an expensive way of providing legal advice, of having the A.G. (Attorney General) or the S.G. (Solicitor General) there all the time to provide legal advice when in fact it could be written down in the report so that we can vet it first, if you like. The next point is the Ministry of Justice argument. It is a very weak argument that: "Oh well, the Ministry of Justice is going to look at it later anyway, is going to look at the statement of compatibility later so, therefore, we do not have to be informed." It does not follow at all. The Ministry of Justice cannot assume that we get it right, but I am sure they would find it problematic if time and time again we were not getting it right. I am sure that is not the situation. I am sure that the Ministry of Justice are in a supervisory way checking that we have got it right. That is their role but it does not affect this issue at all. In fact it proves yet again that the information is already there because it has to be sent to the Ministry anyway. The argument about Scrutiny Panels is particularly extraordinary. If a Scrutiny Panel is going to subject a law to some kind of human

rights audit, they will have to get independent legal advice because they cannot use the Law Officers because the Law Officers have given advice on the law in the first place. So the cost of that method of reviewing human rights compliance should be something that would concern the Council of Ministers and indeed all Members. If we are going to rely on the argument of cost we really cannot go down the route of saying: “Well, park it with Scrutiny.” I think that is all I need to say. The arguments advanced by the Council of Ministers are very flimsy in this instance and I just wish they had been a bit more pragmatic, a bit more sensible and just said: “This seems to be a sensible way to go.” Thank you.

3.1.6 Deputy R.G. Le Hérisier:

I just want to make a few comments because a lot has been said. I am a member of the H.R. (Human Rights) Group but I am certainly not one of those people who believe that paradise lies in the greater and greater implementation of human rights because obviously one of the issues is that one person ...

The Deputy Bailiff:

Deputy, one moment please. I need to do a count, I think we are not quorate. Could I ask Members outside the Chamber to return to the Chamber, we are currently inquorate. Very well, Greffier, will you please call the roll?

The roll was called.

The Deputy Bailiff:

It is indeed a delight to welcome so many old faces back to the Assembly. **[Laughter]** I cannot help noting that it is fortunate for the Connétables and the Deputies that they are called after the Senators because it is certainly the case that Deputies are able to come back and be recorded as present when Senators have not had the same opportunity.

[10:30]

Senator S.C. Ferguson:

Next time we have roll call, would it be possible to start from the bottom and work up?

The Deputy Bailiff:

I am very tempted to. If I am in the Chair I will do that.

Connétable D.J. Murphy of Grouville:

Can I check, please, that the Greffier recorded me as being present because the stampede of Members coming in was so loud that I am not sure she heard me answer.

Deputy P.V.F. Le Claire:

On a point of order, I do appreciate that I was not in the Chamber as the roll call began. In fact, I only just managed to make it in time for my name to be called. But the Standing Orders are there. We do not change them lightly. The States have recently agreed a change in procedure because I brought a proposition suggesting exactly what you have pointed out, Sir, and I would contend, with the greatest of respect, calling Deputies in reverse order will just mean that most decisions are made by Deputies in the future.

The Deputy Bailiff:

Deputy, if I am not able under Standing Orders to do a reversal, and I have not checked them, obviously I will not be able to do so.

Senator T.J. Le Main:

All I can say is it is a bit of a joke because, quite honestly, everybody has rushed in and the same Members that are the ones that are always missing from the Chamber in 15 or 20 minutes' time will be gone again.

The Deputy Bailiff:

Now, if Deputy Le Hérissier has not completely lost his flow, I call on him to resume his speech.

Deputy R.G. Le Hérissier:

Unaccustomed as I am to speaking to a fairly full Chamber [**Laughter**] which is fast reducing again, what I was saying, I have been staggered by some of the arguments put forward by the Chief Minister, as the Deputy of St. Mary said. I remember a comment made by the very much-lamented former Senator Lakeman and he said, when the Human Rights Act was first debated in the States, I remember him saying: "It will not involve lawyers. In fact, be assured it will not involve lawyers getting involved in political issues." Then I wondered. I looked at bodies like the United States Supreme Court. I looked at how decisions were made in *Roe v Wade*, the very famous or infamous, depending where you stand on the issue, abortion decision, how one word could change things and how massively important I thought political issues ended up being resolved by a court, by the American Supreme Court. Then that is why, much as I very much respected the former Senator, I did go away with a certain scepticism and I have noticed obviously as decisions are put through, increasingly it is difficult to distinguish between what you might call the judicial decisions and what you might call its political implications. That is why I think it is terribly important that we do see the arguments put forward. We have had some quite extraordinary arguments and I am waiting for the Attorney General to reply with his gut instinct. We have had the Chief Minister's assertion that the Attorney General sort of reviews laws and sort of makes a decision based on gut instinct, which I think is a terrible summation of how he reaches decisions. I am sure he reaches them in a very logical way, a very strict analysis of the facts and so forth. We have also heard the Attorney General compared to a car mechanic. Now, he may be a bright spark [**Laughter**] and he may be steering us in the wrong or right direction, depending on where you stand [**Aside**] ... yes, disappearing in a puff of smoke, but again I found that an unbelievable analogy. Again, there was this feeling that he can look at the engine, as was elaborated upon, and then make some sort of decision about whether the engine is working correctly or not, and again I think that does a disservice to the very elaborate process hopefully of reasoning in which he is engaged when he studies these matters. Surely, by having done this in the department, he is in possession of a line of argument which he can then write down. Given what I have said, my worry, which I think will become more and more acute, is that it is very important that we can see the distinction between what you might call the political implications and we can see how the judicial officers reach a decision. It is very important that we see how they reach that decision. Of course, if you take, for example, the right to family life, which I think Deputy Southern - he was not referring to that one but he was referring to some of the articles - there is an enormous amount embraced within that simple phrase. You can go off in an enormous number of directions, depending on how you choose to define it. Oddly enough, I hesitate to raise the whole issue of legal advice to Scrutiny Panels because, as we know, that was a fairly well argued and perhaps acrimonious fight at times but oddly enough, I am not sure the Deputy of St. Mary is right in saying that: "Well, look, we have got the Attorney General's position. We only need it laid out in writing and then the Scrutiny Panel will be advised." Well, unfortunately, that was not necessarily the view of everybody who was involved in that argument and there have been 2 Scrutiny Panels who have sought legal advice on the human rights implications of legislation and, as we know, the findings of their advisers were not necessarily congruent with the findings of our Law Officers. I know our Law Officers have this fear, and I am slightly digressing, that the States will then end up as the court of law deciding between competing legal opinions. Back to the point. I think, as the Deputy of St. Mary said, a mountain has been made out of a molehill. I am sure there is a very clear process going on within the Attorney General's chambers and I cannot for the life of me see how an extra person is needed

to write that down, but I would like to hear from the Attorney General. I think it is vital we hear whether he is a car mechanic or not or operating on gut feeling. I think that does a disservice to what the process is.

3.1.7 Senator T.J. Le Main:

I would like to say that I feel that Members have had a very good explanation from the Chief Minister. He went through all the procedures and all the steps that have to be gone through. I am opposed again to more laws, more bureaucracy, more staff needed. We just cannot continue down this road. I submit that the extra burden of increasing the workload on the already pressed Law Officers' Department, which, at the end of the day, will cost financially and have manpower implications, is something that Jersey just cannot afford. The response from the Council of Ministers is quite clear, that all the procedures are in place to make sure the Privy Council and the Ministry of Justice are fully informed of the compatibility with human rights on any legislation that we produce in Jersey. Even though I keep reading all the time, even Mr. Cameron is now determined more than ever to rid the U.K. of unnecessary bureaucracy and laws that quite honestly are not needed. I submit to Members that this is another luxury we cannot afford. I am going to oppose any new unnecessary bureaucratic laws. We are a modern, small democracy and we do need to heed human rights, freedom of information, privacy rights, and more but please remember Jersey is 48 square miles and 90,000 population. I submit, as well explained by the Chief Minister, that all the procedures are in place and it is working well. With the Ministry of Justice, I have not seen anything from that department to say that our procedures and laws in human rights are in breach of any convention for which they hold responsibility for Jersey. I noted the Deputy of St. Mary saying the Council of Ministers is making a mountain out of a molehill. Well, I say to the Deputy of St. Mary if you want to continue making more laws, more bureaucracy, then somewhere along the line someone has got to pay for it. At the end of the day, we are going to be asking and the Minister for Treasury and Resources is going to be seeking savings and also not only savings but possibly increasing taxes on this Island. The public of this Island do not want more taxes. If we continue the way we are doing, now spending something like £800 million a year and we continue to increase staffing and other issues, then this Island will be bankrupt in 10 years' time. I would like to say that I have full confidence in our Attorney General and Law Officers and I have worked with the Law Officers over a period of years in Ministerial government and, as far as I am aware, there have been no issues. In fact, I sent a note to the A.G. before. I believe that Jersey has been reported on a couple of occasions - I think they were probably housing issues - to the European Court of Human Rights and Jersey was found to be compliant in every way possible. I noticed the Deputy of St. Saviour, Deputy Maçon pulling faces there when I mentioned that Jersey will be bankrupt. Well, at the end of the day, you are either going to tax people out of this jurisdiction or, in years to come, the way we are spending money and not having any control over the spend in this Island, then we will be, I submit. I am not going to support this proposition. I am going to be opposing in future any new laws or issues that are going to create an extra burden that is not necessary. I believe that the Chief Minister, in my view, has made a very, very good case with his Ministers and I will be supporting the Council of Ministers in this and I do not support this proposal in any way, shape or form.

Deputy M. Tadier:

I was wondering if I could ask the A.G. a question at this point. I think it might be useful for the whole Assembly. We have heard statements that passing this law is going to increase the Law Officers' workload and incur significant costs. Would you be able to confirm whether you think that is the case?

The Deputy Bailiff:

Attorney General, there is a professional golfer who is very affectionately known as "the mechanic" [Laughter] but if you would like to address the Assembly now, go ahead.

Mr. T.J. Le Cocq QC., H.M. Attorney General:

I am grateful for the advice from the Chair but I am not a golfer myself, I am afraid, [Laughter] so it is a matter that is rather lost on me. In terms of the resource implications for the Law Officers' Department, I think it is important to understand the way in which human rights advice evolves during the course of its consideration and the way in which we end up delivering it from time to time. Sometimes at the end of the process, it is possible simply to say: "We have considered everything we need to consider and we can assure you that there are no human rights issues." Sometimes we have to advise at rather greater length than that but it is not the case in most situations in which there is a single human rights analysis done of a piece of legislation. Generally what happens is that legislation comes in original draft form to the Law Officers' Department. It is evolved, changed, redrafted in response to legal advice, many of those being human rights considerations, and the human rights advice analysis is often to be found in a collection of memoranda, research documents, emails, memoranda internally, memoranda externally and it is an evolving process. What there is very seldom is a single definitive document at the end which says: "These are all the human rights issues. These are why we think you have no difficulty with them." Quite often it is very straightforward and there is no problem because that has been an evolving matter of advice over a protracted period and we have ironed out the difficulties as we went along. That, I suppose, is the first thing I should say to the Assembly. The second thing I should say to the Assembly is that we are at absolutely full stretch in terms of our resources where human rights work is concerned. We already have a backlog. I would say we are under-resourced in our ability to deal in a timely fashion with human rights matters and any increase to that workload will inevitably mean either much greater backlog or that we will simply be under-resourced and unable to deal with it and other things will suffer. There is no slack to move from one area of work to the other. We are fully committed in all our various guises within the Law Officers' Department.

[10:45]

There will inevitably be, in a large number of cases to my mind, an exercise in synthesising a definitive statement of position from a number of files to provide that advice in a single document and that will mean more work in a large number of cases. My best estimate is that that will be a sufficient amount of additional work to necessitate a further person within the Law Officers' Department although it may be the case that a portion of that person's time can be dealt with in assisting with the backlog and making things rather more efficient. But having taken the advice from my specialists within the department who deal with this work on a regular basis, and knowing the pressures that they are under, this is not, to my mind, resource-neutral for the reasons that I have explained. I might make one or 2 other observations, if I may, simply from the point of view of the legal position, of course. The Law Officers' advice is politics-neutral. It is independent. It is advice, yes, that we give to the Minister who is proposing the projet because that is what we are required to do but it is the same advice we would give in the Assembly if we were asked for it and it is the same advice we would give to a Scrutiny Panel if called before Scrutiny to ask for it. So to that extent, it is independent advice and it is distinct from the advice to an extent in the United Kingdom because I understand that it is Ministerial departments and their legal advisers that prepare the advice that goes into the statements that go before the Houses of Parliament. But the Law Officers' Department is independent and neutral so the use of the term "independent" in terms of requiring independent advice, I would suggest to the Assembly, there is independent advice. There is perhaps one further aspect that I will mention and it is absolutely a matter for the Assembly if more information is required on a routine basis. Of course it is and, as a matter of principle, there is no difficulty with providing it, provided we are resourced properly to do so. But the other point that I would mention, I think, is the nature of the report that goes to the Privy Council in putting a law forward for the Royal Assent. We have an obligation to say to the Privy Council if we think there are any difficulties which would place the United Kingdom in breach of its international obligations. We therefore have to have done that consideration. Normally, in a

report to the Privy Council, it takes no more than a line or 2 to give that assurance, no matter what the background work might have been but the importance of me making the point at this point is that it seems to me that it would be wrong and invidious if we thought that there was a human rights issue and would therefore have to make the report to the Privy Council that I would not also feel compelled in the Assembly to draw it to the attention of Members while the matter was being subject to a debate. It would be wrong, if I were to be aware of a human rights difficulty, not tell the Members about it, and then make an adverse report to the Privy Council. So to that extent, there is a positive obligation on me to give advice if I think there is a difficulty within the Assembly, and those are circumstances where I would offer advice as opposed to merely waiting to be asked for it. Hopefully that gives the information that I have been asked for.

Deputy M. Tadier:

Can I ask a supplementary and do stop me. I am mindful that I do not want to cross the line in making a second speech but can the Attorney General confirm that it is the Minister who makes the statement of compatibility, not the Attorney General, and presumably if the Minister has to satisfy himself before, there should not be any additional work because the Minister should already be satisfied. It is simply the Minister stating the reasons for which he is satisfied.

The Attorney General:

I do not think I can comment upon the necessity for more work at the Ministerial side of things. All I can say is that if the Minister, in being guided in making his view, requires advice from the Law Officers' Department, and that needs to be in a succinct form which can be placed as a positive statement with that information, then that will require more work from the Law Officers because that is not the way that we currently deal with processing human rights issues when we are reviewing draft legislation. Perhaps the Assembly would readily understand that it is one thing to say there is no problem and it is another thing to say: "This is absolutely fine for the following reasons", and that, I suppose, while I do not particularly wish to be compared to a car mechanic and listening to the tone of an engine, there is an element of accumulated knowledge and wisdom which only a professional can bring to bear on a particular issue without necessarily having intellectually to recreate the wheel every time they deal with and look at an issue. In creating that into a positive statement, that is a much greater exercise to my mind and that is why I think there are resource implications.

The Deputy of St. Martin:

Could I just ask a question of the Attorney General because I have a statement of compatibility. This is the one that was used yesterday and it says: "In the view of the Minister for Treasury and Resources, the provisions of the draft Income Tax Law are compatible with convention rights." So he is saying here is a view. How would that Minister have got that information? Would there not have been some resource implication from the Law Officers' Department in the first place? There must have been, surely.

The Attorney General:

Undoubtedly; I work on the assumption, which I believe to be correct, that statements made by Ministers of compatibility for human rights matters are made in the very great part on the basis of legal advice provided by the Law Officers' Department. A Minister will take his own cognisance of whether or not he can make such a statement and certainly one of the important factors I am sure will be the legal advice that he has received. But the way that that legal advice is communicated to the Minister via his officers is much more along the lines of a dialogue in a large number of cases and it is a simple definitive statement and I do not think I can assist much more.

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

I have to say I found that very useful so thank you, Attorney General, for that. I just want to focus on a few issues and I was going to talk about the prisoners' issue which I am glad Deputy Southern

has brought up. But although I feel very strongly on those matters, I have to say I agree in quite a big way with Senator Le Main. I am no fan of a P.C. (politically correct) society just for the sake of it but I do not think we are really talking about that in this today. We are talking about the serious issues of human rights, hopefully not the absurdities, because listening to the Chief Minister, I could not help but think that really he just gave us a list of excuses. It did seem to sum up, I am afraid, the approach to democracy that his Executive often displays, really looking for reasons why we cannot or should not instead of the benefits of why it might be worth it to do so. I just do not think that can be the right and the best way to go about government. I have to add that I had a chuckle with him rolling out the line that we must not spend more money 2 weeks after asking us to support him in another £15 million. It just seems that old line is used whenever it is convenient and I think anyone listening to him on the radio must laugh at us all. The other thing he brought up was about Scrutiny. Well, listening to him, does he really suggest that then Scrutiny should start pulling every law into: "Look out because I suppose we could do that and what impact would that have on government?" I am not a fan of Scrutiny in its present form, as most people know. I just think it ties us up often looking at total irrelevancies and stops us doing more important things, but if we are really meant to go down this line, as I think it was Deputy Tadier said, who is a human rights expert in here? So we are going to spend all our time trying to work out whether a law is indeed human rights compliant. Frankly, from the Chief Minister, that was an absurd suggestion. But what I really wanted to focus on is at a more base level, if you like, this argument from the Chief Minister that there is nothing defective in what we do. Well, I am afraid I believe that this shows a complete detachment of reality because if we look just a little further down the line to some of what is done in the name of this government, we see that that argument absolutely holds no water whatsoever and I will just touch on the one example, because it is a personal example of what I went through before I got elected, and I am not going to bore Members again with all the details. I only roll it out when it is convenient. I was forced to stand for election as a part of legislation supported by this House where I could not access money owed to me for hours I had worked on behalf of Jersey. I could not access annual leave I was entitled to. Now, this was human rights compliant apparently, the same human rights compliance I imagine that said I could use that time or access those monies to go out and work in the campaign for a Member of the Council of Ministers. Completely absurd and that was confirmed for me by my lawyer. He said: "You could absolutely win this case on a human rights basis. Trouble is, just 2 little things. Have you got the time and, more importantly, have you got the money?" Well, I did not have the money but how did that come into being? If there is nothing defective in what this House does, how could such a thing be slipped into legislation? Completely absurd, so there are defects and you would expect it in government. There are always going to be defects but surely the issue is that once we see those, we do something about it and I think really that is what the Deputy of St. Martin is asking us to do, to be quite clear at that key starting point that we have got it right. I have to say with the Attorney General if his office is understaffed, then we should be doing something about that because it is a fundamental aspect of government. So I think he has made a good pitch for some additional staff. Whether it is listened to, I do not know. When the Deputy says it is making a mountain out of a molehill, I think that is quite true in trying to object to what the Deputy of St. Martin is. I get that awful feeling again that the real issue is who is bringing it and that is sad if it is the case for some people because the Deputy of St. Martin does go away and he does do his homework and he is not a time-waster, I have to say. I have got every respect for him. I will close on this. It cannot be the right way to go about business waiting to be pulled up afterwards for things that you could have and should have noticed at the onset. I think it is quite logical what the Deputy of St. Martin is asking us to do. As I say, I am with Senator Le Main. I am not a fan of a P.C. society. When I was at university doing my course, it got to the stage where some people said you could not say "manhole", you could not say "blackboard". That is the absurd level of human rights, and it is ridiculous, but I think what the Deputy of St. Martin is really concerned about is the real key fundamental issues and I think we should all be committed to that. It is common sense what he is asking us to do. I think it is important that the House does send out the message that we

do take human rights seriously and the best way to do that, I believe, is to support him in what he is asking.

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

Most of what I wanted to say and had written down has already been said. I just want to touch on the fact that I feel this proposition is a “no brainer”. All of our legislation goes to the U.K. We have already been told by the proposer that the U.K. is now doing this within their legislation. There is a possibility that in the future, we may have to include this in our legislation as it is going to the U.K., to say that it would create more staff and that we cannot possibly do that when, in the Business Plan, Treasury is looking to increase the staff in order to save money. As the previous speaker said, I feel the same as him that the actual case has been made for an increase, possibly, of a member of staff to assist in the Law Officers’ Department. The Law Officers’ Department is vital to the Island, to the legislation that we bring in this House. If they are understaffed and struggling, maybe some of the Treasury staff should go and new staff go to the Law Officers. I will be supporting this. We are always told that our legislation is human rights compliant and, as we have been told by the A.G. in the last question that he was asked, a lot of this information is already given to the officers and they convey it to the Minister. Most of those officers bring forward these propositions and legislation. It would not take a great deal to put a short sentence. We are not asking for a book, just a short sentence saying which laws are affected and why. So I will be supporting this proposition and I hope the majority of the House will.

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

Just to correct Deputy De Sousa there. I think she said that we may have to start doing this in our laws we send to Privy Council. From my understanding from what the Chief Minister said, we already send a running commentary along with every law. That begs what everybody has been saying, why do we not know? To the majority of people who have spoken against the proposition, they, to me, are not really even interested in human rights.

[11:00]

It is an unnecessary bureaucracy. It is icing on the cake. It is a necessary thing that we have had to sign up to and really Ministers who are making a declaration do have the ear of the Attorney. They have the ear of their officers. I bet very few of them could tell you ... well, it has been proven by the Deputy of St. Martin. When he has asked any of them: “Why is this human rights compatible?” none of them have even bothered to research that and put that in their speech, none of them. Can anybody in this House remember a Minister - and this is the Minister - compatibility on advice from the Attorney General or the Law Officers’ Department? We are in a real pickle here today. The Chief Minister made much too much of why we cannot do it and in listening to what he said, we are doing it. The Law Officers are already doing it. He may not want to know. There are many Ministers and Constables or other Deputies who do not want to know but I am one of the persons who want to educate myself in human rights and I think we should know. As for what Deputy Pitman said about Scrutiny, if I was on Scrutiny and I was the Chair, I would call every law in just for the compatibility, double the work of the Law Officers. It is not rocket science. All you have to check is why it is compatible. You do not want to check anything else so if they cannot play your game, you better play their game because I think we are letting this go. We are being fobbed-off today. Most people, as I say, really are not bothered about human rights. They think it is one step too far. Senator Le Main said we are a little Island. What does that have to do with this proposition? Nothing. It has to do with do we want to be human rights compliant and, again, it is something he deals with, not necessarily probably that we need. So, as I say, I just also have one little inkling of suspicion and it was when you were Attorney, Sir, and I did not quite hear it from this Attorney but we have had this argument about legal advice and legal advice is advice until it is tested. Now, if there is a fear that the legal advice may not stand up to scrutiny, may not stand up,

why are we not hearing that, because that is a possibility but, as Deputy De Sousa has said, this is to ask the Council to come back with something. I think the proposer has maybe gone too far. I will support it but the proposer says if any are affected, relating to the legislation, bring it forward and the reasons why. Now, maybe it would just be a list of articles with a brief outline. Maybe he is asking for too much but I do not think it is rocket science to say this affects 1, 2, 3, 4, 7, 10 of the Human Rights Law and they cross over because the work has been done. Senator Ferguson is pulling a face at the mechanic. Senator Ferguson made this analogy to me yesterday in the coffee room that a consultant is similar to a car mechanic. Now we have got an Attorney General that is similar to a car mechanic. Well, I think the whole world should be run by car mechanics [Laughter] and we would get more sense because they have a feeling. They look at something and they have a feeling whether it is right or wrong. Next time you want an operation, do not go to a car mechanic. That is what I would say but if you want good legal advice, go to our Law Officers. They do the work. If it is there, it is done. Why can we not have a paragraph and please anybody in this House, any Minister from now on, even if this is not passed today, please brush up on your human rights because everybody who is going to vote for this will be testing you to why it is human rights compliant.

3.1.11 Connétable L. Norman of St. Clement:

During his opening remarks, the Deputy of St. Martin said on a number of occasions imploring us to support his proposition that it makes sense. Well, it does not to me. In fact, I would say exactly the opposite. What has happened when a Minister presents a new law to the States? He produces this law in conjunction with the officers of the department and, as we have heard from the Law Officers' Department, normally in several drafts. It is checked as the drafts are going through against the various human rights articles. At the end of the day, if there are no issues, no problems with the human rights articles, the statement that the law is compatible is made and is published. That is after the 4 or 5 or 6 checks, very serious checks, that are carried out as was described earlier by the Chief Minister. There is another check after that as I can tell you with absolute certainty. The Ministry of Justice do check our laws for human rights compliance. If there is some doubt about whether one or 2 of the articles in the new law are not human rights compliant, and that is where the subject becomes important, not when there is no doubt about it, when it becomes important is when there is some doubt about it, is that when the Minister is obliged to say so and say why, as I say, where there is some doubt. If there is no doubt, why the heck should we do more than we are doing now? What I am saying is that if a law is compatible, just what is the point in doing more than what we are doing now with all the costs and manpower implications that are involved? What Deputy Southern said this morning emphasised this point to me. He pointed out that since our Human Rights Law came into effect in 2000, I think it was, not one case has been brought before the Royal Court. I know that before that, there were one or 2 cases taken to the European Court in Europe which found in Jersey's favour, but none since the Royal Court were empowered to deal with this legislation. So therefore we must be doing something right. The Privy Council has not sent back any of the laws that we have produced and passed because of human rights issues so we must be doing something right. Deputy Southern also said that even with all that advice, we still cannot be certain until the matter is tested in court and he is absolutely right. So we can do all this extra work, employ this extra person, debate the human rights issues as much as we like on any particular law, scrutinise it as much as we like on any particular law, check the human rights compliance on any particular law, get all the advice we want on the human rights compliance on any particular law and we still will not be certain unless and until it is challenged in court and the court makes the definitive decision. So on that basis, I say: "No, Deputy of St. Martin. Your proposition does not make sense. Your proposition is nonsense."

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

I would just like to make a few observations and regretfully I have to say that a lot of what I wanted to say has already been said. Nevertheless, I think it was in probably 2006 that I went to

Westminster with the Social Affairs Scrutiny Panel which was chaired at the time by the Deputy of St. Martin. We were made aware then that the Westminster Parliament puts exactly the information that the Deputy is asking for today on their propositions that they take forward. I notice now in the Deputy's report today that all Government Bills now include explanatory notes on human rights compatibility and that is not a statutory requirement. Rather it is a commitment by the Government to providing the information which it feels is necessary in order that all M.P.s (Members of Parliament) are able to make a full and informed decision before passing the legislation within the Westminster Parliament. The one question that has kept coming into my mind is if Westminster does it, why is the Jersey States unable to do the same thing? I have not heard a definitive answer to that question. I do not know if there is anyone in the Chamber today who is able to give me and Members the answer to that question but it seems to me that Westminster, since 2006 when the Social Affairs Scrutiny Panel visited, has taken a further step forward because they now put the information on Government Bills. As I said, that is not a statutory requirement, rather a commitment by the Government to providing what it considers to be important information. When Senator Le Main spoke, he was referring to he would not support making more laws. This, in fact, has nothing to do with making more laws. It is about ensuring that the laws that we do make in this House are fit for purpose. It is about us being fully aware of all the information that we need before we make a decision. Another thought that has occurred to me during this is that I am disappointed in the comments today by the Chief Minister. I do not think that he made a strong argument against this. It was shocking to me to read the comments of the Council of Ministers: "The Council of Ministers is opposed to the proposal because it considers that the suggested changes would be unnecessary" and I think that is such a weak statement from the Council of Ministers, that suggested changes would be unnecessary. We have heard plenty of reasons today why, in fact, they would be necessary. But to come back to when the Chief Minister spoke, he said that the Ministry of Justice, prior to submission to the Privy Council, checks the legislation that is sent to it from Jersey and it just occurred to me, does the Ministry of Justice check the same with the legislation that goes through Westminster? I do not know, that is a question I throw open. I do not know if anyone is able to answer that. I look to the Attorney General. Perhaps he could ...

The Attorney General:

My understanding is the Ministry of Justice would not scrutinise U.K. domestic legislation. It scrutinises Jersey legislation because it is the interface between the Crown Dependencies and the Privy Council but it has no role to play *per se*, as I understand it, in U.K. legislation.

The Connétable of St. Lawrence:

I have another question for the Attorney General. If this was passed today and we went forward including the information on our legislation that is being asked for by the Deputy of St. Martin, would that then mean that it would be unnecessary for the Ministry of Justice to check what goes to it from Jersey?

The Attorney General:

No, it would not. The Ministry of Justice checks Jersey domestic legislation as it does indeed for the other Crown Dependencies against the United Kingdom's international obligations and it would still carry out that check, in my view, whether or not there was an enhanced statement of compatibility.

The Connétable of St. Lawrence:

I thank the Attorney for that. Nevertheless, I am minded to support the Deputy's proposition notwithstanding the fact that we have been told by the Attorney General that the information provided to the Ministers is an evolving matter of advice. It is quite clear when questioned that Ministers or indeed Assistant Ministers are not able to give precise answers to Members regarding the compatibility of the legislation that they are proposing. Deputy Martin I think hit the nail on the

head. I had already made notes here that I think it is up to us, up to all Members, to keep asking the Ministers for the information. If they are not prepared or if they are unable to provide the written information to us when they present legislation, then we must stand up in this Chamber and ask them to give us the information that they are, in effect, refusing to give to us.

[11:15]

The Scrutiny Panels have been referred to and the role that they play in scrutinising legislation and, of course, we are aware that there is no specific panel to scrutinise legislation brought to the House. It is down to each individual panel to keep an eye on what is going on in their departments. I know again that when I was on the Scrutiny Panel formerly, we did pay close attention to scrutinising legislation that was being brought under our remit and we did ask these questions when we met the Ministers before the debate in the House, but I think it may have been incumbent upon us to ask the questions within the Chamber so that again the Ministers would be required to give the answers in open forum. We know that Scrutiny is open to the public but very few members of the public bother to come and take any notice of what we do. I have no doubt that Members will be swayed by the argument that has been put before us that this should not be implemented because of resource implications. I have no doubt at all this is not going to be carried. It is up to those of us then who feel that what I consider to be freedom of information, that is what we are asking for, freedom of information, it is an openness, transparency - thank you, Deputy Le Claire - it is up to us to keep pushing to get this information. It is up to all of us to scrutinise all legislation that comes before this House anyway. I am not going to be swayed by the argument of resource implications. One other thing I would like to touch on is in the comments put forward by the Council of Ministers. They say if detailed explanations of the legal considerations leading up to a statement of compatibility were required in lay language... In lay language. I see no request from the Deputy of St. Martin that this be put in lay language and I wonder what sort of language the advice is given to the Ministers. Is it in lay language? Is it in legal jargon? Most of our Ministers have no legal background. How can the Minister understand the information? Is it put to them in lay language? If it is, then it can be put to us in precisely the same terms. I think that comes down to the nitty gritty of when and I have no doubt that the Deputy of St. Martin, if he is unsuccessful today, will bring back another proposition. This is going to be an ongoing matter within this Assembly until it is approved and until we as Members get the freedom of information that we are seeking. So to summarise, no doubt it will fall today. It will come back again. I hope that Members will give consideration to my comments and to all others that have spoken in favour of this. If it is necessary, as Deputy De Sousa said, that the Law Officers' Department have more resources given to them, then that should be a consideration because certainly we are elected to represent this Island, to make informed decisions and those informed decisions must be made by us receiving as much information as we can. I think it was Deputy Trevor Pitman who said it is no good passing legislation and finding out afterwards that there are errors or oversights in it. So I will conclude but I will be supporting this proposition by the Deputy of St. Martin and I will support it when he brings it back in the future.

Deputy D.J. De Sousa:

Could I just ask the A.G. for some information or a point of clarification? I am not sure which it is. He mentioned the Ministry of Justice when he was answering a question from the Constable of St. Lawrence and said that it does not scrutinise U.K. law. It is the interface between Jersey and the Privy Council. Does the Privy Council then scrutinise the U.K. law for human rights compliance?

The Attorney General:

The Privy Council is Her Majesty in Council which is a group of Privy Councillors who meet quite often with Her Majesty in attendance. I do not think at their meetings they scrutinise things put before them. I think what comes before them is on the recommendation of the Ministers who are

bringing it, who are Privy Councillors, into the committee. The Ministers will make the recommendation on the advice of their own officers who will number among them the lawyers in the Ministry of Justice.

3.1.13 Deputy P.V.F. Le Claire:

I was in the Assembly when we introduced the Human Rights Law and, at the time, it was known quite well by those of us that supported it that there were going to be resource implications and there was a heated exchange during the debate between those that did not want to spend any money and those of us that thought it was necessary even though it was going to cost. I think those arguments will be borne out again in the upcoming Freedom of Information Law where, no doubt, we will be told that we have not got the money for this. I brought an amendment to the Strategic Plan that was accepted by the Assembly that the Government be more open and accountable and transparent and, since that amendment was agreed, I have seen nothing of the sort. There has been no indication from the Council of Ministers that they are prepared to open anything except the rules when they want them changed. I think what we have today is a problem in relation to a budget. If a private Member brings forward a proposition, that Member may or may not know the financial and manpower implications of that proposal that he is bringing. If that Member does not know those implications at the moment, he is required to ask the Minister to furnish him with those costs and the Minister is required to supply those to the Member so those costs are clearly understood before the Assembly debates the proposition. Now, if there is a financial implication in analysing the human rights elements of propositions and laws that come before us, then surely budgets should be looked at in the future to make sure that financial and manpower implications could also include human rights compatibility, financial and manpower implications, and the element of that because, at the moment, nobody scrutinises the Law Officers in terms of what they are doing. I am not suggesting that we should, for one instant, scrutinise their activities but there does not seem to be any ongoing check and balance. We have lost the Legislation Committee. We do not have a second Chamber. These are real holes in our armoury at the moment. We certainly do need to think about this in the near future, especially as the majority of work that we should be doing is legislation. So to say that one does not like bureaucracy, well, that is an easy argument to talk about. I will give Members one of the best cases of bureaucracy that I have ever experienced in my life last week. When I transferred my licence from a Canadian licence to a Jersey licence, I could not do it because it was not recognised so I had to sit my test in 1998 and take a theory test. Failed the first one. Had to go back and do another one. This week I had to go down to D.V.S. (Driver and Vehicle Services) to ask for an augmentation to my driving licence. The lady behind the desk told me first of all she did not have any forms for driving licences; I would have to go to the Town Hall. So I had to drive back into town, park the car, go and get a driving licence form. Get a provisional licence. Go back to the D.V.S. When I got back down to the D.V.S. Department, the lady behind the desk asked me if I had passed a theory test. I told her that I had passed the theory test because it was a requirement at that time that I took my licence and she said that I would be therefore required to show her the certificate and I said: "Well, I do not have one, it was 1998" and she said: "Well, we can give you one to show us for £10. We can print a duplicate out."

The Deputy Bailiff:

Deputy, can we come back to the proposition?

Deputy P.V.F. Le Claire:

I was talking about bureaucracy, Sir, and whether or not the States are spending money in a wise way or whether or not we are looking at the kind of bureaucracy ...

The Deputy Bailiff:

That would go very wide indeed if that is what you are talking about. We can talk about the proposition.

Deputy P.V.F. Le Claire:

Well, States resources, in terms of what we do with our money and what we ask our officers to do and what we require the public to go through in order to get a decent sort of life in this Island and make sure our requirements are up to speed with the law. In my view, it would be better focused on resourcing the Law Officers' Departments. This could be a step in the right direction to making sure that they are adequately funded. In the recent court and case costs that came before the States Assembly, I stood and said to the Assembly ... because I had done previously and, Sir, when you were Her Majesty's Attorney General, I had done it to your embarrassment as well. I had fought for your corner, Sir, as I continue ...

The Deputy Bailiff:

I was not embarrassed, Deputy.

Deputy P.V.F. Le Claire:

Thank you, Sir. I fought for the Law Officers' corner because the work they do, the work that you did, Sir, if any Member thinks that is easy or achievable, just have a look at the papers they have to carry. It is absolutely laughable. The workloads that they are currently under, and Her Majesty's Attorney General did say this to me when I inquired recently, and I made a point of saying it in the court and case costs, and he re-emphasised that in his speech today, they are stretched to the limit. They are now telling us and confirming in public that the cases and the workload that they are under are having an impact - not going to have an impact, but they are having an impact - upon the deliverability in terms of time of the work that they are currently doing and are required to do. So they are under-resourced now. In my view, the Council of Ministers needs to consider rather than lengthy attacks upon Back-Bench Members who are trying to bring forward things that should be done, they should be considering some of the other issues and where they can save money, perhaps applying costs through the Jersey Financial Services Commission to the finance industry for all of the policing activity that goes on within the finance industry which we have to pay through the taxpayer for. Why should the taxpayer be paying millions of pounds for police officers' work in relation to financial frauds, *et cetera*? That should be taxed and paid for by the finance industry and then that money would be available in the budget for us to staff our Law Officers' Department accordingly. The Council of Ministers is not staffing and funding the Law Officers and nor has it done for years. I have been saying this. I have wondered if my microphone is channelled into some other room until I heard today Deputy De Sousa speaking exactly the same way as I have and followed by the Constable of St. Lawrence. The Law Officers do a wonderful job - and I concur - but they have put it on the table out front for everybody to see. They are not political. Her Majesty's Attorney General has said they have not got the resources. They cannot do what they are needed to do now in a timely fashion. A timely fashion is critical in matters of law. I will be supporting Deputy Hill obviously. The comments that have been made already by other Members that it is being done in the United Kingdom and everything else I think are well made. I would also like to reiterate what was said by the Constable of St. Lawrence. We, as States Members, have a duty and obligation to make sure that not only are we passing things but also that we understand what it is we are passing. The Human Rights Law is a living, breathing entity that could be influenced by cases in the European Courts today. Laws could change tomorrow and if we are not fully *au fait* with the nuances and the changes that are made, then we will not be able to govern the Island effectively as politicians. I am really of the belief now, and the point was made by the Constable of St. Lawrence, I am really of the belief, getting back to what I said in summation to finish, it is all about what they want us to know. If we go back to my work permit proposition, I was told work permits are against human rights. The Island, through the media, was told work permits are against human rights. The work permit legislation that I was proposing was against human rights, in effect rubbishing a Back-Bench Member's proposition through what the Council of Ministers, many of them still there today that were there at the time, through what they wanted the public to think. In reality, when my proposition was finally delayed and finally shared with all

States Members, at the time it was quite clear there were issues that we needed to be cognisant of. For example, it could not be retrospective but there was nothing against human rights about the introduction of a work permit yet the Back-Bench Member was stopped because of the mutterings of the Council of Ministers at the time, the Policy and Resources Committee:

[11:30]

“Oh, you know, just take our word for it and press the button. Just do not listen to the other Back-Bench Members’ arguments and just press the button. You are in our party. Press the button. Tell them to shut up and sit down and press their button.” The reality is it is about control. Control. Secrecy and control, and that is what they are trying to tell us to do today. Well, I do not agree with secrecy and control. I agree with democracy, accountability and transparency and funding adequately the Law Officers’ Department.

3.1.14 Senator B.E. Shenton:

Deputy Le Claire has made some good speeches in this Chamber recently, but that certainly was not one of them. Unfortunately, he was back to his old rambling and rather repetitive days. I disagree with the Constable of St. Lawrence. I do not believe that we have heard reasons today why this change is necessary. It seems to me in some ways a case of spending money for the sake of spending money at a time when we should be keeping a close eye on how we do spend money. Should we spend money to fix a problem that we have no evidence exists is ... is I think not the case. I see absolutely no reason to support this. I think for those Members to stand up and say: “Well, just throw money at it” when we are at a time of fiscal and economic difficulties is quite disgraceful. I think as an Assembly we need to be much more prudent with how we do spend money going forward. If there is a real problem with this, the Deputy of St. Martin would have brought a proposition highlighting the past problems and highlighting why there were failures, but we do not have that. We have a case of let us do this because it is nice and let us spend considerable amounts of money on it. It is not the way we should be doing government and I would urge Members to reject this proposition.

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

Very briefly, it has been said of some accountants that their clients can tell them the number they have thought of in advance of the accountant doing the work. It has also been said that if you put 2 lawyers in a room you will get at least 3 opinions if not slightly more. We as an Assembly, as a Government, employ the Law Officers to provide impartial - in the words of the learned Attorney himself - non-political advice and in my opinion they do a very good job at that. I believe wholeheartedly that what the Deputy of St. Martin is proposing today is unnecessary and, as we have heard also from the learned Attorney, it is not necessarily ... even if we were to agree it, that is not the way the advice is currently provided and, therefore, there would be a lot of work required to put it into a position where it was in that state and, therefore, there will without doubt be resource implications. That is in my opinion a fact; there will be that. It is disingenuous of other Members to suggest that that is not the case. We have heard it from the Law Officers’ Department themselves. I believe that the system that we have currently is working. Should any Member have concerns about the human rights implications of a particular piece of legislation it is entirely open to them to speak or ask a question of the Law Officers either in advance of the debate or during a debate. I do not believe that we should put ourselves in a position where we are coming forward with second pieces of legal advice or third pieces of legal advice and arguing over those legal advices. We have Law Officers to provide that advice. I believe that it is provided in a satisfactory manner. Ministers make statements to underline that fact. I believe there is no need to approve this proposition today. It seems to me to be working in a perfectly satisfactory manner and, therefore, I urge Members not to accept this proposition today.

The Deputy Bailiff:

Does any other Member wish to speak? I call on the Deputy of St. Martin to reply.

3.1.16 The Deputy of St. Martin:

I can almost say how depressing it is really to listen to some of the arguments today. There were 17 speeches and one could almost say that almost all were taken as read before a person spoke. When a Member stood up I was almost certain whether it was going to be support or not. The biggest disappointment I must say, really, was Senator Shenton and, indeed, Senator Sarah Ferguson. We have 2 Members here who are highly placed in Scrutiny and if there are any people who should be pushing for this it is those who lead Scrutiny. Goodness knows why those Members are chairing Scrutiny Panels. If they cannot see the value in what I am trying to achieve then they have no reason for sitting on panels whatsoever. In fact, had it been ... you can see how much interest some people have because at one time there were more out of the Chamber than inside the Chamber. Again, it says little for those people who really have concerns for human rights. I would take up something which Deputy Le Hérissier said. Those people who support human rights are not raving moonies. What they are saying, really, they are looking at issues which should be tackled. They affect each and every one of us and there are human rights issues which affect us in our daily lives. It is not about whether someone has a right to something when they are in prison. What we are looking at is commonsense applications and my proposition is a commonsense application. Indeed, had the vote been taken when the majority were out of the House, this would now have been passed. I have a note on my right ... maybe they will tell me why. What I have to say, really, is what has the Council of Ministers got to hide? The information should already be on hand. We have a statement; I read it out when I asked the Attorney General a question. It is a simple line or 2 that says what they are proposing is human rights compliant. That information should already have been given to the Ministers. If it is not, someone is not telling the truth. Is it ... and I daresay is it from the Law Officers or is it from the Ministers? It cannot be compatible. If we are told that this information is already there, why can it not then be put on the proposition? There should be no cost involved whatsoever. It is not about red tape; pure red herrings. Every time a Back-Bencher brings something forward it is defeated or almost defeated on the grounds of cost, yet last week or 2 weeks ago there we were proposing and accepting ... Senator Le Main has just come in time because he is one of those who voted for it, does not want to spend money on unnecessary red tape, and yet one of those who voted for £15 million 2 weeks ago. What are we talking about? I am grateful particularly I think to Deputy Martin and the Connétable of St. Lawrence. They were involved with human rights, they have seen it, and in fact I think those that went to Westminster ... and I know certainly it was an eye-opener to me and I did not realise how simple really human rights could be if we want to approach it from the right way. I would like to be more positive with the Constable of St. Lawrence. I always hope I am going to win but I have to be pragmatic, but I do not think it is necessary to lose faith because I honestly believe that Members of this House have their heads screwed on, they can see the value. There is no cost involved. If you want to know more, you should have that information. All I will say, if people wish to make work for themselves I can assure you there are enough people who are on Scrutiny, enough people who are like myself who will continually be pushing and asking for more information. I am still waiting for the information that Deputy Noel is going to give me about why the law yesterday was human rights compliant. He did say he will provide it for me and I have not got it, but I hope I will get it. Anyway, let us sum up. I am not going to spend time dwelling on those who have spoken. I am thankful, as always, to those who have spoken whether for or against. Let us lock it down and knock it down into summary. What we really have, there is no cost involved. I have heard what the Attorney General is saying, but really if the Attorney General has given that information already to Members, to Ministers, then all that has to do is be transferred on to a proposition. We do not need reams of it. All we need is a short explanation as to why that particular law is compatible and what Articles are affected. It should not be rocket science. It should or it probably would be in lay language because the Ministers have to understand it. Quite rightly, the Constable of St. Lawrence mentioned about the U.K. I did mention it, too. There is a memorandum of

understanding now in the U.K. It has come basically because the Members themselves have wanted it on both sides of the House. No additional staff, no additional cost. That information is already there. It is then transferred on to the Bills. Commonsense proposition, despite what the Constable of St. Clement had to say. He and I will have to disagree again, but that information should be made available to Members at the outset. Could I say that if indeed Members do wish to vote against it, this proposition will return if not by me by someone else, but I hope we can see common sense can win the day. For all those Members who are thinking about it, what I would ask: vote pour for this proposition. I ask for the appel.

The Deputy Bailiff:

The appel is called for on the proposition to agree that Article 16 of the Human Rights (Jersey) Law be amended to require Ministers to state what Articles, if any, are affected in relation to legislation being brought forward. I ask Members to return to their seats and I ask the Greffier to open the voting.

POUR: 20		CONTRE: 28		ABSTAIN: 0
Senator A. Breckon		Senator T.A. Le Sueur		
Senator F. du H. Le Gresley		Senator T.J. Le Main		
Connétable of St. Lawrence		Senator B.E. Shenton		
Deputy R.C. Duhamel (S)		Senator F.E. Cohen		
Deputy of St. Martin		Senator S.C. Ferguson		
Deputy R.G. Le Hérisssier (S)		Senator A.J.H. Maclean		
Deputy J.A. Martin (H)		Senator B.I. Le Marquand		
Deputy G.P. Southern (H)		Connétable of St. Ouen		
Deputy of Grouville		Connétable of Trinity		
Deputy P.V.F. Le Claire (H)		Connétable of Grouville		
Deputy S. Pitman (H)		Connétable of St. Brelade		
Deputy of St. John		Connétable of St. John		
Deputy M. Tadier (B)		Connétable of St. Saviour		
Deputy of St. Mary		Connétable of St. Clement		
Deputy T.M. Pitman (H)		Connétable of St. Peter		
Deputy T.A. Vallois (S)		Connétable of St. Mary		
Deputy M.R. Higgins (H)		Deputy J.B. Fox (H)		
Deputy A.K.F. Green (H)		Deputy of St. Ouen		
Deputy D.J. De Sousa (H)		Deputy of St. Peter		
Deputy J.M. Maçon (S)		Deputy J.A. Hilton (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		

Senator S.C. Ferguson:

I wonder if I could just make an apology to the Attorney General who has come in for a certain amount of stick this morning. Of course, I bow to his greater fluency and elegance in that I was really attempting to imply the wisdom and skills accumulated over years of practice and learning. [Laughter]

The Deputy Bailiff:

And the Attorney is a very, very competent professional golfer.

The Attorney General:

I have no observations to make on that. [Laughter]

The Deputy Bailiff:

I can announce to Members that the Health, Social Security and Housing Scrutiny Panel has lodged an amendment to the Annual Business Plan, P.99/2010.

4. Foreign Taxes and Freight Costs in Prices of Goods Sold in Jersey (P.89/2010)

The Deputy Bailiff:

We now come to the next item of business, which is Foreign Taxes and Freight Costs in Prices of Goods Sold in Jersey, P.89/2010, lodged by Deputy Higgins. I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion: (a) to request the Minister for Economic Development to instruct the Trading Standards Section of his department to investigate consumer pricing complaints and generally to monitor the prices charged by both foreign-owned and locally owned businesses to ascertain whether they are incorporating into the price of goods sold locally any foreign taxes, or component of foreign taxes, that are not applicable to goods exported to Jersey, or incorporating into the price a shipping cost that is greater than the true cost of the shipment of the goods to the Island; and (b) to request the Minister for Treasury and Resources to present to the States for approval no later than September 2010 amendments to the Income Tax (Jersey) Law 1961 that would enable the Income Tax Department to change the tax status of any foreign-owned company trading in Jersey or the shareholders of locally owned trading companies so that: (i) in the case of a foreign-owned company it will be liable to pay tax in Jersey on all its locally derived profits if it has been found by the Trading Standards Section of the Economic Development Department to be incorporating any foreign taxes, or components of foreign taxes, in the price of the goods that it sells in Jersey that are not applicable to goods exported to Jersey, or charges as part of the price more than the actual cost incurred in the shipment of the goods to the Island by that company or someone acting on its behalf; (ii) in the case of a locally owned trading company the shareholders will be liable to pay a higher deemed dividend on the company's profits than they do at the present time if it has been found by the Trading Standards Section of the Economic Development Department to be incorporating any foreign taxes, or components of foreign taxes, in the price of the goods that it sells in Jersey that are not applicable to goods exported to Jersey, or charges as part of the price more than the actual cost incurred in the shipment of the goods to the Island by that company or someone acting on its behalf.

[11:45]

The Deputy Bailiff:

Deputy Higgins, would you like to propose the proposition?

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

Two years ago, during the Senatorial elections, all the candidates standing for election, including members of the Council of Ministers and Assistant Ministers who are sitting opposite me, condemned the practice of firms charging Jersey consumers prices for goods that included the 17.5 per cent value added tax that was applicable in the United Kingdom but not applicable in Jersey. They promised to find ways to stop these retailers who members of the public felt were ripping-off the Jersey consumer. But that was 2 years ago and the promises were also made during

an election campaign and, as the public knows from experience, politicians will say anything to get elected and when they do they will conveniently forget their promises until the next election when they will restate the same promises - if the matter is still a live issue, that is - hoping that the electorate will not remember what they said previously and their inaction during the years in between. This problem is particularly acute when the promises were made by Senators because during the 6 years that they are in office, the public are highly unlikely to remember anything they said previously and thus they are unlikely ever to be held to account. Well, I for one have not forgotten the promises I gave during the election, and I have spent considerable time over the last 2 years looking for possible solutions to this problem and the related problem of firms charging an additional sum for freight charges that may be higher than the actual cost of shipping goods to the Island. Whether I have succeeded, however, remains to be seen, but I cannot be accused of not trying, which is more than can be said for the Council of Ministers which has not even attempted to address these issues and the related problems which make Jersey such an expensive place in which to live. They prefer to hide their heads in the sand and allow the abuse to continue to the detriment of the vast majority of people in this Island because they believe that market forces will eradicate the problem for them. Or is it simply because they do not really care? But they should care because they are 2 of the practices that help make Jersey such an expensive place in which to live and which adds to the difficulties of the many individuals and families who are struggling financially in the current economic climate to make ends meet. It is also a problem which market forces and so-called competition will not eradicate because of imperfections in the marketplace such as the lack of knowledge or access to alternative suppliers. Well, what is my proposed solution to this problem? It involves 2 stages. Firstly, it requires the Trading Standards Section of the Economic Development Department to investigate whether firms are charging Jersey consumers foreign taxes or components of foreign taxes in Jersey, a fact that *prima facie* will be the case if they are charging exactly or substantially the same prices for the goods in the Island as they do in the state from which they have imported the goods into the Island, and the price in that state incorporates a tax that would not be payable in Jersey. Now, this will require the Trading Standards Section to be assisted by a specialist cost and management accountant or a private accountancy firm with this expertise, the costs of which will be met from the firms who are subsequently found to be guilty of these practices and who do not change their abusive pricing behaviour and are thus penalised as a consequence under the Zero/Ten provisions of the Income Tax (Jersey) Law. If no firm is penalised but prices are reduced as a consequence of these proposals, I believe the benefits to the Jersey economy overall will far outweigh the costs that may have been incurred to achieve this end. Secondly, it involves the Comptroller of Income Tax penalising any firm that is found to be guilty of either of these 2 practices. In the case of a foreign-owned company, it will involve them paying taxes in the Island on all the profits they have made in the Island, something they do not do at the moment for under the Zero/Ten tax regime they pay no taxes whatsoever in the Island despite making excessive profits at the expense of the Jersey consumer. In the case of locally-owned companies, it will result in the shareholders of a Jersey trading company paying a higher deemed dividend than the 60 or so per cent they pay at the present time under the Zero/Ten regime. Remember, companies do not pay taxes on their profits and for local companies it is clawed-back through the shareholders. In order to do this, it will require an amendment to the Income Tax (Jersey) Law. I believe that if these measures are adopted and put into effect by the Council of Ministers, the Island will be faced with a win/win scenario. If firms change their abusive pricing behaviour it will have a positive downward effect on prices in the Island and, therefore, the cost of living. If they do not, they will be penalised by having to pay tax, or higher taxes, which will help reduce the structural deficit and, therefore, the size of any service cuts or tax rises for the Jersey taxpayer. But as we all know from having read the Council of Minister's comments paper on these proposals it is against this proposition. Now, this does not surprise me at all bearing in mind its political and economic dogma and the fact that it has taken little or no steps of its own to deal with these problems or the high cost of living in the Island. Now, what are the arguments? The Council of Ministers states that attempting to change market

behaviour by punishing and penalising individuals and businesses for charging higher prices is not the purpose or a legitimate use of the taxation system. But do all governments not use the taxation system to try to change certain behaviour and, if they are unsuccessful in achieving those aims, generate income for the state instead? One of the arguments for higher taxes on tobacco, cigarettes and alcohol is that the higher prices will cause a reduction in the use of tobacco and alcoholic products, which are considered detrimental to the purchaser's health and wellbeing and which impose costs on the health service. In fact, if I am not mistaken, Senator Ozouf used these same arguments himself last year during the budget debate when he was seeking a rise in alcohol and tobacco duties. Those who are not deterred by the higher prices and do not change their behaviour generate substantial sums to the Exchequer and help fund the health service and other services. What about landfill charges, a sort of disposal tax which tries to encourage people to dump less waste in council-owned tips and perhaps recycle their rubbish? If not, they pay for the privilege of disposing of their waste. Do governments all over the world not use carrot and stick approaches to reducing greenhouse gases, subsidies and tax increases to change behaviour, higher taxes on less efficient gas guzzlers and lower taxes or subsidies on hybrid or more efficient cars and fuels? Taxes, for example, on petrol, and thus their pump prices tend to be higher than on diesel fuels because petrol vehicles tend to go less far on a litre of fuel than a diesel engine vehicle. Secondly, the Council of Ministers states that they are already providing significant protection for Jersey consumers to prevent any form of mis-selling, abuse of monopoly or excessive pricing through its funding of Trading Standards, the J.C.R.A.'s (Jersey Competition Regulatory Authority) oversight of the Competition (Jersey) Law 2005 and the Jersey Consumer Council. You could have fooled me. What have they done? It states that Trading Standards investigates consumer pricing complaints during the course of normal business under existing legislation, investigations being undertaken on the basis of complaints received from consumers as and when they arise, but when have you ever heard of a prosecution by Trading Standards of anyone engaged in these practices? Never. The statements are also contradictory as it also states in the comments paper that Trading Standards would require a fundamental change to its powers, mandate and budget because at the present time it does not investigate prices charged on goods in the Island. It states that the Jersey Competition Regulatory Authority is a proactive regulatory authority supported by extensive competition law. Yes, we all know what the J.C.R.A. has done or is doing in the telecoms and postal markets, but what has it done about excessive prices charged by U.K. multinational chain stores charging U.K. prices in Jersey which are inflated by V.A.T. (Value Added Tax) or local businesses using the opportunity to make an extra 17.5 per cent profit margin? The answer is nothing. Why? Because it does not fall within its powers. The Competition (Jersey) Law 2005 is concerned with the prohibition of anti-competitive arrangements between undertakings, the abuse of a dominant market position and mergers and acquisitions. It does not cover the actions of individual firms acting independently of one another that do not have a dominant position. If these firms colluded with one another then this would be a different situation and they would have the power to act. Therefore, the charge that my proposition for Trading Standards is duplicating the role of the J.C.R.A. in investigating cases of excessive pricing and needlessly burdening the taxpayer with extra costs at a time when controlling spending and considering options for raising finance are critical issues is unfounded as the J.C.R.A. is not acting in this field. In addition, even if it did, the fact is that my proposals would largely be self-funding. While the Jersey Consumer Council does very good work comparing prices and publishing information to the public at large, it has no powers other than the power of publicity to try to bring about changes in the marketplace. The Council of Ministers also states that Jersey consumers buy in a competitive market and retailers set their prices based on consumers' willingness to pay and that if Jersey retailers decide to price their goods at V.A.T.-inclusive levels, Jersey consumers can and do exercise the option to shop elsewhere, such as on the internet. But is this necessarily true? We live in a small community and have limited choice in the provision of certain goods and services. Not all consumers can shop elsewhere. Although many young people are computer savvy or literate, the elderly may not be and, therefore, not everyone can shop on the internet and even then certain large items may be more

difficult to ship to the Island. Nor is the Jersey marketplace a perfect market where consumers have full knowledge of alternative suppliers or prices that are being charged by them. We also know how difficult it is to establish new retail outlets or businesses in the Island. The Council of Ministers also states that my proposition will require a fundamental change to the Island's corporate tax regime, but will it? For it is taking advantage of what I believe is the flawed Zero/Ten tax regime to redress the balance and will only require minor amendments to the law. Changing schedules, as all States Members are aware, is a relatively straightforward exercise. The Council of Ministers also states - and this is interesting after the last debate - that it foresees a potential problem with regards to human rights. But as it also states that the European Court of Human Rights has given states a considerable degree of latitude in setting their own tax policies and my trawl of human rights case law has found numerous examples of them upholding actions taken by governments to prevent abuse of consumers and the tax system, I do not believe it is a problem. The Council of Ministers also floats the red herring of the proposal not being Ecofin code compliant or would potentially damage our future inspection by the E.U. examiners. This is errant nonsense because the measures are non-discriminatory and apply to both foreign and local firms who abuse the consumer and, in the overall scheme of things as to whether the Zero/Ten tax regime is code compliant or not, they are a minor item. Now, finally, for those of you who do not believe that V.A.T. is charged in the Island, I have reproduced a notice about the V.A.T. policy of one group in the Island. I recorded this information on my mobile phone - I went into the shop, saw the sign very prominently on the counter - and it is going to be passed out by the usher in a moment. You will be able to see that they say they are not going to pass on the extra 2.5 per cent that the U.K. Government had taken off V.A.T. when they reintroduced it to their customers. This is a chain which has many, many shops in the Island. I also have in my pocket a receipt I was given earlier from someone issued by a Jersey firm which records their V.A.T. number and the value of the V.A.T. paid on the goods. I urge Members to stand up for the Jersey consumer and support this proposition and take a first step in trying to reduce the high cost of living in Jersey.

4.1.1 Senator A.J.H. Maclean:

Although I understand and sympathise with the principle behind this ...

The Deputy Bailiff:

I am sorry, Minister, I should have asked if the proposition was seconded. **[Seconded]** I am very sorry, Deputy, I assumed it would be but I should have asked.

Senator A.J.H. Maclean:

We were both quick off the mark, Sir. Although I understand and sympathise with the principle behind this proposition, critically it fails to understand the basics of how the retail market functions. It does not appear to have researched or perhaps properly understood the role and functions of other organisations such as the J.C.R.A. or the Jersey Consumer Council which were specifically set up to deal with such matters referred to in this proposition. I will return to this point a little later. There is a belief by some that we pay too much for many products and services in the Island.

[12:00]

There is, indeed, evidence to support this view, although I think that perhaps today there are less examples than was the case some short while ago. In an island economy, a premium is sometimes added to the all-inclusive price of products and services. There is some justification for this in terms of higher operating costs for local businesses such as staff costs, premises and transportation. However, if such a premium is charged then it should be small and proportionate. Regrettably, in some cases, the margin, including any premium, between the wholesale and retail price is unacceptably high and I will return shortly to how excessive pricing is already being dealt with. Turning now to the detail of the proposition, it is, I am afraid, fundamentally flawed. If approved, it could not hope to solve any of the issues to which it refers in an acceptable manner. What the

proposition asks is either already being done, impractical or potentially very costly. It would effectively duplicate the work of other existing organisations which are specifically tasked and funded to address such issues. Of critical importance, Deputy Higgins' proposition fails to recognise that Jersey retailers and consumers operate in a largely free and competitive marketplace, a marketplace that is increasingly international in nature. I say that because local consumers have significant access to products over the internet. The internet has had the single greatest impact and influence on local retailers and the single greatest effect in ensuring that local consumers have greater choice and lower prices. The benefits of such are seen by those whether they use the internet or not. It has an effect regardless. Jersey consumers can, therefore, buy in an increasingly competitive market and local retailers have to set their prices based on consumers' willingness to pay. Some consumers will be prepared to pay a small premium but not an excessive margin to buy locally, either out of loyalty to local businesses or because they prefer, quite simply, to deal on a face-to-face basis. The internet and other consumer awareness campaigns have ensured that consumers are more aware than ever before of the cost and the value of products. Remember, for example, our "Think twice, buy local" campaign. It was not the "Think twice, buy local at any price" campaign. It was intended to capture some of the leakage that occurs each year through internet sales by encouraging Islanders using the internet to challenge local retailers to closely match those prices. I have to say we have seen good evidence that it had an impact and it worked. Quite simply, if local retail prices are too high, local consumers will not pay and local businesses will see a net effect: classic market forces in action. Jersey offers an increasingly free and open market, a position that both my department and I fully endorse. Our recently launched retail strategy is a good example of our continued drive for open, competitive markets, a strategy that had at its heart the removal of barriers to entry, greater competition and a level playing field for all. In general terms, a competitive market will help to drive prices down and increase consumer choice. The J.C.R.A. was established with exactly that in mind and has from a consumer point of view achieved a number of notable successes. The proposition before Members today effectively seeks to duplicate the work not only of the J.C.R.A. but of other important organisations such as the Jersey Consumer Council. The Consumer Council, which as Members will be aware is funded by my department, is actively and effectively involved in challenging pricing policies and services of any business which seeks to charge excessive prices and deliver substandard service. It should also be noted that in today's economic climate far fewer businesses are charging excessive prices as we have such an incredibly challenging retail environment. Nevertheless, those who seek to charge excessive prices must be brought under pressure to lower those prices and offer a fair deal to Islanders. The J.C.R.A. and the Jersey Consumer Council both play an important role in representing consumer interests and achieving that objective. I have to add that I am slightly disappointed that the *J.E.P. (Jersey Evening Post)* seems to have dropped its fair play column which had the interests of Islanders very much at its heart. It was especially successful in, for example, helping to reduce petrol prices. Importantly, it raised consumer awareness in many areas and I certainly hope to see it again fighting to represent Islanders' interests for a fair deal. The J.C.R.A., the Jersey Consumer Council, open, competitive markets and consumer awareness campaigns are exactly how we currently deal in the most effective way with the concerns raised in this proposition. Turning to the detail of the proposition, under (a) Deputy Higgins asks me to instruct Trading Standards to investigate consumer pricing complaints. Well, Trading Standards already undertakes this role as part of its normal business. This makes the first part of (a) a non-issue as it is already being done. The Trading Standards Department also deals with matters relating to mis-selling of goods. It administers the Price Marking Law, a law that ensures transparent pricing by retailers who must clearly show the all-inclusive price of each product for sale. To ask Trading Standards to monitor locally priced goods to establish whether they incorporate any foreign tax elements or incorporate excessive shipping charges would require fundamental changes to its powers, to its mandate and, indeed, importantly, to its budget. This would also duplicate the powers and functions of the J.C.R.A. Duplication involves inefficiency and unnecessary additional costs at a time when we are all trying to bear down and to cut

unnecessary cost. Incidentally, if this proposition were adopted, the cost would be considerably more than the £60,000 that Deputy Higgins includes under “financial implications” and I would be interested if perhaps in his summing-up he could give us a little bit more detail and justification for where the £60,000 comes from. Members will appreciate that governments do not set retail prices; retailers do that. Furthermore, government policy does not seek to control prices and does not plan to do so. In fact, we seek the opposite. We seek free and open and competitive markets. The issues concerning foreign taxes are nothing but - and I hate to use this term because it has been used already several times today - a red herring. In a free market, retailers can charge whatever they feel a consumer will be prepared to pay. Any so-called foreign tax element is, in effect, not a foreign tax at all but simply an additional margin for the benefit of the retailer. By this I mean that retailers can charge whatever they like and will make their pricing decision based on whether they think consumers will buy the product at that particular price. If consumers do not think the all-inclusive retail price ... they have increasing choices to go elsewhere and we have a Competition Law to deal with any matters relating to anti-competitive behaviour. The proposition also asks for shipping costs to be monitored and for the retail price of products to be checked for excessive shipping charges. Again, this is impractical as most retail products sold locally do not give any breakdown of input costs on a per unit basis and certainly to try to obtain such data would be time consuming and, again, extremely costly. The J.C.R.A. has done some work on shipping costs and was instrumental in the competitive tendering of the stevedoring licence, the first time, I should add, that that particular licence was put out to open tender in more than 30 years. The increasingly competitive nature of the L.O.L.O. (load on, load off) freight market has helped to drive down freight prices to a particularly low point at the present time; in fact, they are at historic lows. In summary, this proposition could be described as a nice idea at face value. It is certainly populist, but I am afraid it is impractical, costly to implement and, importantly, we are already addressing these issues in many different ways which I believe are, without doubt, more effective than this proposition would be able to deliver. As such, consumer interests will remain a keen focus of mine and of my department, a focus to which we already devote considerable resources to help prevent mis-selling, abuse of monopoly positions and excessive pricing. I therefore urge Members to reject this well-meaning but misplaced proposition.

4.1.2 The Deputy of St. John:

The previous speaker, I think he came in on the platform of one of the angry men. I have to ask is it a horse? Is it a mule? Is it a zebra? No, it is one of the angry men. One of the comments that he made on the platform, and I recall, he was going to do what was right for the people of Jersey. He believes what he has just told us is right. Given that we walk into one of the well-known brands, Marks & Spencer, who admit they carry their U.K. taxes over into the Island, that is not acceptable. The people of Jersey want a lot more than that. They want fair play across the board. They do not want to be paying U.K. taxes when they are purchasing their goods in a shop in town or anywhere across the Island, in St. John, for instance, where we have one of those outlets. I think it is wrong and I take my hat off to Deputy Higgins for doing what he said he would do at the time of his election. He made a pledge to the people that elected him that he would act on this and he has done so. In doing so, I believe quite a number of Members should support him because I can recall standing on the platform saying I would ... if this comes up into the House I will vote in what I believe the right way, the right way being what is right for the people of Jersey, the people who go into the shops and are getting ripped off by this additional charge, part of a V.A.T. U.K. tax. Therefore, in truth, I believe the previous speaker “doth speak with false tongue” because he said one thing on the platform and he is saying something totally different here today. We all know he is in charge of E.D.D. (Economic Development Department) and they have certain commitments within certain areas. He and his 2 Assistant Ministers frequently try to pull the wool over my eyes at question time. Fortunately, I wear glasses on the top of my head so they are not quite sure if they are or not. But that said, we have to do what is right for the people who elect us, not paying additional money so the U.K. companies who do not pay tax in the Island anyway, other than

through their employees' wages, are benefiting on the back of an economy which is probably more buoyant than their own back in their mother country. But that said, do what is right for Jersey, and I would expect ... and I do not see them at the moment and for most of the proposer's speech I did not see the Treasurer ... sorry, the Minister for Treasury and Resources - I do not need to be corrected, thank you, Minister - in the Chamber and I do not see his 2 Assistant Ministers who I would have expected to have been listening to this given that they would be the Members with responsibility for probably doing something about this if, hopefully, it is adopted by the House. But I am sure that the Chief Minister and his Council of Ministers will have the 3-line whip out later on for their 24 Members and possibly a few others to support them so this does not go through, but Members, remember what you told the electorate at the time of being elected, that you wanted to do what is right for them and you wanted to have fair taxes for the people of Jersey who do not want to be paying other people's taxes within the cost of some of our products. I expect to listen to quite a good debate here because I think the Minister for Economic Development was banging a different drum to what he did 5 years ago or 4 and a half years ago.

The Deputy Bailiff:

The Deputy of St. Martin. Deputy, one moment, please. **[Interruption]** One step closer to being properly quorate. The Deputy of St. Martin.

4.1.3 The Deputy of St. Martin:

I am glad to follow the Deputy of St. John because I do agree with him about the party whip. I do not think these Members have to be in the House because they know which way they are going to vote before they start so it does not really matter whether they are here or not, providing they are here at the right time to press the button at the right time.

[12:15]

That is all a lot of Members and the Council of Ministers and some of their Ministers or Assistant Ministers have to do. We have heard a lot about sympathy but not support. Where have we heard that again? Well, I have good news for Deputy Higgins. He has my sympathy and he has my support. But I rise early simply because I want to ... the Council of Ministers has made its comments and produced them and published them, but there are 2 questions I will ask maybe that someone from the Council of Ministers could answer for me. Deputy Higgins has circulated a piece of paper which indicates that there is no V.A.T. increase, *et cetera*. Now, we have all seen these as we go round the shops and as far as I am concerned I take them with a pinch of salt. But I would like to know maybe from one of the Ministers who could tell me, what is the trading section doing about it if, indeed, they are ... the information up here that is being displayed is incorrect? Is it an offence to say that V.A.T. is not applicable when in actual fact it is ...? So, maybe someone could answer that because I am not sure. I am not the only one who wants that information, though. The general public wants it as well. Of course, I do rise with very serious ... because I am grateful again that here we are denying us ordinary Members the opportunity of knowing why something is human rights compliant. We are here for the second time with Deputy Higgins. He brings a proposition and lo and behold the Council of Ministers is saying: "Do not vote for it" because - guess what - it is not human rights compliant. Well, maybe someone from the Council of Ministers could tell me, please, and I would ask if they could write the questions down because they are quite important and I do believe we should get the answers. Can we ask the Ministers where did human rights advice come from? How long did the Council of Ministers have to wait for that information? How much did that information cost? If indeed the information did come from the Law Officers, were extra staff employed? The last thing is can we know what Articles are affected if, indeed, this particular piece of legislation or this particular proposition is, indeed, violating the Human Rights (Jersey) Law. I think it is very important because human rights work on both sides. It is there to defend the innocent. It is not there to protect the guilty. It is very

important so I would ask that if human rights are going to be bandied around this House willy-nilly, people vote for it when they want to, I think it is fair that Deputy Higgins and the rest of us know why this particular piece of legislation might violate the Human Rights (Jersey) Law.

4.1.4 The Connétable of St. Peter:

In bringing this proposition, I am just wondering whether the proposer is totally ignoring the freedom of choice. That is the freedom of choice of Jersey residents to choose where they buy their goods from and, equally, the freedom of businesses to choose where they operate. To levy additional taxation as proposed will have 2 distinct effects: either increase the cost of products of those that carry the additional tax or reduce the choice of Jersey residents. Many locally-produced products can be purchased for less at large supermarkets with the benefit of economies of self-purchasing powers. We have seen that Jersey Royal potatoes can be bought less at Tesco in Birmingham than they can be on the street corner in Jersey. Do we really want to tax a Jersey grower more when he sells his potatoes in Jersey because he is making more profit in Jersey? Is that what we are saying? Because that is exactly what this proposer is intending to do. He is looking at proposing taxing increased costs. The proposition is not a win/win as the proposer put forward, but a lose/lose. We will either lose in that costs will go up to cover the costs of the tax levy or we will lose the ability to choose where we choose to buy. One of the previous speakers spoke about a local supermarket that charges a levy for bringing their goods into Jersey, and yet that is one of the most popular supermarkets because of the choice it gives the Jersey buyer. If they were to pay a tax additionally because of their levy, do you think they will be here tomorrow? No, they will not. The costs to operate in Jersey would be too great and the Jersey person will lose and the remaining supermarkets will just put their prices up because they have more ability to do so and less competition.

4.1.5 Senator P.F.C. Ozouf:

I think that every Member of this Assembly would agree that we do not want to see U.K. firms charging U.K. V.A.T. I am not alone in this Assembly of being a Member who has certainly said things in the past about this issue and done something about it. I have checked on numerous occasions and retailers know that some Members check whether or not they are incorporating U.K. V.A.T. prices in their pricing comparisons. Indeed, I was criticised at the point of the introduction of G.S.T. (Goods and Services Tax) when I published a list of those firms that did charge U.K. V.A.T. versus others. I believe that the naming and shaming of retailers, empowering consumers with information, is the right way and the consumer pressure way to deal with these issues. The Minister for Economic Development has explained ... because this proposition is in 2 parts in terms of requesting 2 Ministers to do something, he has explained I think very well the challenges that he would face in accepting the proposition from a Trading Standards perspective. I need to also explain in equal fairly honest terms to Members, and strong terms, that what the Deputy is asking, while well-intentioned, is impossible to deal with from what he asks as an income tax perspective. Jersey's tax system is based on a scheduler system. There are 2 schedules, Schedule A which charges tax to income arising from property and property development, and Schedule D which charges tax to income and profits that arise from trades or employment and other sources of income such as bank interest. A critical important component of the scheduler system is that tax is only charged where a source of income on profits exists. The proposition does not conform to the basic tenet of our taxation system on source. I am afraid it would be impossible for us to conceive of bringing legislation to this Assembly that would incorporate an event such as an organisation charging U.K. V.A.T. into the tax system. It would be a massive, significant departure from our taxation system. It would, frankly, be ... while it is in a proposition that is before the Assembly, it is unworkable, it is indefensible and, yes, I have to say to the Deputy of St. Martin it would not conform to human rights. The Deputy is not alone in caring about human rights; Ministers, as we have had a previous debate, have to sign-up to human rights compatibility statements. I am advised that the statement that I would be required to make or I would be invited to make as to whether or

not such legislation would be human rights compliant, it would not be human rights compliant and I could not sign it. Certainly, I would not be advised to sign it. The Deputy has views ...

The Deputy of St. Martin:

Could the Minister tell us why, then?

Senator P.F.C. Ozouf:

I do not know whether or not I can add anything.

The Deputy of St. Martin:

All I was asking was if the Minister could tell us why. I did pose questions and I think I am entitled to the answers.

Senator P.F.C. Ozouf:

I will attempt to explain. While the European Court of Human Rights allows a considerable degree of latitude to governments to set their own taxation policies to meet their own social and economic circumstances where they are well-founded, objective and legitimate, introducing an event such as tax charge based solely on a pricing policy would, it seems, fall foul of human rights legislation where particularly a trader is legitimately able to legally charge whatever they would want to as prices for goods and services. It would be effectively not compliant for those reasons, that you would effectively start penalising somebody using the taxation system and it would not work. That is the advice that I have received and I would hope that the Deputy would accept that that is sound advice. Deputy Higgins has views on Zero/Ten. I do not share them. The Deputy made a number of comments which I will not refer to in detail, but I simply do not agree with his assessment and the critique he gave of Zero/Ten. Jersey's position, the Treasury's position and the Council of Minister's position is that Zero/Ten is code compliant. We are, as Members will be aware, being assessed on whether or not we are code compliant and we are confident that we are code compliant. What I need to say to Members is that it would be extremely unwise, quite apart from the other matters that I have raised in relation to the complete impracticality of incorporating such an event into Jersey tax law, for this Assembly to start being seen to be tinkering with Zero/Ten at the point that we are being assessed. It would be impossible to explain and to justify such a change. We have had discussions and I want to find a solution to taxing foreign corporations as we have said numerous times in relation to the business tax review, but we should not be making changes to Zero/Ten at the point at which we are going to be assessed, particularly a change that would, I think, raise more than an eyebrow to other governments that would be looking or officials that would be looking at our taxation system. They would be wondering exactly what the Assembly of Jersey was doing in terms of such a dramatic change to our taxation system. From a Treasury perspective, not to in any way undermine the intentions of the proposition, I wish to say that you cannot use the taxation system to punish people who are charging U.K. V.A.T. If the Assembly really wants to punish such firms, it must be for Consumer Affairs and consumer legislation to do so. This would be the least practical way of dealing with punishing of firms who are charging U.K. V.A.T. I would summarise by saying that we all share a view, as I said, in relation to U.K. firms charging U.K. V.A.T. The way to deal with this is by consumer awareness and by consumers having alternatives to shopping. That means a competitive landscape; that means competition where consumers can vote with their feet or move with their mouse online to choose alternative suppliers who are not charging U.K. V.A.T. I agree with the Minister for Economic Development's observation about the good work that the *J.E.P.* did in relation to their fair play column. That is the way of raising awareness of who is charging V.A.T. and who is not and if there is something that the Consumer Council can do in relation to naming and shaming, that is the way that Islanders need to punish retailers charging U.K. V.A.T., not tinkering with the taxation system, which would have, I am afraid, dire consequences quite apart from me having to say I just simply cannot do it.

4.1.6 Senator A. Breckon:

I can well understand Deputy Higgins' frustration and his reason for bringing this because the cry goes up: "Something must be done" and when you suggest something you say: "Yes, something must be done but this is not quite it." As I said, I can well understand the frustrations. Of course, the issue is nothing new and aside from this - I did not know about this proposition - at about the same time when I got accused by the country club Chamber of Commerce of being in collusion with Deputy Higgins on this, I wrote to about 60 retailers to ask them what their policy was on value added tax. I had done that for a reason, because as Members are probably aware, the U.K. Coalition Government has proposed that V.A.T. will increase to 20 per cent from 8th January I think it is next year. So the reason I wrote to them is at the back end of last year it went down to 15 per cent and then it went back to 17.5 per cent. The proposal is it is going to go to 20 per cent. Well, if it is that much more expensive to do business in Jersey, is it 15 per cent more, is it 17.5 per cent more, is it 20 per cent more or is it no per cent more? The reason I say that is the Minister for Treasury and Resources has just disappeared but he has just sent out a consultation paper on who would like to pay more tax and which one would you like to choose, which we all know about, and in there it mentions social security and in the U.K. employers pay 12 per cent. Now, okay, they do not pay 12 per cent in Jersey, so the question is, is it more expensive to do business in Jersey? Well, not if you are paying wages and you are paying social security on them, which they should do, then it is not. Although there is that stretch of water which gives the excuse, it also provides a comfort zone for some.

[12:30]

So I understand exactly where Deputy Higgins is coming from, but it goes back a lot further than that, since the introduction in the 1970s of taxes in this area on consumption. In Jersey, before the Consumer Council, there was a watchdog group and among their members former Senators Rothwell and Stein were members of it as well as people from the trade. They looked at the very issues that we are still looking at today. What are the prices? What is the reason? Some of those questions in that very near 30 years have not, unfortunately, been answered. So how do we flesh that out? There is the transparency, there is the information and there is the people-power doing that to people and there is an example of where that happened in Jersey, and I can say it does not happen very often. Members will recall when Safeway was taken over by Channel Island Traders, the day before the Competition Law came in, people voted with their feet. They took a view and they did that not for a few days. They did it for a very long time, a period of 15 months before they had the trade back, and the same happened in Guernsey. So people can and should more often take a view. The difficulty is, how do you get the information in the public domain, and petrol has been mentioned. That is one issue where people will look and they are voting with their feet because they know what the price is and there is a degree of transparency and as the Minister for Treasury and Resources knows, there are still some issues there. If you strip out the duty, petrol and diesel in Jersey is still very expensive. But then how do you change people's habits, whether it is drinking, smoking, buying habits? Then it is a very long haul. It is no good just going with a lot of publicity. It is like a tap dripping. You need to keep doing it and it is an expensive business to do that because you need to have the evidence. You cannot just say it; you need to be able to prove it. So you need to gather that information and what that means in Jersey is foot soldiers going out there with clipboards to get it. We do not have access to many Jersey, for example, supermarkets to gather the information without going in the shop and for the Consumer Council to do that on a monthly basis, convenience stores, supermarkets, garages and one or 2 areas that we are looking at, but it is fairly expensive to do that. The Minister did say, and in front of him I might say to him not quite well enough, because we could do more but then there is a cost of doing that and there is a cost of getting the information out there. But it does raise the question, is it more expensive to do business in Jersey? We have never really answered that and the reason I say that is in Ireland, the Government there did a survey and they did it in a proper way and they hauled-in Tesco who were

operating and said: “Well, you are charging 9 per cent more. Why is that?” I think at the time Mulcahy was there to answer the question. He said: “Well, your road system is rubbish. We are paying for landfill. We have a stretch of water and there are insurance costs and other things”, and he justified why it was more expensive to do business in Ireland than it was on the mainland U.K. Nobody has done that here. Now if the Chamber of Commerce and others wanted to exercise their minds, they could do something. Is it more expensive to do business in Jersey, and that would address perhaps some of Deputy Higgins ... if they can justify that by saying rents are, wages are, social security. I have already said social security is not. The transport ... once you are here you do not go very far. You are not bombing up and down the A1 or the M1. You are not going from Land’s End to John o’Groats. You are going from the docks to Five Oaks, or wherever it is. So that is about it. In smaller vehicles and you are not having overnight stays for drivers unless there is volcanic ash in Trinity. **[Laughter]** But generally, you do not so we have never had this discussion. So I can understand all of Deputy Higgins’ frustration because we have, perhaps we would call it a Comfy Club where, yes, we have some competition. Yes, there are some challenges. But I do not think we have a free market because there are barriers to entry. How do you set up here? Now, if you look at the High Street, shops have opened and closed. They have come and gone. They have thought it was this and it was not. So there has been that. But you mention another supermarket and the balloon goes up. But shops have come and gone in King Street and Queen Street and wherever else but the supermarket is the sort of elephant in the room. But again, people can vote with their feet and there are people buying things on the internet, doing that, and there are issues about V.A.T. on that. So that is not the answer to everything. But what we require is greater transparency and this notice is an example that Deputy Higgins has passed around and that is something I am working towards, hopefully by the end of the year, so that retailers will display what they are doing. What do they do? Are these prices U.K. equivalent? Is there some sort of difference or discount on that? If they do that, then people buying, the consumers, are making an informed choice. If they want to go to High Street names and they know that they are charging the same price and they want to pay it then that is their choice. But sometimes the other side of that is they do not have many options because we cannot drive 30 miles down the road and go to an out of town shopping mall and have that choice and we do not have head-to-head competition where it is, literally, cut throat. There is no need for that because everybody from the Comfy Club can make a living and they do not need necessarily to get to the cutting edge to do that. There are some issues in it. The thing is with what Deputy Higgins is proposing, really I think he has misunderstood trading standards because they do not have the authority to go in some of these areas. If there was an issue, then perhaps the Jersey Competition Regulatory Authority could get involved depending what it was. But I am not sure that ... Trading Standards investigates, it says here, pricing complaints during the course of normal business. But if somebody buys a box of Christmas cards and it is £9.99 in one place and then they discover it is £4.99 somewhere else, it is not an offence really. Nobody has committed an offence. What happened, the person who bought them should have checked around first to find out they are available at £4.99 before they paid £9.99. You can go back to the shop and say: “Can I have my money back?” They will say: “Why?” You will say: “Well, they are cheaper somewhere else.” But that is not an issue. There is nothing wrong with them. They are fit for purpose. That is not an offence.

Deputy M.R. Higgins:

Sorry, would the Member give way for a second? The point I was making was that this was what the Ministers have written in the comments paper. They are saying Trading Standards do this as a matter of course.

Senator A. Breckon:

But again, you see, even if that was reported in Trading Standards, they have no avenue to publicise that. It is *caveat emptor*. It is buyer beware. That is the market that we are in and then the question is, how do you publicise that? Just to give you an example. I do not know if Members are

aware, there is a multi ... it is used as a marketing tool, it is a website called "My Supermarkets" and the people who set it up, set it up with their own money and they gather all the supermarket prices and change them, virtually, on a daily basis. But this is multi-million pound organisation that has set this up and you do not have to pay a fee to go on there but when you are on there, the advertising brands are there. They make their money from the advertisers but, of course, you could not set that up for Jersey and you could not have the prices there. The difficulty is, how do you get the information across to people, and what Deputy Higgins is suggesting a tax penalty for those there but the difficulty is the enforcement of that and what is suggested through Trading Standards and others really is very difficult because it does not fit in really to the system that we have. The Minister for Treasury and Resources has touched on that and the sad thing is at the moment there is no way for him and his predecessor for taxing non-domicile companies. So we have companies operating in the High Street who are charging U.K. equivalent prices and taking their profits out of the Island. So something needs to be done to address that. But then the consumers are voting with their feet and either going there or not. I am not sure if taxing them is the right way to do that. The other thing that I think is useful is at the moment we do not have much legislation regarding advertising. So in the main, the High Street operators use the same codes that they do in the U.K. in general terms but they do not have to but, as I say, in the main, they follow that and I think that is an opportunity for people to look and see what has happened. The other thing is, money is tight then people are a bit more canny in what they do and where they go and that is really where some of the pressure is, and I have to stand really here and apologise for having to say some of this but there is not a great deal that so far we have been able to do and I am not sure that this is the right way to cure where we are. I mean, people-pressure and power is certainly effective, as I mentioned before, but then we need to get that information out but the retailers themselves need to be honest with us, to say: "Well, this is what we do here. We charge these prices." Now, that could be a garage. What are the prices of cars, oils, accessories compared with the U.K.? Everybody needs to do it and I think that is a role that the Minister said he is certainly sympathetic to. How we do it, it is a massive job. It is a massive job but then it is about galvanizing people themselves to do the sorts of things that Deputy Higgins and others have expressed concerns about. It is about people-power and galvanizing those. Certainly, I have given the House assurance that although I do not have any statutory powers as chairman of the Consumer Council, we do a lot of work in this area, as I say, without statutory. We do not particularly want statutory powers. Publicity is a fairly powerful tool. Having said that, if somebody is making a lot of money then they do not get usually embarrassed very easily either. So, you know, it is a case of: "Well, yes, they have said that. They will go away." But we have not gone away. This is not just about the Consumer Council or consumers, it is about us all and what we can do and we can change habits, we can vote with our feet, we can put pressure on, we can do all sorts of things but it is a collective thing. I am not sure, as Deputy Higgins is suggesting ... we have got here I think a bit of a blunt instrument and I do not think, with respect, he has this quite right. As I said at the start, something must be done but I am not sure, I am not convinced, maybe he can convince me in summing-up, that this is the right thing to do. But there is certainly more we can do and more we should do but, in conclusion, I would just say I am not sure that using the tax system, although it might be a lever ... the other thing that perhaps the Deputy might not be aware of is that generally contracts take place between a willing buyer and a willing seller and if you put something there that is a restriction to trade then some may take a view and they may walk away. Because do not forget, Jersey's market of 100,000 souls or so is a pinprick in global terms to some operators and with that, they will say: "What is that? Bit of a nuisance." Walk away. That is the other possibility. So some of us could damage where we are if traders take a view, you know, they could set up another hypermarket outside Milton Keynes or somewhere like that which generates that. But having said that, there is some good business to be had in Jersey but, again, people should be aware of this and, again, it is down to the people and I think there is value to be had in certainly airing this, discussing, debating it, but I am not sure as it stands I can support it because I do not think it quite fits the situation we have.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

The adjournment is proposed. The States, therefore, stand adjourned until 2.15 p.m. this afternoon.

LUNCHEON ADJOURNMENT

[12:45]

[14:15]

PUBLIC BUSINESS - resumption

The Bailiff:

We continue with P.89.

4.1.7 The Deputy of St. Mary:

I shall be moderately brief. The key issue here, there are 2 key issues. One is, is it working now? Is consumer protection with regard to this matter of price because of freight charges and V.A.T. being charged, is what we have in place working? Because if it is, then obviously we do not need the proposition. The second thing is, are the proposals or is the proposal of the proposer, is it feasible, does it work, are there problems with it? In that context, those are the 2 issues as I see them and the first thing I want to say ... I want to say 3 things. I will come to (a) and (b), those are the second and third comments but the first comment is how can we make judgments on these issues whether it is necessary and whether the proposals are feasible when the reply of the Council of Ministers is that it is an old beef and here we go again but it came yesterday ... sorry, the day before. It came on Monday. Now, I am going to give 3 examples of areas where they have made statements that should have been tested before the debate and if anyone had a particular interest in this issue, how could they have tested these assertions when they only get the comments on Monday. It is an old issue this but it keeps on coming and, as a result, I feel this debate is quite unsatisfactory. We are getting assertions on one side from the proposer and his supporters saying: "We need this and this is the way to go." We are getting assertions from people like the Minister for Treasury and Resources saying the opposite and really it is very difficult for us to make these judgments on the hoof. So I will just give the 3 examples, and I think Members will then see that this is not a satisfactory way of proceeding. On page 2 of the comments which arrived on Members' desks on Monday, we have a statement about Trading Standards which, of course, comes into the context of is there a problem; do we need to fix it? The claim is that Trading Standards are doing what is necessary already. What the Council of Ministers write is: "At present Trading Standards investigate consumer pricing complaints during the course of normal business under existing legislation. Investigations are undertaken on the basis of complaints made by consumers as and when then arise. Therefore, this first element is a non-issue." Well, firstly, we do not have any evidence for this and it would have been difficult to have challenged that in the time. How many times did consumers complain on these grounds and have these things investigated. The second thing is, do they expect me to believe that Trading Standards apply the sort of investigations that Deputy Higgins is asking for? Did they really apply those sorts of investigations on the hoof, case by case? I do not believe they can. They cannot go into the accounts of a certain store and look for the sort of information that Deputy Higgins is after on the basis of a complaint when somebody walks in and says: "I found this was a bit on the expensive side." Also, as we heard, the fact that a good was on the expensive side would not, in itself, be a legitimate cause for a complaint anyway. Okay, you bought it. That was the contract. You were shown the price and you bought it. So it would even be difficult for Trading Standards to investigate and what Deputy Higgins is asking for is an overall right, a proactive stance within the government apparatus to go after this particular issue of over-pricing, building in freight charges which are excessive and building in V.A.T. which does not apply in Jersey or other taxes which do not apply in Jersey. So I do not think the Trading Standards argument stands up. But it is here. It was sent to us on Monday. Very

difficult to question it. I am questioning it now, and then we get a reply on the floor of the House and it is altogether not very illuminating. The second example has been touched on already which is human rights and we get a bald statement on the second last paragraph of page 4 that there is a potential problem as regards human rights with a very brief summary of why the Council of Ministers think that there is a problem. But, in fact, they simply state that there is a problem. There is no justification within the human rights legislation for why this is human rights non-compliant, and I must say I find it quite difficult to grasp why it should not be. But there it is. There is a bald statement. We are given no time at all to challenge it. No time at all to find out what lies underneath that statement except on the floor of the House in the debate. It is too late. That is not the way we should be making decisions of this type. The third is the statement about Ecofin that this proposal ... the mechanism which Deputy Higgins is proposing would fall foul of Ecofin and would somehow clutter up the 2010 review. Again, that is a statement. Now, I am not in a position to challenge that or look at the ins and outs of whether that might be true or not but other Members might be and they might wish to take that up and they might wish to dig a little further. Again, no time to do it at all. So this debate is unsatisfactory. We have a proposition which is quite deep in the sense that it goes to the heart of a matter that has been bugging people for years, and yet we get comments 2 days before and it is really very difficult to know the real facts of the matter. So turning to (a) and (b) now, the specifics of what Deputy Higgins is proposing: in (a) he is asking for the Minister for Economic Development to instruct Trading Standards to proactively look at this issue in the round. In other words, not to wait for complaints but to take it as an issue that is live and real and needs something done about it. Now, we have heard people assert that the rip-off element is out there and it is real and that supposition has not really, I do not think, been challenged and we heard from the chairman of the Consumer Council about the Comfy Club and so on and there is an issue which I think is real. It has not been challenged. It has not really been justified by the proposer. He did not feel he needed to. He just knows that this is a live issue out there about the prices in Jersey compared to the prices in the U.K., for example, or indeed in France. So on that assumption he then proposes that we go after this problem. Now, it has been with us for 30 years, we have been told, that price differential between here and the U.K. and, of course, it matters not only to residents but also to our visitor economy. Our whole tourism industry is handicapped and hobbled if it is true that there is a difference in price and I am sure there is. So what we have here is a proposal to do something about it and I am glad, and we should all be glad, that the Deputy has brought this proposition so we are at least talking about it, and my personal view is that this is a reasonable way to go after this information. Nobody else has suggested a better way. It certainly does not fall within the J.C.R.A.'s way of operating, as the proposer pointed out. So I will be supporting (a) unless someone brings very strong reasons not to in the rest of the debate. But (b) I find more problematic and I hope the proposer will, in his summing-up, explain why he chose this mechanism, to use the tax mechanism as the mechanism for penalties on companies that are found to be abusing the prices they charge or being abusive in the prices they charge. We have heard from the Minister for Treasury and Resources that there are problems with bolting this on to our existing tax system. I can see that the proposer wants a way of getting the money back. He wants a way of making this revenue-neutral and, in fact, probably revenue-positive in terms of the States' overall budget, but I do find the problems with the implementation quite serious as they have been put to us. So I hope that he can justify that in his summing-up. I am really quite doubtful. I do say I hope he is going to take the 2 separately. I hope he is going to take (a) and (b) separately in the vote. I do say that (a) does stand alone because we could go after the information and then work out in short order a mechanism for somehow clawing the money back from the companies that are abusing the system. So with that I come to an end.

The Bailiff:

Before I call the next speaker, there is one matter I had meant to mention when I first came into the Chamber and that is simply to inform Members that Her Royal Highness the Princess Royal will be visiting the Island on Thursday, 30th September. She will be carrying out a number of engagements including at Durrell and the Jersey Field Squadron and she will be opening the new Jersey Dairy at Trinity.

4.1.8 Deputy J.B. Fox:

Before I was a policeman, I was a grocery manager. I came to the Island and in 1969 they were discussing this problem then.

The Bailiff:

You have had many careers, Deputy. Yesterday you told us of another one that you had.
[Laughter]

Deputy J.B. Fox:

I have. I am very versatile. [Laughter] It also means that I also have a great deal of knowledge which sometimes comes in handy. In 1969 I remember the customers, the clients, then were discussing the same problems. But I also, when I entered in the police force, became a crime prevention officer and I had the privilege of having much more knowledge to the workings and commercial viabilities of various organisations, *et cetera*, none of which I can talk about now except to say that although it is some years ago because I have been retired for 12 years, there were rate differentials between here and the U.K. There were property owners and, therefore, differentials in that sense and also rents, rates, *et cetera*. But the one thing that was also different is that the business here for the size of a property often was hugely greater, and I know that not necessarily it is now but there were occasions when some of these U.K. companies were doing hypermarket trade in a supermarket-type sized premises. So we should bear that one in mind and these are the sort of differences. We also should bear in mind that a lot of these premises now are divided up into various U.K. and local organisations and some of which a local owner just rents out parts of the store to other organisations, some of which are local and some of which are U.K., and some of which are franchised from large U.K. organisations. So the argument often is: "Yes, I know it is dearer than what it is in the U.K. but you must remember we are a franchise." I always remember that because they always tell me it as a reason why they should be charging more. I think it is very sad that a Back-Bencher is trying his best to do everything that the local people know full well that they are being ripped-off in one form or another and we are being told that, in fact, we have a choice of where we go to shop. That is true, we do. The trouble is we do not have the same choice. When I go across to France, I have a lot more choice through some of the different franchises, shall we say, but they charge a lot less than what they do here and they are not necessarily French companies. They can be German companies, they can be U.K. companies. But of course you have the argument of the question of size and the question of shipping. The one thing that we have never had the answer here - and I think (a) is what the Deputy is trying to bring forward - is that we would like some answers. For a change, can someone concentrate on the issue and try to resolve some of these questions and some of these arguments.

[14:30]

I know that Senator Breckon has been doing this for many years and they have done a sterling job over the years and we have heard some of them today with the *Evening Post* and various looking into the competition in relation to vehicle petroleum, *et cetera*. But we really could do with some more understanding of what the difference is in the U.K., France or anywhere else to know, yes, what is the precise cost of transport that is different because if you go to a similar Island, like the Isle of Man where I was at a conference a short while ago, I would not like to see our shopping

centre looking as tired as what their shopping centre is, although it is a very nice Island and it has got a lot of gains, but I do not know the true causes. It might very well be because they are paying the U.K. equivalent of V.A.T. But what I do not want to see is V.A.T. going up in the U.K. and then for convenience going up to 20 per cent; it becomes convenient to be put up here, and then we have our G.S.T. which may be one of the things that will end up by being considered as the less painful of the 4 options that have been brought to us, and so we end up by paying 26 per cent, shall we say, which is more than what the French are doing. I can go to France and shop and they have a percentage of T.V.A. (Taxe sur la Vaieur Ajoutée) which is far greater than here, but the price of goods manages to be cheaper. But again, I am not going to repeat myself on the differences, but I think it is about time that we got down to the nitty-gritty. We are going through a very tough time at the moment and the deficit is going to get bigger; and if it does not get bigger it is because we are making huge cuts and people are going to lose their jobs or lose a percentage of their earning, *et cetera*. I think this is an area ... I do not want to see businesses being penalised or anything else like that. But I want them to know that we know exactly what they should be charging us and not what they think they can get away with. Some are very genuine; we know the genuine ones; they do a lot of business. But likewise, if we get the big stores that come in - we have heard about Waitrose coming in. Waitrose is a quality shop; it sells quality goods. But it does not sell the bottom end in the main. But maybe we need some more competition in the bottom end; I do not know. But I think at the moment our problem is that one side is telling us one thing, one side is telling us another. I will vote for (a) at the moment here and hope that the Minister for Treasury and Resources and the Council of Ministers will take on board that it is time we had some answers, and it can be done. It does not have to be that expensive. There are a lot of people out there who will volunteer their support. All they need is encouragement, they need somebody to bring it together, and I would be very happy to come on board and impart some of my knowledge and some of my time if it would help.

4.1.9 Deputy D.J. De Sousa:

I am happy to follow the last speaker. He made quite a few of the points that I would have wished to make. One of the first things I wrote down was double taxation. We have just passed off this morning a Double Taxation Agreement with the U.K. In a way, what shoppers are being expected to pay is a form of double taxation. Certain outlets that are franchised here in the Island, like Marks & Spencer, Topshop, *et cetera*, they are charging V.A.T. plus G.S.T. plus shipping cost. My daughter loves to shop in New Look. We recently went over to the U.K. and the New Look here is cheaper than the U.K. But we wonder, is that just to lure people in? We will have to wait and see. We are told that we are going to get competition with Waitrose as has already been intimated. It is a higher quality outlet. We already have a vast number of higher quality outlets. There is no real competition, no real chance for people to buy at the cheaper end of the market. I spoke to the proposer of this proposition before lunch and told him that although I agree with the principles, I do have a problem with the second part, which is getting money through taxation. Maybe E.D.D. (Economic Development Department) should look at maybe some sort of fining system; I do not know. But I will be supporting (a), but I do struggle with (b) and will probably vote against it.

4.1.10 Senator S.C. Ferguson:

Oh, dear, the nanny state again. I would make one comment though: be careful, there have been a number of snide comments this morning about: "Oh, it was in your manifesto." Well, I would ... **[Laughter]** referring to various Members and so on. You know, I should be a bit careful, because comments like that can come back and bite you when other people go and read your manifesto. But really, this is a no-brainer. I mean, on a human rights basis, every retailer is free to charge whatever he wants for anything he is selling. Fair enough? Conversely, every member of the public has every right to purchase wheresoever he or she wants. Well, that is fair enough too. By the laws of the market, if the retailer charges too much and the customers do not go, then they will go out of business. Through the excellent publicity we have had from the *J.E.P.* - they are awake in

the balcony there; good [Laughter] - and through my own personal investigations, basically I avoid the shops that leave the V.A.T. on, as is my right. The public is aware of the position of some of these shops, but they continue to patronise them. I am not going to name them all, because I have probably missed a few out and I think it would be fairer to have them all in. So people are choosing to shop at some of these shops when they do not need to. Some shops say they deduct V.A.T. Well, if a price is pre-printed on the label, then the actual price should be some 16 per cent lower. Most people have mobile phones, so they can work out the percentage. So, if the price is not 16 per cent lower than it says on the label, haggle. Deputy Fox talks about retailing. Well, as in a former life, to coin a phrase, I was a small retailer [Laughter] ... I think I will re-phrase that. I was a retailer with a small shop. [Laughter] But I can tell you that economies of scale, high rents, transportation costs, staff costs, are all overheads to running a business, and I can understand some of the pricing pressures. I understand that shops down King Street - I may be a little out of date on this - but they are paying ... a good suburb in London or in the Home Counties or in the Northwest, good quality suburbs, they are paying the same rent; and these are high rents. Whereas if you go to France and you are somewhere out in the country, then you have got a very low rent to pay. We do need to bear these in mind, particularly for the local retailers. The only real way to be able to run a shop profitably is to have a freehold property, and if you do not make allowance for the cost of the property in your accounts, you think you are making a profit. If you put in a deemed rent for the property you will find you are making a loss. But that is another story. But I think the principle behind tax is something we should be looking at; and tax should be collected for the funding of the good running of the Island. It is not a mechanism for punitive pursuits, however well-meaning. This is again a sledgehammer to crack a nut, and as Senator Breckon has pointed out, aspects of this proposition will be expensive. It is a combination of the nanny state and status economics, not the free market. Finally, I really do think it is up to individuals to be responsible for their actions and purchasing decisions. I really feel that this is just extending the tentacles of government too far.

4.1.11 Deputy M. Tadier:

I am glad that I am following on from Senator Ferguson because the first thing I want to address is this issue of are we being overly paternalistic here, and to what extent should we follow a more neoliberal paradigm? So, I will start off by a quote that I have found by Peer Steinbrück. He was Germany's Finance Minister in 2007, and this was a statement he gave during an interview to a question which was: "Where does the borderline run between market and states? Where do you see you economy between neoliberalism and paternalistic status orthodoxy?" He said: "You cannot draw that line on a sheet of fine lined paper. The right sentence was uttered 40 years ago by Karl Schiller: 'As much market as possible, as much state as necessary'." He went on to say that the common free marketeer acts as if every deregulation, every privatisation were a good thing in and of itself. If we did not have any regulation we would not have a £10 fine for that mobile that went off there; so an amount of regulation it is a healthy thing.

The Bailiff:

I am waiting for an admission of guilt from over there.

Deputy M. Tadier:

It is appropriate that the £10 fine went to the Constable of Grouville. Let us carry on, though. He said: "I advocate a more practical approach. On the one hand, we need a State that can act when needed. It must at least minimise people's biggest risks in life. That is hugely important for the cohesiveness of a society." I think one of the big risks, or certainly one of the big factors facing your ordinary Jersey person - whether they be working class, if we can talk in class, or just a middle income earner - is the cost of living in Jersey. I think we had a very good speech from Deputy Fox earlier, because I would like to use unparliamentary language here; I will not, though. But many retailers in Jersey are simply taking the proverbial, and I think we all know that. What Deputy

Higgins is seeking to do here is to redress that balance. We clearly do have a responsibility as a government, without being overly paternalistic, to protect our citizens. That is quite right. It is not being a nanny state. What this proposition, I believe, is trying to do is to promote reasonable intervention of a responsible government. Secondly, I think the analogy that many Members, including the last speaker came out with, is that we do not need these laws in place because members of the public shop with their feet. If they go somewhere that is passing on V.A.T. they can shop elsewhere. Well, let us take that analogy one step further. We could, if we are favouring the free market, therefore say: "We do not need to regulate kitchens, places which sell food for hygiene standards; we do not need to send around inspectors because, in fact, if a member of the public goes there, eats some food and then is sick, they simply will not go back there again. We do not need inspectors to go into kitchens to tell us that the food is bad because that is too much of a nanny state. We should get rid of them. Save the taxpayer some money, and when they are sick they simply will not go back there again." But we do not do this, of course, firstly because it is a nonsense; secondly because we have respect for our citizens; and thirdly, society would have to pick up a cost in medical care. Similarly, the State does also have to pick up a cost if people are being ripped-off because they have less expendable income and they are more likely to come knocking on the door of the Minister for Social Security because they do not have enough money to live on. We should be promoting people to be self-sufficient. They cannot do that if they are being overcharged. I hope that deals with the neoliberal argument there. We can reject that.

[14:45]

It has been said also that politics is the art of the possible. I think this is another reason I think that Deputy Higgins should be commended. There may be elements in here which not every Member is satisfied with, but at least he is trying to make an effort. We have not seen much of an effort, either from the Council of Ministers, the Minister for Economic Development, and it must be said that many members of the public do feel that the J.C.R.A. is becoming more and more toothless when faced with either monopolies or with companies that are charging V.A.T. It is important to say that this proposition does not penalise every retailer, nor does it try to seek a complete answer for different prices being charged in different shops. I hope that Senator Breckon will change his mind, because I feel that he has a lot of sympathy for this proposition. I feel that the analogy he gave about cards being charged £4.99 in one shop, £9.99 in another one, is not an appropriate one here, because that is not to do with V.A.T. being passed on. There are valid reasons for shopkeepers to charge different amounts, because their overheads may be different. If they run an all-night garage, then necessarily their staffing costs and their maintenance costs will be different. But there are also invalid reasons. Of course it is difficult to tell categorically which retailers may be passing on V.A.T., but of course the burden of proof must always lie with Trading Standards. It is for them to prove reasonably that somebody has been charging V.A.T. where they should not have been doing it, and it is only in those cases that the retailers would then be penalised. For example, there are many high street brands. We have also already heard of New Look today; they are not guilty by the sounds of it. But it is quite easy to tell if a retailer like Bhs, Marks & Spencer, which are selling retail clothes, shall we say. If it is the same price as it is in the U.K. and they are saying: "Oh, this is a freight charge," why is it that the freight charge happens to be exactly 17.5 per cent, the same as V.A.T.? We have had this piece of paper circulated, I think by Deputy Higgins, with one retailer saying: "V.A.T., no increase. The Arcadia group is pleased to announce that they are not going to be increasing the amount charged to V.A.T. They are not passing on that 2.5 per cent increase." Well, I should certainly hope that they would not. We do not charge V.A.T. in Jersey, full stop. I would be more concerned about the 17.5 per cent which is being passed on in many cases. I think, really, we are faced with a basic decision here. We are either going to support the retailer, many - or some - of whom, I should say, are ripping the customer off, or we support our own people, the people who elected us to government, the consumers in this instance. I will leave it there, I think. Many of the points have been raised already. I think we can support this

proposition. It will only apply to those, as I said... the disreputable retailers; the ones that do not pass on V.A.T. will have nothing to fear.

Connétable M.K. Jackson of St. Brelade:

I would like to give notice under Standing Order 84 that I would like the proposition to be brought to the vote.

The Bailiff:

All right. You are giving notice that you will be moving a closure after 30 minutes. Very well.

4.1.12 Deputy G.P. Southern:

I thought for a minute you said you were moving a closure after 30 seconds. I will make it brief. It was interesting to listen to the previous speaker, Deputy Tadier, when he was talking about why do we not stop inspecting food outlets. We do not need that. Why do we not get rid of a few Public Health officers? I have got news for him: we are. It is proposed. That is already on its way. You should never predict because the worst does come to happen, often. It seems to me that both the Minister for Economic Development and the Minister for Treasury and Resources have sought to do one thing: they have sought to attempt to prove that what is in the proposition is absolutely impossible and cannot be delivered. It is the wrong target for the Minister for Economic Development; he should be acting directly through Trade Standards. For the Minister for Treasury and Resources, we have got some form of event-led tax which will be absolutely impossible to operate and therefore we should not even be considering the second half. What they think they have demonstrated is not that. They have not demonstrated impossibility; they have demonstrated that it might be a bit tricky, and it might be difficult. But they have not said it is impossible. Of course we have had the usual “unregulated, free market and competition solves everything” answers trotted out, despite the fact that very often the Minister for Treasury and Resources says that he is not very far from me and he does not believe in unregulated free markets. But far from it: from regulated, control markets. We must have some say. But in this case, and especially when a Back-Bencher comes and suggests they do some regulation, that becomes, oh, extremely difficult. But it seems to me that ... and if we want to look at the effects of the unregulated, rampant free market and competition, we only have to look at the recent issues that the J.C.R.A. have proposed with their licensing of separate postal companies to compete with our own post office, and the potential catastrophe that may well hit us as a result of that. The free market and competition, certainly in a small community, are not always the answers. At some stage, Government may choose - and rightly - to act to protect its residents, and that is what is proposed here. Now, both the Minister for Economic Development and the Minister for Treasury and Resources seem to want to have their cake and eat it. They suggest on the one hand that the target is wrong, E.D., and that it is impossible to operate anything and yet at the same time they say: “And anyway, Trading Standards is doing that anyway. When it receives a complaint it is perfectly able to do it, but we will not be told to do it. We will not try and improve the mechanism for doing it and make it more regular because we do not want to.” Have your cake and eat it. The Minister for Treasury and Resources, he too, has said at least 6 times in the last fortnight to my knowledge that Zero/Ten is fully compliant with the U.K. Business Tax, and yet ... but we could not possibly tweak it except by the failed Blampied proposals which were trying to tweak it to make it apply to non-local and non-finance companies, but that failed. So we should not be tweaking it, even though it is completely compliant. Yet what we have got is a proposal here. It says: “Do this to non local companies and do this to local companies.” Again, equality of treatment is maintained meticulously by the proposal, so there is no argument there about: “Do not go near Zero/Ten.” That is a false dichotomy that has been presented. The more accurate analogy when the Minister for Treasury and Resources starts talking about: “We cannot possibly have event-led taxation” ... but of course we can. What in the U.K., when the bottom fell out of the oil market, did they do about massive profits from that event made by the oil companies? They launched a windfall tax:

“We will have some of that please. You are making excessive profits on the back of our members and we must act to do something about that.” That is an event-led tax, and a perfectly permissible and permitted response. This, if you like, is an event-led tax as the Minister described it. It is the convenience of having 20 per cent additional profit if you want it, and this Government should and could act to prevent that, against that, that exploitation of local consumers. So it seems to me, both parts indeed of this proposition do hang together, and I believe is perfectly permissible if you think we should be acting on this, to vote for both parts of this proposition, and I urge Members to do so.

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

I do have a great deal of sympathy with the proposer on this proposition. It is a very, very difficult situation. A lot of hard work has been done in the past by Senator Breckon and the Consumer Council on this subject, keeping retailers and service providers in order. Even on the BBC many years ago, we had a lady from the Women’s Institute coming in with a shopping basket telling us where we can get the best deals. What we must remember is, with a lot of companies, especially the national companies, they will in fact price to the market. So supermarket X in, say, Huddersfield, will charge an awful lot of more than if supermarket X is in London, and I fear they put us into a similar band. As long as people do not advertise the fact they are charging G.S.T. and V.A.T., they are not breaking any laws. Things are tight money-wise. There are still people who shop in the expensive supermarkets, but there are awful long queues now at the cheaper bargain supermarkets. I say money is tight. I am not sure if this is the way to go. I need to be convinced.

The Bailiff:

Does any other Member wish to speak? Very well. I call upon Deputy Higgins to reply.

4.1.14 Deputy M.R. Higgins:

I would first of all like to thank the people who vote in support of my proposition, and with regard to the others, I will try and address some of the points you have made. First of all, Senator Maclean mentioned again in his speech that the Trading Standards Department are already doing this, the J.C.R.A. already have the power, and so on. As I said in my own speech, I have consulted with the J.C.R.A.; they do not have the power to deal with an independent company that is not in a dominant position. So in other words, the Competition Law is more concerned with arrangements between businesses, with the colluding together, or where you get a monopolist or a person who has a substantial share of the market who is using his dominant position. So forget the J.C.R.A.; they have not got the power unless there is this collusion. They are not going to deal with this issue. Trading Standards, on the one hand we are being told, have the power already and are using it under existing legislation. Further on in their paper they say they have not got the mandate, they have not got the powers and so on. They are not dealing with it, and there has not been a single case brought forward. In terms of other things that he has mentioned: he says: “The £60,000 cost, where is it going to come from? They have not got the budget.” According to this proposal it will be self-funding, because those firms that do not change their behaviour will be paying a price for not changing their behaviour, and therefore that money will be used to fund the rest of the operation. The Minister also believes in free and open markets, as do a number of other Members who have spoken today, and believe that the market will always arrive at the right solution. Well, maybe they did not notice the failure that resulted from the near collapse of the global financial system and the markets there. Governments around the world have had to intervene into the markets to protect consumers from, I say, the abuses of certain banks and financial institutions and what has gone on. There are plenty of other examples of market failure. Just quickly moving on: the Constable of St. Peter mentioned Jersey potato growers and they may be charging higher prices than U.K. supermarkets. They would not be covered by this because they are not charging any U.K. taxes or foreign taxes. It is only trying to stop that abuse. The Minister for Treasury and Resources says that it would be impossible from an income tax point of view. Personally I am not convinced. They have got some very knowledgeable, and they have got certainly some well paid,

advisers there, who are capable of devising a scheme that would deal with this issue. I obviously believe where there is a will there is a way, and I personally do not think the will is there. I think they pay lip service to this, and they do not want to deal with the problem. He mentioned human rights' concerns, and I know one or 2 people have been concerned about that. In fact, the Attorney General said that earlier. The truth of the matter is that the European Court of Human Rights and many other courts that are discussing human rights matters give tremendous leeway when it comes to governments and taxes.

[15:00]

They also give tremendous leeway to governments concerned with workers who are being abused. Remember, the Human Rights Law is not just about the rights of an individual. It is also a balance of right between the State, the firms, consumers, residents and so on. I did a trawl through as much as I could of the case law concerned with the European Convention on Human Rights, and to be perfectly honest I cannot see anything there that will give a problem. The Minister also mentioned - again I will stress this - the Ecofin code of practice and our forthcoming assessment, as if this is going to put a spanner in the works for us. If he certainly thinks that, I think he is worrying about very little things. I think it is his Zero/Ten and its compliance that is going to give him the real headache. I do not believe it will cause a headache at all. As was mentioned by one of the speakers, when I drafted the proposition I made sure that I treated foreign firms and local firms exactly the same. There cannot be discrimination between the firms and that is why it is worded in the way it is in part (b)(i) and (ii). Now, Deputy Breckon mentioned the work that they have been doing and I give them credit for the work they have been doing in publishing information about prices and so on. Also the *Jersey Evening Post*; obviously everyone is going to try to get their attention, probably for tomorrow's paper, but the truth of the matter is they have done a very, very good campaign. But you can only do a campaign for a short period of time. Deputy Breckon mentioned, for example, you have not got the funds to do it for a long period of time and, secondly, the *Jersey Evening Post* relies on advertising. If it keeps on highlighting some of the deficiencies of some of their advertisers maybe they will not be getting as much advertising and their profits may be under threat; not that I am saying that would be a motive but it is always a consideration. Now, Deputy Breckon mentions greater transparency ...

Senator S.C. Ferguson:

Excuse me, a point of order. It is Senator Breckon.

Deputy M.R. Higgins:

Sorry, I apologise for that. I was getting a bit carried away. Senator Breckon mentions that greater transparency is needed but how can the Jersey Consumer Council enforce that transparency? Without legislation we cannot do anything and I think the way this House treats these issues, we probably would not even get legislation to deal with that matter. Sorry, I am just quickly scanning through some of the notes I made about different speakers' points. Some people think the use of the tax system as I am proposing is a very blunt instrument. Yes, it may be. But has anybody else come up with a possible solution? It has taken more than 2 years, trawling through different pieces of legislation in this Island, to try to find a lever that can be used to change behaviour and I have not found any other method of doing it. I must say I think it is probably going to be very effective because I have had an amazing response from the Chamber of Commerce. David Warr, for example, was on Jersey Radio and was obviously saying we have got to be able to fix our own prices. He mentioned that they do increase their prices by 17.5 per cent because they need to increase their margins because of the high cost of living in the Island. Well, why have we got a high cost of living in the Island? One of the reasons is they are charging 17.5 per cent more than we need to. So when you take all these things together they are adding to the problem and I do believe that we have got to take steps now to start reversing this trend. Now, the Deputy of St.

Mary, going through his speech, he is quite happy with part (a); asking the Minister to instruct the Trading Standards Department to proactively investigate this. But I would go further. It is not only “instruct”, he has also got to give them the funds and the tools to be able to do the job because it is no good giving instructions unless you give them the ability to do the job properly. As far as part 2 is concerned, he finds it a bit problematic, as well as one or 2 other people have said, but possibly you have not looked, as I have done, at the Zero/Ten tax system and looked at the other sort of mechanisms. I will be quite frank with you; there are no other alternatives. If someone can think of a better way, a more selective way, then I would support it but no one is even coming forward. I honestly believe that if you do not support this you will not see anything for years, if at all. Senator Ferguson; well, I know we will never agree. She is a free marketeer through and through. She thinks the market solves everything and she is against what she sees as big government or even medium-sized government. I think she would prefer no government at all. She believes that it is a sledgehammer to crack a nut, that it is going to be very expensive, that it is status rather than free market. Well, I am sorry; I have to disagree with her. Yes, I agree, on the other hand, that there are some costs that firms have here. There are high rents. I think the high rents that are being charged on the Island - as I feel the high rents for accommodation for ordinary citizens and the high cost of housing are also problems - are all sorts of things that we have not addressed in this House. Now, transportation costs; she mentions, yes, there are transportation costs. I accept that but I do not believe, as I think Deputy Tadier said, that it is 17.5 per cent of transportation costs and in fact I have spoken to a number of small retailers or retailers who have small shops who have told me that they paid nothing in transportation costs. They either haggled with or they got deals from the people that were supplying them and the goods came over free. I think in one sense anything I really say is probably not going to make much difference because I believe the House is divided, as it usually is. It will be divided on the usual sort of lines. But I do believe that if you were really concerned about the high cost of living in Jersey and you want to do something about it then you will vote for the proposition. If you want a continuation of the *status quo* and no change for the foreseeable future then you will vote against this proposition. The reason I say this is, as I have already said, there is no real effective method for dealing with this problem on the table. I think, other than that, I will just say that while I am prepared to accept this proposition in 2 parts, one of the reasons I spent so much time on the proposition and doing the research I did was I did not want to see another investigation and the expense of doing that and then nothing coming from it. I spent my time looking for a possible solution to the problem, not just another report., I would ask ...

Deputy P.V.F. Le Claire:

I beg your pardon, may I ask the speaker to give way? I was going to ask Her Majesty’s Attorney General give us an authoritative position on this because we have had an opinion from the Minister and I notice that he has just left the Chamber. He has obviously got other things to attend to. He is back. Maybe now might be an appropriate time, Sir.

The Bailiff:

It is a bit late in the day, Deputy but, anyway, if the Attorney is willing to deal with it.

The Attorney General:

I am sorry, Sir. I am afraid I did not catch the question. I have been trying to catch the Deputy outside for half an hour.

Deputy P.V.F. Le Claire:

If he can give me the answer, Sir, I will try to word the question because I cannot get it right the other way round. May I ask Her Majesty’s Attorney General; there has been a debate this afternoon about the proposal before us and the Minister for Treasury and Resources said that under no condition, due to human rights issues, would he be able to agree to such a proposition coming

forwards. I would wonder whether or not the proposition is neutral enough in its format for us to work through those human rights issues as one normally would?

The Attorney General:

The first thing I should mention to the Deputy is that I have not previously been asked for any human rights advice on this particular proposition or indeed on any of the comments. So I come at this somewhat fresh, without the opportunity of mature consideration. It seems to me that it is Article 1 of Protocol 1, that is the relevant human rights provision that is engaged in any taxation type matter; that is the right to private property. That is obviously an important right but it is a significantly qualified right and the qualified nature of the right means that it is possible for a State to impose taxes, to impose penalties. Generally speaking, there is a very wide margin of appreciation that is afforded to any State to determine its taxation and penalty policy. Provided there is a reasonable and cogent justification for it, it is unlikely to be refused on those grounds. But I should emphasise to the Assembly I have not considered this specifically against the backdrop of its potential status as a penalty, which strikes me maybe a rather higher threshold to be crossed from a human rights perspective, and if there is a penalty involved then one would have to consider a convention-like tribunal in determining any answer. What I am really saying is there are potential issues which I might have considered had the proposition been afforded to me in advance but that, I am afraid, I have not turned my mind to so cannot advise the Assembly on it.

Deputy P.V.F. Le Claire:

Could I ask one other question to Her Majesty's Attorney General? The Minister for Treasury and Resources stated that he had taken advice on this issue. One would wonder that the Minister for Treasury and Resources would be taking his advice from Law Officers' Department, certainly when propositions such as this that involve taxation come before us and the Minister for Treasury and Resources stands to speak. Is the Attorney General able to tell us whether or not somebody in his department has covered this or if it has just been some private advice the Minister has received?

The Attorney General:

It would not be appropriate for me to say whether or not anyone from my department or I have advised on this matter.

Senator P.F.C. Ozouf:

Would it assist if I clarified? I have taken advice from the Income Tax Department. I would just respectfully say to the Deputy, I have not discussed this with the Attorney General. The issue of human rights is not the clinching issue. It is a relevant matter which is raised ...

The Bailiff:

That is going too far, I think.

The Deputy of St. John:

Sir, could I ask the Attorney General a question?

The Bailiff:

This is after the proposer has closed. I think we have got to limit this. These questions should be raised during the course of the debate, not after the debate is over. I did allow the Deputy to raise one because I think he had indicated he wanted to raise it earlier but I am not going to allow a free-for-all after the debate is over now of the Attorney General.

Senator A.J.H. Maclean:

Sir, it is not about the debate. It is just a question about the order of the vote. I asked a question of the proposer during the debate about his justification of financial implications. He answered in his sum up that this proposal, which has significant implications to the budget of Economic

Development, would be paid for by part (b); the taxes that he is proffering. He has now suggested that he is going to propose the 2 parts separately, (a) and (b). If part (a) is taken first and succeeds and part (b) fails, there would be no way of funding it as he suggested. This will have a significant impact on the Economic Development budget and I would just like this reassurance that he will take the proposition as a whole if indeed he is going to be funding it from part (b).

Deputy M.R. Higgins:

I think a number of Members have asked me to take it in 2 parts. I am going to. I think that if Members believe that this is an issue and it should be properly investigated then it should become a priority of the department and some money should be found to fund it. Now, I hope that Members are going to support both (a) and (b) because it will be self-funding on that basis. So I am proposing the proposition be dealt with in part (a) and part (b).

The Bailiff:

So you want them taken separately, Deputy?

Deputy M.R. Higgins:

Yes, I would like the appel.

The Bailiff:

Senator B.I. Le Marquand:

Sir, would it be helpful if they were taken separately, with part (b) taken first because ...

The Bailiff:

No, part (a) first.

Senator B.I. Le Marquand:

Can we not do that, Sir?

The Bailiff:

No, part (a) first. Very well. Now, the matter then before the Assembly is the proposition of Deputy Higgins. The appel has been called for. I invite Members to return to their seats. There will be a separate vote on paragraph (a) and (b) and the Assembly will consider first paragraph (a). That is the matter now before the Assembly and I invite the Greffier to open the voting.

POUR: 18		CONTRE: 28		ABSTAIN: 0
Senator A. Breckon		Senator T.A. Le Sueur		
Deputy R.C. Duhamel (S)		Senator P.F. Routier		
Deputy of St. Martin		Senator P.F.C. Ozouf		
Deputy R.G. Le Hérisssier (S)		Senator F.E. Cohen		
Deputy J.B. Fox (H)		Senator S.C. Ferguson		
Deputy J.A. Martin (H)		Senator A.J.H. Maclean		
Deputy G.P. Southern (H)		Senator B.I. Le Marquand		
Deputy of Grouville		Senator F. du H. Le Gresley		
Deputy P.V.F. Le Claire (H)		Connétable of Trinity		
Deputy S. Pitman (H)		Connétable of Grouville		
Deputy K.C. Lewis (S)		Connétable of St. Brelade		
Deputy of St. John		Connétable of St. Saviour		
Deputy M. Tadier (B)		Connétable of St. Clement		
Deputy of St. Mary		Connétable of St. Peter		
Deputy T.M. Pitman (H)		Connétable of St. Lawrence		
Deputy M.R. Higgins (H)		Connétable of St. Mary		
Deputy D.J. De Sousa (H)		Deputy of St. Ouen		
Deputy J.M. Maçon (S)		Deputy of St. Peter		

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

The Bailiff:

Very well. Then we move on to paragraph (b). The Greffier will reset the machine and paragraph (b) is now open for voting.

POUR: 9	CONTRE: 36	ABSTAIN: 0
Deputy of St. Martin	Senator T.A. Le Sueur	
Deputy J.A. Martin (H)	Senator P.F. Routier	
Deputy G.P. Southern (H)	Senator P.F.C. Ozouf	
Deputy S. Pitman (H)	Senator F.E. Cohen	
Deputy of St. John	Senator A. Breckon	
Deputy M. Tadier (B)	Senator S.C. Ferguson	
Deputy T.M. Pitman (H)	Senator A.J.H. Maclean	
Deputy M.R. Higgins (H)	Senator B.I. Le Marquand	
Deputy D.J. De Sousa (H)	Senator F. du H. Le Gresley	
	Connétable of Trinity	
	Connétable of Grouville	
	Connétable of St. Brelade	
	Connétable of St. Saviour	
	Connétable of St. Clement	
	Connétable of St. Peter	
	Connétable of St. Lawrence	
	Connétable of St. Mary	
	Deputy R.C. Duhamel (S)	
	Deputy R.G. Le Hérissier (S)	
	Deputy J.B. Fox (H)	
	Deputy of St. Ouen	
	Deputy of Grouville	
	Deputy of St. Peter	
	Deputy J.A. Hilton (H)	
	Deputy P.V.F. Le Claire (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	
	Deputy I.J. Gorst (C)	
	Deputy A.E. Jeune (B)	
	Deputy A.T. Dupré (C)	
	Deputy E.J. Noel (L)	
	Deputy T.A. Vallois (S)	
	Deputy A.K.F. Green (H)	
	Deputy J.M. Maçon (S)	

[15:15]

5. Central Market Sub-Post Office facility: social and economic study of closure (P.90/2010)

The Bailiff:

Very well. Then we come next to projet 90 - Central Market Sub-Post Office facility: social and economic study of closure - lodged by Deputy Shona Pitman. She did send me a note just now saying she would ask the Assembly's leave for a call of nature for a moment but we will read the proposition in her absence. Then there is one matter, if Deputy Duhamel is around, which we could perhaps deal with in her absence. So let us, first of all, read the proposition, Greffier.

The Greffier of the States:

The States are asked to decide whether they are of opinion to refer to their Act dated 23rd June 2010 in which they requested the Minister for Treasury and Resources, as representative of the shareholder in Jersey Post, to take the necessary steps to request Jersey Post to reconsider its position relating to the presence of a Sub-Post Office facility in the Central Market, and (a) to request the Council of Ministers to commission a report which will examine the social, economic and cultural impacts of the closure of the Sub-Post Office and to present the report to Jersey Post and all States Members, in order that they can consider its findings and recommendations, before the final decision is made as to whether or not the Sub-Post Office in the Central Market should close; (b) to request the Minister for Treasury and Resources, following the publication of the report, to lodge a proposition asking for the States Assembly to debate whether or not they consider that the Sub-Post Office in the Central Market should close so that the Minister can inform Jersey Post accordingly.

The Bailiff:

Very excellent timing, Deputy, and I invite you to make your proposition.

5.1 Deputy S. Pitman of St. Helier:

It is very important I begin by making one thing quite clear to Members. This amendment is not being brought as an argument that the Sub-Post Office must be kept open under all circumstances. It is an argument of the correctness of the decision that has been made and all the possible pros and cons underlying this have not been fully considered. On 20th April it was officially announced that the Sub-Post Office in the Central Market was to be closed at the end of June this year. There are several purported reasons for this. On the same day the Minister for Treasury and Resources said in answer to a question I asked: "The justification for closing the Central Market Sub-Post Office is because of the rapid decline of the use of local and global postal services. I can tell Members that Jersey Post have advised me that the retail network, in other words the Island's Sub-Post Office network, loses around £1 million per year." In addition, on 11th May the Minister said: "With the traditional type of counter transactions switching to alternative electronic methods, Jersey Post volumes of letters is declining significantly. The total Sub-Post Office business made a loss over the 5 years and without action this loss will continue to rise. The new model with alternative access to postal services will mean that the majority of this expenditure will be saved, contributing to a significant reduction in overall loss of the network. In other words, it needs to be modernised." In a statement sent to States Members on 4th June the Chief Executive Officer of Jersey Post also spoke of the £1 million a year loss of the Sub-Post Office network and that it is due to transaction levels and footfall across the counters declining annually. Currently these losses are funded from the only profitable part of the business, the bulk packet export or fulfilment sector. Indeed this view is reiterated by the comments and report submitted by the Minister for Treasury and Resources that we have on our desks today. However, the questions asked of the Minister were in fact about how much money the Central Market Sub-Post Office loses and not about the 22 sub-

Post Offices in Jersey. It was only on the fourth occasion of asking him the same question on 11th May when I finally got the answer, which was: "It has been loss-making." In an answer to another question on the same day he also went on to say: "There is an inescapable issue that the retail network is loss-making and that difficult decisions are going to have to be taken in order to bring the retail network to at least a break-even position; of which, unfortunately, the Central Market Post Office is an important component of bringing it back into break-even position." But still the Minister gave no figures as to the loss that the Market Post Office was making and even with the statement from the Chief Executive we do not know how much the Sub-Post Office is losing, if anything. Instead we were given the impression that less people are using the Market Post Office and that this will continue. The only figures that we have been given are how much the Market Post Office costs a year to run, which is approximately £141,000. Why have the Minister for Treasury and Resources and the Chief Executive of Jersey Post been so evasive with this financial loss? I do not believe the Minister has been given the full information - and States Members - from the Chief Executive because I am reliably informed from a number of Jersey Post staff that the Sub-Post Office has, in the last 2 years, made a profit and that it is one of just 2 Sub-Post Offices out of 22 that has done so. I do not know what the profit is because the staff I spoke to were not given this information by their management. In fact, the Central Market Sub-Post Office has done so well that it has, for the last 2 years running, won the Mystery Shopper Survey Award for all Sub-Post Offices in Jersey. The mystery shopper assesses all sources of information provided at a Post Office, staff interaction and overall service. The score for this Post Office was 99 per cent out of 100; the perfect service one might say. Traders have also told me that at Christmastime there are queues outside the Post Office from 1st December and only 18 months ago a facility for weighing letters and paying utility bills was installed. It would only make sense to do this if the business was doing well. We are also told that Jersey Post will be opening a new retail outlet at the Co-op in Don Street to replace the Market Post Office which will deliver a more efficient service. What, I ask, does the Minister for Treasury and Resources and Chief Executive of Jersey Post mean by this given that the Post Office is making a profit, is one of the busiest on the Island and has a superb record of customer service? We should also be asking: how much money will be saved by operating a Sub-Post Office at the Co-op instead of the Market and will these savings mean loss of certain services to the community? The current services provided by the Market Post Office are normal postal services, provision for paying Housing Department rents, paying electricity bills, water bills, television licences, cashing social security cheques, banking with Lloyds TSB and Barclays, sending money grants, foreign exchange, pensions, selling parking pay cards, mobile phone top-up cards and the Post Office also has a Portuguese employee who can translate. Each of these services brings with it its own footfall into the Market. Do we know how much each service brings in? What exactly are the benefits of moving the Market Post Office to Don Street Co-op? How will it fit into, as the Minister for Treasury and Resources has put it, the new model with alternative access to postal services in a way that the Market Sub-Post Office does not, apart from new opening times? We do not know the answers to these questions because the Minister for Treasury and Resources has been unable to give them to us. Clearly he does not know. The Minister for Treasury and Resources also said on 11th May: "Jersey Post has to be focused on taking a commercial approach to running its business and at the same time to ensure that it reshapes the provision of services to meet the future customer demands." One has to ask, with all due respect, did the Minister have sufficient knowledge about what the new Co-op service will or will not provide and was he aware of the success of the Central Market Post Office to back up these words because the Market Post Office is clearly already doing this? I believe not. My next point is about the effect that the closure of the Market Post Office might have on market traders. The market traders are very concerned that they will lose even more footfall; that is customers who primarily go to the Market to visit the Post Office and then, on their way out, buy from a fruit and vegetable store, order flowers or buy a sandwich. I am told that when Woolworths closed the number of people going to the Market fell dramatically. When the Reduced Price Milk Shop closed, again footfall decreased. Notwithstanding this, I am aware that the Minister for Treasury

and Resources has met traders to discuss a way forward, to sustain the current footfall and attract more people into the Market. However, he has done this without any knowledge of the figures of how many people use the Market and for what reasons. Furthermore, many of the traders felt that they had had no say in the matter and should have been consulted upon before the announcement was made to close the Sub-Post Office. In my view, this should have been done. Most of the traders are important stakeholders in this small Post Office and if we are a government who supports small businesses we should have at least done this. Their businesses are very sensitive to any closure in the market and this will be considerably more so with the Post Office closure. The Post Office receives thousands of office-worker visits a year; hundreds of pensioners who collect their pensions, *et cetera*; tourists; traders in and out of the area who rely on the Market Post Office, many of whom use it rather than the main Post Office because they receive a quicker and better service; and thousands more members of the general public use the different services it provides. The study I am asking for is on the social, cultural and economic impact of the closure of the current Market Post Office. The report presented to us on Tuesday has not done this - and I would ask Members to pick it up and have a look - despite the proclamation of the Minister for Treasury and Resources that it has. To begin with, on page 3 the first 2 bullet points in the Executive Summary are misleading as, first, the Co-op Post Office will provide fewer services than that in the Central Market. The second bullet point says: "While the closure of the Sub-Post Office will be noticed and will inevitably have some impact, the market traders' strength in numbers and diversity will remain their unique selling point and attraction." This alone, by far, is not enough and demonstrated to me a knowledge on behalf of the researchers of other factors that have affected diminishing trade in the market. It, therefore, spurred me to ask market traders if they had been consulted upon during this research. The answer was: "No." On page 3 and 4 you have the background. This is mostly generic and implies that the Market Post Office is part of this downturn in use of Sub-Post Offices in the Island. This is not true as I have clearly outlined.

[15:30]

The key conclusions on page 5; 8 out of 11 are generic and not specifically related to the Central Market Post Office and the remaining 3, I will read them. The first one: "Whenever there is an announcement made with regard to the closure of any Sub-Post Office, there is always a negative reaction received from the general public. Such concern is always heightened if the office had been in the same location for many years." The third one: "Many older people like the ambience of the Central Market Sub-Post Office and preferred using this office when purchasing other goods in the market." These points are common knowledge and did not need an official study to work them out. What else is in the report? I will remind Members of the title of the report, *Central Market Sub-Post Office Facility: social, cultural and economic appraisal of closure*. What else is in the report? It has a section on Jersey's demographic profile, a comparison with other jurisdictions on the density of post offices, post office locations, Island-wide post office use. Nothing on who uses what services in the Central Market Post Office, how often they are used, what other shops, *et cetera*, customers utilise after they have been to the post office. Then we have a section on changing consumer needs. Again, generic and irrelevant to the Central Market Post Office because it is one of the most successful in Jersey in terms of customer care, type and amount of usage and profit. We need a specific and detailed report with all stakeholders which will properly inform States Members, not something that looks like it has taken 5 minutes to put together. We are talking about our heritage, our community life, small businesses and the potential loss of the Central Market as it has served this Island for nearly 130 years. When I say "potential loss" I mean it. This is not overstating the reality. The loss of one of the few remaining gems of what helps make Jersey special. On behalf of all those stakeholders, the market traders, visitors and the significant number of elderly people for whom the Sub-Post Office is a genuine community lifeline, and a shareholder of Jersey Post, we have a responsibility to the public. I urge Members to consider these points carefully before deciding whether or not they will support this proposition. If

the Council of Ministers do believe that they are already committed to doing much of what the proposition asks, then all the better. Logic would surely demand that they simply accept the proposition and forge ahead, the result of which can only be we, as a Government, are ultimately making a more informed decision.

The Bailiff:

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

5.1.1 Senator P.F.C. Ozouf:

Yesterday in one of the debates - I do not know which one it was - the Deputy of St. Mary said that this Assembly should not be micromanaging a department, and I do not always agree with the Deputy of St. Mary, but I agreed with what he was saying in that debate yesterday. As difficult as it is to say to Members, we have incorporated Jersey Post and we have incorporated them in order to run the business. As the shareholder representative, I need to think very carefully before intervening into operational and management issues to do with any of the owned entities or the utilities. I am not saying that there should not be appropriate intervention and guidance with universal service obligations, signing-off of business plans, but certainly on a micro issue it is a very important consideration that this Assembly should take as to the extent to which they request the shareholder in terms of the Minister for Treasury and Resources to intervene. I would draw Members attention to the conclusions of the Deloitte report on governance and an appropriate relationship between the shareholder and the utilities which sets out the fact that there can be and there must be a clear segregation of duties between the shareholder and the entity itself. I do not run the Post Office and neither does this Assembly. I appoint a board. I sign-off on a business plan and I certainly signed-off on remuneration of directors, which is something that I am going to be increasingly doing for all utilities and those that we did not previously do. The post office has considerable challenges. Without bulk mailing it loses mailing. Delivering letters is unfortunately a declining business. The Sub-Post Office network is also sadly a declining business. The Market Post Office was run independently and it had to be taken over by Jersey Post because it could not stand alone. The Central Market is a fantastic jewel in Jersey's crown. This Assembly has sanctioned millions of pounds worth of investment in its infrastructure. We cannot however hold the tide of progress and change back. For that reason, while I regret the closure of the dairy market shop that was also closed, we cannot hold economic reality back. But we can look forward and we can assist the Market to find a place in a vibrant retail world of today and tomorrow, and that is why Property Holdings have commissioned a retail review, perhaps that should have been done before, but they have commissioned a retail review in order to identify what are the retailers that should be given the opportunity of renting space in the Market and significantly reduced market rents to attract customers to create a vibrant atmosphere in the Market; niche operators, farm shops. There are examples of markets which are vibrant elsewhere that I believe that we can taken considerable advantage and experience from and bring into the Central Market. There are very good many retailers and fruit and vegetables, retailers, *et cetera*, that do provide excellent services but we need to provide other retailers in order to attract footfall into the Island. That is what the Property Holdings review into the retail environment of the Market is going to be looking at, and identifying alternative new retailers for the Central Market. Following discussions at the Council of Ministers, I thought that the best way and the Council's best way of dealing with this proposition in terms of part (a) was to do the job that Deputy Pitman asked. I suspect that Deputy Pitman will never be satisfied with a report under (a) because it will not say what she wants to hear in terms of a report that says the Post Office must continue in operation. I understand her views and I respect her views about the fact that we all like the Central Market Post Office, but we have to understand that the world has changed and the report that is attached to the proposition, I would have thought that she would have said: "Thank you for providing the report that I requested in a short amount of time." I understand it does not say what she wants but nevertheless it does analyse all of the issues that she requests under part (a) of the proposition. If the Assembly wants to approve part (a), I

cannot honestly say that there will be much more in terms of the socioeconomic and other matters that she asks for that could be brought to this Assembly. In other words part (a) has been done and it has been done quickly in order to deal with the question that she raised. Part (b) of the proposition, effectively now asks this Assembly to start making micromanagement decisions within the Post Office, and this is not something that I think is wise or that I think, as difficult as it is, should be accepted by this Assembly. Times have moved on. The Post Office has significant challenges. The Post Office, as a result of this closure, will return a difference of £60,000 in terms of the profitability reversal of the Central Market Post Office. I am pressing Jersey Post to provide the services that the Market users and other users of the Central Market Post Office use in another way. But not in the traditional Central Market Post Office that exists, run by the Post Office. I should also say that in tendering the site I am aware that there are some retailers that have come forward that will continue to offer all of the range of post office facilities potentially in that retail space, but not exclusively in terms of being a post office in the traditional sense. So I am confident that we cannot support inappropriate intervention into the Post Office. That we can continue to have the postal services, all of which the Deputy is wrong to suggest that any of the services that are currently provided by the Central Market are not provided by the Co-op. I am advised that they are all provided by the Co-op and the other services will continue to be provided in some way, but in a modern way by other retail offerings within the Central Market Post Office. I regret to say it, but we simply cannot micromanage to the extent that we may wish to as an Assembly of 53 into operational issues of the Post Office, and I urge Members to reject the proposition in both of its parts.

5.1.2 Senator F. du H. Le Gresley:

The previous speaker has made some of the points I was going to make. I am surprised that Deputy Shona Pitman has not withdrawn this proposition before today. The reason being is that we know that the post office or the Sub-Post Office has now been opened in the Co-op store in Don Street and we know that the lease is going to be seen out to the end of the year, and that the decision really has already been made and we are now going to spend time debating it. I would say to Members, and again I take a leaf from Deputy Fox who recalled in his previous life he was something to do with selling goods, and I can say in a previous life I ran a Sub-Post Office. As a consequence of that I can tell the Deputy that the only reason that Sub-Post Offices are viable is because of the extra footfall that it brings into your store. In other words, what you make running a Sub-Post Office is relatively small. They pay you a salary and they pay you some commission, but the only reason that people take the Sub-Post Offices on is because it increases the footfall into your business, and that is exactly why the Co-op in Don Street are willing to take this, because they are putting it on the ground floor and they will combine it with other businesses that they run over the counter. When I was on the election trail to become a Member of this House this question of the Sub-Post Office closure came up and I have to confess I was very inadequate in answering the question at the hustings, and Deputy Southern will probably remind me that I was inadequate when possibly he speaks later **[Laughter]**, however in an effort to familiarise myself greater with the current situation I did have an appointment and went to see the Finance Director at Jersey Post and he did clarify some history about the Sub-Post Office in Jersey but, in particular, the Central Market Sub-Post Office and I was told that it was not viable being run as a Sub-Post Office and that when the Sub-Post Office mistress retired the Jersey Post took over the running of it. So it is incorrect to call it a Sub-Post Office. It is actually a branch of Jersey Post in Broad Street and it is staffed by employees of the Post Office. It is not staffed in a normal Sub-Post Office by employees of the business, so it is really just a branch and has been for some considerable time. The Minister has answered one of the questions that was raised by Deputy Pitman.

[15:45]

She alluded to the fact that she was reliably informed by staff that the Sub-Post Office in the Central Market had made a profit. I would suggest to Members that being reliably informed is not sufficient information to make a decision, but the Minister for Treasury and Resources has told us, and I hope I have got this right, that by closing the Sub-Post Office in the Central Market there will be a £60,000 reversal in the fortunes of Jersey Post. Now that is a significant sum of money, I would suggest. I will close by saying that we are aware that Jersey Post were paying rent for the premises and of course that is an additional cost over and above employing staff. The paper that we have seen, the comments and study, makes it quite clear that there is the opportunity to run some sort of a facility in the Central Market but on a much scaled-down basis using machinery, some of which has already been installed in that building anyway. I think, in summary, I would say it is not our job to be interfering in the running of Jersey Post. This was a commercial decision and is not one that Members should interfere with.

5.1.3 Deputy P.V.F. Le Claire:

At the time that we debated the retention of the Sub-Post Office or the branch of Jersey Post I bothered myself with a visit to the Chief Executive Officer of Jersey Post and also to the officers of Jersey Property Holdings and I was able to bring to the States a proposition, through the desires of the petitioners, the post office in the market was kept open. The reality was is that the relationship between Jersey Post as an incorporated body and that of the Treasury perhaps may have gone better than it did in recent times. I think the first that Property Holdings knew about its closure was when it was announced in the media, even though they had a mutual agreement that they would be talking about these things with each other, they did not. I listened to Senator Le Gresley standing and quite rightly speaking about what makes sense. But he will learn in time, as I have come to learn in time, that what on the face of things seems perfectly sensible in the world, in the States, when you know what is going on, you know it is a completely different story altogether. I certainly am not about to stand here and spill beans all afternoon, although I could. I am just going to say, Deputy Pitman's proposition, and perhaps mine even, were too little too late. People have lost jobs. Investigating the issues about the business of Jersey Post Limited and the pressures that they are under, it came to my knowledge, and it has now come to the wider public's knowledge that there are significant pressures on Jersey Post and significant issues. I was told in confidence ahead of most people that these things are on the horizon, so it was with my heart in my mouth that I came to the Assembly asking to save 2 jobs when I realised that in the future there would be certainly a lot more than 2 jobs on the line. These pressures are not going to leave Jersey in relation to this business in the near term. There is only one Sub-Post Office left, officially, and that is the one at Cheapside. The rest of them are all parts of Jersey Post. Jersey Post is having to change its business model dramatically. I have some great sympathy for the Minister for Treasury and Resources. He is having to micromanage, it seems, every portfolio there is and trying to keep all of the balls out of the net in this game is nigh impossible. I think the report that they have given in response to the Deputy's proposition goes a long way to showing that they are willing to do what they can as and when they can but sometimes their hands are forced as well. I am grateful that the report has come because I think it allows me to spill at least one bean this afternoon that I have been keeping in the tin. That is the likely closure of Broad Street Post Office. That is not a Sub-Post Office either. Yet the model of Jersey Post is going to require it to slim down considerably, probably lose more weight than even I need to, in terms of management. I would urge the Minister for Treasury and Resources therefore, now that I have spilt that bean, with his Council of Ministers - no doubt I will be getting a call from the Chief Executive Officer of Jersey Post in the next few minutes - I would like the Minister for Treasury and Resources and his Council of Ministers to look at the social and economic impacts of losing that facility because it certainly is going to be a much bigger impact upon the States and the Island than the Sub-Post Office in the Market. The reason why I link it, although it is outside of this debate, is because the comments highlight the importance of the facility within the social economic study that they provided for us today. If I do not do that then it is going to be death by a thousand cuts for the consumer, and the

ability to get the things in the way that they have been accustomed to them in the past is going to change rapidly. I do appreciate that change needs to come but I feel personally that for many of the residents, who are not mentioned in the report, identified as what seem to be the extremely brackets, which are between 20 and 40, the more elderly residents, 60 to 100 years of age. They do not come by way of change easily. I think if we are going to help manage this company of ours and the company of Jersey's into the future then we need to acknowledge, in all likelihood, there is not going to be any more post office facilities as we have known them within the next 5 to 10 years. Not in the way that we have known them. They are going to be in other businesses. There will be post office facilities in the Market Place and I congratulate the Property Holdings and Treasury for doing the work that they are doing in the market to keep it a vibrant place, and I do extend congratulations to Jersey Post for trying to maintain a presence in the Market, albeit with a reduction in service. I am sorry to say to Deputy Pitman, and to others as well, once again, the Market and propositions about the Market unfortunately because of the way the States work ... In the old system we might have been made aware of it earlier but we were not made aware of it early enough, and in fact, in all honesty, as I said before, nor was the Minister for Treasury and Resources on this instance. But we certainly are aware now that the Broad Street Post Office is under threat. I think that is something we should be putting our focus into and trying to retain. Jersey Post needs to cut down but it also needs to look at its own management structure and awarding its human resources directors bonuses is something I think the Minister for Treasury and Resources needs to look into, and he is looking at what the directors get, because that is what I am told is happening. Some of the directors' monies that were identified in the newspaper recently were absolutely appalling given the current circumstances. I have not had a chance yet to talk to Senator Le Gresley, since he has been elected, I have been promising him to get together for a coffee, he does not seem like he has a burning desire to do that, but I certainly ... I do not blame him, but I certainly would like to have a chat with him about the real way this place works. Normally people know everything that is going on a long time before propositions such as this come along and it certainly is the case today, I am afraid to say, I cannot support Deputy Pitman's proposition. It was a proposition that had meaning 6, 8 weeks ago. It has not got any meaning now and I urge her though and my fellow Deputies of St. Helier to start to focus on the bigger prize, and that is retaining Broad Street because that is going to be going next.

5.1.4 Deputy J.B. Fox:

We are talking about micromanaging, that this Island is a very prosperous commercial centre, but if we look at bigger places like London and Dublin and Paris, *et cetera*, they are all little villages and little villages are the same in Jersey, whether it be Cheapside or whether it be where the Central Market is or Broad Street or Colomberie, *et cetera*. To do that we need to encourage obviously the communities. Now, the Central Market has always been a village in its own right, and a very important area it is, and the post office and the butcher and the fishmonger, *et cetera*, has been a way of life for many a long time for all the nationalities from the old J rriaise to the French to the Portuguese, a little further afield in Dominion Street, and now the Polish, *et cetera*, and the Italians, *et cetera*. We have always been talking about the prosperity of St. Helier and part of that is the transport system. We have been talking about that for a long time as well. The late Mick Eden, I think really came out with a most imaginative scheme where it was proposed that there would be a Shamrock system that would link a circular bus out to the St. Clement way, up to the Five Oaks way, up to the borders with St. John and Trinity, and across to St. Lawrence, so that St. Helier would be covered with this circular route. But it was not going to use the Weighbridge of the day. It was going to stop off with no bus terminus, but outside the Central Market, right in the middle of Halkett Place.

The Bailiff:

I was wondering when you were going to come to the Central Market, Deputy.

Deputy J.B. Fox:

Sorry, Sir. I was trying to put in a little extra than what has already been said and the reasons why. That is why. The Central Market area was going to be the hub and the centre part of St. Helier, and when we are talking about our ageing population, and we want to reduce the amount of vehicles by 15 per cent, *et cetera*, it all becomes very relevant. It is very sad when you see that government and the various agencies, both private and public sector, have not managed to get this all into one thinking. Now I can understand companies like the Co-op, for the reasons that have just been said, that are expanding their operation of Sub-Post Offices and offering very competitive rates and the changing world in the post office, *et cetera*. But there are occasions when they are not quite in the right place although people will go in there when other premises shut down, and we have heard about Broad Street, *et cetera*. There might now be a necessity for a Central Market one anyway when we get our transport system sorted out. I agree with what has been said so far, though, that Deputy Shona Pitman had the best of intentions when this came out, and I indeed supported the position along with thousands of other people. But we have moved on since then. It has closed. The new one is open and everything has overtaken this situation, which is most unfortunate, but all this happened behind closed doors without public consideration and public debate. There are some times we lose things in this world and the Market could be the loser, and when I start seeing sun blinds, is it, that are being sold in the Market, it is not quite the sort of thing that you nip out to the shops for, is it? It is something you have maybe 2 or 3 times in the lifetime. That is the sort of trading that you would expect in a secondary trading area, not in a prime trading area. I do not perceive that I am going to talk much more on to this except to say that I think this particular proposition is past its time. Well done to the Deputy for putting it forward. But I would put a stern request both to the Minister for Economic Development, who fails to be in his seat just at this moment, but one of his Assistant Ministers is here, who will pass it on, and to the Minister for Treasury and Resources; can we think of in the round, in the whole, and start looking at all our little villages in St. Helier. They are all very important to the residents and if we take things in isolation we will end up by destroying our own prosperity and we will end up without a town supermarket, like they have got in the United Kingdom, with these little express satellites with no character, no feeling whatsoever, and that is not what Jersey is all about. At least that is not the Jersey I know. I do not want to see it carry on like it.

[16:00]

5.1.5 Deputy M. Tadier:

We are the shareholders of Jersey Post Office and when the Minister for Treasury and Resources stands up and says that he is the representative of the shareholders that means that he is the representative of the States Assembly by extension. When we talk about micromanagement or when he was talking about micromanagement, rather that is not quite what we should be talking about. We are talking about sending a clear signal from States Members, depending on how they wish to vote on this, and so it is quite appropriate at that point for the Minister for Treasury and Resources in his capacity as shareholder representative to go back to Jersey Post and to tell them what the shareholders think. That would be quite acceptable in a business scenario if the shareholders all got together, they did not like a particular decision that was taken by the company, all the shareholders could get together and they would have a representative who goes back to the companies: "We did not like the decision you took there. We do not think it is within the interests of shareholders, we want you to change it." That is exactly what is being asked today, I think. Moreover it is a wider responsibility we have because we are not simply shareholders for us, we are shareholders by extension for the entire public of Jersey. We have already had it said that the market is a jewel in the crown and I believe that it can be extended to the post office in the Market, which I think is also a jewel in the Central Market. We heard from Senator Le Gresley about the reason that the Co-op have decided to take it on is because it is going to increase their footfall by extension, give them more business. Well, of course that is why they will want to do that. I would

ask what about the footfall in the Central Market? We know that the post office, as far I can see, was very well used. I certainly used it. It was always well attended when I went in there. It is going to be a sad day for all the retailers in there if they are losing out on the footfall in their respective shops and stalls. Deputy Le Claire is quite right, I think he touched on the underlying issue which is the closing of the post office in the Central Market is simply a symptom of a greater and more insidious problem. The selling off of the post office is happening by stealth. There is a hidden agenda, I believe, to run a profitable organisation into the ground by introducing competition on what is the profitable part, giving that to competition, leaving the States at the end of the day to pick up the service level agreement which cannot be profitable because it is not profitable, it never was profitable, to deliver letters. Let us not be fooled by the fact that this is a new phenomenon. Of course there may be less letters going out; there are still bills going out everyday though. It never was profitable to deliver letters and we should not expect it to. But the reason that Jersey Post succeeded is because it could offset those costs with a very profitable section which delivered large letters and bulk letters. So this is the underlying problem that we are seeing here. It is a very simple proposition. I think part (a), there is absolutely no reason why we should not support it. It is absolutely necessary that we do look into the social and economical and also cultural impacts of closing the market. I think we should in fact be supporting both parts of the proposition. Let us not simply stand up and give lip service to the Central Markets, say: "Is it not such a shame that the post office is being shut in the Central Market." Let us get behind this, everybody who speaks in favour of having the value of having a post office in the Central Market. We know it is a tradition, and it is a good tradition. It is one that was well used and I think we should all get behind this proposition and support it.

5.1.6 Deputy S. Power of St. Brelade:

I do not want to speak very long, but there are a few points I would like to make. I think the first thing, it is important to remind ourselves that postal services the world over have had to dramatically change in the last 10 to 15 years with the arrival of the internet. I would ask any Member that is in the Chamber at the moment to compare the number of emails they send to the number of letters they send. I must say in my own case I pay my monthly bills by post, the ones I have to pay by post I pay by post. I write an occasional birthday card or letter to family and friends and not much else. If you look at this debate that we are having right now, it is not so much about the Sub-Post Office in the Central Market as it is about the Market itself, and it is about changing conditions within postal services worldwide. That is what we are talking about here. Jersey is no different. My own particular experience is the Irish postal service - An Post - La Poste in France, and the United States Postal Service that I did use, and I do use quite frequently. All of those are going through dramatic and painful changes in the way they trade. I read recently in the *Washington Post* that the United States Postal Service has had to make 3,500 people redundant on the eastern seaboard because of changes in the pattern of usages of postal services. The market is one of St. Helier's gems. It has had a Sub-Post Office or, as Senator Le Gresley has said, it has had a part of the post office in it for some time; when the market first opened it did not have a post office, then it had a post office and Senator Ozouf said the post office was taken over ... somebody said it was taken over by the Post Office because it was not viable. So we are dealing with changing market conditions globally in terms of world postal services. Those changes have been caused by the internet, by email, by the huge increase in logistics companies over the last 10 to 15 years where FedEx and U.P.S. (United Parcel Service) and all these companies are now delivering from Tokyo to New York overnight, or from London to Moscow, or from Cape Town to New York, whatever. That is the way business has changed, and people are not prepared to post a letter or a bank is not prepared to post a letter in Jersey to go to Cape Town, because it will take 3 or 4 days where U.P.S. or FedEx will do it in 24 hours. Anyone who has travelled in America will see some of these huge logistics operations in some of the Midwest cities and airports that concentrate on this solely. So we are dealing with changing conditions for postal services throughout the world. I visited 2 markets outside of Jersey ... fruit and vegetable wholesale markets outside Jersey

in the recent past. One is in the middle of Oxford and one is in Belfast. Now the one in Oxford City Centre is very similar to the one in Jersey. It has little cafés, it has little fruit and vegetable shops, it has a Sub-Post Office, it has trinkety-trankety shops. It is all the sort of things that we have here but Oxford City itself has got a problem with its market in that a lot of the shops that are in it are not viable and they are now trying to change the pattern of trading in Oxford Central Market to make it more viable. I visited Belfast recently. Because of what we euphemistically call “The troubles” in Northern Ireland, there was a market in Belfast called St. George’s Market, which was effectively closed down because of terrorist problems. Belfast Corporation reopened it 2 years ago and it is an enormous success and it has a pattern of activity, this market, different to the Jersey market - it does not have a post office - but what it does have, it has all of Northern Ireland’s finest organic produce in there, it is Northern Ireland butters, cheeses, the Republic of Ireland stuff and chocolates, all the kind of things that I think we could have in our Central Market. So I think when we look at Deputy Pitman’s proposition, Deputy Pitman is approaching it from this is going to be the end is nigh. My view is that the Central Market has the opportunity to become far more viable if we change and tweak the pattern of trading within the market over a period of time. I know that Senator Ozouf has referred to the fact in the past that Property Holdings are looking at the pattern of usage in the Market. The Market is a gem. If I were to get any of you on a plane to Ireland and take you to Belfast, to St. George’s Market, it has jazz music, it has the smell of fresh coffee, it has the smell of cooking food [Aside] ... No, you cannot smell Guinness. It has lots of things and it makes it a pleasant place to shop in. You can sit down, buy a paper and sip coffee and watch the world go by. I think the Central Market has the potential to do that. But we need to be able to be flexible about our approach to our market. It is a gem in the middle of town. Deputy Fox did allude to the fact that transportation is important to the Market and I think our Minister for Transport and Technical Services needs to realise that part of the usage of the Market has got to be to make it easier to get to rather than having to park. While I do sympathise with Deputy Pitman’s wish to retain footfall in the Market, I honestly do not believe that the maintenance of a Sub-Post Office is key to the future of our Central Market and its success. I believe we need to change the way leases are issued, the way shops are laid out, perhaps we need to make it more open, more stalls, less shops. I do not know. I am not an expert in this area. But I do know that compared to the 2 markets I am comparing to Jersey - Belfast and Oxford - St. George’s Market in Belfast is a joy to be in and I hope that Jersey’s Central Market becomes a more pleasant place to visit, to shop in, to sip coffee and to read a newspaper and even to listen to music, so I will not be supporting this proposition.

Deputy T.M. Pitman:

Could I ask for clarification from the speaker? I am sorry if I misheard the Deputy, but what are “trinkety-trankety” shops? It could be something we could buy into big time.

Deputy S. Power:

I am not quite sure they are myself. [Laughter] I do not want to generalise, all generalisations are dangerous, but they are shops that sell lowish-value jewellery and bracelets and stuff like that.

5.1.7 The Deputy of St. Mary:

The Minister for Treasury and Resources in his comments says: “It is inappropriate for the Assembly to involve itself in the detail of these commercial and operational decisions.” One or 2 people have touched on this. My comment would simply be where else will the sort of things that we have been discussing, as the previous speaker has been discussing, where else will these things be aired? Who else will concern themselves? As people have said, we are the shareholders. This is a publicly-owned company providing a public service. Obviously, particularly in reference to the Central Market, there are community issues, and I just cannot see, particularly as there has been no...

The Bailiff:

I am sorry, Deputy, I think we have just become inquorate. Usher, could you summon the Members please? We are now quorate again. Please continue, Deputy.

The Deputy of St. Mary:

Particularly as there has not been much in the way of public debate or discussion about the proposal to close the Post Office in the Market. Now I just want to take Members to the report the Post Office wrote about itself and purporting to be basically the report that Deputy Pitman is asking for. I find it very puzzling how Jersey Post concluded from this document, although they wrote it of course after the decision, how they can from this document justify closing the post office in the Central Market. If we go to the key conclusions and look at some of the bullets, it does not stack-up. They make a case for having the post office in the Central Market, and I will come to the matter of costs in a second. But the first bullet is really interesting: "Wherever there is an announcement made with regard to the closure of any Sub-Post Office there is always a negative reaction received from the general public. This is very understandable because of the high regard the postal service has among the community generally which very much looks at the post office as a social service rather than a commercial operation." But we are told constantly that we run the post office now solely as a commercial operation, these are commercial decisions and so on. It is interesting that the public do not share that view. The public see things, as Deputy Fox talked about, in the round. Other people have said: "Take a holistic view" and they are quite right. It is not just a matter of pounds, shillings and pence, and the public are telling us that it is not just a matter of pounds, shillings and pence. Their instincts are right. The second bullet: "Such concern is always heightened if the office had been in the same and sometimes historic location for many years and the quality of service received has always been very personable, and these are both strengths of the Central Market Office." Exactly. That is the whole point.

[16:15]

This is the right place for this post office to be. I do find it very odd that you have key conclusions which lead directly to keeping that particular office there and then it appears that it is going to be closed. I find this very hard to understand. It is not just being sentimental either because the Co-op are very happy because they will get the increased footfall. We have been told. Increased footfall from Senator Le Gresley, increased footfall follows the post office. So it is not just a matter of saying: "Does this post office lose money?" We are told on the one hand by the proposer that it is viable and it does not lose money, and then other people say that it does lose money and they come up with a figure of £60,000. But I wonder about the increased footfall and the ripple effect of having it in the right place. We are also told in this report that over-60s particularly are loyal to the post office; 30 to 60s use it quite a bit and under-30s hardly know what the post office is. Okay, there is a trend there that going forward one day, not only ... the country post offices will have to be revised and reviewed and changed, but even this one. But I do not think that time is now. It certainly is not now and this decision reminds me of a certain decision in Liberation Square where we had exactly the right situation with the Tourism Information on the Liberation Square, people eating their ice creams, looking at their maps, I saw it everyday when I went down there to lead cycle tours from outside the tourist office, and now it has been moved round the corner, round the back and it just feels wrong. It feels wrong. People point it out that it was wrong and we still did it. This seems to me the same kind of decision. We had something that was right. It fitted all together and we have undone it for the sake of a few pounds, shillings and pence, apparently. Even that is questionable. Really questionable because of the footfall effect. So, those are my general remarks. Coming to the proposition itself. I have a problem and I hope that the proposer can clarify this. If we just take how it starts: "To ask the Minister for Treasury and Resources to take the necessary steps to request Jersey Post to reconsider its position." That, no problem at all. I would be absolutely happy with that but then we have: "(a) to request the Council of Ministers ...

before the final decision is made.” I am not clear whether “the final decision” has been made. So I would like the proposer who knows a lot more about the specifics of the situation with the Market Post Office to just clarify whether it is simply that it has moved to the Co-op but they have not finally decided to close the one in the Market. But if they have finally decided to close it, then I am not quite sure how this proposition sits and where we can go with it.

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

I will be very brief. I noted when Senator Ozouf suggested that all the facilities from the Central Market Post Office had moved to Don Street Co-op site it appeared the proposer did not agree with that statement, and I therefore ask the Deputy in her summing-up please if she would identify what facilities she believes have not been included in the new site.

The Bailiff:

Does any other Member wish to speak? Very well, I call upon Deputy Pitman to reply. [Aside] There were no lights on when I said it. You have to be quicker. Deputy Southern.

5.1.9 Deputy G.P. Southern:

From the questions indeed that the Deputy of St. Mary was asking: has a final decision been made? My understanding is that a final decision has not been made because Property Services has intervened and said: “You cannot change your views here. You have to pause and wait.” So there is some time in which to make that final decision ...

Deputy P.V.F. Le Claire:

In order to be helpful, can I ask the Deputy to give way? The situation is that Jersey Post tendered its announcement to let go of the lease. They have been required to keep it open until the end of October where there will be a requirement to readvertise the actual position so, in effect, it is closed. The notice has been given by Jersey Post and in October there will be an option to retain possibly some of those services but they will have to be tendered in open tender according to law.

Deputy G.P. Southern:

I will change my phrasing then. The final decision has been made, but the final outcome maybe has not ...

Senator P.F.C. Ozouf:

May I clarify? Will the Deputy give way?

Deputy G.P. Southern:

I love being clarified.

Senator P.F.C. Ozouf:

Let me be absolutely clear. Jersey Post have surrendered their lease but they must continue to provide the Central Market Sub-Post Office with the service until the conclusion of that lease. They have surrendered their lease, it is now Property Holdings to then re-tender that site. There is a difference between the Post Office and Property Holdings. The decision has been made and the lease surrendered.

Deputy G.P. Southern:

And they might reapply and the final outcome is not yet decided, which was the phrase I settled on in the end. Really, we are looking here at the first of many serious decisions we have got to make and it comes down to a philosophical approach and a political approach from the rabble behind me, from various perspectives, as to what the role of our public services is. It seems to me that it is so often, so very often, we are talking about something that, yes, does provide a public service by definition and therefore in some cases may require subsidy or support in some way or other in order

to produce the social impact as well as the economic impact that it obviously supplies. Here we are, we are seeing the result of market forces. Again, we have had this all afternoon, market forces, market forces, market forces. We are consulting on the entire future of our postal services. It seems to me we are getting consulted to death. If you look at the main J.C.R.A. consultation process you are given a choice. Would you like 3 deliveries a week or would you like 5 deliveries a fortnight. That is the 2 options that are being consulted. Not, what sort of service do you want? Do you want to maintain something like a daily delivery and daily collection? Do you want to maintain that or not? The consultation we are getting is do you want the services being supplied to be cut in half or cut in less than half because that is the option that is being presented. At the same time, the J.C.R.A. are still out on deciding whether to take away the last profitable bit of the post office and open it to competition. Again, competition, competition, competition, which will be the death knoll of our postal services. We have to be very careful round this area. This is an example of one of many decisions we are going to have to make and it will be down, sooner or later, to this body because the entire Island does not run as a business, as we are often being told. It is not a business. It is more than a business. It is the sum total of all its people and our duty is to look after those people. If our public services, because of the small nature of our Island and the small numbers involved and the inability to get savings from scale, if that means that we have to take political decisions in order to support bits of what used to be called public service, then we must, I believe, start to take those decisions on grounds that are not strictly pure economics - down to the bottom line - because no doubt the postal service does provide a service. This decision today is symbolic, I believe. It is a symbolic decision that we make today about do we want to bother saving our postal services? If we vote one way we say yes ... I believe we say yes, we still care. Does not solve all the problems but we make a statement today say: "Yes, we still care and yes, there is a social element that we are keen to preserve, and yes, perhaps we can find ... we can still give time to find a solution." If we do not know I think we say: "We do not care." The market rules are public services will go wherever the market leads and we will see reduced services on this Island. It almost says: "And we are wiping our hands", Pontius Pilate-like, we are washing our hands of this business. We are still the owner of our post offices and our services. Bear that in mind. Do we wash our hands or do we not? What signal do we want to give to the public out there? I think this is a marker.

5.1.10 Deputy T.M. Pitman:

Thank you, Sir, for being flexible. I do try not to speak when it comes to any proposition brought by Deputy S. Pitman for reasons I am sure that the Chair and Members will understand and that is particularly so if it is a proposition that I would wish to support. But I do feel that I have to speak on this. Firstly because it focuses on a commonsense approach, despite what the Minister for Treasury and Resources might suggest, to hopefully doing whatever we can to prevent a hugely significant part of St. Helier's cultural fabric slipping away, as Deputy Power has touched on. Slipping away before our eyes and without even giving the matter full and informed consideration. If nothing else, I am pleased that we are debating this because maybe we can put a stop to some of this now, and as the Deputy of St. Mary really summed-up why we need to do this, with the issue of the spectacularly foolish decision to let the tourist office go from its prominent position. But secondly, because of the manner of the opposition to the proposition from the Council of Ministers feel I have to speak and say something. I am under no delusions that it will make any difference. On Monday we heard the Minister for Treasury and Resources confront Deputy Tadier, I think it was, and challenged the quality of some questions raised in the House. I have to likewise challenge the Council of Ministers on the yet again shoddy inept quality of a report claiming to set out reasons why we should not support a proposition. This report, as presented by the Minister for Treasury and Resources, it has to be pointed out must be described as just a hotchpotch of ... I will not even say facts. Most completely irrelevant to what we are being asked within this proposition. Cobbled together I believe to give the impression that the Council of Ministers are tackling these issues at hand, which they really should be doing. The sort of document that probably

demonstrates why, no disrespect intended, accountants should not be allowed or trusted to examine matters that have a wider implication than just the one dimensional numerical one. I would like to just look at the document for a moment. Conclusions, if they can be called that, that I doubt can be called true conclusions because those need to arise from analysing widely research information. This document, again as the Deputy of St. Mary pointed out, reaches conclusions that fly in complete opposite direction of what is in there. It is crazy. It is a complete missing of the point. It spends much of its pages focusing on the postal service *per se* rather than the overall impact, social, economic and postal, of one of the small handful of genuine - and I use this word with trepidation - iconic places Jersey has left. Our ancient town market. Much of the - I do not know if I can say "bumph", I do not think that is a rude word - bumph in this report, it is just a smoke screen, a red herring to tempt us to vote against, and sadly it is almost certainly going to work. We are told for example of all the many groups that the researchers have spoken to. I am sure that the Minister for Treasury and Resources will be able to confirm that one key group being interviewed for their opinions and interviewed at depth were the market traders. If the traders had not been included in the alleged research, well, this really shows how we should just dismiss this document. The fact is the market traders were not consulted, which I have to say really does make a complete mockery of the comedic garbage.

[16:30]

I do not know why the Minister for Treasury and Resources is laughing because if that is the best he can do, well, perhaps he should find a different job. But to be generous; how many people were interviewed in these 6 focus groups? Can the Minister tell us that? Who were they? How were they selected? I mean I am willing to give way if he wants to tell us, but I do not think he does. We have also heard the Council of Ministers are doing just about everything that the proposer asks. Even if we accept that, and as one of the few Members to my knowledge who have taken the trouble to meet with a number of the traders and people who use the Sub-Post Office, I am afraid I do not believe that by a long way. But surely this raises the following question. If this is not another case, as I personally believe we saw this morning with the Deputy of St. Martin, a proposition that made a lot of sense being voted against purely because of who was bringing it, a Back-Bencher perhaps, not from within the fold. Why are we taking this approach to something that is so important, because I believe it is? The Market is somewhere I have frequented since I was child, my mum used to take me there. I think the post office was there since 1972, unless I am mistaken. It does go beyond simple market forces taken at face value. Surely then it is worth us looking in every possible way we can to see if it is salvageable. Maybe it is not and I think the proposer made that quite clear. She is not saying it has to be kept at all costs, she is saying: "Let us make that decision being as informed as we can." But if we are just going to let this slide away the result of this will be that the Sub-Post Office, which contrary to the misleading spin I have also been informed very reliably ... and perhaps Senator Le Gresley, who I have got a lot of respect for, perhaps that is the political naivety when he thinks that you can always trust what the people at the very top say. Because I am like Deputy Le Claire, I have learnt very quickly that that is not the case. The Post Office in the Market is very, very successful at what it does and it is certainly well worth saving. If we do not take this stance now, this will just slide away before our eyes and be gone. Before we know it what will happen with the Market, it will be turned into a soulless shopping mall that you can see in many large countries. If that is what we want, fair enough. That is not what I want and it is not what the people I seem to talk to want. But when we are told about the loss that the Sub-Post Office has made, perhaps we should also consider how much Jersey Post places on these facilities. I do not think I am straying too far from the point but I thank the postal worker who wrote to the *J.E.P.* on 14th June for the following information. Bear in mind we are talking about a £1 million loss apparently. "Managing director salary £133,000 [and the important bit] plus £46,000 bonus; finance director £128,000 salary plus £34,000 bonus; incredibly, human resource director, £123,000 salary plus £42,000 bonus." Total salary, a quick adding up - I have

got a mathematician by me so I am sure he will tell me if I am wrong - £506,000. A completely different story from the pay awards reported to me by a number of frontline staff. Yet the chief executive is saying that we need to close our Sub-Post Office because they are losing £1 million a year. £500,000 and £1 million: interesting figures. I think we States Members have to ask ourselves what our voters and the taxpayers of this Island would prefer to keep: these directors with their huge bonuses or our community Sub-Post Office in the Market? I know what I think but perhaps we should ask them, which is really, I think, what the proposition asks us to do. I did not want to be all doom and gloom but Deputy Tadier is probably quite right when he says that this is just one example of an insidious and ideologically driven move to dismantle and destroy the service as we have known it. In summary, I would just like to stress that as States Members we really should take the erosion of those little things that make Jersey special seriously. We should not allow them to slip away, especially on the back of some cobbled together report that frankly the value of it could be summed-up on the back of a postage stamp. I think the Council of Ministers really must do better when they are giving us information if they are asking us to make decisions on the back of such things. The Market and the Sub-Post Office itself is an integral part of that, affecting both the ambience of the place if you go in and the footfall. It is special and particularly to a significant number of older people, people do tell me that all the time since this possibility of closure has been in the air. We should at the very least fully consider every angle in trying ensure that we can keep that Market that special place and develop it. The simple review that the proposition calls for does just that. It could be done very easily and very quickly and if what the Minister for Treasury and Resources is telling us is correct and much of the work has already been done then brilliant. Surely that just means they could accept the proposition, within a month hold up a document and say: "Look, we have done it. We have not even spent the few thousand pounds you said it would cost. The answers might be what you want or what the public wants but there we go." What would the problem be with that? Would the Council of Ministers take such a commonsense attitude, I will not be holding my breath. But for everyone who does care about what Deputy Powers talked about, and others, I would say please do support this and send out the message that this erosion of Jersey's uniqueness and its cultural heritage, its very feel, has to be stopped somewhere. Thank you.

5.1.11 Deputy J.A. Martin:

Yes, I will just be very brief to follow on from Deputy Pitman. I just wanted to point out the so-called report of the company; the comments. I have trawled through it and I cannot even find terms of reference. None of us would be able to get away with this. Loaded questions, we do not know. There are a few comments that 50 people were sampled, members of public, on the very end page. Not happy with the report at all and I think that at the very least the Market and the Sub-Post Office deserve a proper analysing of what is going on there. It should be upfront and we should know at least the terms of reference. Why were these people picked? Were they given 10 sets of conclusions and then had to come up with the reasons to make them? Because that is what it looks like to me. As I say, nobody on a Back-Bencher's report would be able to get away with that but we are expected to take it from the Minister for Treasury and Resource or a member of the Council and it is not right. I am sorry, so I will be support Deputy S. Pitman. Thank you.

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

Deputy Southern states that the consultation paper only gives 2 options. That may be true, and for a very good reason. The *status quo* is just simply not sustainable. Postal services around the globe are having to evolve and to do so in the changing world of communication that is seeing the rate of change move exponentially generation to generation. I agree with Deputy Power and he has said much of what I intended to say. What is required is for Property Services to deliver a vibrant Central Market, not just a Sub-Post Office which will not deliver a vibrant Central Market. Deputy Trevor Pitman comments about the Jersey Post directors' costs are misplaced. They have already

cut directors' posts as well as of mainstream staff. So although well-intentioned Deputy S. Pitman's proposition will not result in a vibrant Central Market.

5.1.13 Senator S.C. Ferguson:

Oh dear, I feel if I am wading through treacle. Frankly, yes, forget all the wailing and gnashing of teeth. It is a bit of lateral thinking that is needed. I understand that Jersey Property Holdings as the landlord have the matter well in hand with a view to maintaining and retaining a postal centre in the Market with the footfall. So I can assure Members also that the antique letterbox which dates back to certainly before me, and probably before Deputy Fox, is going to be retained. So I suggest we stand back and let them get on with it and get it changed and modernised. I shall not be supporting the proposition.

5.1.14 Senator T.A. Le Sueur:

Just to add that as far as I am concerned we are indeed in danger of trying to micromanage. We are now apparently even going to try to micromanage the way in which this report is conducted. If the report does not come up with a conclusion which says that Sub-Post Offices are the best thing since sliced bread, I am sure that report is going to be rubbish as not being objective. I fear Members minds here are polarised one way of the other but this is the wrong proposition at the wrong time and I see no justification for maintaining it.

The Bailiff:

Does any other Member wish to speak? Deputy Higgins coming to the proposer's rescue.

5.1.15 Deputy M.R. Higgins:

I hope so. The proposer is here. In fact I think most things I would have said have been said, thank you. [Laughter]

The Bailiff:

Very well, I call upon Deputy Pitman to reply.

5.1.16 Deputy S. Pitman:

Thank you. I would just like to start with the questions that were asked. Firstly, Deputy Jeune, what I have to ask is why did she not ask the Minister where all his information is, that he should have and I suspect she had not done so because she never really does question the Ministers. But I have got this information from Jersey Post staff, and this is how I know; not just one Jersey Post staff but several of them have had contact. I have spoken to quite a few of them and I know a handful of them as I worked there several years ago. So I am reliably informed. The Deputy of St. Mary, his question: "Has the final decision been made?" Well, I believe it is but, as we have heard, the post office could reapply for their lease. Firstly with regard to what Senator Ozouf said about me asking him to micromanage and that he should think carefully ... or I should think carefully about asking him to intervene in this micro issue. Well, I am not asking him to do that. I am not asking him to demand a closure once the report is done, what I am asking him and States Members to do is to read ... to have in front of them the correct information so they can be properly advised and properly make a decision to advise Jersey Post, as we are the shareholder. He also talked about the sanctioning of the millions to the roof at the Central Market which I think is a good thing but then why do this if we will not support our local ... the businesses inside the Market? Going back to intervening in micro issues, the Minister for Treasury and Resources does not want to intervene in any way because he does not want a public postal service, and he has made this quite clear many times and it is evidenced in the reluctance to address the increased postal competition that is coming to Jersey. I have a statement, I think, that supports this and this is from the review, 2009 review done by Jersey Post.

[16:45]

They say in this report: “We remain deeply concerned by the J.C.R.A.’s continuing reluctance to adopt E.U. mandates that require regulators to undertake formal risk assessments ahead of their decisions. Unintended consequences are therefore highly likely and we are concerned that those might be profound if competition is introduced too suddenly in the bulk mail market which is used to fund the Island’s loss making letters and postal services.” Senator Le Gresley, well I should say to him why the Market Post Office is closing. That is because, as we know, the Co-op is opening or has already opened and it cannot have competition on its doorstep, because it would have serious competition with a Sub-Post Office in the Central Market. He also talked about footfall in the post office ... for post offices. I ask him, as did Deputy Tadier, about footfall from customers using the Central Market Post Office for the shops, for the stores, for the cafes, for the traders in a market. What about them? What about all ... each service that the post office provides in the Central Market has its own footfall, it goes to different stores, it goes to different businesses and this is just one major thing which, if lost, again the footfall to the Market will be reduced, and in a big way. I was surprised to hear that he was suggesting I do not take the word of the employees. Given his background in listening to people I thought this was surprising and disrespectful. Lastly, I thank all Members who have spoken but I would just remind Members that we have a responsibility as a shareholder, and for the taxpayers’ money that we use to prop-up and to provide the services of Jersey Post. As custodians of the Market, to make sure we all have the information required to make an informed decision to then advise Jersey Post on the information we have. I call for the appel.

The Bailiff:

The appel is called for then.

Deputy A.E. Jeune:

Sorry, just before we carry on, I did genuinely ask the question of the proposer what it was she believed was not going to be provided. I do not think it is fair to say I do not question the Ministers, I certainly do, but I did see the proposer at the time was obviously not happy with that statement and I would like to know, because I think it is important we know, what facilities are not being provided. Thank you.

Deputy S. Pitman:

I have answered the question. I do not know specifics but I have been told that a lot of the services that have been provided in the Market Post Office are going to be lost. The fact is that the Co-op, the Post Office there, has traditionally been for its members only. I am afraid it has. We have a Post Office there and that comes from the Co-op. It initially began its days there. So I think I have answered the question.

The Bailiff:

Very well, the matter before the Assembly is Projet 90 lodged by Deputy Pitman. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 13		CONTRE: 28		ABSTAIN: 0
Senator A. Breckon		Senator T.A. Le Sueur		
Deputy of St. Martin		Senator P.F. Routier		
Deputy R.G. Le Hérisssier (S)		Senator P.F.C. Ozouf		
Deputy J.A. Martin (H)		Senator T.J. Le Main		
Deputy G.P. Southern (H)		Senator F.E. Cohen		
Deputy of Grouville		Senator S.C. Ferguson		
Deputy J.A. Hilton (H)		Senator A.J.H. Maclean		
Deputy P.V.F. Le Claire (H)		Senator B.I. Le Marquand		
Deputy S. Pitman (H)		Senator F. du H. Le Gresley		
Deputy M. Tadier (B)		Connétable of Grouville		

Deputy of St. Mary		Connétable of St. Brelade		
Deputy T.M. Pitman (H)		Connétable of St. Saviour		
Deputy M.R. Higgins (H)		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Deputy R.C. Duhamel (S)		
		Deputy J.B. Fox (H)		
		Deputy of St. Ouen		
		Deputy of St. Peter		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy I.J. Gorst (C)		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy J.M. Maçon (S)		

The Bailiff:

Very well. Before we come to the next matter there are 2 matters which have been lodged or presented. First of all report R107, Jersey Competition Regulatory Authority: appointment of board member presented to the States, and furthermore R108, Rural Economic Strategy White Paper presented by the Economic Development Department and the Planning and Environment Department.

Deputy C.H. Egré of St. Peter:

Just to avoid confusion against what the proposer of the last proposition has said, the Co-op Post Office serves all members of the public not just members of the Co-op.

Deputy S. Pitman:

May I clarify, please? I have it in black and white here, I cannot reveal the name, it is from management in the Co-op and it says: "Having this office here was not dependent upon having a Sub-Post Office as part of it. It is there to serve our members' banking and dividend needs and our travel maker foreign exchange service."

The Bailiff:

Very well, there are 2 other matters which are presented. Draft Annual Business Plan 2011 Amendment lodged by the Health, Social Security and Housing Scrutiny Panel and a report R106 Meetings of the States in 2011.

The Bailiff:

Now it occurs to me, before we come to the next item, Deputy Duhamel, you I think wish to present on behalf of the Minister tomorrow the matter concerning oyster regulations but you will need to ask the Assembly if you are going to do that to shorten the minimum lodging period. Would it be helpful to do that today so that Members know whether this matter is going to be debated tomorrow or not?

Deputy R.C. Duhamel:

Certainly, Sir. I was happy to do that but I think my Minister wanted to ask for the thing to be debated and then I was going to do the running through the regulations.

The Bailiff:

I beg your pardon. I assumed wrongly that it was Deputy Duhamel. I beg your pardon, Minister, do you wish to make that ...

Senator F.E. Cohen:

I am not sure you made a mistake. I think we were in a muddle rather than you. I apologise for the urgency but the situation is potentially critical and if the regulations are not approved we could end up in a situation in which we may not be able to export oysters at all. So while Deputy Duhamel will act as rapporteur I do urge Members to allow us to debate this properly.

The Bailiff:

You say that therefore it is ... you are asking the States to agree that it relates to a matter of such urgency and importance that it would be prejudicial to Jersey to delay its debate.

Senator F.E. Cohen:

Most certainly, Sir, if one considers the oyster industry of importance, which we do.

The Bailiff:

Very well, is the proposition seconded to reduce the minimum lodging period? **[Seconded]** Does any Member wish to say anything?

Deputy J.A. Martin:

Well, I have read ... and normally I would not support this because when people try to do such urgency and importance that it would be prejudice Jersey we are always told: "No." P.P.C. (Privileges and Procedures Committee) always stand up and say: "No." But as I have learnt how to say *Crassostrea gigas* which is worth £1.57 million to the Island I have now heard ... the only problem I do have, and I would like to test the mood of the House, is that you, Sir, said tomorrow and I did not think if this was going to be a debate it would be a long debate and I know we have another debate which Deputy Southern says to me he does not think will be a long debate. So after this debate ...

Deputy G.P. Southern:

A point of clarification. I do not want it done and dusted in 20 minutes.

Deputy J.A. Martin:

I do not say you do. After this debate I will be testing the mood of the House to maybe sit to 6.00 p.m. this evening. Other than that I think it is sensible that we do for this once lift Standing Orders on a Minister's proposition. Thank you.

The Bailiff:

Very well, all those in favour of acceding to the Minister's request, please show. Those against? Very well, so the Assembly will take that matter either today or tomorrow whenever it so chooses.

Deputy R.G. Le Hérissier:

Is there any chance, given that we do have what could possibly be a rather long debate, is there any chance we could do it now? It might neatly fit between now and 5.30 p.m.

The Bailiff:

Yes, if Members agree we could do the Oyster Regulations and then the appointment of the Chairman of the Arts Trust, leaving only, I think, the Comprehensive Spending Review proposition for tomorrow. Are you happy with that, Deputy Southern?

Deputy G.P. Southern:

That would enable me to start and finish the debate in one and if it goes to 2 hours I would be surprised, but it must have proper debate. Surely it must have proper debate, Minister for Treasury and Resources [**Laughter**], even a humble Back-Bencher of little experience has the right to have a proper debate.

The Bailiff:

Can I suggest to Members that if we take the other 2 matters and then Members can decide whether to adjourn at that stage or soldier on?

Deputy I.J. Gorst:

While I appreciate that helpful suggestion, I suspect we might get through the business earlier were we to decide to try and complete all business by 6.00 p.m. today.

The Bailiff:

Can I suggest we do the first 2, see how long they take and then Members can decide whether to adjourn at that stage or carry on with Deputy Southern's proposition.

6. Draft Community Provisions (Mortality in Oysters) (Jersey) Regulations 201-(P.94/2010)

The Bailiff:

Very well, we will come next to Draft Community Provisions (Mortality in Oysters) (Jersey) Regulations, lodged by the Minister for Planning and Environment and I will ask the Greffier to read the citation.

The Greffier of the States:

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

The Bailiff:

Minister, do I understand you are going to asking your Assistant Minister to present this.

Senator F.E. Cohen:

Yes, Sir.

6.1 Deputy R.C. Duhamel (Assistant Minister for Planning and Environment - rapporteur):

I think it might be helpful to just recap on the salient points in the report that appends the Regulations and I would like to thank Members for agreeing to take this piece of legislation as quickly as we wanted it. Jersey, as Deputy Martin referred to, is one of the largest producers of Pacific oysters in the British Isles and it is a significant contribution to the economy in terms of our fish farming exports. It is worth some £1.5-£1.6 million. Unfortunately over the last couple of years Jersey has been caught out, along with France and Ireland, in that there has been an emergence of a disease which causes, for some unknown reasons at the moment, the oysters to sexually mature at a faster rate. Some people think this is due to increased water temperatures and there are planktonic blooms and more food means that they oysters can lay down their reserves for procreation and because they grow so fast it tends to weaken their immune systems and they do

become liable to this herpes virus. The virus is a little bit on the nasty side and it manages to kill off a large element of the youngsters that are produced. So much so that it causes massive problems for the laying down of oysters in particular parts and, indeed, the mortality which is the death of the younger animals has been as much as 90 per cent or even 100 per cent in some places. Interesting enough, because this is emerging disease, there are some places close to Bordeaux in Arcachon where this particular effect has not been realised and the scientists are working away at the moment to find out why those particular oysters are unaffected and yet the ones that we grow, and indeed the French and Irish grow are affected. In spring 2009 we had increased mortality which was attributed to the same combination of factors, mainly hotter waters and planktonic blooms. As I say, the scientific community is still out trying to work out why these things are happening and, indeed, whether or not they can be treated. At the moment there is no treatment other than the populations die-off. As a result the European Union, of which the U.K. is part and we come underneath the U.K. in terms of some of the agreements that we are bound to, have decided that there should be, in essence, regulation of the movement of these infected oysters and to limit the movements only to other areas that are similarly affected. You cannot move, as I understand, oysters to clean areas where the disease has not become apparent.

[17:00]

So as a consequence of that there has been some hasty legislative changes that have come through from the E.U. and the U.K. are bound by them as indeed we are under our Protocol 3 agreements for trade in agricultural produce. So as a consequence of that we are really responding to something which is not necessarily of our making and we are having to respond in a way that is really bowing to the greater knowledge, if you like, of the E.U. Commission which had deemed it appropriate and necessary to extend these measures to all affected Member States which includes us. This has had the effect, or will have the effect, of ensuring uniform conditions for the implementation of the controls by regulation which accords with the opinion of a standing committee on the food chain and animal health. So basically the Commission Regulation 175/2010 to implement these controls was made on 2nd March 2010 and will remain extant until 31st December. Some Members might think: "Well, why make up regulations that are only going to last for 6 months?" and the reason for doing that is to allow the scientists to get to grips and to decide what the next control measures might be, and indeed what a better regulatory control or legal control might have to be applied. Jersey is classed as a containment area at the moment because we did discover some of the oysters that had been so affected by the virus last year. They are undergoing tests at the moment to determine whether or not the problem has recurred this year and that work will be completed soon. But the measure really is important in order to allow oysters still to be traded within containment areas between consenting states or areas. That is about as much as I think I should say in terms of the background to the regulations and I think I would like at this stage to propose the principles to the regulations.

The Bailiff:

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

6.1.1 Senator S.C. Ferguson:

Is this particular *Crassostrea gigas* the only variety of oyster which is subject to this virus and what work is being done on alternatives to this to avoid this particular problem? I notice these are Pacific oysters, what has happened to Whitstable oysters and things like that. Why are we not growing natives?

6.1.2 Deputy T.M. Pitman:

Very briefly, if the Minister was a Back-Bencher I would probably be saying to him: “Let them eat lobsters” but of course it is a very important issue and all I really want to say is it seems so clear cut that we should be supporting this that let us get on with it and vote for it and move on.

6.1.2 Senator B.E. Shenton:

I just wish to point out that I fully support my very good friend, Senator Cohen, on this proposition. [Laughter]

The Bailiff:

Very well, any other Member wish to speak. Then I call upon Deputy Duhamel to reply.

6.1.3 Deputy R.C. Duhamel:

I thank Members for their support and their comments. Senator Ferguson referred to whether or not there are any other specie of oyster that are affected. I am told from the limited research that I have done that the *Ostrea edulis* which is the natural oyster is also so affected but only time and tests will tell. There are 2 other species of oyster that are affected. One from Australia and another one from New Zealand, so it is not just our waters, it appears to be something that is being experienced in other parts of the world as well. I put the proposition.

The Bailiff:

Very well, all those in favour of adopting the principles, kindly show. Those against? The principles are adopted. Deputy of St. John, do you wish this matter to be referred to your Scrutiny Panel.

The Deputy of St. John (Chairman, Environment Scrutiny Panel):

No, I am quite happy, Sir, thank you.

The Bailiff:

Very well, Assistant Minister, how do you wish to propose the Regulations, *en bloc*.

6.2 Deputy R.C. Duhamel:

I think I would like to propose them *en bloc* but I would just like to say one or 2 things about them. Generally it gives powers to designate areas in terms of containment, creates an offence for not telling that you do have a problem or suspecting a problem and generally the Regulation should be seen as a stopgap measure before further legislation is brought to this house by the end of the year in order to lay down a longer term kind of legal treatment of how we should manage this particularly worrying problem. I would like to put all the Regulations forward *en bloc* and I will answer questions on any particulars.

The Bailiff:

Very well, are the Regulations seconded? [Seconded] Does any Member wish to speak on the Regulations? Very well, all those in favour of adopting all the Regulations, kindly show. The appel is asked for in relation to Regulations 1 to 11. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 38		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator A. Breckon				
Senator S.C. Ferguson				

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

Deputy R.C. Duhamel:

I would just like to thank Members for their support.

The Bailiff:

Well, I should wait until you have got it right through, Deputy. **[Laughter]** Do you propose the Regulations in the Third Reading?

Deputy R.C. Duhamel:

I do, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Regulations in the Third Reading kindly show? Those against? I am sure now you could express your gratitude.

Deputy R.C. Duhamel:

Thank you. I would like to express my gratitude again to Members.

Senator F.E. Cohen:

May I just add my thanks to the States veterinary officer for her sterling work, together with the draftsmen, in bringing this matter forward in such a timely manner. Thank you.

The Bailiff:

Very well, thank you, Minister.

7. Jersey Arts Trust: appointment of Chairman (P.95/2010)

The Bailiff:

We come next to Projet 95 - Jersey Arts Trust: appointment of Chairman - lodged by the Minister for Education, Sport and Culture. I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to appoint Mr. Alan Le Breton as Chairman of the Jersey Arts Trust for a period of 4 years with immediate effect from the date of approval by the States.

The Bailiff:

Minister, I understand you wish your Assistant Minister to act as rapporteur in this case?

Deputy J.G. Reed of St. Ouen (The Minister for Education, Sport and Culture):

Yes, Sir.

7.1 Deputy A.T. Dupré of St. Clement (Assistant Minister for Education, Sport and Culture - rapporteur):

Just before I start the proposition may I just take one moment to congratulate the Jersey team on their cricket win, the first European win for the Jersey cricket team. **[Approbation]** I am delighted to propose Alan Le Breton as the new chairman for the Jersey Arts Trust, especially as he is a St. Clement resident, or as our Constable would say, a member of God's own Parish. As you will see from the report accompanying this proposition Mr. Le Breton is more than qualified to hold this place. He is a Jerseyman born and bred who has had a distinguished career with the BBC in London which culminated with his appointment as managing editor of the News and Features for the BBC World service. He is also the current vice-chairman of the Jersey Arts Trust. I know that he will bring his expertise to the organisation and enable it to continue to develop. I would also like to take this opportunity to publicly thank Colin Perchard for all his hard work over the past 8 years. He came into the role following a career with the British Council, which is the agency responsible for United Kingdom's cultural and educational relations with overseas countries. He has among many other projects been overseeing the refocusing of the trust's role and has successfully collaborated with Guernsey, establishing connections with the Guernsey Art Commission. Therefore, I would like to propose Alan Le Breton.

The Bailiff:

Mr. Le Breton. Very well, is that seconded? **[Seconded]** Does any Member wish to speak on the proposition? Deputy Lewis.

7.1.1 Deputy K.C. Lewis:

Very briefly, I do know Mr. Alan Le Breton. He is a very hands-on man and I am sure he will be a great boom to the Arts Trust in Jersey.

7.1.2 The Deputy of St. John:

As a former Arts Trust trustee myself can I wish him well and I hope he has got his feet well on the ground because, no offence to the fellow trustees, but usually they come from the arts and they are not necessarily ... they are good at what they do, very good at what they do but necessarily keep their feet right on the ground when it comes to the pounds and pence. So I wish him well.

7.1.3 Senator S.C. Ferguson:

I trust he is not bringing any of his mainland BBC spending habits over here.

The Bailiff:

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

7.1.4 Deputy A.T. Dupre:

I can assure you he is not.

The Bailiff:

Very well, all those in favour of adopting the proposition kindly show. Those against? The proposition is adopted.

The Bailiff:

So then the one remaining matter on the Order Paper is Projet 91, the Comprehensive Spending Review.

Deputy J.A. Martin:

I would to test the mood of the House. I think we have at least an hour for debate and if obviously we are not finished at 6.00 p.m. ... I would like to propose we sit until 6.00 p.m. and obviously then if we can see there is a lot more debate we will have to return tomorrow but I would like to make that proposition.

The Bailiff:

Very well, you propose sitting now until 6.00 p.m.?

Deputy J.A. Martin:

Yes, Sir.

The Bailiff:

Seconded? [**Seconded**] Is that the mood of the House then? Do we agree that? Do you wish to say anything, Deputy Tadier? We can put it formally to vote if you wish?

Deputy M. Tadier:

Either way, I personally cannot stay until 6.00 p.m. I have an appointment, it is a National Trust event that I have got to go to so I am happy just to leave early if Members will excuse me rather than forcing it to the vote. But I do intend to speak so I am anticipating ... I would have thought this proposition may be a long one because it is ...

The Bailiff:

Very well, let us put it to the vote then so Members can decide whether to sit until 6.00 p.m. or if this is rejected then we will adjourn now.

Senator A.J.H. Maclean:

Could we perhaps get an indication from the proposer as to how long his introductory speech is likely to be? He did mention 2 hours earlier on and I hope that was the entire debate, not his speech.

Deputy G.P. Southern:

It might stretch to 2 but, no, I am prepared to make a start tonight.

The Bailiff:

Very well, so the proposition is that of Deputy Martin that we should, in principle, agree to sit until 6.00 p.m. at this stage and then see how we go. All those in favour, kindly show. Those against? It is carried. Very well so we will sit until 6.00 p.m. and see how we go.

8. Comprehensive Spending Review: savings proposals – impact on employment of public sector staff (P.91/2010)**The Bailiff:**

Then I ask the Greffier to read the proposition, projet 91 - Comprehensive Spending Review: savings proposals: impact on employment of public sector staff - lodged by Deputy Southern.

The Greffier of the States:

The States are asked to decide whether they are of opinion (a) to request the Minister for Education, Sport and Culture to reinstate the recruitment process for the appointment of 8 temporary modern foreign language assistants pending final sanction of the States in the Annual Business Plan debate in September 2010; and (b) to request Ministers, pending the debate on the Annual Business Plan in September 2010, not to take any action arising from the Comprehensive Spending Review proposals, which would cause or result in any reduction in the number of public sector jobs or job opportunities, pending the Ministers receiving sanctions to do so from the Assembly's 2010 Annual Business Plan debate.

8.1 Deputy G.P. Southern:

I hope Members still have the attention and the energy to give this important matter its due attention and to vote wisely on it. I will be a good deal under 2 hours, I sincerely hope. It is an issue I believe passionately in. It contains, I believe, 3 basic elements. One is the quality of language teaching in our schools and in an Island with the French tradition that we have, I think that is a vitally important issue that we maintain the very high standards that we have in our schools in languages, particularly French. The second issue is that I believe the Minister for Education, Sport and Culture is, consciously or not, attempting subvert the actions of this House. The fact is that the Annual Business Plan, with the proposals that have been put forward so far will be voted on by this House, it will say, we will say, where cuts occur, where cuts do not occur, *et cetera*, by this House on 14th September or some days thereafter.

[17:15]

Not now, not a month ago, when people started devising proposals. As the Minister for Treasury and Resources himself said the other day on the radio, this is a set of proposals, the House will decide. Remember it is always our decision. Yet it seems to me that by refusing to go ahead with the appointments procedure in this particular case E.S.C. (Education, Sport and Culture) have pre-empted that decision. Then finally part (b) says, and it is a bit of a catch-all, I must admit, and I hope nobody else, no other Minister, is effectively pre-empting any decisions that should be made by this House on 14th September because while I am aware that E.S.C. apparently are doing that, I am not aware and I have not asked anybody if they are also running through the back door to try and get action before 14th September. I think those principles are important. I first discovered the fact that this was happening from question time. "Can the Minister confirm that under the savings proposals E.S.C. 4 redefining core business for schools" what a strange way to hide a major change in delivery language teaching: "redefining core business for schools, whether that would effect modern language assistants?" What the Minister said at the time was: "In the event that the States should decide in September 2010 not to accept the proposed spending reduction, the department would presumably then investigate alternative arrangements for the academic year 2010-2011." Does that sound like pre-empting a decision to you, because it certainly does to me. What has

happened is the appointments procedure which usually starts way back in the year, in about May, and runs through this term, has been suspended and stopped. What it involves is 8 temporary modern foreign language assistants in classrooms. That has been stopped and the Minister, I assume, was going to come to the House and say: "Here we are, we are proposing these cuts." If we rejected it, and I await his answers, what are the solutions, what is the alternative or do we risk the level of teaching in our schools? The high level of teaching in our schools, which I think are put at risk, are indicated by the fact of our results to start with. Let us examine them. Our results, and I have got the French examination results at A level in 2009 here in front of me. A and B grades, the very 2 top grades, Jersey scores are 79.9 per cent of its students get A and B at A level, in the U.K. it is 66.3 per cent. So a substantial difference. What is that saying? That is saying the Jersey system, the way we have been doing it, is not broke. It is highly effective, it is highly efficient and it is successful. A to C grade, the 3 top grades at A level, 100 per cent success rate in Jersey. That is what we are doing. In the U.K. 84.4 per cent. I believe if you examine the exam results compared to other subjects as well, languages very often pull up the whole value added score of many schools in Jersey, certain at Hautlieu, certainly at Jersey College for Girls. The overall results are pulled up by the excellence of our language teaching. So there is no doubt that we are doing it well at the moment and yet we are proposing a change.

Senator S.C. Ferguson:

A point of clarification, Sir. How many people took the exam?

Deputy G.P. Southern:

I do not have those figures in front of me. I am sorry, I cannot answer that. Now, as I say, what does this mean? This means losing 102 hours from these temporary modern foreign language assistants and leaving only 84 hours by the permanent staff who remain. We have 4 permanent staff who assist in the classroom and we have 8 temporary staff who provide over half of the total input into the classroom. So it is not an efficiency saving, it is a change in the service delivery. It is a reduction, substantial reduction in the service delivery, having less input in there of over 50 per cent. Just to examine what that means in individual schools, last year, for example, 19 hours out of the 23 input from these students was given by these temporary assistants in Grainville. At Les Quennevais, it was 12 hours out of 14 given by these temporary assistants. That would not be happening. At Hautlieu it was 16 hours out of 34; at Jersey College for Girls it was 11 hours out of 31; and at Vic College it was 17 hours out of 25. So that is a substantial reduction in the input from what is seen as a vital element, the oral skills that we are giving to our students in our schools. Just to remind Members that the oral skills play an increasing part in the exam results. If we look at G.C.S.E. (General Certificate of Secondary Education) we are talking 25 per cent on your oral and these assistants are vital to preparation for that oral. AS level 35 per cent and A level 35 per cent. Over a third of your marks are dependent on your performance in oral skills and these assistants are the people who put the finishing touches and do the basics of delivering really good oral skills in our students. So the quality of our teaching is good, there is no need to fix it. Now, the comments of the Minister for Education, Sport and Culture say: "The department has invested significant time and resources over the past 2 years in language teaching. This has resulted in primary teaching resources being rewritten, new assessment tools being developed to ensure progression into secondary schools, and 20 primary teachers receiving additional training to teach French in upper key stage 2, 9-11 years. That suggests, yes, there has been a change in primary schools. We have got 20 new teachers with new skills delivering in a different way. How does that effect this decision to remove these assistants from secondary schools and from primary schools? Well, they only delivered a total of 24 hours in the week into primary schools between them. So it is very insignificant. You could remove that from primary schools and say you have replaced the way you teach in primary but there is no need to take out 8 because that significantly affects secondary school education when it becomes fairly critical. Again, it is not an efficiency saving, it is presented as an efficiency saving but it is a reduction in service and it pre-empted our decision on

whether this is a good move or not in September. In the comments the Minister goes on to say that: “The proposed changes have been discussed with heads of modern languages and the permanent language assistants.” I am reliably informed that “discussed” is the wrong word. The change was presented to them: “This is what we are doing.” In terms of talking to the heads of modern language, it was not a question of how many hours do you think you will need because we are restructuring, it was the starting point is 10 hours. Do not even bid for anything more, that is what you are getting. In order to spread fewer staff among the secondary schools, 10 hours is the mark. How many hours were they receiving? Haute Valleé 22; Grainville 23; Les Quennevais 14; Le Rocquier 13, and Le Rocquier has gone down to 6 hours; Hautlieu 34, J.C.G. (Jersey College for Girls) 31; Victoria College 25. Stripped out down to 10 hours from the permanent language assistants. So it is a spreading-out of a vital resource, it is a reduction of a vital resource, is the issue.

The Bailiff:

I am sorry, Deputy, I am advised by the usher that we are inquorate. So we will summon back Members. Very well, we are now quorate again.

Deputy G.P. Southern:

So the Minister is fairly confident, he says, that this will not be a reduction in standards, however I will just read some of the comments made by heads of departments over the role of language assistants from this Groundhog Day, because I did this first in 2003 and here it is back again. “The role of language assistant is central to the delivery of effective teaching and ultimately to the standards achieved. Exam grades depend upon them.” As one teacher put it to me: “You cannot teach modern languages without an assistant.” “Unlike many ancillaries they are teaching staff. They work in tandem with the class teacher or alone with small groups. They give invaluable attention to individuals and groups to stimulate genuine communication in the target language. They bring the foreign country and its culture into the classroom. They are a cheap and effective way of providing native speaker input to language learning.” Note: cheap and effective. We are talking about the number of hours put in by 8 part-timers at a cost of £70,000. I would like the Ministers to look to their budgets and say: “Where can I provide such great value for money with an excellent result at the end of it for £70,000?” I do not think you would find many with better value for money than that. So for the sake of £70,000 we are talking altering a whole structure and the level of input into our secondary education in languages, especially French. This cannot be right. In 2002 I was able to Say, and I think it is still valuable now, Jersey head teachers and heads of foreign language departments have an effective and efficient system for delivering a high quality language experience in our schools through this centrally funded scheme. We must maintain it, we maintained it then, we must maintain it again I believe. Then finally, moving on to the third part of the proposition, I note that the Council of Ministers have some comments to make about item (b) of my proposition. They say, part (b) reduction in public sector jobs: “It will be for the States to determine whether the size and scale of these reductions in the comprehensive spending review is agreed. However the States have previously agreed P.64/2010 funding requests under Article 11(8) which included agreement to provide funds for a voluntary redundancy scheme.” They go on to say: “Departments are currently reviewing their services and proposals are being put forward which involve fundamental changes to services in order to reduce their expenditure requirements over the next 3 years. These proposals will inevitably mean some reduction in the number of jobs in the public sector.” They say my proposition prevents that. Notice it says “reviewing” it does not say “acting upon”, it does not say “actioning”, it does not say “actions”, it does not say when, nonetheless my proposition is supposed to change all of this.

[17:30]

“This reduction will be achieved by robustly managing vacancies as they arise through a challenge process to ensure that only those which are critical are filled.” My proposition does not say anything about that. “Use of redeployment and retraining to redirect people to alternative opportunities as they arrive.” My proposition does not stop that either. What it does, and I will bring people to the nub here, to request Ministers pending the debate on the Annual Business Plan in September 2010 not to take any action arising from the comprehensive spending review proposals, not across the board, from the C.S.R. (Comprehensive Spending Review) proposals, which would cause or result in any reduction in the number of public sector job or job opportunities pending the Ministers receiving sanction to do so from the Assembly’s 2010 Annual Business Plan debate. They are suggesting that that statement stops all progress. No, it focuses on the C.S.R. and the proposals saying: “Wait for us to tell you you can do that.” All right, we have put some money in the V.R. (voluntary redundancy) pot, £6 million, and that can be actioned come this House saying, in September: “Go ahead, do these cuts, do not do these cuts, do these cuts, lose these jobs.” That is our decision and that statement says: “Wait for it.” In September you can go ahead if we say and you can cut where you like and do what you like and spend your V.R. fund, no problem, because this House will have told the Ministers: “That is what you have permission to do.” Until then I do not think you have. That is, I think, the critical issue here. The Minister for Education, Sport and Culture, I believe, is attempting to pre-empt the decision, I think (a) deals with that so have plans ready to deliver if we say you must deliver these posts. The second part says to other Ministers: “Please do not act on the proposals you are putting forward in the Business Plan through the C.S.R. before we give you permission to do it because it is our decision.” Ministers are time and time again coming back to us when we question any decision and saying: “This House decided. Members decided.” Let us give Members the opportunity to decide on this major initiative, the Business Plan and the comprehensive spending review this time round. Let us make sure we get it right and are not pre-empted from actions. I maintain the proposition.

The Bailiff:

Is the proposition seconded? [**Seconded**] Deputy of St. Ouen.

8.1.1 The Deputy of St. Ouen:

I would like to start by saying that I, like Deputy Southern, fully support the teaching of languages at school and there are no plans to change the longstanding decision of the States for the compulsory teaching of French. In practice this means all pupils receive 5 years of French tuition before the age of 14. I do not plan on repeating all the information contained in the comments in response to Deputy Southern’s part (a) of the proposition however I would like to pick up on a couple of points raised by the Deputy in his report. My intention is not, as the Deputy suggests, to subvert the powers of the States Assembly but to provide information on which Members can make informed choices. The Deputy will be well aware that all Ministers have been tasked with identifying where savings could be made as part of the Business Plan process and the proposal to reduce the number of language assistants is just one. Excluding the cost of language assistants, the department spends in excess of £1.5 million supporting the teaching of modern foreign languages within our secondary schools and the proposed saving will mean in practice that in primary schools only support from language assistants will be reduced per pupil by 10 minutes each week. This cannot be regarded as a substantial reduction. I am proud of our French speaking traditions and heritage. However, I do not believe that this relatively small change will have any material affect on the ability of our young people to learn a second language. I would like to reiterate that the changes will only affect children at primary school. The support provided to those at secondary school taking external examinations, including G.C.S.E. and A level and those periods where they are struggling, will not alter. Will not alter. Eight years ago in 2002 the education provided to our young people was somewhat different to that of today. The development of I.T. (information technology) now enables students to converse directly with their counterparts in other countries including France. Also video conferencing is becoming more common place, providing another

dimension to the learning experience offered to the Island's school children. In addition, as the Deputy has already said, over the last couple of years the department has provided and funded additional training in teaching French to 20 of our primary school teachers. This, coupled with an updated curriculum and new technologies, will, I believe, more than compensate for the relatively small reduction with regard to temporary language assistants. Finally, I take exception to the insinuation by the Deputy that I presented a *fait accompli* in regard to the savings proposed. In answer to a question on 22nd June, I gave an assurance that in the event of the States deciding quite rightly during the Business Plan debate not to accept the spending reduction, the department will investigate alternative arrangements for the academic year 2010-2011. I can inform the Deputy and States Members that the department is confident that experienced modern foreign language assistants already on the Island could be used, if necessary, to fully support schools in the next academic year. Therefore, the recruitment process for the appointment of 8 temporary language assistants does not need to be reinstated prior to the final sanction of this assembly in the Annual Business Plan debate scheduled for September this year. With regard to part (b) I am sure that other Members will be speaking on the subject however I would just like to say that if the States are to reduce overall costs then staff reductions are indeed inevitable. Equally, it would be wrong to stop States employees taking advantage of the voluntary redundancy scheme based on a request for Ministers not to take any action which would cause or result in any reduction in public sector job or job vacancies before this Assembly sanctions it. I therefore ask Members not to support Deputy Southern's proposition.

Deputy T.A. Vallois of St. Helier:

Could I just ask the Minister to clarify, with regards to his budget, does it run from September to the following August or is it for January to December?

The Deputy of St. Ouen:

The academic year runs from September to August and with regard to temporary assistants, they are employed between October and May.

Deputy T.A. Vallois:

Could the Minister confirm the budget for 2011 would run from September next to the following August?

The Deputy of St. Ouen:

No, the reduction in budget that we are debating or we will be debating in the 2011 Business Plan is for the funding for that whole year which takes into account two-thirds of the academic year of 2010 and a third of 2011-2012.

The Bailiff:

The budget is for the calendar year.

Deputy G.P. Southern:

Could I ask a point of clarification from the Minister, I think it is clarification. Can I ask where these qualified language assistants are coming from because they have not been identified to me by any of my informants?

The Deputy of St. Ouen:

The sadness is that the Deputy's informant is not me either. He has chosen not to discuss this matter with me and my department officers who are responsible for all schools and colleges, and who have been in discussion with not only the modern language teachers but those responsible for developing modern languages. They have identified individuals on this Island who are more than capable of providing that support.

8.1.2 Connétable J. Gallichan of St. Mary:

I wish to address only part (a) of the proposition. Many Members will know that I am passionate supporter of teaching of languages to our youngsters and of course anything that will have an effect on that gives me cause for concern. Furthermore, as Vice-President of the Jersey section of the Assemblée Parlementaire de la Francophonie I would remind Members that the States of Jersey have been full members of the organisation since 1980 and among the aims of that organisation it is to support initiatives for the diffusion of the French language, to join in any initiative which has the objective of protecting and putting forward effectively the French language and culture, and to join in any action which has the objective of developing and making known the French language. So as Vice-President I feel I am honour bound to speak up for French teaching, and also of course for other languages. I am grateful to have had the confirmation that the Minister is fully supportive and remains fully supportive of teaching. I understand the C.S.R. process. It is a painful process and I am fully aware, as sometimes the Minister gives me a lift home, from the extra volume in his ashtray that he has long battles and long deliberations thinking about how to do this. It is not right that we look at the C.S.R. process here but I am concerned that we do not set in stone now things which will cause us a problem should various aspects of the Business Plan not go the way the Ministers are hoping that they will go. The Minister has said that he is satisfied that there is adequate extra provision that could be provided by, I believe, the Alliance Française.

The Deputy of St. Ouen:

A point of clarification, it is not just Alliance Française.

The Connétable of St. Mary:

I am grateful for that. I wonder if the Minister can confirm to me that the cost of any such provision would only be equivalent to the cost that would be involved with ... he does not have to rise now, I can see that Minister is looking to rise, but I would like to get all my points out if I might. The costs would not be any greater than the cost of employing the assistants in the normal way. Surely it would be possible, we understand recruitment has been suspended, there are always people looking for positions and in these difficult times they are more than willing to look for positions some months in advance. Could not the process simply be put on hold with a view to these people literally shortlisted as soon as we know the result of the debate? There is something that the Minister ...

The Deputy of St. Ouen:

Please, Sir, again if the Constable will allow me, as a point of information, this is exactly what has happened. It has simply been suspended until the States make a decision and we are not here obviously to discuss that decision now, we are just discussing the process by which those individuals will be employed.

Deputy G.P. Southern:

If I may could I ask for a point of clarification from the Minister. I believe the appointments procedure has been stopped before the appointments have been made so there are not 8 people waiting to be appointed come September. The whole process has stopped, there is no one aware of those jobs. The whole vetting process has stopped. The thing is in ... it is not suspended ...

The Bailiff:

This sounds remarkably like a speech.

Deputy G.P. Southern:

Sorry, can the Minister confirm?

The Deputy of St. Ouen:

I draw the Deputy's attention to page 3 of his own report where he highlights the answer that I gave to a question that was raised on 22nd June which says: "I confirm that the temporary posts were advertised on the Alliance Française's website but the process was suspended shortly after advertising but prior to shortlisting."

The Bailiff:

All right, can we revert then to the Constable of St. Mary?

The Connétable of St. Mary:

I would like to give notice that I am not going to be sitting down again until I have jolly well finished. There were a couple of things that the Minister has given me a little concern for though when he spoke, and it is a shame that he spoke so early, I tried to get in beforehand, because he would have had the opportunity then to have addressed the issues that I am going to raise. Deputy Southern, when he spoke, mentioned how good our grades are or how good our performance is. That certainly cannot be denied.

[17:45]

But education and language education is not just about getting the grades. One of the things I am most passionate about is that we should be teaching our children earlier. I know they get, I think it is, 5 years before they are 14 but in European countries they have got 3 years before they start real school. I think we have a real catch-up exercise. Our children will go out into the marketplace in Europe at a disadvantage if they have not had sufficient preparation in foreign languages. I am continually concerned that we have not had the ability to initiate more language tuition earlier on. But the Minister said, I think his words were: "It is only the primary schools that will lose out." One of my points is it is the primary schools who have a real need of teaching language at this early age. Our children do not just go out because they get good grades, it is not only the academics who are able to take these exams at the highest level that we should be promoting, sometimes youngsters get the best from an oral lesson for those who are going to be probably not getting that grade but going on to have fun and enjoy the French language and to take that forward with them in their lives in future. I am concerned in the rounded development of our children and I would be grateful if the Minister could bear that in mind. I know he will not have a chance to reply to me but in his process. Language is not just about getting the grade, language is a way of developing and enriching your life for the future. I am a product of learning a language, I speak 4 languages now. I have been to many places where my knowledge of French particularly has given me a great insight and given me great opportunities. I am passionate that our children have the same opportunities that I had. Thank you.

8.1.3 The Deputy of St. John:

I am sure that Members know but I will remind them that this is a bi-lingual government. Unfortunately we do not hear any speakers these days in French in this Chamber but hopefully we will in the future. I am sure if Deputy Tadier was here this evening he probably would give us one in French. I will direct this particular comment to the Minister for Treasury and Resources. He has the fiscal stimulus in his hands or at his fingertips and we should be ... this is an area he should be looking at seriously to make sure we do not drop back within our educational standards within the schools and I believe he would be doing the Island a service, a very big service in the long term, more so than in the medium term, in the long term, by allowing this to go ahead within the fiscal stimulus. That said, I would be pleased to hear the Minister for Treasury and Resources, before 6.00 p.m. I hope, give us an indication if he would give serious thought to the fiscal stimulus being used in part in this way to make sure our children in the Island do not lose out by learning a second or third language. I will not say more than that but those are 2 areas that I have got great concerns about.

8.1.4 Senator P.F.C. Ozouf:

Monsieur le Président je dois premièrement déclarer que je suis Vice Président de l'Alliance Française. For those not of the French language instruction I should say that I am the Vice-President of the Alliance Française, it is a declarable interest and not something that I get any remuneration from. About 9 years ago I was a young angry Deputy, I was sitting right in the seat that Deputy Southern sits today [Laughter], the Minister for Education of the day brought forward a proposition for the abolition of French language assistants. I fought it and I still today am stopped by the language teachers ... and one did last week, absolutely truthfully, and stopped me to say that she remembers the speech that I gave on language assistants. We fought off the Education Committee's outrageous proposal to abolish all language assistants. I, 9 years on, have not reduced my forthright views about the importance of languages. Like the Constable of St. Mary, I was fortunate to have languages and to be able to say that languages changed the course of my life for ever in terms of the experience that I had living and working in France, Germany and Spain. I believe that French is vital to our culture, I believe French is vital to our Island and, indeed, those Members who will be alert will have noticed that the French language has even crept into Treasury bank notes which have been issued. I have wrestled with this proposition and indeed, on occasion, I wrestle, metaphorically speaking, with the Minister. I understand as Minister for Treasury and Resources that there are going to be some very difficult decisions that the States is going to have to make in terms of spending. As far as I am concerned this is not the end of the matter or indeed the deciding matter. This is not the proposition that was brought in 2002, it is a change in terms of some language assistants and I - perhaps the Minister will not be pleased with me - will ultimately reserve my position because there are some issues which are so important to one that one has to continue to hold one's principles and I reserve my position in respect of the cut in the Business Plan. The Business Plan is the right time to have that debate. I have heard persuasive arguments, I have to say, at the Council of Ministers from the Minister for Education, Sport and Culture and his senior official that deals with languages. I have heard some persuasive arguments that would tend to allow me to support the proposal potentially to do away with some of the ... to remove the budget for some of the language assistants. This does not remove all of the language assistants and I reserve my position. I do not think, from everything that I have heard, and I do care passionately about this subject, I have heard nothing which leads me to think that this is such an unacceptable proposition that the proposition to reinstate the recruitment should be agreed by the Assembly. Certainly the Minister said that it should be put on hold, it is suspended subject to the Business Plan. I am going to be do some more investigation and some work in a private capacity almost as a Back-Bencher on language assistants and I want to be fully informed for the debate on the Business Plan. But what I have heard so far indicates that this is a step which is possibly something that would be supportable. So I am going to hold my position but I am going to not vote in terms of part (a). Part (b), and I am going to be very brief, simply casts the States in absolute aspic. No reductions in public sector jobs. I am sorry to say to Deputy Southern that we have some incredibly difficult decisions to take in respect of the budget deficit. I did another public meeting at lunch time, very well attended, no media, from members of the community, all walks of life, on the fiscal strategy and related questions on the comprehensive spending review. Everything that I have learnt so far in the F.S.R. (Fiscal Strategy Review) leads me to the conclusion that Islanders absolutely want us to deal with spending and they want us to deal with slimming down the public sector to the extent that we can, delivering efficiencies and making some tough decisions in respect of spending. There are some efficiencies that can be made and made operationally straight away. Now that the States has approved in principle the Redundancy Fund in order to commence - depending on who comes forward in terms of efficiencies, we can make some adjustments - operational decisions over the next few months. It may well be that there are further decisions that this Assembly will permit in terms of reductions in manpower if the Business Plan is passed. There may well be further reductions in relation to the total target of £50 million that will be asked for in the budget later on this year. Ministers, moreover their departments, need to be allowed to manage and manage in an envelope of available resources which is less. That is the reason why sending a message out that

nothing must change, no savings must be made, no reductions in public sector is a step which effectively is saying no cuts, no efficiencies, no determination to deliver even the first part of the comprehensive spending review and the target of £50 million. So I urge Members to reject part (b) and to hold their counsel on part (a) subject to the Business Plan.

8.1.5 Senator S.C. Ferguson:

This seems to be an awful lot of hot air over, was it, 10 minutes a week. We are only talking 10 minutes a week. I must say I was rather interested: is Deputy Southern suggesting that language teachers are incompetent? He stated they are absolutely essential for teaching languages and if the letters of the support he got saying that they are invaluable ... I do wonder, are the teachers up to the standard we require? It is quite clear from the Minister's comments that the schools will have the ability to hire the assistants if they so want but we had ... when I was at school we had one teacher for the class and my French teacher who was renown for her skill in throwing the board duster would not have taken kindly to such an implication that she needed an assistant as well. Okay, my French is pretty fractured, but my sister who came through the same system as I speaks 3 languages fluently. So I just wonder if we are making a mountain out of a molehill over 10 minutes per week in primary school. As to part 2, this we cannot afford ... I agree with the Minister for Treasury and Resources, we cannot afford to crystallise what is an important cost-cutting issue and will be essential to States reform. I am not going to vote for either part of the proposition.

8.1.6 Deputy S. Power:

Monsieur le Président j'ai étudié aussi le français dans une école irlandaise avec les Frères Chrétiens entre les ans 1968 et 1973. I love everything about the French language. I am also a signed-up member of A.P.F. (Assemblée Parlementaire de la Francophonie), I attend as many meetings as I can and, as the Constable of St. Mary said, I am also a Francophonie. My initial reaction to this proposal by the Minister for Education, Sport and Culture is one of sadness. It is one of sadness because ... I will come at this from a different direction. What essentially is being proposed here is that the French language assistants, the part-time assistants that come to Jersey, are being replaced with white electronic boards and software. The argument is that this is more efficient and more effective than French national language assistants. I go back to my own experience in secondary schools in Ireland and we had what was called in those days Language Laboratories, which I think now are largely gone. Where you sat at a desk which was equipped with audio-visual equipment and you listened to hours and hours and hours of French text. It was not particularly much fun but as we progressed through the French language it got better. As I did my leaving certificate, which is the Irish equivalent of Baccalaureate, I was able to read and understand and write fairly well and managed to master Guy de Maupassant, Voltaire and even Victor Hugo. What we are being proposed today is a 'nice to have' rather than a 'have to have' and I discussed this briefly with the Chief Minister last Sunday week - I do not know if Members watched 109 French yachts, Belgian yachts and some Jersey yachts leave Jersey at the start of the Tour des Ports de la Manche - and again I commented, and the Chief Minister agreed, that our cousins in Normandy and Brittany always seem to push the boat out and we do not reciprocate as often as we should.

[18:00]

It is something that we do have to rectify. I very much agree with Senator Ozouf's comments. I think part (b) is a no-brainer but I am also going to reserve my position on part (a) and I do really think that this matter of hiring part-time French language assistants and bringing them into Jersey is a very good thing. I am really reluctant to close another door on our French cousins, which is what this effectively would do. Try and keep that door open and try and do this some other way. So for the moment I shall listen to the remainder of the debate and see what happens. Thank you.

The Greffier of the States (in the Chair):

Perhaps before calling the next speaker I should draw Members' attention to the fact that it is 6.00 p.m., the States agreed to sit until 6.00 p.m.

Senator P.F. Routier:

How many speakers do you have on your list, Sir?

The Greffier of the States (in the Chair):

I only have one but that is not an indication that other Members do not wish to speak. Are other Members indicating they wish to speak? At least 3 Members are waiting to speak.

Senator P.F. Routier:

I propose the adjournment.

Deputy R.G. Le Hérissier:

If they are reasonably succinct is there any chance we could finish?

The Deputy of St. Mary:

Maybe an indication from the people who wish to speak how long they are going to speak for, rough indication. I can go on a long time but I will not in this instance.

The Greffier of the States (in the Chair):

Deputy Green, yourself, Deputy, how long are you anticipating speaking for?

The Deputy of St. Mary:

Two minutes.

The Greffier of the States (in the Chair):

Are Members content to continue? Very well, Deputy Green.

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

Before starting I would like to assure Senator Ferguson that our language teachers are definitely up to the mark, they can do the job well and we have got no doubt about their capability. Members will be aware that as a Ministerial team we do not take our responsibility to reduce expenditure lightly. When this proposal came forward to reduce the language assistants and was presented to us as a team we challenged it vigorously. Not to be difficult or to be awkward but to ensure that we could provide and continue to provide a quality provision in terms of language teaching. So as a team we support the teaching of modern languages, all languages, and the department has invested a lot of time and money in ensuring that our children can benefit from professionally trained teachers to the point that we have, as the Minister said earlier, increased the number of teachers that can teach by 20, developed 20 of our own staff. Now, will 10 minutes a week for children in primary school really make a huge difference? I do not think it will. We do not think it will and we have to take our responsibility very seriously in terms of providing value for money, for providing our share of the reduction in the expenditure without reducing - without reducing - the quality of our service. We must remember, some of us probably did not have a very good experience when learning languages at school. I seem to think we did miming at French when I was at school but ... no, some of us seriously did not have a very good experience but things have moved on so much. There is video conferencing, there is technology, there are computers, there are all sorts of things as well as the language assistants that we are still keeping to work alongside our professional teachers. We are still employing language assistants. I think that we would be irresponsible at this stage to go ahead and appoint 8 people, and to have this debate in the Business Plan, to possibly agree that this is one of the cuts that we should make and then tell those 8 people that we no longer require them. We want to be good employers, we want to provide quality education and to do both would be wrong to make those appointments at this time.

8.1.8 Senator T.A. Le Sueur:

I will begin by looking at part (b) and this really does strike me as being a very odd proposition from the Deputy. The comprehensive spending review, as we all know, is tasked with the idea of saving money and finding new, better and cheaper ways of delivering services. Now, the Deputy seems to suggest in his remarks that this would not stop us from doing other things, only those which are specifically mentioned in the Annual Business Plan. I hope I have interpreted him correctly. That was what I understood. So it strikes me that if a Minister can find other ways in which jobs can be reduced which are not specifically in the Business Plan he or she is quite at liberty to go ahead and do that. Really it is suggesting that the less detail that went into the Business Plan the more chance the Minister has got of providing a much wider range of opportunities. But in any case the policy of voluntary redundancy is one which the Deputy seems to think has suddenly appeared in the 2011 Business Plan and I remind him that voluntary redundancy has been in existence for many years. If a person now chooses to apply for voluntary redundancy but that post was not specifically mentioned in the Business Plan, we would be foolish not to take advantage of that simply because we have to wait until September. This is really a cock-eyed proposition and really bears no resemblance to the objective of the comprehensive spending review which is to make things better and cheaper for the future. It is in that policy and principle of new and better and cheaper ways of delivering services that I also suggested in part (a) we have to think outside the box. Yes, teaching assistants are very nice and they do provide 10 minutes a week for a certain part of the school year to primary school children, but we need to think of other innovative, better ways of doing it. The Deputy of St. Mary in a written question to me this week asked about community involvement, are there ways in which we can involve the community in providing this service in a better, simpler and cheaper way. Are there ways in which we can use modern technology? I have been involved now with the Conseil Général de la Manche for a few years and they are anxious to extend video conferencing and lessons with the French community and the people in Normandy. If we do not use modern technology and think outside the box now and again, we are never going to find ways of changing our ways of doing things better. This gives us an opportunity not to say this is a retrograde step, it is an opportunity for us to think of new and better ways of delivering services for the future. So I applaud the Minister for Education, Sport and Culture for thinking outside the box. I urge all other Members to think in that same sense of how we can do things in a better and simpler way. So I agree we should reject both parts of this proposition.

8.1.9 The Deputy of St. Mary:

The arguments around paragraph (a) have been well rehearsed about the value of face to face contact in language teaching and I will not be reiterating any of that. But (b), Deputy Power said it is a no brainer. It is indeed a no-brainer. The proposition does not say that the States is in aspic and cannot make reductions in spending. There may be efficiencies which can be achieved at no cost to the provision of services but what the proposition is saying is that Ministers should not cause any reductions in the number of public sector posts without the say so of this House. I cannot see that that is not the right thing to do. How can Ministers cause job reductions in their departments without us saying that is the right thing to do? It just seems very odd and that is what he is asking. The process ... the reason that we are doing things back to front and that we are shedding jobs before even the Annual Business Plan, or apparently we are, is that the whole process is rushed. We had the framework of 2 per cent, 3 per cent and 5 per cent which was never robustly considered. The 50/50 split so far as I can see was done pretty well on the back of the envelope. I am still waiting on the Minister for Treasury and Resources to send me and other Members the principles governing the C.S.R., which I asked for back on 2nd June. Maybe the process is so rushed that there are no governing principles, there are no ways for Ministers to assess clearly which cuts to make and which not. So I will be supporting paragraph (b) definitely and I do think it is a no-brainer. We are doing things completely back to front.

The Greffier of the States (in the Chair):

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

8.1.10 Deputy G.P. Southern:

Thank you. This is the last time I volunteer to have a late night debate on any of my propositions ever because I think we have had a short shrift here. One of the reasons why we have had short shrift is because the Minister for Education, Sport and Culture has mentioned this fact of only 10 minutes in primary schools as the loss. That is not the loss. As I clearly pointed out earlier the loss is some 78 hours out of 180 hours in secondary schools. That is where the major cut occurs, in secondary schools. What was being offered in return is spreading the 4 permanent language assistants thinner on the ground. It is a reduction in the service, absolutely, categorically a substantial reduction in the service. The thing about primary schools is that the language assistants go in there for something like 24 hours in total in the week, that is a minor portion and yet speaker after speaker has mentioned: "It is only 10 minutes; it is only 10 minutes." That is simply not true. If Members believe that, if Council of Ministers believe that, then I believe they have been misled. They have been fooled. Equally if they believe that this is not a reduction in service and that the ... even that we can make this decision in September, again they have been fooled. I do not know if they are fooling themselves or they have been misled, but that is simply not true. These positions will not be able to be filled in September. The 2 part-time permanent language assistants on the Island do, at the moment, between them 13 hours in total. One is about to retire and is trying to run her hours down but might be persuaded to do a little more but that is only going to be perhaps 10, 12, 15 hours in total between them. That is the total resource we have got in there, apart from rethinking the whole appointments. I focus minds on: this is the way we have done things, why? Because we start early, we get the best candidates, we vet them properly and we get the appointments procedure and it works well. Instead of which we are in danger now of having nobody ready to be appointed and therefore a fait accompli. There will be no point or little point in discussing this in September because it is dead in the water. If we do not vote this out now it is dead in the water; certainly part (a). I am quite happy to take both these propositions separately as I understand they can be. They are absolutely clearly separate. But certainly part (a), if we do not vote for this now holding your position is no position whatsoever. Abstaining is no position whatsoever. It will be too late come September. You will not be able to fix it. It will be broken. Let that be clear. Senator Ferguson, I will focus on briefly, says surely schools can hire them if they want. With what part of what reduced budget? That will not happen either. That is simply not an option. The fact is that if redundancies, referring to the second part of the proposition, are taking place now voluntary or otherwise ... I am aware there has been little or absolutely no discussion, negotiation, concentration held with any of the employee reps as far as I know so far. So we will be pre-empting decisions there as well. Please, I would urge Members to examine their role as Members of this Assembly. It is us who control the process or it should be. We decide. Ministers do not decide; Ministers propose. We decide. Look at your conscience and decide well now, it will be too late in September to change anything. Thank you, I maintain the proposition.

[18:15]

The Greffier of the States (in the Chair):

In 2 parts?

Senator F. du H. Le Gresley:

Excuse me, Sir, if I may be allowed to ask the question of the proposer because I need clarification because the Chief Minister raised a point about whether voluntary redundancies could still go ahead provided the applicants are not job holders affected by C.S.R. proposals of the departments. Is that the case that the proposer is saying that as well?

Deputy G.P. Southern:

I believe that is the correct interpretation of what the words says in the proposition.

The Greffier of the States (in the Chair):

That is correct. Very well, the first vote is therefore on paragraph (a) relating to the language assistants. If Members are in their seats the Greffier will open the voting.

POUR: 20		CONTRE: 22		ABSTAIN: 0
Senator A. Breckon		Senator T.A. Le Sueur		
Connétable of St. Brelade		Senator P.F. Routier		
Connétable of St. Saviour		Senator P.F.C. Ozouf		
Connétable of St. Lawrence		Senator T.J. Le Main		
Connétable of St. Mary		Senator F.E. Cohen		
Deputy R.C. Duhamel (S)		Senator S.C. Ferguson		
Deputy of St. Martin		Senator B.I. Le Marquand		
Deputy R.G. Le Hérisssier (S)		Senator F. du H. Le Gresley		
Deputy J.B. Fox (H)		Connétable of Grouville		
Deputy J.A. Martin (H)		Connétable of St. Clement		
Deputy G.P. Southern (H)		Connétable of St. Peter		
Deputy P.V.F. Le Claire (H)		Deputy of St. Ouen		
Deputy S.S.P.A. Power (B)		Deputy of Grouville		
Deputy S. Pitman (H)		Deputy J.A. Hilton (H)		
Deputy K.C. Lewis (S)		Deputy of Trinity		
Deputy of St. John		Deputy I.J. Gorst (C)		
Deputy of St. Mary		Deputy A.E. Jeune (B)		
Deputy T.M. Pitman (H)		Deputy A.T. Dupré (C)		
Deputy D.J. De Sousa (H)		Deputy E.J. Noel (L)		
Deputy J.M. Maçon (S)		Deputy T.A. Vallois (S)		
		Deputy M.R. Higgins (H)		
		Deputy A.K.F. Green (H)		

The Greffier of the States (in the Chair):

I will ask the Greffier to reset the voting system and the Assembly will now vote on paragraph (b) which relates to the more general request of Ministers relating to the comprehensive spending review proposals and the Greffier will open the voting.

POUR: 12		CONTRE: 30		ABSTAIN: 0
Senator A. Breckon		Senator T.A. Le Sueur		
Senator F. du H. Le Gresley		Senator P.F. Routier		
Deputy of St. Martin		Senator P.F.C. Ozouf		
Deputy J.A. Martin (H)		Senator T.J. Le Main		
Deputy G.P. Southern (H)		Senator F.E. Cohen		
Deputy P.V.F. Le Claire (H)		Senator S.C. Ferguson		
Deputy S. Pitman (H)		Senator B.I. Le Marquand		
Deputy of St. Mary		Connétable of Grouville		
Deputy T.M. Pitman (H)		Connétable of St. Brelade		
Deputy T.A. Vallois (S)		Connétable of St. Saviour		
Deputy M.R. Higgins (H)		Connétable of St. Clement		
Deputy D.J. De Sousa (H)		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Deputy R.C. Duhamel (S)		
		Deputy R.G. Le Hérisssier (S)		
		Deputy J.B. Fox (H)		

		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Greffier of the States (in the Chair):

Very well, the Assembly comes therefore finally to the arrangement of public business for future meetings. Chairman.

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

The arrangement of business will be as per the lavender sheet. If I could make quite clear for Members at the outset, the next sitting on 13th September, that is a Monday afternoon sitting again. It will start at 2.30 p.m. as did this current sitting for questions, *et cetera*. The deadlines for questions will be written questions 9.30 a.m. on Friday the 3rd and oral questions noon on Wednesday, 8th September. The changes to the sheet as outlined are as follows. For those Members thinking there is an air of déjà vu on 28th September, we have already debated P.94 so that should not be there. For 12th October the addition of Projet 102 which is the Le Clos Gosset: upgrade of heating system - petition in the name of Deputy Maçon. Also added P.103 and the amendment thereto, the North of Town Masterplan revised by the Minister for Planning and Environment. On 16th November 2010, Projet 104 which is the sustainable transport policy lodged in the name of the Minister for Transport and Technical Services. I think that I have thought of everything but I am sure there will some other discussion as usual.

The Greffier of the States (in the Chair):

I think, Chairman, are there not some withdrawals? The Chief of Police is clearly withdrawn and also the North of Town Masterplan P.57 has been replaced by the one you mentioned. Are there any comments or matters to raise on the arrangement of business? If not, that is agreed and the Assembly will reconvene after the summer recess at 2.30 p.m. on 13th September.

ADJOURNMENT

[18:19]