

**THE STATES assembled on Tuesday,
4th February 2003 at 9.30 a.m. under
the Presidency of the Bailiff,
Sir Philip Bailhache.**

**His Excellency the Lieutenant Governor,
Air Chief Marshal Sir John Cheshire, K.B.E., C.B.,
was present**

All members were present with the exception of –

Senator Christopher Gerard Pellow Lakeman – ill
Francis Herbert Amy, Connétable of Grouville – ill
John Baudains Germain, Connétable of St. Martin – out of the Island
Philip Francis Ozouf, Connétable of St. Saviour – ill
Alan Breckon, Deputy of St. Saviour – ill
Jacqueline Jeannette Huet, Deputy of St. Helier – out of the Island
Terence John Le Main, Deputy of St. Helier – out of the Island
Jennifer-Anne Bridge, Deputy of St. Helier – ill

Prayers read by the Greffier of the States

Welcome to Connétable of St. Lawrence

The Bailiff, on behalf of members, welcomed the newly-elected Connétable of St. Lawrence, Mr. Geoffre Fisher.

Subordinate legislation tabled

The following enactment was laid before the States, namely –

Diseases of Animals (Bees) (Jersey) Order 2003. R&O 3/2003.

Matters presented

The following matters were presented to the States –

States of Jersey Law 1966, as amended: delegation of functions – Home Affairs Committee. R.C.3/2003.

Presented by the Home Affairs Committee.

Field 790, L' Avenue de la Reine Elizabeth II, St. Peter (P.240/2002): comments. P.240/2002.
Presented by the Harbours and Airport Committee. Com.

The following matter was presented on 28th January 2003 –

States of Jersey Law 1966, as amended: delegation of functions – Civil Service Administration. R.C.2/2003.
Presented by the Policy and Resources Committee.

THE STATES ordered that the said reports be printed and distributed.

Matters noted – land transactions

THE STATES noted an Act of the Finance and Economics Committee dated 28th January 2003, showing that, in pursuance of Standing Orders relating to certain transactions in land, the Committee had approved –

- (a) as recommended by the former Public Services Committee (now Environment and Public Services Committee), the purchase from Solest Holdings Limited of an area of land (measuring 1,089 square feet) at Nos. 34/36 New Street and Nos. 1, 3, 5, 7 and 9 Union Street, St. Helier (adjoining the property known as Salisbury House), required for road widening purposes, for a consideration of £1,089 plus an additional sum of compensation of £1,500, with the Committee being responsible for the vendor's reasonable legal fees, together with surveyor's fees of £500, arising from this transaction;
- (b) as recommended by the former Public Services Committee (now Environment and Public Services Committee), the entering into of a Deed of Arrangement with Raleigh House Limited, owner of No. 11 La Rue Grellier, bordering La Rue des Prés, St. Saviour, in order to recognise that an encroachment onto public property existed and to ratify the boundary, as follows –
 - (i) the curved granite wall on the western side of No. 11 La Rue Grellier towards the main road known as "La Rue des Prés", which had partly encroached onto public land, would as it currently existed form the western boundary of No. 11 La Rue Grellier towards the main road owned by the public. The said wall would belong in its entirety (but without off-set) to Raleigh House Limited; and,
 - (ii) Raleigh House Limited would be responsible for meeting a fee of £1,000 in respect of the legal fees and expenses incurred by the public in relation to this transaction; and,
- (c) as recommended by the Health and Social Services Committee, the renewal of the lease from Mrs. Christine Fiott, née Hamon, of the three-bedroom "(j)" category detached house known as "Le Hurel", La Rue de Cambrai, Trinity for a period of two years from 21st January 2003 at an annual rent of £21,431, for occupation by a Consultant in Diabetes and Endocrinology, on the basis that each party would be responsible for its own legal costs arising from the transaction, with no deposits to be paid.

Matters lodged

The following matters were lodged "au Greffe" –

Grainville School, St. Saviour: Redevelopment Phase 2- art, design and technology block – approval of drawings. P.9/2003.
Presented by the Education, Sport and Culture Committee,

Simultaneous Electronic Voting: replacement for ‘appel nominal’.
Presented by the Privileges and Procedures Committee. P.10/2003.

Chief Executive to the Council of Ministers and Head of the Public Service:
appointment.
Presented by the Policy and Resources Committee. P.11/2003.

The following matters were lodged on 28th January 2003 –

Income Tax: increase in small income exemption limits and allowances, and
introduction of higher rate.
Presented by Deputy G.P. Southern of St. Helier. P.6/2003.

School milk: provision for the years 2003, 2004 and 2005.
Presented by Deputy G.P. Southern of St. Helier. P.7/2003.

Draft Housing (General Provisions) (Amendment No. 18) (Jersey) Regulations 200
Presented by the Housing Committee. P.8/2003.

Arrangement of public business for the next meeting on 18th February 2003

THE STATES confirmed that the following matters lodged “au Greffe” would be considered at the next meeting on 18th February 2003 –

Draft Crime and Security (Jersey) Law 200-.
Lodged: 12th November 2002.
Home Affairs Committee. P.210/2002.

Field 790, L’Avenue de la Reine Elizabeth II, St. Peter.
Lodged: 31st December 2002.
Deputy of St. John. P.240/2002.

Field 790, L’Avenue de la Reine Elizabeth II, St. Peter (P.240/2002): comments.
Presented: 4th February 2003.
Harbours and Airport Committee. P.240/2002.
Com.

Commission Amicale: Membership.
Lodged: 21st January 2003.
Senator J.A. Le Maistre. P.4/2003

Draft Housing (General Provisions) (Amendment No. 18) (Jersey) Regulations
200-.
Lodged: 4th February 2003.
Housing Committee. P.8/2003.

Grainville School, St. Saviour: Redevelopment Phase 2- art, design and
technology block – approval of drawings.
Lodged: 4th February 2003.
Education, Sport and Culture Committee. P.9/2003.

Chief Executive to the Council of Ministers and Head of the Public Service: P.11/2003.
appointment.
Lodged: 4th February 2003.
Policy and Resources Committee.

Education Committee Capital Programme 2004-2010 and the establishment of a Development Fund – P.120/2001 – withdrawn

THE STATES noted that in accordance with Standing Order 22(3), the President of the Education, Sport and Culture Committee had instructed the Greffier of the States to withdraw the proposition regarding the Education Committee Capital Programme 2004-2010 and the establishment of a Development Fund. (P.120/2001 lodged “au Greffe” on 24th July 2001, in the name of the former Education Committee).

Draft Employment (Jersey) Law 200- (P.187/2002), and draft Employment (Jersey) Law 200-: amendments (P.187/2002 Amd.) – withdrawn

THE STATES noted that in accordance with Standing Order 22(3), the President of the Employment and Social Security Committee had instructed the Greffier of the States to withdraw the draft Employment (Jersey) Law 200- (P.187/2002 lodged “au Greffe” on 8th October 2002), and the draft Employment (Jersey) Law 200-: amendments (P.187/2002 Amd. lodged “au Greffe” on 5th November 2002).

Status of the draft Legal Practitioners (Jersey) Law 200-, and related legislation – question and answer (Tape No. 808)

The Deputy of St. Martin asked Deputy Roy George Le Hérisssier of St. Saviour, President of the Legislation Committee, the following question –

“On 18th June 2002 in answer to a question as to when the Draft Legal Practitioners (Jersey) Law 200- and the two related pieces of legislation, the Law Society of Jersey 200- and the Law Society of Jersey Bye Laws 200- would be lodged, the then President replied ‘The Committee is anxious to see the progress of this legislation and hopes to lodge the draft Laws in the early autumn’.

Would the President inform members –

- (a) why the legislation has not been lodged?
- (b) when are the draft Laws likely to be lodged?”

The President of the Legislation Committee replied as follows –

“(a) The legislation has not been lodged as it became apparent that the Royal Court, through an oversight, had not been consulted. Its views have now been submitted as per the agreed deadline of 31st January 2003. They will be considered, along with further representations from English solicitors, by the new Committee.

(b) Clearly, the time of lodging will in part, be dependent on the view taken by the Committee on issues that require further consideration, namely – the disciplinary structure in respect of lawyers, the policy and laws governing the practice of law by English solicitors. I would hope to lodge the matter before the summer recess.

Although the Committee fully understands the frustration expressed by the Deputy of St. Martin, i feels it is very important that the final draft follows upon a thorough review of these aspects of the proposed legislation.”

Increase in fees under the Data Protection (General Provisions) (Amendment No. 3) (Jersey) Order 2003 – question and answer (Tape No. 808)

Deputy Gerard Clifford Lemmens Baudains of St. Clement, asked Senator Terence Augustine Le Sueur President of the Finance and Economics Committee, the following question –

“With regard to the Data Protection (General Provisions) (Amendment No. 3) (Jersey) Order 2003 (R&O 1/2003), will the President inform members whether the increase in fee breaches the 2½ per cent inflation policy?”

The President of the Finance and Economics Committee replied as follows –

“In approving the increase in the triennial registration charge for data users from £75 to £125 under the Data Protection (Jersey) Law 1987, the Finance and Economics Committee, as previously constituted, considered whether such increases were in accordance with the States Anti-Inflation policy (P.125/2000).

Whilst that Anti-Inflation policy does include as one of its major pillars, the 2.5 per cent cap on annual increases to charges levied by States departments, of equal importance is the concept of ‘user pays’.

The Strategy states that where a particular group of ‘users’ receives a valuable service from the States, and that service is charged at below cost, an increase to that charge may be permissible in order to recover the full costs of that service.

Core to the Fundamental Spending Review is the identification of services provided at a subsidy to the user which are currently subsidised by the taxpayer, but should be fully recharged to the user.

The Finance and Economics Committee firmly believes that it is unreasonable to subsidise the data user at the taxpayers expense and reducing this subsidy by increasing the charge to the user will contribute to an overall reduction in the rate of growth of States expenditure.

In considering the increases, the Committee, as previously constituted, considered not only the principle of user pays, but also that the charge had not increased since 1991. An increase from £75 to £125 in the fee for triennial re-registration is not disproportionate to the increase in R.P.I. over that period.

These increases are an interim measure to charge users with the costs of providing the service and are to be restructured with the implementation of the proposed Data Protection (Jersey) Law 200-, later this year, which will see a move to annual fees from the current triennial basis.

The Finance and Economics Committee continues to maintain and attach importance to the policy of a 2.5 per cent cap on the annual rate of increases in States charges but will exercise discretion in the application of the cap where wider economic policy objectives can and clearly should be met, as is the case with this increase.”

Employment settlement terms of the former Chief Executive, Policy and Resources Department – question and answer (Tape No. 808)

The Deputy of St. John asked Senator Frank Harrison Walker, President of the Policy and Resources Committee, the following question –

“Would the President give details of the actual cost of the financial settlement with the former Chief Executive of the Policy and Resources Department, the terms of which were set out in his statement of 21st January 2003?”

The President of the Policy and Resources Committee replied as follows –

“I am unable to give details of the actual cost of the financial settlement with the former Chief Executive of the Policy and Resources Department. I advised the States on 21st January 2003, of the terms of the settlement, but I am unable to add to this because of the following –

- (i) given what I have said in that statement, to give the actual cost of the settlement would effectively reveal the salary of the former Chief Executive. There is a longstanding convention over many years now not to disclose publicly the salaries and terms and conditions of service of individual senior officers employed by the States. The Committee negotiates with these officers on a personal basis. In the Committee’s view, therefore, there is an implied condition of confidentiality in these negotiations. The policy of the Committee is that everyone’s individual remuneration is private and confidential, regardless of whether they are members of a bargaining group or individual employees who negotiate their own terms and conditions of employment;
- (ii) our legal advisers have advised us that to do as asked could infringe the former Chief Executive’s Human Rights (in particular his right to respect his private and family life); and,
- (iii) as is normal practice the settlement agreement with the former Chief Executive contains a confidentiality clause.”

Former post of Chief Executive, Policy and Resources Department, in relation to that of Chief Executive to the Council of Ministers and Head of the Civil Service – questions and answers (Tape No. 808)

Deputy Roy George Le Hérisier of St. Saviour, asked Senator Frank Harrison Walker, President of the Policy and Resources Committee, the following questions –

- “1. (a) Would the President outline the material differences between the job description of the current Chief Executive position of the Policy and Resources Department and the job description of the recently advertised position of Chief Executive to the Council of Ministers and Head of the Public Service?
 - (b) Would the President confirm whether or not the job description of the position occupied by the recently departed Chief Executive of the Policy and Resources Department was designed in such a manner as to provide the basis for the new position of Chief Executive as recently advertised?
 - (c) Would the President confirm whether or not the performance management regime in place for chief officers was applied in the case of the recently departed Chief Executive?
 - (d) Given that the former Chief Executive’s performance was described as ‘exemplary’ in the statement made by President on 21st January 2003, how then did he become ineligible for the recently advertised position?
 - (e) What improvements, if any, will be made to the appointment process for senior civil servants following this episode?
2. (a) Would the President confirm that the previous Policy and Resources Committee decided to –

- (i) create a new post that would subsume the post presently occupied by its Chief Executive Officer?
 - (ii) invite applications for that new post other than from its Chief Executive Officer?
 - (iii) install the successful candidate in the new post prior to the expiry of the present Chief Executive's contract?
- (b) Would the President state why the Committee did not time the starting of the new post to coincide with the end of the present Chief Executive's contract, thereby saving a considerable sum of public money should the current incumbent not be successful?"

The President of the Policy and Resources Committee replied as follows –

- “1. (a) There are major differences between the two job descriptions. In the new job description –
- (i) the Chief Executive is given specific responsibility for leading and directing the work of the Public Service during the transitional period in preparation for the ministerial system of government. This work will include the development of new structures and organisation of government, in accordance with the States' decision of 28th September 2001;
 - (ii) in the ministerial system the Chief Executive will have direct responsibility for the discharge of States wide policy objectives set by the Chief Minister and Council of Ministers. He will be the Head of the Island's Public Service and lead and direct the other Chief Officers. He will be the first ever States of Jersey employee to have such responsibilities;
 - (iii) the job description for the Chief Executive to the Policy and Resources Committee was prepared and approved in March 1998 in very different circumstances. This was a full 12 months before the States' decision to appoint a body to review the Machinery of Government in Jersey (the 'Clothier' Panel) and clearly at that stage it was not possible to predict the outcome of a review of the Island's system of government. The job description reflected the situation that existed at that time, and the primary roles of the job were –
 - advising and supporting the Policy and Resources Committee;
 - directing, coordinating and promoting the strategic policies of the States, and
 - advising on strategic policy issues on an inter-Committee basis.

Clearly, these responsibilities did not include being Head of the Public Service.

- (b) No. As I have already said in answer to question (a) the job description for the post of Chief Executive of the Policy and Resources Department was drawn up in March 1998, before the Review of the Machinery of Government had taken place and long before a States decision on the future machinery of government. It was therefore impossible to predict if and when any changes might occur and the form that they might take.
- (c) Whilst I was not a party to them, I can confirm that the processes associated with Chief Officers' Performance Review and Appraisal were applied in the case of Mr. John Mills.
- (d) Mr. Mills was not ineligible for the recently advertised post. He applied for and was a serious contender for the position. However, in all selection processes, there is a judgement that has to be made on the relative strengths of those who have applied for a position. In this particular case, Mr. Mills was unfortunate in coming up against other candidates whose skills and experience more closely matched the requirements of the new job description.
- (e) Under the supervision of the Appointments Commission, the processes that were applied in filling the Chief Executive's position were of a very high standard. I believe, therefore, that few, if any, changes will need to be made to the approach that was adopted. No doubt, however, the States

Human Resources Department and the Appointments Commission will keep these matters under close review as they move on to the next set of senior appointments.

2. (a) (i) Yes. In developing the proposals contained in the proposition '*Machinery of Government: proposed departmental structure and transitional arrangements P.70/2002*', the previous Policy and Resources Committee determined that, as a natural consequence of the Chief Minister's Department taking on most of the functions of the Policy and Resources Department, together with other major functions, the new post of Chief Executive to the Council of Ministers and Head of the Public Service, which would also assume the role of head of the Chief Minister's Department, would naturally subsume the role of Chief Executive Officer to the Policy and Resources Committee.
 - (ii) Yes. The Committee decided to invite applications from all those who felt themselves competent to carry out the new role. This did not exclude Mr. Mills.
 - (iii) Yes. The Chief Executive will guide, advise and influence the transition to the ministerial system. Given this key role the Committee felt it was essential he should be appointed as soon as possible.
- (b) As I have made clear in response to the Deputy's earlier questions, the post of Chief Executive to the Council of Ministers and Head of the Public Service is a new role. This requires different skills and behaviours to the previous post of Chief Executive to the Policy and Resources Committee.

Two other courses of action were open to the Committee –

- (i) we could have retained Mr. Mills until the end of his contract and appointed the new Chief Executive at that time. Superficially, this would have been the cheapest option. However, it would have delayed the introduction of a more efficient system of government and cost the Island considerably more in the longer term; or,
- (ii) we could have retained Mr. Mills in post and sought to appoint the new Chief Executive. However, this would have resulted in an expensive and unworkable duplication, it would have seriously affected the ability of the new Chief Executive to perform his job and it is doubtful that any high calibre candidate would have accepted the post under these circumstances.

The Committee has no doubt that the decisions it took were in the best interests of public services and of the Island as a whole."

Mulch containing woodchip – question and answer (Tape No. 808)

The Deputy of St. John asked Deputy Francis Gerald Voisin, President of the Economic Development Committee, the following question –

- “(a) In late December 2002 the Crabbé compost site closed for organic waste. Will the President explain whether a permanent solution has been found to the problem of organic waste disposal in the Island?
- (b) How does the Committee propose cleaning up the soil in many areas around the Island where large stock piles of mulch containing woodchip, some of them on land adjacent to Island reservoirs, are found and where leaching could have occurred over the last several months?
- (c) Has the Committee identified land where mulch with woodchip has been placed and ploughed in over recent years, and, if so, what method is to be used to clean up the land, to prevent crops from this land getting into the food chain and what compensation, if any, is to be paid to the landowners concerned?
- (d) In recent years many banks around the rifle range and gun ranges at Crabbé have been formed with mulch containing woodchip. Is it the intention of the Committee to remove these banks and, if the answer is in the affirmative, what material is to be used to replace the banks?

- (e) Will the President give members details of how many tons of mulch with woodchip has been produced since the operation at Crabbé began?"

The President of the Economic Development Committee replied as follows –

- “(a) The Environment and Public Services and the Economic Development Committees and Departments are currently developing a short-term solution for agricultural waste, other than potatoes, for 2003. In discussion with industry representatives on 30th December 2002 it was agreed that, for the 2003 season, potato waste materials would be applied directly back to land. This is not a long-term solution, however, because of the negative effect on plant health in subsequent years. The long-term solution will form part of the overall waste strategy being developed by the Environment and Public Services Committee. The two Committees and Departments are currently working together reviewing alternative composting processes, aiming to identify a sustainable solution both for the organic waste from the agricultural industry, including potato waste, and for the Island’s green waste.

This long-term solution forms part of the integrated Waste Management Strategy which is the responsibility of the new Environment and Public Services Committee. The President of that Committee will be making a statement to the Assembly before Easter advising Members and the general public on how the three key elements of recycling, composting and the replacement of the Bellozanne Incinerator are being integrated into the overall strategy.

- (b) Whilst the inclusion of Chromated Copper Arsenate (CCA) treated woodchip into compost and mulches at Crabbé is, in hindsight, seen to have been undesirable, the studies of the CCA Assessment Group have shown that the health of the Island has not been compromised in any measurable way. Save at the site of the original borehole pollution incident, analyses have shown that crops and milk have not been contaminated and that the levels of contaminants in water and soil elsewhere in the Island are well below the levels that are considered acceptable. Only the mulches themselves, and the soil immediately beneath these mulches and soils where compost has been incorporated, appear to contain slightly raised levels of the contaminants, but still well below levels that would be of any concern.

As a precaution, mulches containing woodchip from Crabbé have already been removed from playing areas in primary schools to eliminate any risk from those sources of small children transferring arsenic from contaminated woodchip to their mouths. Other mulches do not need to be removed.

- (c) The Committee is aware of lands that have received such materials, and has no intention to remove these from fields that produce food for human consumption – because it was concluded by the CCA Assessment Group that there is no need to do so. Furthermore, subject to further research on the leachability of arsenic from Crabbé soil conditioner, it is the intention for the remaining soil conditioner at Crabbé to be spread on farmland. This action is also supported by the CCA Assessment Group.

WRc, an independent specialist consultancy, has been contracted to undertake research with regard to the leachability, and when results are known, the material will be spread at a rate recommended by WRc.

- (d) It is not the intention of the Committee to remove these banks, because there is no need to do so. Many of them were constructed with materials prior to the introduction of treated woodchip. The one bank that does contain woodchip poses no threat.
- (e) The total tonnage of material produced from Crabbé since 1998 is estimated to be around 138,000 tonnes. This total includes composted gardenwaste that did not have woodchip added. The amount which has contained woodchip is not currently available but could be estimated if required.”

Procedures for the establishment of bodies with autonomy to spend States funds – question and answer
(Tape No. 808)

The Deputy of St. Ouen asked Senator Frank Harrison Walker, President of the Policy and Resources

Committee, the following question –

“Subsequent to the Review dealing with the Process involved in the production of the 2020.je Report carried out by the States Audit Commission –

Would the President advise the Assembly whether the Committee is considering the introduction of appropriate guidelines relating to the establishment of bodies such as the Jersey Information Society Commission with autonomy to spend States funds, to cover issues such as –

the governance and constitution of such bodies,

the involvement and responsibilities of States members on such bodies,

procedures for dealing with conflicts of interest, and

appropriate reporting procedures between sponsoring Committees and such bodies.”

The President of the Policy and Resources Committee replied as follows –

“Yes, lessons have been learned and the Policy and Resources Committee, together with the Finance and Economics and Privileges and Procedures Committees will ensure that the necessary controls and procedures, consistent with best practice, are put in place for all such bodies in future.”

Arrangements for hustings meetings for the forthcoming Senatorial election – question and answer (Tape No. 808)

The Deputy of St. John asked the Connétable of St. Ouen, Vice-Chairman of the Comité des Connétables, the following question –

“Is the Vice-Chairman prepared to explain to members what new arrangements have been made for hustings meetings for the forthcoming senatorial election?”

The Vice-Chairman of the Comité des Connétables replied as follows –

“At its last meeting on 14th January 2003, the Comité des Connétables discussed the arrangements for the forthcoming by-election for Senator. Among the subjects discussed, was a suggestion that, as there were likely to be only a limited number of candidates, an alternative format for the hustings meetings should be considered. The alternative format which was considered was along the lines of that used by the States when electing the President of the Policy and Resources Committee.

Mindful of the fact that the Connétables role is solely to facilitate the electoral process and accordingly to arrange a meeting in each Parish so that the electors of that Parish may hear the candidates explain their policies and may question the candidates on a range of issues, the Connétables decision was that any changes to the normal format should be agreed by the candidates and that in the meantime the status quo would apply.

I can now advise the Assembly that following discussion with the candidates nominated for the senatorial by-election, I can confirm that the Connétables will be hosting a hustings meeting in each Parish and that the format will be similar to previous Senatorial hustings. However, as on this occasion there are only five candidates, it has been agreed with them that each may speak for up to ten minutes explaining his policies and that following this there will be an opportunity for electors of the Parish to question candidates on subjects of their choice.

I wish to take this opportunity, on behalf of the Comité des Connétables, to say how disappointed, yet not surprised, we are that the Deputy of St. John should see fit to comment to the press on this subject before seeking an explanation from any representative of the Comité des Connétables.”

Tax liability of essentially employed public sector employees for incorrectly declared rental subsidies –

questions and answers (Tape No. 808)

Deputy Peter Nicholas Troy of St. Brelade, asked Senator Frank Harrison Walker, President of the Policy and Resources Committee, the following questions –

- “1. Would the President –
 - (a) give details of any correspondence, meetings and discussions (inclusive of dates) between the Policy and Resources Committee, the Comptroller of Income Tax and Finance and Economics Committee concerning the tax liability of essentially employed public sector employees for incorrectly declared rental subsidies?
 - (b) advise members of the number of employees concerned and the total cost as advised to his Committee by the Comptroller for payment of the liability for a five year period for all employees affected?
2. Can the President –
 - (a) advise whether there is any legal obligation for the States of Jersey to pay the tax liabilities of third parties (in this case employees)?
 - (b) inform members whether the Committee recommends that public funds be utilised in payment of the employee liability and, if so, would he give the reasons for this decision?
3. Would the President confirm that some employees have correctly declared their rental subsidies on tax forms submitted to the Comptroller and paid all taxes due, while others have failed to do so, and if so, is he able to offer any explanation as to why some were aware of their responsibility to pay tax on the rent subsidy and others were not, given that since 1998 every tax form states ‘If your employer pays rent due under a lease in your name, that is taxable’?
4.
 - (a) Can the President advise whether there is any legal obligation to reimburse those employees who have correctly paid tax on any rental subsidy received and advise whether the Committee recommends reimbursement for this group?
 - (b) If so, would the President advise how many employees are involved, how many years would be reimbursed, and the total cost of reimbursement?
5.
 - (a) Can the President explain why such an important matter concerning the use of public funds has not been brought to the States Assembly for debate, particularly as it involves a decision to utilise public funds to extinguish a liability not of the States but of third parties?
 - (b) Would the President agree to prepare and present to the States a comprehensive report on this matter explaining in greater detail the background and legal position in relation to the parties concerned, and would he give an undertaking to members that no action to inform the employees concerned formally, to commit the States of Jersey to any particular action, or to implement any decision, will be taken until such time as all States members have had the opportunity to assess the report and decide what action is appropriate?”

The President of the Policy and Resources Committee replied as follows –

- “1. (a) Having first been alerted to the problem by the Human Resources Committee, the previous Finance and Economics Committee considered, on 18th September 2002, a paper prepared by the Comptroller of Income Tax. Subsequently, a meeting was convened at the request of the President of the new Finance and Economics Committee on 13th January 2003. Those who took part included the President of the Finance and Economics Committee, who chaired the meeting, the Presidents of the Policy and Resources Committee, the Education, Sport and Culture Committee and the Health and Social Services Committee. In addition, senior officers from the Education, Sport and Culture Department, Health and Social Services Department, Housing Department, States Treasury, States Human Resources Department, and the Comptroller of Income Tax also attended that meeting.

Thereafter, the Finance and Economics Committee, on 15th January 2003, considered whether it would be appropriate to meet the tax liability from the General Reserve and the Policy and Resources Committee considered on 17th January 2003, whether the employer should meet the tax liability. Both Committees had papers relating to these matters before them when they took their decisions.

The above sets out when the main discussions took place on this matter between the main parties concerned.

- (b) At this time, I am unable to confirm the exact number of employees concerned, nor the overall costs. This is because individual departments are currently collating information that will allow the Comptroller of Income Tax to determine accurately what the true position is. However, it is most unlikely to exceed £500,000.
2. (a) I confirm that there was originally no legal obligation to pay the taxes in respect of States employees. However the Committees considered that there was a strong moral obligation to do so. They took into account the fact that the Comptroller of Income Tax has allowed private sector employers to meet the tax liability of their employees in similar circumstances. The decision of the Committees has subsequently been made public, so that the affected employees have been given to understand that their liabilities will be met. It is a settled principle of law that there is a requirement for consistency and fairness in relations between the individual and the State, and once the employees have been given a legitimate expectation that their liabilities will be met, they may, in this way, acquire a legally enforceable claim.
- (b) The Deputy will have noted that I am making a statement to the Assembly on this matter later in the agenda. I will confirm, however, that the Policy and Resources Committee has requested the Finance and Economics Committee to utilise public funds to pay the tax liability of 'essential employees' in respect of the last five years, and the Finance and Economics Committee has acceded to this request. The reasons for doing so are set out in my statement. However, in essence, these are that –
- (i) many employees were not advised by their employer that the rental subsidy arrangements gave rise to a tax liability;
 - (ii) such employees were genuinely unaware of their liability;
 - (iii) the methods of payment chosen by departments to pay the rental subsidy were confusing from the point of view of identifying that the employee was receiving a benefit from the employer; and
 - (iv) it is important to retain the commitment and support of these key members of staff.
3. I confirm that a small number of employees have correctly declared their rental subsidies whilst others have not. As I have stated earlier, in discussions with employees, it was apparent that there was a genuine lack of knowledge that such subsidies gave rise to a tax liability. This was not helped by the fact that their employer had not provided them with the information that would have assisted them in understanding their position. Indeed, in some circumstances, the method of paying the subsidy was convoluted and would certainly not have identified to employees that they were in receipt of a benefit that should be declared for tax purposes. It should be noted that some rental subsidy arrangements give rise to a tax liability whilst others do not.
4. (a) I confirm that there is no legal obligation to reimburse those employees who have correctly paid their tax. However, the Committees felt that there was a strong moral argument not to leave them in a worse position than those who had not paid their tax. It has, therefore, been decided to reimburse them for the tax that they have paid.
- (b) As I have already pointed out in my response to Question 1(b), details are still being sought in connection with all those who are affected by these decisions. However, information so far received suggests that there are a relatively small number who have paid tax on their rental

subsidies and, the additional costs associated with this group of employees are not, therefore, expected to be significant and are expected to fall within the overall figure referred to in my response to Question 1(b).

5. (a) The Finance and Economics Committee has determined that this is a legitimate use of public funds.
- (b) Although I am prepared to bring a comprehensive report to the States should States members request it, the Policy and Resources and Finance and Economics Committees have been advised that a legal obligation now probably exists (see answer to Question 2(a)). The Committees therefore believe that the payments should be made and I do not believe a further report will be of any great value in the circumstances.”

Jersey Heritage Trust’s plans for Mont Orgueil Castle – questions and answers (Tape No. 808)

Deputy Gerard Clifford Lemmens of St. Clement, asked Deputy Maurice François Dubras, President of the Environment and Public Services Committee, the following questions –

- “1. Will the President give an assurance that sufficient time will be allowed for proper scrutiny of the plans to be submitted by the Jersey Heritage Trust regarding Mont Orgueil Castle?”
2. Is the President able to give details of the brief under which the Paul Drury Partnership, independent advisor to the Committee, is working and state his role with regard to the Jersey Heritage Trust’s plans for Mont Orgueil Castle?”

The President of the Environment and Public Services Committee replied as follows –

- “1. Yes.

Sufficient time will be allowed for proper scrutiny of the plans and other documents that have been submitted by the Jersey Heritage Trust. The application was received on 31st January 2003, and has been subject to preliminary validation prior to acceptance to ensure completeness of the documentation. The application will be included in the list published in the Jersey Evening Post due tomorrow, 5th February 2003, for public comment.

This is a complicated application which requires a longer period of public deposit than the usual two weeks. We have decided that a period of six weeks is appropriate to allow interested persons to inspect the application and submit written representations upon it to the Committee.

As usual the application details will be available for public inspection at the Planning Office. However, as an exception, a copy of the full application particulars has also been deposited at the Public Library. The applicant has also made available identical copies at the *Jersey Archive Centre* and the Library of *La Société Jersiaise*. Information is available on the *Jersey Heritage Trust* website (www.jerseyheritagetrust.org). Individual copies of the application have also been provided to *Friends of Mont Orgueil*, *La Société Jersiaise* and *The National Trust for Jersey*.

It is my intention to make a public statement at the conclusion of this six week period of public deposit and will then set out the likely timetable and process for the subsequent determination of the application. This will take account of the opinions of the Committee’s professional officers and its independent external advisor upon the matters raised by all the written representations received.

I will consider how we can provide an opportunity for the respective principal parties to address the Committee on the major issues in person and to hear the other submissions being made. Exact details of these arrangements will be decided at a later date once we know the nature of the written representations made.

2. The Paul Drury Partnership (*Fellows of the Society of Arts, Associate Members of the Royal Institution of Chartered Surveyors, Members of the Institute of Historic Building Conservation*) was commissioned by the Committee on 26th February 2001, to give independent advice to the

Committee and its officers on all aspects of the Mont Orgueil project, insofar as they relate to the exercise of the Committee's planning powers.

The Paul Drury Partnership has very extensive experience of historic building and archaeological planning matters and provides the current United Kingdom representative, and Chair, of the Built Heritage Committee of the Council of Europe, and who was previously Director of the London and South-East region of *English Heritage*.

The exact nature of the Drury Partnership's brief in Jersey has been modified as the project has evolved since its appointment in 2001. In summary its present brief is to '*advise, in all the relevant circumstances, whether the proposed works of repair, restoration and alteration are acceptable in planning, archaeological and architectural terms.*' If so it is also asked to advise how best we can ensure that appropriate standards of management and monitoring of the work are achieved."

2002 house price survey – question and answer (Tape No. 808)

The Deputy of St. John asked Senator Frank Harrison Walker, President of the Policy and Resources Committee, the following question –

“At the end of 2002, the Statistics Unit released a survey on house prices.

- (a) Is the President confident that the method used to obtain the results was appropriate and accurate in view of the subsequent criticism of the survey by both the Jersey Estate Agents Association and by members of the Housing Committee?
- (b) Will the President inform members whether the Committee is taking action to ensure that any future surveys address all aspects of the concerns raised by the Jersey Estate Agents Association?"

The President of the Policy and Resources Committee replied as follows –

- “(a) No, we need to be satisfied that the Jersey house price index reliably reflects price movements in the Island's housing market, and neither I nor the Head of Statistics is satisfied with the coverage of the present index and we are seeking ways to improve it.
- (b) The matter has been put on the agenda for the next meeting of the Statistics Users Group in February 2003 and I have asked that group to produce a report on its findings, together with any recommendations for the future. I am sure that the Statistics Users Group will take full account of the concerns raised by the Jersey Estates Agents Association.”

Housing Committee's policy regarding the Committee's policy of raising 'fair rents' – question and answer (Tape No. 808)

Deputy Geoffrey Peter Southern of St. Helier, asked the Deputy of Trinity, VicePresident of the Housing Committee, the following question –

“In response to my question to the President of the Housing Committee on 21st January 2003, the President indicated his continuing commitment to the Committee policy of raising fair rents to within 10 per cent of levels in the private sector.

The following table shows the changes to the Housing Committee's annual income from rents and abatements for the years 1999 to 2000 along with the annual percentage increase in "fair rents" and estimates for the years 2002 and 2003 (source: Treasury Accounts 2000 and 2001, Budget 2003).

Year	Total rental income for the year	Total rent abatement for the year	Net increase in rent less increase in abatement	Percentage increase in maximum or "fair" rent
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	£,million	£,million	£,million	%
1999	24.1	12.3		
2000	26.2	13.3	1.1	5
2001	27.4	13.9	0.6	5.5
2002 (E)	28.0	13.9	0.6	7.9
2003 (E)	31.7	16.2	1.4	3.5

- (a) For each of the years 2000 to 2003, will the president inform members what proportion of the net increase is accounted for by the percentage rise in 'fair rent', and how much can be attributed to other factors?
- (b) In particular, can the president explain why the estimates for both abatement and net increase for 2002 have remained static despite a 7.9 per cent increase in fair rent last year?"

The Vice-President of the Housing Committee replied as follows –

- “(a) The percentage rise in fair rent in each of the three previous years has only had a relatively small effect on the rental income received net of abatement. This will also apply in 2003, and is because, as about 85 per cent of Committee tenants receive an abatement, only about 15 per cent of tenants pay the relevant percentage increase on their rent.

As there is considerable movement in tenancies and tenants' incomes, it is not possible to break down accurately how much of the increase in net rent (rent less any abatement) in each year is attributable specifically to the rent increase. However it is estimated that the rent increase element as part of the net rental income in the years 2000 to 2003 is as follows –

Year	% Increase in Rent Income	Net Rental £	Increase over previous year £	Attributable to Rent Increase £
2000	5	12.8m	1.1m	196,000
2001	5.5	13.4m	0.6m	226,000
E2002	8.9	14.07m	0.607m	332,000
E2003	3.5	16.2m	2.13m	166,425

It can readily be seen that the net rental income each year is affected by factors other than the gross rent increase. These include –

- (i) stock growth and changes in the Housing stock – new build dwellings at higher rents as well as demolition of lower rent dwellings and temporary loss of buildings;
 - (ii) changes in the average earnings index;
 - (iii) resources spent on anti-fraud measures and the verification of claims for abatement; and
 - (iv) opportunities for relatively wealthy tenants to self-house in the private sector.
- (b) The estimates were prepared at a time when the budgeted rental increase for 2002 was 3.5 per cent. However the triennial re-evaluation of the Committee's property rentals was undertaken at the end of 2001 and the evidence from this exercise led to the implementation of an 8.9 per cent increase, considerably in excess of the original budget proposal. This will be reflected in the 2002 accounts. In 2002 abatement was budgeted at 50 per cent of rental income, slightly lower than in previous year but reflecting a downward trend.

The gross rental income in 2002 was actually about £29.4 million but rent abatement increased in line to about £15.35 million, resulting in the net increase in rent less increase in abatement remaining, a £0.55 million, at a similar level to that achieved in 2001?"

Draft Employment (Jersey) Law 200- statement

Senator Paul Francis Routier, President of the Employment and Social Security Committee, made a statement in the following terms –

“Members are aware that the previous Employment and Social Security Committee lodged the Draft Employment (Jersey) Law 200- (P.187/2002) last October, with subsequent amendments lodged on 5th November 2002. However, there was not enough time to debate them as a result of the build-up of States’ business towards the end of the last session.

The new Committee is currently familiarising itself with the draft Law and has been considering some additional comments from the Attorney General. As a result, the Committee will want to make further drafting amendments; although these may be minor, they are important from a legal perspective.

There will therefore be a short delay whilst the Committee considers the issues raised. Accordingly, today the Committee has withdrawn (P.187/2002) and will lodge an amended version within the next two months so that the debate may proceed in an orderly way.

I give members my assurance that there is no intention to change the purpose of this draft legislation in any substantive way at this point, nor will it stop progress on work being carried out behind the scenes on the subordinate legislation, including research by the Employment Forum into the minimum wage rate and also a new Employee Relations Law.

This short delay will enable all members to familiarise themselves with the draft legislation and, to this end, a further presentation will be arranged for the benefit of members prior to the debate.”

Taxation of rental subsidies of essentially employed public sector employees – statement

Senator Frank Harrison Walker, President of the Policy and Resources Committee, made a statement in the following terms –

“I wish to make a statement on the recent issues concerning the non-payment of taxation in respect of rental subsidies provided to certain employees of the States of Jersey.

The problem had its origins in 1988, when the Finance and Economics Committee of the day approved the payment of rental subsidies to those who were recruited to the Island as ‘essential employees’. This approach was adopted because it was recognised that the cost of leasing or renting a property in Jersey was significantly higher than in the United Kingdom, particularly as these employees were obliged to rent in the “(j)” category market. It was apparent that if support was not provided it was unlikely that the States would be successful in recruiting such staff.

Unfortunately, it would appear that action was not taken at that time by the employing departments to establish the taxation consequences of such payments and this issue was not re-considered until recently, when a review of the arrangements associated with these payments was carried out.

Since 1988, no consistent information has, therefore, been issued to such employees, who, in the main consist of teachers, doctors and other employees of the Health and Social Services Committee, identifying that these payments were subject to tax.

In the light of this uncertainty and confusion, the Policy and Resources Committee, as the Committee now responsible for Human Resources matters, in consultation with the Finance and Economics Committee, has determined that on balance it would be unfair to expect employees to pay back taxes in respect of their subsidies. This decision was also influenced by the impact that this might have on their motivation and morale and the possibility that some might leave their employment. In addition, the Committee felt that it would be inequitable to expect the small number of States’ employees who had correctly paid their tax on their subsidy to be left in a worse position than those who had failed to do so. As a consequence, the Committees have also agreed to reimburse them with the amount of tax they had already paid.

Departments who have been responsible for recruiting “(j)” category employees have been requested to

notify the Income Tax Department of the details of the subsidies that have been paid in order that the size of the tax liability can be calculated. The amount is not, therefore, known accurately at this stage. However, it is most unlikely to exceed £500,000.

It is permissible for the overall liability to be paid by the employer to the Comptroller of Income Tax as a lump sum, in line with past practices that have been applied in the case of the private sector. The Finance and Economics Committee has agreed to a request from the Policy and Resources Committee that the sums in question should be paid to the Comptroller of Income Tax from the General Reserve. In due course, these revenues will, of course, be returned to the States Treasury.

Clearly, this situation is most unsatisfactory. However, the Committees felt that it was vital to retain the loyalty and commitment of this important group of employees and have, therefore, taken the action that they have.

I can assure the Assembly that procedures have now been put in place in order to provide all existing and new employees with advice on the declaration of their rental subsidies to the Income Tax Department. For the years of assessment 2002, and subsequently, the tax liability clearly rests with the employee.”

Draft Customs and Excise (Amendment) (Jersey) Law 200- P.230/02

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, adopted a Law entitled the Customs and Excise (Amendment) (Jersey) Law 200-.

Welfare grants and family responsibilities for the next of kin – P.236/2002

THE STATES, adopting a proposition of the Employment and Social Security Committee –

- (a) agreed, in principle, that the customary law obligation of children to contribute to the support of parents who were genuinely no longer able to care for themselves should be removed for the purposes of assessing Parish Welfare; and
- (b) charged the Employment and Social Security Committee, in conjunction with the Comité des Connétables, to bring forward for approval detailed proposals on the most appropriate manner to give effect to the change.

Draft Sea Fisheries (Miscellaneous Provisions) (Amendment No. 3) (Jersey) Regulations 200 P.237/2002

THE STATES commenced consideration of the draft Sea Fisheries (Miscellaneous Provisions) (Amendment No. 3) (Jersey) Regulations 200, and adopted the preamble.

Members present voted as follows –

“Pour” (33)

Senators

Le Maistre, Norman, Walker, Kinnard, Le Sueur, Ozouf.

Connétables

St. Brelade, St. John, St. Peter, St. Clement, St. Helier, Trinity, St. Lawrence.

Deputies

Trinity, Duhamel(S), St. Martin, Baudains(C), Dorey(H), Troy(B), Voisin(L), Scott Warren(S), Farnham(S), Le Hérissier(S), Fox(H), Martin(H), Bernstein(B), Ferguson(B), Ste. Marie, S. Oue Ryan(H), Taylor(C), Grouville, Hilton(H).

“Contre” (5)

Connétables

St. Mary.

Deputies

St. John, Southern(H), S. Pierre, De Faye(H).

One member abstained from voting.

Regulations 1 and 2 were adopted.

THE STATES, in pursuance of Articles 2, 5, 8 and 22 of the Sea Fisheries (Jersey) Law 1994, having consulted with the Secretary of State and obtained his concurrence, made Regulations entitled the Sea Fisheries (Miscellaneous Provisions) (Amendment No. 3) (Jersey) Regulations 2003.

Draft Plant Health (Jersey) Law 200- P.1/2003 Amendment – P.1/2003 Amd.

THE STATES commenced consideration of the draft Plant Health (Jersey) Law 200-, and adopted the preamble.

Articles 1-17 were adopted, the States having adopted an amendment of the Economic Development Committee that at the end of Article 8 there be inserted the following paragraphs–

- “(5) An inspector who seizes anything in the exercise of a power conferred by this Article or by an Order shall, if so requested by a person showing himself to be the occupier of premises on which it was seized or to have had custody or control of it immediately before the seizure, provide that person with a record of what he seized.
- (6) The inspector shall provide the record within a reasonable time from the making of the request for it.”

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, adopted a Law entitled the Plant Health (Jersey) Law 200-.

Bailiff’s Consultative Panel – membership – P.2/2003

THE STATES, adopting a proposition of Senator Jean Amy Le Maistre, referred to their Act dated 7th July 1992, in which they agreed to establish a Consultative Panel of elected members of the States with whom the Bailiff would be able to meet in order to consult on a confidential basis in appropriate cases, and agreed that the composition of the Panel should be revised and be comprised as follows –

- the senior Senator;
- the senior Connétable;
- the senior Deputy;
- the President of the Policy and Resources Committee;
- the President of the Privileges and Procedures Committee;
- the President of the Finance and Economics Committee; and,
- three other members elected by ballot by the States for a period of 3 years.

Bailiff’s Consultative Panel: appointment of three members nominated by the States

There were nominated for appointment as Members of the Bailiff’s Consultative Panel –

Deputy of Grouville – proposed by Connétable Kenneth Alan Le Brun of St. Mary

Senator Paul Francis Routier – proposed by Senator Michael Edward Vibert
Deputy of St. John – proposed by Connétable Michael John Touzel of St. John
Deputy Alan Breckon of St. Saviour – Proposed by Deputy Judith Ann Martin of St. Helier

THE STATES, having proceeded to a secret ballot, were informed by the Bailiff that the Deputy of Grouville, Senator Routier and the Deputy of St. John had been appointed to serve on the Panel.

The result of the ballot was as follows –

Deputy of Grouville	35 votes
Senator Routier	34 votes
Deputy of St. Helier	33 votes
Deputy Breckon	21 votes

There was one spoilt paper.

War against Iraq – P.12/2003

THE STATES commenced consideration of a proposition of Deputy Geoffrey Peter Southern of St. Helier regarding the War against Iraq. On the proposition of Senator Frank Harrison Walker, the proposition was lodged “au Greffe”.

THE STATES further agreed to take the proposition into consideration as their first item of Public Business at their next meeting on 18th February 2003.

THE STATES rose at 12.45 p.m.

M.N. DE LA HAYE

Greffier of the States.