

## STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

### 5.1 Senator P.F.C. Ozouf (The Minister for Economic Development) regarding the Fulfilment Industry:

#### The Bailiff:

Now, there are no matters under J. Under K, Statements on a Matter of Official Responsibility, the Minister for Economic Development will make a statement regarding the fulfilment industry.

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

In the last week, there has been a flurry of comments made on the fulfilment industry in Jersey, with varying degrees of accuracy. I want to inform Members of the situation from Economic Development's perspective and attempt to ensure that Members have accurate and correct information at their disposal. At the outset, it is worth summarising exactly what the current policy on the fulfilment industry is, recognising that it has arisen out of decisions taken by me as Economic Development Minister, but also by the previous Economic Development Committee. In a nutshell, the current policy is to allow on-line retailing as a whole to expand in the Island, while at the same time only granting time-limited licences to U.K. companies that simply use Jersey as a post box and divert their business in C.D.s (Compact Disks) and D.V.D.s (Digital Video Disks) through the Island. By February 2007, these firms will no longer be granted a licence to operate through Jersey. It is worth me explaining why the policy focuses on curtailing the particular activity where U.K. retailers simply divert their business through the Island. There are, Sir, effectively 3 reasons: (1) this activity is damaging to the Island's reputation; (2) such activity is increasing the probability that the U.K. will act to change L.V.C.R., to the extent that all our fulfilment on-line retailing businesses will be undermined; (3) the economic contribution of such activity is very low in terms of the value added per person. I think it is worth me explaining these 3 reasons in even more detail, as I believe it is important to Members to fully appreciate why I believe that the current policy is the right one and the only response and is in the Island's best interests. On the first point, where U.K. businesses are simply allowed to use the Island as a means of exploiting L.V.C.R. and avoiding V.A.T. (Value Added Tax) in the U.K., it does not portray the Island in the best light. We must endeavour to continue to ensure that the Island is seen internationally to conduct itself in a manner that has the highest integrity. Not do so undermines the future prospects of all businesses and particularly those operating internationally in the Island. On the second point, the greater volume of C.D.s and D.V.D.s that are shipped from Jersey to the U.K., the more likely it is the U.K. will have to act to stem the loss of V.A.T. Where the increase in volumes is due to U.K. companies diverting their current business through the Island, the need for the U.K. Government to act will only increase. Let me, Sir, be quite clear. If the U.K. does act, then it will dramatically affect the fortunes of nearly all our on-line retailing and fulfilment businesses in the Island. Finally, the economic contribution of those which we call 3.P.S. (Third Party Service), companies that provide logistics or distribution services to other retailers, is very low. At £24,000 per F.T.E. (Full Time Equivalent) it equates to that, I am afraid, of agriculture in terms of economic contribution. W.C.C.s (Whole Chain Companies), companies that physically buy and sell goods to final customers on the other hand have a very high F.T.E. of just over £100,000, the highest in the Island outside the finance industry. Irrespective of any international concerns, the low economic contribution of 3.P.S. in itself would influence the way I apply Regulation of Undertakings and licences to such businesses. As Members I hope can plainly see, there is clear justification for implementing the current policy, and that in so doing, the Island's best interests, both in terms of managing our economic resources and in maintaining our high international reputation. Sir, I do want to take this opportunity to address a number of inaccuracies that have been put forward to justify

criticisms of the policy. Firstly, there has been scaremongering, suggesting that the current policy is costing jobs to the industry. The Scrutiny Panel Chairman has highlighted concern of one particular 3.P.S. which has been affected by the policy implementation. With respect to the Chairman, that is only one example and it would be wrong for Members to gain the impression that this is representative of the whole on-line retailing sector. Sir, I would like to give Members some facts. Since the introduction of the policy of February 2006, W.C.C.s and 3.P.S.s have continued to apply for staff. New applications for on-line retailing undertakings have also continued to be made and approved. Excluding the time-limited licences granted to Jersey registered companies with U.K. principles operating in the C.D./D.V.D. market and whose licence expires in February 2007, a number of successful Regulation of Undertakings decisions have been made in this area. There have been a number of new businesses, all with locally qualified principals, who have been granted licences for the engagement of more staff. A number of W.C.C.s and 3.P.S.s have also been granted additional locally qualified staff. I believe that the current policies, for the reasons outlined, provide greater security for the 650 people that are currently employed in this sector as a whole. Secondly, it has been asserted that the policy is based on incomplete data. The fact of the matter is that it is based on a thorough, objective and independent assessment of the fulfilment industry conducted by the States of Jersey Statistics Unit. There can be little doubt that the policy has been based on sound evidence with the appropriate attention to detail which this Assembly would expect. Thirdly, there has been a suggestion that the February 2006 policy has been an overreaction compared to that of the previous policy. There is in reality only a minor difference between the 2. The initial E.D.C. policy froze U.K. volumes and associated 3.P.S. businesses at very low levels. The February 2006 policy which I announced tightened this approach by granting only time-limited consents to U.K. companies that use Jersey as a post box and divert their businesses in C.D.s and D.V.D.s through the Island. It required companies which did not have a licence to get one. It also restated a policy which I believe had not been strictly adhered to by the previous Economic Development Committee. I felt strongly that this tightening was necessary if the policy was to meet the objectives I have outlined. The previous E.D.C. policy was designed in such a manner that U.K. businesses would be unable to expand their businesses through Jersey from what were very low volumes, and this would mean that they would stop diverting business through Jersey. This would clearly have impacted on a number of 3.P.S.s, even without the tightening of the policy. Accusations have also been made that this is an over-reaction to U.K. pressure, and at the same time, it makes the Island appear weak internationally. Members will have seen the *Hansard* coverage of the recent early day motion in the debate in the U.K. Parliament on this issue, which I circulated to Members last week. It is clear from statements made by the U.K. Paymaster General that neither of the accusations made by Scrutiny and others, to which I am referring particularly to the I.O.D. (Institute of Directors) can be correct. It is apparent that the threat of action by the U.K. to change L.V.C.R. to the detriment of the Island is both clear and present, and that if Jersey had failed to act in a manner it has in the current fulfilment policy, the threat would have been much greater. Secondly, the policy does not make Jersey appear weak internationally. The Paymaster General has made it clear that she would have liked sterner action by Jersey. The current policy gets the balance right between acting to address international concerns, but at the same time maintaining a policy which is supportive of genuine Jersey on-line retailing businesses that do not assist U.K. companies to avoid U.K. V.A.T. There is a minimal economic cost to the policy, and at the same time, it reduces the probability that the rug will be pulled from underneath the whole of our on-line retailing industry. I would point out that despite a number of issues raised by the Economic Affairs Scrutiny Panel, some of which seem to be based on a complete misunderstanding of the situation, the Panel was unable to recommend any change to the fulfilment policy, or in fact, a better way for the policy to be implemented. I take this as further evidence that the current policy is both appropriate and clearly in the Island's best interests. Finally, I can assure Members that I will continue to keep the matter of on-line retailing under constant review. The Chief Minister and I will continue to

engage with Her Majesty's Government in the United Kingdom to explain the actions we have taken locally and keep us informed of their position.

**The Bailiff:**

Members have 10 minutes to question the Minister.

**5.1.2 Deputy G.P. Southern:**

While it is not appropriate to go into the debate now and to deal with the repeated assertions, denials and justifications, the refusal to examine evidence in that statement, I am relieved to see that in paragraph 24 what was described as “nonsense” has now become complete misunderstanding on my part. But I would like to refer to paragraph 21 where the Minister says: “It is apparent the threat of action is both clear and present” and whether the Minister considers that that ties-in with the actual words of the Paymaster General when she says, and I use 2 quotes, if I may, Sir: “In deciding which option to use, the government will need to consider not only the impact on small U.K. retailers, but the knock-on affect on other stakeholders and larger suppliers” and goes on to say: “I am sympathetic to the position of small U.K. music retailers and it must be recognised that the competitive pressures on them are not solely or even perhaps mainly related to the V.A.T. relief enjoyed by offshore retailers, because I do not make decisions as a Treasury Minister on the basis of only a section of the economy. As important as that section of the economy is, I need to take decisions on the basis of competitive issues that U.K. consumers are getting cheaper D.V.D.s.” Does the Minister agree with the Chief Minister's analysis that these words suggest that no action is being considered at this moment?

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

I do not think that the Chief Minister said that. I think that we are absolutely as one in the clear and present danger of the situation, which is why we must engage with the Paymaster General and Treasury officials in the U.K. to explain what they have done. I would be honest to say to Members I was disappointed that Jersey and Guernsey were grouped together, because clearly we have the Regulation of Undertakings, which does allow me to shut this down. With this Assembly's authority, I effectively can curtail the activity, which was bringing the Island into disrepute in my opinion. I must work with the Chief Minister to ensure that the Paymaster General is fully informed of the actions that we have taken. I will say one other thing in relation to what Deputy Southern said, in relation to our comments made in the media. There was a clear disconnect between the press release he issued, criticising me, and the report, some of which I agree with.

**5.1.3 Deputy G.C.L. Baudains:**

With regard to the pressure, which is allegedly applied by the U.K. in regard to this matter, is the Minister aware whether the pressure is being applied equitably? I am reminded of the comments made previously, by the then President of the Postal Committee, that there were a considerable number of other countries exporting D.V.D.s into Great Britain in the similar fashion to ourselves. Are these other countries being treated in a similar fashion to ourselves, or are we being singled-out?

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

I would say 2 things to the Deputy on that issue. I will make decisions as Economic Development Minister in the best interests of Jersey, and which are designed to protect the Island in terms of its integrity in commercial matters. That is what is set out in the R.U.D.L.

(Regulation of Undertakings and Development Law) Law. Now, separately from that - and those are domestic decisions that I will make - that is why, effectively, one job in a 3.P.S. is completely at much less economically remunerative to a W.C.C. So, there are domestic issues. As far as the international issue is concerned, this Assembly will fight for, not only in this area, but in all areas, in terms of a level playing field in terms of taxation. We would be extremely unhappy with a situation where we would be singled out for a measure that would not have been put on to another jurisdiction. It is the level playing field argument, combined with an approach which we can hold ourselves up as a well-run, properly organised, well-regulated sector, which I think comes together with the overall policy approach.

#### **5.1.4 Senator J.L. Perchard:**

At the outset, could I just say that I do support the Minister's policy with regards to the fulfilment industry, and draw his attention to paragraph 23, and ask for him to advise me: when he says that the current policy gets the balance right between acting to address international concerns but, at the same time, maintaining a policy that is supportive of genuine Jersey on-line retailing businesses that do not assist U.K. companies to avoid tax, could the Minister confirm that there is nothing that he can do to prevent a U.K. company that wishes to avoid paying value-added tax from purchasing a Jersey... what did he call them: "a genuine Jersey on-line business"?

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

I am afraid that I can confirm to the Senator that there is. Just as the Regulation of Undertakings and Development Law was perhaps going out of fashion in terms of its power... The Regulation of Undertaking does give us, for example - which is the subject of particular criticism by the Scrutiny Panel Chairman - the issue of ownership, whereas a condition can be put on a Reg. of Uns. licence that prevents it being sold without the permission of E.D. That is the subject of one of the problems that the Economic Affairs Scrutiny Panel Chairman has: it is that they are unhappy with the fact that I have prevented a Jersey-owned business - with the use of the condition under Reg. of Uns. - from being transferred to a U.K. entity. So, the Reg. of Uns. has come to our rescue in protecting the Island's reputation and integrity, and is a very powerful tool that we have to do it, and I am using it.

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

The Paymaster General referred to a net tax loss to the U.K. Government of some £80 million. My perception of the *Hansard* report, and also the National Audit reports of 25th May, was that the government were concerned about this figure increasing and there were suggestions put forward by some Members of the U.K. Parliament that it could be £200 million by 2010. I would be interested to know what the Minister's views on that would be?

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

I am fully aware of the suggestions, quite extraordinary suggestions. This small Federation of Small Business organisation is - and it is worth agreeing with some of the other comments that have been made - there are small U.K. retailers who are struggling in the face of a new world, from moving from "bricks to clicks" and also the whole issue of supermarkets and their buying power and all the rest of it. They are using, effectively, problems on the High Street, which are coming from all sorts of different areas: fulfilment, supermarkets, on-line retailing. They are using some extraordinary figures. I am, indeed, aware that we do not agree with some of the assertions made upon the figures made by this organisation. Indeed, we do not even agree with some of the figures that the U.K. has made, but I am cognisant of the fact that, in the event that

Jersey-based companies would be effectively losing the U.K. in their terms, losing revenue, that the U.K. may seek to act against Jersey. But it would need to be done on a level playing field argument because Jersey is not the only jurisdiction from which activities could be taken. The world is moving into a globalized market and 747s are coming from Dubai, India, China. Effectively, the world is changing very quickly in terms of globalisation.

#### **5.1.6 Deputy J.B. Fox:**

The question I want to ask the Minister is: have we had any direct talks with the U.K. Paymaster General? My concern is that they make a ruling, or they make an exception up to £18, and then they expect the rest of the world to not export goods into their bracket, having got the exception. My concern is that the genuine Jersey companies have got every entitlement, and every right, to send a product and have the advantages of businesses that, in effect, is in full legal terms, a permitted thing to do. This Island looks as though it has publicly been suffering because it seems to be the one that is taking steps...

#### **The Bailiff:**

Deputy, you must not make a speech, you must ask a question.

#### **Deputy J.B. Fox:**

Sorry. The question, really, of the Minister is about: are we having direct communication with the Paymaster General to invite her to publicly recognise that the States of Jersey are taking their part in being responsible? Thank you, Sir.

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

I can confirm that there have been conversations with the U.K. Treasury and officials locally. I do not believe that the Chief Minister and I have met with our counterparts in the U.K. directly on the matter, but this Assembly can be assured that, through the proper official responsibilities of the 2 departments, that there has been regular contact. There has been an exchange of numerous letters, and I shared some of that correspondence with the Scrutiny Panel, so that they were absolutely clear of the attention that was raised. There was one letter that the Paymaster General did write to us. I agree with Deputy Fox in his conclusion in his, I think, remarks, that effectively it is the U.K. Government that set L.V.C.R. and that is a matter not for this Assembly but for the Parliament over the water.

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

In the light of the statement made by the Minister, does the Minister welcome the opportunity, which I will discuss with my Panel tomorrow, to bring my recommendations to the House for full debate?

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

The Chairman of the Scrutiny Panel is entitled to do what he wishes. However, I note the report that his committee made did not have any new recommendations about a new approach. It had a number of comments about an e-commerce R: I am happy to consider that. In relation to the appeals process, clearly there was a misunderstanding about that. If he looks at the website, we have consolidated all the information about the appeals process of Reg. of Uns.; and, for the avoidance of anybody's doubt, there is a clear process of appeals through Reg. of Uns. dealing with some of the issues that Senator Perchard raised. I am happy to meet with the Scrutiny Panel if they have any advice for me in relation to dealing with what is a very difficult issue, of which

there is a delicate balancing act that we must play. But I am confident that we have had good information and we have made sound decisions; and, frankly, the spectacle of last week being told on Monday that we have overreacted, and then reading the *Hansard* report saying we have not done enough, well it, effectively, I think, confirms that I am stuck between a rock and a hard place.