

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 7th OCTOBER 2009

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

PUBLIC BUSINESS - resumption

1. Vote of No Confidence: States Employment Board (P.142/2009)

The Bailiff:

So we return then to the Order Paper, P.142/2009 lodged by Deputy Southern, Vote of No Confidence: States Employment Board. I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion that they have no confidence in the States Employment Board.

Connétable A.S. Crowcroft of St. Helier:

Could I, before we start, just take your guidance on conflicts of interest? This is a no confidence vote in my wife's employer and I just wondered whether there is a conflict of interest of States Members who are in a similar situation.

The Bailiff:

I take the view that there is not a direct financial interest that requires anyone to withdraw. This is not a debate on whether there should be an increase or not in pay. It is whether there is confidence in the Board, although, of course, the issues are closely related. Nevertheless, my view is that anyone who has a spouse who is in the employment of the States ought to declare it. But it is an interest, which, having declared, they remain for. **[Interests declared]** I think, in fairness to other Members, any Member who has declared an interest who rises to speak should remind Members at the time he or she stands to speak of his interest. So if Members could take that into account.

Deputy P.J. Rondel of St. John:

Given that my daughter and the like, other members of my family, work within the States, do I declare the interest also?

The Bailiff:

No, it only relates normally to the spouse, I think, Greffier, does it not?

The Deputy Greffier of the States:

Yes.

Connétable G.F. Butcher of St. John:

Just before we start, I just wonder if I can seek some guidance from the Chair again. It is not a conflict where I am concerned. I am wondering whether the Deputy has a conflict in that his wife is very active in the teachers' union.

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

I was going to start with that. If I could start my speech, Sir. Right. That is that item dealt with. I think no conflict there. Although my wife is in the negotiation team on behalf of the N.U.T. (National Union of Teachers), she is a retired teacher and can in no way benefit at all from any pay rise or change in conditions of service for her and therefore myself. There is no conflict of interest for me. But I am reminded how close a community we have and how many people are related to people who work in the public sector, and perhaps Members should bear that in mind when they come to debate this issue. So here we are, and on the warmest night, October night, for many, many years, how ironic that we should be facing such a winter of discontent, thanks to the actions of the States Employment Board, because, as I shall attempt to demonstrate, that is what we face. Now this issue, I suppose, concerns 2 things essentially: the establishment of a pay freeze, the reasons for a pay freeze and the way in which it was done, and the handling of the negotiations.

Now, the third item that comes in is the way in which the reasons were presented for the need for a pay freeze. Let us start with the reasons for a pay freeze. We are told we are really responding to economic conditions. It is fascinating to recognise that yesterday we were on our feet for an hour or so and then in the previous meeting we were on our feet for 4 and a half hours or so, debating how best to cope with the recession. We were discussing a fiscal stimulus, how to put money into the economy so the economy stays buoyant when we are in recession. Fundamental to that is the issue of pay. What better way to prop up the economy in recession and to make sure people have money in their pockets and that money gets spent and circulated in the community? That is the fundamental logic of economic theory and action to be taken in recession. The public sector props up the economy until the good times get back. That is the reality. Yet what has happened here? Our States Employment Board, our Ministers, our Council of Ministers and our Government has decided to impose, arbitrarily, a pay freeze. How have they done that? Well, let us have a look at how convenient the timeline, the timetable given in annex B of the comments produced by the Chief Minister, no less, on page 7 of his comments. So 28th March: "The States Employment Board resolves that because of the deteriorating position in the local economy and significantly falling retail price index, it was minded to pursue a pay freeze of all public sector workers this year. It sought the endorsement of the Council of Ministers for this proposal." Note "of the Council of Ministers." So 4 Ministers sought the approval of the rest of the Ministers. Did they come to the States? They did not. The Council of Ministers, 23rd April: "Supports the proposal for a pay freeze in the public sector this year in view of the prevailing economic climate and pressure on public finances in the medium term. 27th April, the Chief Executive of the Council of Ministers, head of the Public Service, meets with senior representatives of all the main pay groups and informs them of the S.E.B.'s (States Employment Board) proposal to have a pay freeze this year. It is intended to ensure the unions could consider their pay claims in the full knowledge of the imposed position of not being in a position to fund a pay increase." The first question I ask is where is the scope for negotiation in that? Because normally pay claims are negotiated. There is give and take and a solution acceptable to all, if you like, a win-win or win and enough of a loss but still to be reasonably content with, comes away from the negotiating table. In this case, absolutely no negotiation whatsoever. As a result of this, 2 Members bring proposals to change the way or change the amount in which we negotiate. Give us something to negotiate over, an offer of some sort of pay deal, one as a flat rate of £400, the Deputy of St. Ouen, and my own for the equivalent of 2 per cent across the board, £1,000 and £250, again, across the board, to try and alleviate increasing pay gaps. The only thing that came to the States here, the Minister for Treasury and Resources lodges a proposition proposing the withdrawal of the 2 per cent previously inscribed in the Annual Business Plan for pay awards this year. So the only thing the States has debated is a proposition to take the money away. The decision was made. It has not debated, in principle, the establishment of a pay freeze. 24th July, trade unions and staff groups write collectively to the S.E.B. asking for a meeting to discuss cuts and services and the pay freeze. S.E.B. and other Ministers meet senior representatives of all main pay groups. The latter are assured, reassured that negotiations on a pay award this year may continue, provided that the overall pay bill does not increase. Yes, by all means, you can come in and negotiate but there is not one penny in the pot for 2009 because we have decided and that is our fixed position and we are not moving, no negotiation. The timeline stops there. But the meeting last month saw something like 1,500 members of the public sector meeting en masse and they proposed a motion of no confidence and expressed it, no confidence in the States Employment Board. We come right up to present time. Last night, unprecedented in my experience since 1986, all the teachers' unions got together; 200-plus members met, around about a little over a quarter of the total teaching force met and decided unanimously to declare a dispute and to proceed with a ballot for action. Teachers, amazingly, a very conservative group of people, very reluctant ever to even talk about or consider striking, voted that the ballot should say: action up to strike action but not including strike action, and the second box to tick: action including strike action. For the first time in my memory, certainly, we face the possibility of, say, a half-day strike, a one-day strike, closing down our schools. I know teachers

are reluctant to do that but they are prepared to ballot on it at this stage. I have never seen that before in my days. That is the state we have got to. That is the first of our public sector pay groups that have met and got organised, declared a dispute and are going to ballot. The manual workers will do simply likewise. I suspect the nurses are engaged in organising that as well. Fire service, I do not know. But pay groups throughout the public sector will be organising. That is just the first; that is just the tip of the iceberg. Why has that been brought about? Because of the actions of their employers, the States Employment Board. Before I go any further, can I just say that although this is a motion of no confidence, the most serious motion of condemnation that can be brought to a House by a Member, one has to bear in mind that, as I have put in my paper, in my report, the structure that we are dealing with, the motion of no confidence is, indeed, serious. But if Members will turn to page 3 of my proposal and examine the rules around the States Employment Board and the membership of the States Employment Board, you will notice that the Chief Minister is solely responsible for the States Employment Board. He appoints Ministers from his Ministers to the States Employment Board. There is nothing the States can do about it as to whatever happens, apart from a motion of no confidence. But that motion of no confidence does not necessarily mean that everybody has to resign. What it is, is a slap of the wrist. The Minister can look because there is no power of the State to do anything. It cannot say: "Put this person on the States Employment Board. Take this person off." All you do is a motion of no confidence. Effectively, it is a slap on the wrist. It says: "Your policy is wrong. You might want to change some of the membership of the States Employment Board, just to show that you are listening." Or you might want to ... we can reconsider our policy but we will maintain the same Ministers on the States Employment Board. In that sense it is a slap over the wrist. It is not the "no confidence" compulsory, you must resign. So it is possible for Members, without provoking an enormous crisis, it will not be the end of the world to vote for this proposition if they are persuaded to do so. That is the timeline. Secondly, why the reasons for a pay freeze. The material that was presented to us was presented in response to the propositions for a pay increase of £400 from the Deputy of St. Ouen and the £1,000 plus from me, presented in comments to P.68 from the Chief Minister. On that there is a table which shows salary comparisons with the Jersey private sector. I will just go through it. It compares lowest grade and highest grade because one of the arguments was that lowest grades, relative to the private sector, are paid relatively better than high grades. High grades in the public sector are paid relatively less well, the average and the overall lowest grade, on average, 25 per cent better than the private sector in the public sector. At the highest grade they were something like 12 per cent less well off than the high executives of the top end of the high grades. The average 3 per cent public sector better off than their counterparts in the private sector. But it then goes down the list. Police, 22 per cent better off; fire officers, 27 per cent better off; prison officers, 37 per cent better off; teachers, 6 per cent worse off; manual workers, 12 per cent better off than their equivalents in the private sector; civil service 4 and a half per cent better off; nurses, 1 per cent better off; on average, 3 per cent better off than their equivalent in the private sector. What, out of that, did the Chief Minister choose to highlight? For example: "The lowest grade of public sector manual worker is paid 30 per cent higher than a similar sized job in the private sector. A civil servant is paid 20 per cent higher than a similar sized job in the private sector. On average, the lowest paid grades are paid 25 per cent more than the private sector." They have gone right to the low end and I will examine that in a little while. So they have picked the worst case of data that they have given of a cross-spread. Not the average figures but the worst case: 25 per cent better off in the public sector than the private sector. Wow. What a big margin. No, that is the worst case. On average, 3 per cent better off. But the Chief Minister and the Council of Ministers chose not to focus on that. I ask Members: is that a way to present your data? I ask them also further to consider: this data was taken in 2006. It was performed by Hay on comparable jobs. That is about half of the Hay Report. That is summed up in one paragraph and one table. Where was the detail? Where was the real information we needed to validly compare one with another. It wasn't there, and, where it was, to be honest, it was misleading. It was misleading, as I shall show. So a shoddy presentation of the so-called facts. But let us consider what is happening there. We are seeing, for

example, teachers 6 per cent worse off, on average, than their comparative equivalents in the private sector, nurses only 1 per cent better off than the average equivalent in the private sector. We have got comparison with private sector for fire, prison and police. Where is the real case? Where is the privatised fire services on this Island? But no, when challenged, where is the private police force? Where is the private prison? It does not exist in Jersey. Yet we have got comparative figures with their equivalent in the private sector. Ah, we were told, when challenged by the Chief Minister: "But they were comparable pay grids in terms of responsibility, size and, et cetera, et cetera." Comparable pay groups with a police officer? Where is the equivalent? Who else in the private sector goes out on duty with a stab vest? A pay comparison would indeed be different if it was the Honorary Police. But I am surprised they did not put it in there and say: "Look how much more they get paid than the Honoraries." No, I must not jest like that because they will. They will. Where is the equivalent of the fire service? It does not exist. No. Who is likely to be going out, as part of their job, running into a burning building as part of their job? Where is the equivalent? So I question the equivalence, especially when I look at the figures. But returning: teachers and nurses significantly fairly on a par or worse off than their equivalents in the private sector. Now, why is that significant? It is significant because we need 2 things in terms of our pay levels in the public sector. One, and indeed you might argue that we have to compete with the private sector in order to attract a good quality work force locally, but also we need to maintain comparisons with the U.K. (United Kingdom) because in many areas, and we have noticed it ... straight away we were debating yesterday: a nursing shortage, teachers, civil servants, ditto. We need to be able to regroup. We need equivalence with the U.K. So there are 2 valid things you can do to look at the comparison with the U.K. What do the Chief Minister and the Council of Ministers do? They brought out the best statistic that, on average, the public sector in Jersey is paid 39 per cent better than the private sector in the U.K. - 39 per cent margin. The beauty of that is absolutely zero unless you examine whether the cost of living in Jersey is equally different to the cost of living in the U.K. Yet, where is the comparator? It was not there. Why, for example, were Hay commissioned to produce this report in 2006 to form the basis of pay negotiations for the future without doing a comparable cost of living comparison so we can get something to judge by. Apparently on average we are 30 per cent better off than the U.K. It sounds significant. How much more or less is our cost of living? What does that mean? What does that pound note buy in Jersey? That is the question that needs to be asked. Why were Hay not commissioned to do that? I do not know. I hope the Chief Minister can answer it because in answer to a question yesterday he said: "Although it is difficult to make the comparison, and it takes some work, it can be done." He says: "Over the coming year the Statistics Unit is endeavouring to undertake an exercise which aims to compare a minimum income standard for Jersey with that in the U.K." So it is being done now. It was not done then. Why not? I choose the only example we have: the household expenditure survey, 2004/05 reveals that our expenditure, which may or may not be an accurate reflection of costs but is indicative, is 46 per cent higher than the U.K. Now, that puts the context of 39 per cent better off into context in a serious way. So comparisons with the U.K. need to be done because we have to attract workers from the U.K. for our professionals, and comparisons with the private sector in Jersey. Let us look at that comparison with the private sector and, again, what information was given to us: that one table and one paragraph. Let us have a look at merely the executive summary, which could have been summarised for us quite easily, so we could have a vote on a pay freeze with some information, instead of which, no, we got these figures: 25 per cent better off in the public sector than the private sector in Jersey.

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

Sir, can I ask a point of clarification? Is the speaker saying our cost of living is 46 per cent higher or the expenditure of individuals is 46 per cent higher? That is a fundamentally different concept.

Deputy G.P. Southern:

I accept that there are differences. What I am saying is the only marker we have, because we have not done the work, the States Employment Board has not done the work, the Chief Minister has not done the work, would be a proper comparison. The only marker we have is a household expenditure survey where we have some figures. That is 46 per cent. Now, I said “with reservations”. With reservations is the only marker we have got of how much it costs and how much is spent to maintain families in Jersey, right? I am not saying it is gold standards by any means. But it is the only comparator we have got because the work has not been done. It could be done and it was not done. The opportunity was there in 2006 to do it. We did not do it because it would have given us an accurate proper marker by which we can judge the actions of the States Employment Board. That is why it was not done. So what does this, in summary, suggest? The pay market in Jersey can clearly be divided into 3 main sectors: the public sector, the private finance sector and the private industrial and service sector. Overall, the private finance sector, a quarter of our work force, half of our economy, the private finance sector is the highest paying sector in Jersey with, on average, 21 per cent higher than the private industrial and service sector. In total earnings, let us look at the bonus culture which also does not get captured by lots of figures but is there nonetheless, there is a substantial difference in the total earnings. The earnings gap, on average, is 28 per cent between the finance sector and the rest of the private sector. Listen carefully: “The industrial and service sector appears to be some way behind the finance sector, particularly at the graduate and professional levels. These levels in the finance sector tend to be more specialised and therefore attract a larger salary.” So skill levels, academic qualifications in the private non-finance sector are lower than the finance sector and substantially lower than the public sector. Where is the best trained workforce on this Island? Where is the best qualified workforce on this Island? In the public sector. So any comparisons between public and private sector must bear that in mind. Then it says: “The public sector is 10 per cent ahead of the market median when compared to all organisations in the private sector. The public sector is 21 per cent - not 28 per cent but 21 per cent - ahead of the market median in total earnings in the non-finance sector.” So there is the comparison. Is that a valid comparison to say: “Public sector this, private sector; here is the comparison, therefore a pay rise is not justified”? It is not. I will quote from some U.K. figures. But it is marked here in the Hay Report that the level of qualification and training and academic qualification is markedly lower in the private sector than in the public sector. It says here: “There are 5 times more unskilled workers in the private than the public sector. The Office of National Statistics Labour Force Survey shows that only 8.6 per cent of people in the private sector are in professional grades compared with 24.5 per cent of all public employers who are professionals.” All the way up the scale: managers, professionals and skilled trades are taking, it says here, a 70p pay cut in working for the state in the U.K. So what you have to bear in mind is comparative qualifications and skill levels, if you are going to do that comparison. What does that say about that comparison? Well, that comparison then is not particularly valid unless you take these other factors into consideration. The broad crude 3 per cent better off - and that is on average - 3 per cent better off in the public sector than in the private sector needs to be balanced by that given, in the light of the differences in qualifications and training and skills. Then you come to examine the detail of some of the charts that they produce. This is where it gets really, I believe, underhand. For example, for nurses, you have got a column that says: “Nurses maximum basic salary” - let us not say what it is at a certain grade - and that is compared with private sector, all organisations basic salary. What is missing? Maximum.

Deputy K.C. Lewis of St. Saviour:

Apologies for interrupting the Deputy. We will very shortly, I believe, be going inquorate. There are several Members here who are en défaut at the moment. May I raise the défaut on the Deputy of Trinity, Senator Ozouf and Senator Cohen?

The Bailiff:

Does the Assembly agree to raise the default on Senator Cohen, Senator Ozouf and the Deputy of Trinity? The default is raised.

Deputy G.P. Southern:

If we are about to go iniquorate I had better speed up. I can see the Constable of Trinity looking at me. But, anyway, where was I? Nurses, nurse grades: maximum basic salary compared with private sector organisations basic salary median, a median figure. Maximum basic salary compared with basic salary, the median that is paid in comparable grades. Well, of course, the maximum salary is going to be larger than the median. That is the structure of a median. But that is what is presented and it looks like: "Oh, gosh, nursing auxiliaries are 34 per cent better off than their equivalents in the private sector." Really? No. Their maximum is 34 per cent above the median pay in the equivalent in the private sector. But then you look down the chart and that sounds significant. Qualified nurses - S.E.Ns (State Enrolled Nurses) 5 per cent behind the market median; staff nurse 2 per cent above the market median on basic wages; second grade sister 6 per cent above the market median; first grade sister 2 per cent behind the market median. So even with that maximum compared with median, we have got nurses paid behind the median balance. Is that public sector pay falling behind? Is that public sector justification for a pay freeze given the dire problems we have recruiting nurses? It is not. Was any of that presented to the States in order to debate whether we take this money out of the pockets of nurses? It was not. Shameful. When you look at overall earnings, what you get is S.E.Ns 10 per cent behind the mark; staff nurses 3 per cent behind the mark; sister 2, 2 per cent behind the mark, overall earnings; and sister 1, first class sister, 12 per cent behind the mark. So we are even underpaying our nurses in comparison with a comparator in the private sector. If you take out the auxiliaries where comparison is with, effectively, people who clean and do basic duties, bottom grades, where we know there is marked difference in the public sector and the private sector, if you take out those, then for qualified nurses they are worse off, far worse off in the public sector than they might otherwise be doing in another job in the private sector. Moving on to teachers, and, again, the comparator is between maximum basic salary. But only one grade of teacher is compared: the grade of teacher on the main professional grade, when you come into teaching. So it is no promoted grades. Why is that? Well, one has to ask why because it is easy to find, the rest of the day, so when you are promoted it is posted. It is not hard to find publicly. You could go to the website now and get it. Only the main professional grade was compared. Again it was maximum basic salary, maximum top of the grade. Why? Because teaching salaries have been deliberately weighted to the bottom end because employer and employee in negotiation have said: "There is the problem. We have a problem getting graduates into the teaching profession. We must weight it towards the bottom end and reduce the differentials for promoted post." That has always been the case. It has been long held. That is what we try to do. The comparator says that the maximum basic salary for a teacher is 2 per cent ahead of the equivalent in the private sector, and remember that that is maximum compared with median, a completely false comparison. When we look at total earnings compared to the private sector, and, again, we are back to bonuses and overtime and things like that, then we are talking about 6 per cent behind. Again, was that data presented? It was not. It was there. It was not. Why not? Because I believe the States Employment Board did not want a fully-fledged debate on the need for a pay freeze. So what do we know about earnings in the private sector? It has been suggested yesterday that a survey from the Chamber of Commerce revealed that 50 to 60 per cent of employees in the private sector have had their pay frozen this year and that therefore 40 to 50 per cent of employees in the private sector have achieved some pay rise. Now, my information says that, certainly in the finance sector, bonuses continue to be paid. Christmas parties appear to be free still and that in many sectors, and I know because I have spoken to the T.&G. (Transport and General Workers Union), pay rises of the order of 2 per cent, the R.P.I. (Retail Price Index), have been negotiated successfully in the private sector and in some cases the mark has been far higher; it has been on 3 and a half per cent. So do we have to show a lead in this? No, we do not. The figures that we do have, the average earnings index, show that earnings in June 2009 have gone up

on average 3 per cent. Now, this covers 59 per cent of all workers in Jersey. They are in the survey. We are 3 per cent higher. The private sector overall increased by 3.3 per cent. Where is that increase in average earnings coming from? E-earnings in the finance sector up by 3.5 per cent. When we compare with the U.K. the other marker that we need to attract highly-skilled workers to the Island, what we see is that average earnings, Jersey, in all sectors, 3 per cent; in the U.K., it has gone up by 2.1 per cent. In the private sector it has gone up by 3.3 per cent compared to 1.6 per cent in the U.K. So the differential is getting bigger in the private sector. In the public sector it is going up by 1 per cent and in the U.K. 3.7 per cent. So the public sector in the U.K. is negotiating successfully because it has not had its negotiation rights taken away. Yet its pay rises. So comparison with the U.K. again, we are making our public sector less attractive for those people in comparison with the private sector. In Jersey, again, our wages are slipping in the public sector. But then one has to look at the way in which the representatives of the unions have been dealt with. It says in my report: "In the course of several attempts to convince public sector workers to acquiesce to the imposition of a wage freeze imposed by the S.E.B. and sanctioned by the Council of Ministers, the S.E.B. have resorted to a series of less than honest arguments." Early on the States Chief Officer tried to persuade representatives that the money saved from their pay award would go to fund apprenticeships and other stimulus measures. We know that is not true. We know where that money has come from. It has come from the Stabilisation Fund and it was in the pot already. Later on the Chief Minister tried the line, and I think he has repeated recently, that savings would go to funding services at the hospital. Well, we know that is not true because the savings have been diverted to nothing more than the bottom line: balancing the accounts. So the public sector have been treated, I believe, shabbily and shoddily by the States Employment Board. I believe they need to be condemned for their actions. Finally, I come to their own words on pages 3 and 4 of their own comments accompanying this. It says: "While it might be regrettable that the S.E.B. and the Council of Ministers found it necessary to recommend to the States a significant change from that budgeted in the 2009 plan ...". So what are they worried about? Are they worried about the standard of living of their public sector? They are worried about: "We have to change our Business Plan, take some more money out of it." At a time of such unprecedented world economic change, a balance had to be struck that protected both employees' jobs and the Island's prosperity in the longer term. The S.E.B. considered that the relative positions of Jersey's public sector workers in relation to the private sector counterparts - and we have seen what a shabby and incomplete and inaccurate comparison that is - relative balance. "The S.E.B. has stated it and will continue to make clear its full support of public sector workers who deliver good public services and show a very high level of commitment to the public." Well, look out. That level of commitment is about to get a lot weaker because the public sector workers are sick and tired of being treated the way they have been. The reality is, and we will move on to this in a minute. Right, okay, let us move there: "A much greater spirit of partnership should be engendered between the States as employer and its work force." Well, that is a lovely sentiment and we can quote that all day. But it is not there. It has not been performed. There has been no attempt to engender a greater spirit of partnership between the States employer and its workforce. How could there be? The States Employment Board have taken away negotiating rights from the very people it employs and is currently making the case with the manual workers that it is your pay rise, chaps, boys, or your jobs. There is no safeguarding in there from the States Employment Board, I do not believe. They go on: "The unions have a fundamentally important role to play in industrial relations. But the current system has too many opportunities for adversarial negotiation." Well, who started the fight? The States Employment Board started the fight. They are the adversaries. They said: "We are not talking to you. You are out of our game. We take away your negotiating rights. We are establishing a pay freeze." Is that the way to encourage a greater spirit of partnership? It is not. "The S.E.B. will be seeking to reconfirm this commitment and to reopen discussions on establishing those formal partnership agreements. These discussions will need to be addressed: address the separation of agreeing overall cash limits [it is in the Business Plan] to the pay negotiating process to bring greater clarity in the future." Fine words butter no parsnips. The

reality is, as the teachers demonstrated last night, public sector workers are ... the unanimity demonstrated by the teachers was absolutely shocking. This is teachers prepared to take strike action, a ballot for strike action on this Island, as a direct result and top of the list is: "You have taken away our negotiating rights as a result of the actions of this Board." I believe this House should condemn this Board, the actions of the Chief Minister and his States Employment Board and vote for this motion of no confidence. Thank you.

The Bailiff:

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

1.1.1 Senator T.A. Le Sueur:

Members will be relieved to know that I am not going to speak at such length. Indeed, I rather wonder why we are debating this at all. I am not sure what Deputy Southern is trying to achieve with this amendment, so that makes it difficult for me to know how best to begin to address it. But I think I will begin, as indeed did the Deputy in his report, by explaining the role of the States Employment Board. The States Employment Board is a body set up under the Employment of States of Jersey Employees law.

The Bailiff:

Deputy Southern if you go we will be inquorate. Sorry.

Senator T.A. Le Sueur:

As I was saying, it is set up under the law of 2005 and by law its composition is made up of 3 or more Members of the Council of Ministers, normally including the Chief Minister. It is not possible to appoint Assistant Ministers or, indeed, any other States Members to the Board. Its primary function is to determine policy in relation to the employment and terms and conditions of public sector employees. But within that remit it is also empowered to negotiate with employer representatives on matters such as collective agreements, training and development and terms and conditions of employment. Furthermore, it has the power to delegate any of its functions to any one of its members or the Chief Executive Officer of the States or any other person approved by the Board. So I mention those matters just as a preamble because I want to make it quite clear that the policies and procedures carried out on behalf of the Board throughout 2009 and earlier were entirely within the parameters of that law. The Deputy suggests that this vote of no confidence would be no more than a slap on the wrist for the 4 existing members of the Board. Now, either he is naïve or he is not really understanding the nature of this law because a vote of no confidence against the States Employment Board is, effectively, a vote of no confidence against me, as Chief Minister, because I am the person responsible for creating and setting up and nominating Members to that Employment Board. So, while the Deputy may regard it as a slap on the wrist, I certainly do not, Ministers do not, and I am sure any thinking Member would appreciate that that could not possibly be the case. The States Employment Board aims to follow good employment practice and we do value our workforce and recognise the services they provide and the commitment that they show. But at the same time we have to recognise the current exceptional economic climate which it is posing and will continue to pose challenging problems. Those, in return, require challenging solutions and exceptional measures. When the States Employment Board first mooted the idea of a pay freeze back in March, we did not do so lightly. Indeed, although composed of Ministers who were fully empowered to make decisions, we nevertheless considered it so important that we took it back to the Council of Ministers for consideration. So the States Employment Board does clearly recognise the impact that the pay freeze will have on all our staff. Despite that, we believe that it still remains the right decision today, just as it was in March of this year when the Board discussed it, and indeed just as it was in July of this year when States Members overwhelmingly endorsed the policy by 31 votes to 10. The Deputy seems to suggest that we were not debating the principle of a pay freeze then but simply the financial implications. There, again, I think he is naïve. I think the

debate was quite clear what a pay freeze and the financial implications of a pay freeze would imply. But this debate is not or should not be just about pay but also the financial health of the Island. We do have a duty towards our workforce, but we have also got a duty towards the population to govern in a responsible way. A pay freeze at this time is a responsible decision, although I appreciate that it may not seem that way for some of our employees. I wonder, though, how it seems to employees in the private sector, many of whom are facing a pay freeze or worse and with far less job security. In his concluding comments Deputy Southern alleges that the money saved by applying a pay freeze has not helped Health, or, indeed, any other department, but has simply added to the accountant's bottom line. Again, that is, I am afraid, just a distortion of the truth. The Council of Ministers made it clear at the start of the year and reiterated in the Strategic Plan that any additional resources offered to the States departments had to be matched by equivalent savings elsewhere in the organisation. Consequently, it is only because we were able to save £6 million over next year's budget on the pay freeze that we were able to fund £6 million worth of expenditure somewhere else. In total we have secured a funding to deliver an additional £17 million worth of expenditure, all matched by equivalent savings. Much of that expenditure does, indeed, relate to Health and I am sure all of us appreciate that that was the right allocation. If we had not reallocated that £6 million but just added it to the Consolidated Fund, then Deputy Southern would have more justification in saying it had been added to the bottom line. But, equally, if we had allocated funds to Health or anyone else without matched funding, we would have been in contravention of the States agreed Strategic Plan. So the plain fact is that without the pay freeze, monies would not have been available for Health and other departments to face the pressures that they are currently having to deal with. It may have been a tough decision but it was and is the right one. The Board will not shirk from making tough decisions when it believes that they are the right ones. In this case, I remind the Deputy and others yet again, that it was the majority of States Members themselves who believed it was the right decision when they endorsed the pay freeze 31 votes to 10. So I think, really, rather than debating all this today, if the Deputy really wants to pursue it he could always have his opportunity when we come to debate Deputy Shona Pitman's proposition in a couple of weeks' time, when we have the same argument all over again. But as a responsible employer, as soon as the decision to set a cap on pay for the coming year had been made, we felt it only correct to tell and immediately communicate that fact to the employee representatives, so that they knew where they stood and that they could formulate their proposals on a fully informed basis. Indeed, it would have been dishonest of us not to tell them and to allow discussion to proceed without the unions or their members being aware of our intentions. There is no intention to circumvent the working of normal industrial relations. The S.E.B. has not sought to deny the normal collective bargaining process, a fact which I made clear to the employer representatives when I met them at their request in August of this year. It is worth remembering that what happened next was a proposition from the Deputy of St. John and then an amendment to that proposition from Deputy Southern which effectively took pay negotiations out of the hands of the union and the board and into the States Chamber. The States Employment Board remains committed to talking to staff and union representatives and working with them and through them in working through these negotiations and indeed we have another meeting with those representatives this coming Friday morning. At this stage I might just interpose in my speech some of the comments that Deputy Southern made in relation to a meeting of teaching unions yesterday afternoon. I may have misheard the representative of the teachers on the radio this morning, a Mrs. Southern, when she, I thought, said that the teachers would await the meeting on Friday before deciding which action to take. I think that is a reasonable and realistic attitude to take. The Deputy also said that the teachers had decided unanimously to declare a dispute. Again I think he is wrong there. The words I heard were that if they were not satisfied with the outcome of Friday's meeting that then they would declare a dispute. So I think it is important in a situation like this that the Deputy gets his facts absolutely clear and that the Members are not confused or misled, as he accuses me of misleading Members, and I would hate to think that he is doing the same thing. I also find it rather odd that the teachers are on the one hand saying they are going to declare a

dispute by the end of this week when last week they came to the States Employment Board and asked to go to mediation and the Employment Board accepted the offer of mediation, as the spokesman said on the radio this morning. So on the one hand they are asking us for mediation and on the other hand they are threatening a dispute and I wonder what negotiations we are supposed to carry out. But that is by the by. All I can say is that, contrary to what the Deputy suggests, this vote of no confidence is a serious vote. It is not just a slap on the wrist. It is something that I take and my Board and my Ministers take very seriously. In his arguments the Deputy also suggests that the fiscal stimulus was the answer to pay and we should have used that. I would remind Members that all these matters were discussed in July when we debated the pay freeze. The same arguments came out then, the same arguments are coming out again today. We decided then nothing has changed. So, as I was saying, we are continuing discussions with the trade unions and staff representatives. Pay claims are being submitted in the usual way albeit with the constraints that we have already spoken about. The policy we have set in March was the right policy. The policy we agreed and confirmed in July is the right policy. The latest information I have, which I accept came out after that debate, but the information from the more recent pay survey and the information from the labour market survey presented today which shows that employment levels have gone down for the first time in years and unemployment levels are the highest for many years, do indicate a change in climate. I make these points really to demonstrate that the States Employment Board has acted entirely properly over the past 9 months but I do not want to spend my entire speech looking backwards. I also want to assure Members of the approach we are taking looking forwards to next year and beyond. When the Board was set up in late 2005 the employers' side was keen to establish a better and more formal partnership approach with trade unions and staff representatives and it did achieve this with some pay groups but others were less comfortable at that time to go along that line. We remain committed to that approach and that can be evidenced by a letter that I wrote to Unite the Union, in February of this year when I responded to their concerns about job security, a letter incidentally to which I have not yet received a formal reply. As I say, we remain committed and I would hope that that commitment is echoed by those employee representatives. I am also committed to working with the unions on a thorough review of terms and conditions of service in 2010 to address many of the issues raised by both sides. I can only urge union representatives to join in that process which I am sure would lead to the 2010 results being a better outcome for everyone. But, I conclude by reminding Members that what the Employment Board have been doing over the last year is what Members have asked us to do. If we had not carried out those wishes then we could rightly be criticised by Deputy Southern or others. But to be criticised for doing what we were asked to do strikes me as being absolute lunacy just as I regard this proposition by Deputy Southern as absolutely out of order. Words begin to fail me. I do suggest that we should despatch this one as rapidly as possible and do some more productive business.

The Bailiff:

Does any other Member wish to speak?

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

The Strategic Plan approved by the States on 10th June this year stated that the economic downturn would put significant pressures on government revenues and spending if we were to maintain a core public service at an acceptable level and that savings would need to be made. It goes on to say why we should do this. We must respond to external pressures, it says, and in particular the possibility of reduced income as a result of worldwide recession. Public sector staff costs have a significant impact on overall expenditure and controlling these costs has a significant impact on the overall expenditure and it sets a benchmark for the private sector and has an impact on control of inflation. The taxpayer, who pays for the public service, expects it. The States Employment Board have and are responding to the Strategic Plan. It goes without question that the States Employment Board respects and values all staff for whom it is responsible and as such we carry responsibility for not

only their pay but also conditions and, of course, job security within the parameters of the present employment laws. To my way of thinking, job security is of paramount importance and in an unprecedented world economic crisis where jobs are at risk and States employees are not immune from this the employer, the States Employment Board, must do all it can to avoid the sort of redundancies which have taken place elsewhere. A *Jersey Evening Post* article only last night described how the Jersey Advisory and Conciliation Service had dealt with a record number of inquiries from people who faced being laid off and from businesses intent on reducing staff numbers. They have had, we read, 870 contacts regarding redundancy this year, some 16 per cent of their workload, and while larger companies can clearly manage change and restructuring more easily, smaller companies have shed staff numbers so they can pay the wages. I heard on the radio only this morning that numbers employed in the wholesale and retail sector are on average some 350 down. Those jobs have gone. I suggest that if we can retain our present public sector jobs we will be doing pretty well. I was quite flabbergasted, I have to say, when I attended a meeting on 10th August last with senior representatives of all main pay groups that not once was the private sector even mentioned. It is absolutely essentially that pay levels between the private and public sectors are comparable otherwise the obvious happens. Work gets outsourced. This is not a course of action that I favour when we have good staff that we have trained to do a better job. I suggest that the majority of the thinking public sector workers are more than well aware of the current economic situation and the risks to society in general and in turn their jobs. I see a restriction on pay as an essential tool of job retention, and contend that Deputy Southern is simply bringing in his old-fashioned industrial north tactics to Jersey and fails to understand the consequences of his actions. The Deputy is a good mathematician and I respect him for it but he uses his figures every which way he can to debate and win his case. There is nothing wrong with that but I read them with a little bit of cynicism. I think that the States Employment Board have been prudent to react in the way they have and it would have been irresponsible of them to have done otherwise. I tend to apply a commonsense approach in my contributions to the S.E.B. and use some 35 years' experience of being an employer in the private sector. I sometimes get concerned that should differentials between sectors be allowed to develop we run the risk of creating an elitist social sector completely out of kilter with the remainder of Island society. I would add, by hoping that the world economic recession will improve and that the States Employment Board will be able to react in the appropriate way when it comes to next year's pay discussions and I would conclude that I stand by the decisions I have made on the States Employment Board and leave Members to judge accordingly. Thank you.

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

I must confess I had some doubts about this proposition, as the Chief Minister expressed it as well, at the next sitting we will be talking about rescinding the pay freeze. But Deputy Southern and indeed the last speaker have raised some interesting points and I think it is worth having a little look at some of what has been said because ... well I will go through what I have to say and Members will be able to judge. The line being taken by the S.E.B. and by the Chief Minister is that we are in an exceptional economic climate and I do not dispute that, but if we look at some of the argumentation, I will just pick on one particular concept which is inflation ... well 2 actually, one is inflation, and if we look at the Chief Minister's comments on page 5 there is a very odd paragraph about inflation, the sixth paragraph, and there is a lot of misunderstanding around inflation and I thought it had been nailed, and I thought that when I spoke to the Fiscal Policy Panel very briefly after their last presentation to States Members and I said: "Is it true that if you take money out of the private pocket and put it into the public pocket and it gets spent that that has no overall effect on inflation, assuming that you manage your expenditure by sector correctly?" and they said: "No, of course it does not. If the money is spent, whether it is private money or public money, makes no difference to inflation." But here we read in this sixth paragraph: "The purpose of G.S.T. (Goods and Services Tax) is to take money out of the economy and therefore from individuals' pockets. Only in this way will it have a downward effect on inflation." That is complete nonsense. If you

take money out of people's pockets in the form of G.S.T., put it into the government pot and then spend it it will have no effect on inflation either way, and yet this is part of these comments. It is an extract from the 2009 Annual Business Plan and it is used as part of the argumentation around pay negotiations and it just does not make any sense. The previous sentence is: "Higher inflation is bad for all Islanders." I quite agree, it is: "Higher inflation is bad for all Islanders and Island businesses and will undermine the fiscal strategy because it will reduce the scope for economic growth."

The Deputy Greffier of the States (In the Chair):

I am sorry, could we just pause for a moment please? We have only 26 Members that I can see and one Member that I cannot yet see. The défaut is to be raised on Deputy Le Fondré. Is everybody happy with that? The défaut is raised. Thank you. You may continue your speech, Deputy.

The Deputy of St. Mary:

Welcome, Deputy Le Fondré. [Interruption]

The Deputy Greffier of the States (In the Chair):

You are quite right.

Senator P.F.C. Ozouf:

Madam, may I now raise the défaut on Deputy Le Fondré.

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

Indeed, the défaut is now raised. Please continue.

The Deputy of St. Mary:

These procedural matters are wonderful. We have to be quorate in order to raise the défaut on someone who will make us quorate. Lovely, is it not? But anyway, to return to inflation: "Higher inflation is bad for all Islanders" says the previous sentence, and quite right too, but we had a chance to deal with higher inflation long ago, 20 years ago when it was seriously damaging the tourism industry. That is what did a lot of damage to the tourism industry, the fact that inflation in Jersey was running year on year above the rate in the U.K. The solution was to take more out of the private pocket, put it into the public pot and not spend it, to remove it from the economy. That was not done and that is part of the reason why we face these huge problems today. But that is just an aside on inflation and the way it is used to justify the thinking around the pay freeze when in fact it does not add up. I would then refer Members to page 7 which is the timeline produced by the Chief Minister and there are 3 statements about the R.P.I. On 23rd March we are told that: "The S.E.B. resolves that because of the deteriorating conditions in the local economy and significantly falling R.P.I." On 22nd April we are told: "March R.P.I. published showing an increase of 2.1 per cent nearly all of which was attributed to G.S.T." On 15th July: "June R.P.I. published showing a decrease of 9.4 per cent." I would just like someone from the S.E.B. or from the Council of Ministers to confirm the correctness of those 3 statements on the record because I do not believe them. I would just like to know that those 3 figures are correct because we were told in Deputy Southern's proposition to give all States employees £450 as a flat rate increase. I remember the figures that Deputy Southern quoted which were quite different, and the R.P.I. he quoted was an increase I think of 2.5 per cent or 3 per cent without ... that was sort of the basic figure and 5 per cent the low income R.P.I. So those 2 figures do not match up and I just want someone from the Council of Ministers' side to confirm that all 3 are correct as they have been presented to the House today because I am not sure and I need that confirmation. The third thing I would like to say on this background of the exceptional economic climate and the justification for the pay freeze is the word "vital" and on page 2 of the comments of the Chief Minister we have in the third paragraph: "Was the pay freeze justified? Wages and salaries are the biggest proportion of the revenue budget at over £300 million and freezing pay costs was vital in order to maintain our finances on a sound

footing in the economic climate that prevailed early in 2009.” Was the pay freeze as vital as not spending £5 million on preparing for the pandemic? Oh, but we did spend £5 million or we have earmarked £5 million. We have earmarked that money for ... well maybe somebody can correct me on that but my understanding was that we earmarked that money in case it was needed for the Minister for Health and Social Services to spend on ... as going of course to the Treasury but still the money has been earmarked and we have spent - my note here is £7 million, but I think it is probably more on of course the incinerator overspend in various forms, whether it is the euro or unauthorised expenditure. That money too was found out of various Ministerial decision pots. So I just wonder what this word “vital” here means. Is it vital because it is not top of the list or it is not near enough to the top of the list but it is not vital? What I mean is we are playing with words there. So that is the comments on the exceptional economic climate. I am not sure that it holds water or is as potent an argument as we have been made to think. My second comments are on the how. Now Deputy Southern has given us a very good picture of just how concerned our public sector workforce is and he described the meeting last night of the teachers and just how bad the situation is out there and I went to the mass meeting about a month ago. The reason is of course that it was a unilateral declaration and there was not any negotiation or compromise or talking down together. It was a declaration and this goes together with a not listening attitude which was referred to again and again at the Fort Regent meeting that this government does not listen, it does not take views on board, and that is a serious concern. Now if we look at the Chief Minister’s comments at the foot of page 2 we have: “The S.E.B. decided to take the proposal for a pay freeze to the Council of Ministers for wider debate.” So it went from 4 people to 10. I am not sure that that meets my definition of wider debate and they then go on: “But taking this tough line on public spending does not mean that public sector staff are not valued” and they repeat that point at the foot of page 3. You see if you tell people they are not getting any more money at all even though the cost of living is rising and then you say: “But we do value you” it just does not wash, does it? Because as Deputy Southern has pointed out the normal pattern of talking with people and saying: “Times are hard” and making the case but in a proper discussion has not been followed. So the how is really important and the how seems to have gone missing and the how is what we are really talking about. There may be an argument about whether the money is there or not or whether the private sector should stump up a little bit extra in taxes and so on and so on, there is an argument to be had, but it is the how. It is how this S.E.B. goes about its business. Now we are told, interestingly, on page 4 of the Chief Minister’s comments that there is going to be a new look. There is going to be a new approach and a much greater spirit of partnership, and the current approach to pay negotiations and remuneration needs to be carefully reviewed. Well amen to that. At the end of that paragraph on their page 4: “These issues suggest that it is necessary to develop a system of pay settlement and remuneration which better recognises the major contribution that public sector workers make to the community of Jersey.” “Which better recognises the major contribution that public sector workers make to the community of Jersey.” Well there you have it. That we are going to reform. We are going to make the system better. But then of course the question arises why was it not better before? The other question of course is how much credence can we give to this new look and that raises the question on which I will end, which is honesty and this whole question of trust. We do have obviously serious issues in this area. We have heard in this debate that the idea that there is a pay freeze across the private sector is unsubstantiated. It just is not true. It is true in part but it is not true. There has been no mention, or serious mention, I cannot say there has been no mention, very difficult to prove a negative, but as far as I am aware there has been no serious mention of the 46 per cent difference in purchasing power when presenting pay comparisons. That is quite an important fact and when we hear that our workers are paid 39 per cent more than in the U.K. well and good but what is the difference in the purchasing power? That is a clear must have piece of information round which we talk about what effect that has on the pay negotiations and we have not been told. The presentation of information has been misleading and, of course, in the third place about misleading is the famous table in proposition whichever it was ... sorry, the comments of the Council of Ministers on Deputy Southern’s

proposition about the £1,250 flat rate increase where we had this amazing table comparing jobs to other jobs that did not exist and Deputy Southern has gone into that in great detail. So when the previous speaker, the Constable of St. Brelade, said that the public sector was completely out of kilter with the private sector that statement needs to be justified. It may be true but I do not think it is on the evidence we have heard today from Deputy Southern. But either way it needs to be justified and it has not been and that is what we are talking about. We are talking about the credibility of the S.E.B. and by extension of the States when they deal with their own workforce. That is the nub of this debate. Are we credible? Does the S.E.B. behave on our behalf in a proper way when dealing with the very workers who deliver our policies and programmes on our behalf and on behalf of the people of Jersey? So those I think are the key issues and I look forward to the rest.

1.1.4 Senator P.F.C. Ozouf:

I have no doubt that this vote is in effect a vote of no confidence in the Chief Minister. I have no doubt that this is the kind of vote which has the highest sanction available to States Members and if it would be successful it is effectively a vote of no confidence in both him and the Council of Ministers as well. In fact I think it is almost a vote of no confidence in the Assembly itself because as the Chief Minister has said, this Assembly has already discussed a number of the matters which Deputy Southern raised in his speech. In fact most of his speech was concerned around the whole issue of the pay freeze. He referred to a number of groups but he particularly focused on teachers, and I am sure that I am not the only person in this Assembly who is somewhat uncomfortable with comments in relation to the teachers particularly having heard the comments of the president of the Teachers' Association on the radio this morning. I very much express the hope that we are not going to use our public sector workers in party political politics, but whether anything is the case, whether or not ... I am not giving way.

Deputy G.P. Southern:

I believe that impugns my integrity. You cannot imply that. The Minister should not be implying that somehow I am manipulating or using my wife's position in any way whatsoever. That is impugning my integrity and hers.

Senator P.F.C. Ozouf:

I do not believe it was impugning. I just expressed the hope that we are not going to engage in party political use of our public sector workers. What I was going to go on to say is that whether it be teachers, whether it be nurses, whether it be paramedics, whether it be policemen, whether it be Treasury officials, whether it be parks and gardens employees, incinerator workers, liquid waste workers, I care perhaps just like Deputy Southern about our public sector workforce. I care about the whole of our community and of course our public sector is an important part of that. I know that all Members of this Assembly, and indeed most Islanders, are concerned about our economy and they are concerned about our public finances and particularly the Island's future. It is only with a strong, vibrant economy that we have the availability and the resources available to fund properly our public sector and to make wage settlements in future. Tonight Senator Maclean and Deputy Ferguson and Deputy Higgins and I are all attending a Chamber of Commerce briefing on fiscal stimulus. I am expecting that the Chamber of Commerce is going to recount to us some of the real difficulties that businesses are experiencing in the Island. I am sure that we are going to hear that businesses have been through very difficult economic times and I have to take responsibility to ensure that our public finances respond to some of those difficulties, particularly responding where necessary to making investment in order to keep the economy going over the next few months and particularly in relation to matters of the fiscal stimulus plan, et cetera. I fully accept the Deputy of St. Mary's point - he did not quite make this point - but I fully accept the point that I as Minister for Treasury and Resources have been potentially at risk of sending out mixed messages; on the one hand investing in the economy, investing in fiscal stimulus is a one-off, on the

other hand having to put in place budgets over the next year which are realistic in the backdrop of our public finances. The Business Plan it has to be said has been, in my experience, and having been involved in 10 of them, it has been the most difficult that we have had for 10 years and the envelope of wages and staff costs are the biggest costs in that overall Business Plan process. We have had to respond to some very real and serious issues in the Health Department and we have had to make some decisions which balance our books in the appropriate way. So, we have to make responsible decisions and we have to make responsible decisions in relation to the public sector pay envelope and the suggestion that somehow the S.E.B. is deserving of a vote of no confidence because we have set envelopes for public sector pay I find extremely curious. I need to remind Deputy Southern that it is this Assembly that decides on the envelope for public sector pay. This Assembly decides annually what the envelope is for public sector pay and I do not understand why there is action which merits the support of a vote of no confidence in going back and revisiting the wage envelope available for the public sector. That is exactly what we did in the proposal last year, but it was not the Council of Ministers that started the discussions about a pay freeze, it was other Members who responded to some of the thoughts that were being made, particularly the Deputy of St. John. I think that this Assembly has got a responsibility to set the envelope for public sector pay and that is exactly what we did last year. This Assembly has been concerned about the economy. This Assembly has been engaged in numerous debates about the real threats to our economic future. Inflation fell in the last few months to the lowest level for years. Wage rates in the private sector, something that I am sure we are going to hear from the Chamber of Commerce this evening, are for 60 per cent of businesses surveyed either flat or falling. Vacancies that are published today are at the lowest level they have been for 10 years. Employment levels have fallen for the first time in 5 years. Most importantly our revised economic forecasts show that the Island has the possibility, maybe even the probability, of a structural deficit. I have challenged Deputy Southern and others previously about how he would deal with such matters and how he would deal with increased spending. Because at the end of the day it seems that this vote of no confidence is based entirely upon this issue of the pay freeze. I have to say to Deputy Southern that there are only 2 choices. If he wants to put £6 million in relation to a reversing of the pay freeze, which is at the heart of this discussion on the vote of no confidence, there are only 2 choices. We either cut services, which he also stands implacably against, or we raise taxes. Tax rises and cuts in services on top of the structural deficit that we need are very real and I have to say to Deputy Southern will he please come clean and say if the vote of no confidence in the States Employment Board is successful and there is a new States Employment Board put in place maybe chaired by him or chaired by another Member, it would be a curious state of affairs if there were changes going forward in relation to the fact that there would be a disconnect between the Council of Ministers and the States Employment Board, I find that a very curious state of affairs. But I challenge him how is he going to find the £6 million and to the Deputy of St. Mary it is not just £6 million one-off, it is £6 million every year and rising for the next few years. Because Deputy Southern, I have heard, wants to shut down the finance industry, he wants no G.S.T., he wants ...

Deputy G.P. Southern:

That is absolutely outrageous. I have never said that in my born days.

Senator P.F.C. Ozouf:

I apologise.

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

Please resume your seat, Deputy. The Senator is entitled to make his point.

Senator P.F.C. Ozouf:

Well I suspect ... I have read numerous blogs ...

Deputy G.P. Southern:

Take it back. Which blog? It is not my blog.

Senator P.F.C. Ozouf:

I have read party political blogs. If Deputy Southern thinks he is not going to do that then I welcome that statement from him, but I certainly ...

The Deputy of St. Mary:

On a point of order, Madam. I do have a point of order please.

Senator P.F.C. Ozouf:

I withdraw that comment if necessary, Madam.

The Deputy Greffier of the States (In the Chair):

I think that would be helpful.

Senator P.F.C. Ozouf:

I withdraw that comment if necessary. That is absolutely fine, I apologise. But what I am saying to Deputy Southern ...

The Deputy of St. Mary:

But I have a point of order. Thank you.

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

If it is a point of order, Deputy.

The Deputy of St. Mary:

I think it is a point of order because I was misrepresented and I would like to put it right. The Minister said that I was talking about we would have to find £6 million every year. I emphasised in my speech the how. The problem is the process, whether or not we would have to find £6 million is a debate for another day.

Senator P.F.C. Ozouf:

That is fine and I apologise if I am getting too emotional about the public finances, but I am very concerned about how we deal with the issue of a pay freeze and the £6 million and I am getting confused messages from Members. Because on the one hand I heard Deputy Southern and other people say that they do not want to increase G.S.T., they do not want to extend 20 means 20, they do not want cuts in services, they want no increase in taxes, I am confused with Members what the approach is in relation to diversification. How is a £6 million cost to reverse the pay freeze going to be afforded? That is the real issue and I am sorry if I get het up in relation to public finances but these are the real issues that the Council of Ministers has had to deal with and these are the real issues that we have had to deal with in bringing together a Business Plan that works. I am sorry and I apologise just as governments around the world are having to apologise to their workforce for difficult economic times, but I believe that the responsible, that the honest approach of the States Employment Board in the last few months of its activity has been the right one. We are being honest with our public sector workers and we are being honest with our Island community about the real challenges that we are facing in respect of our public finances and that is at the heart of whether or not there is confidence in the States Employment Board. Whether or not Members believe that the States Employment Board in bringing forward proposals for realistic and affordable levels of wage settlements have done the right thing. This is not an easy situation and I accept that and I am not prepared, I have to say, to not respond to the vital investment in frontline services that we have had to make for the Health Service. I think that this proposal is unfair. I think that it undermines decisions that this Assembly has made in relation to public sector pay. I believe that it has been unfairly and unjustifiably made in terms of the personal integrity of people sitting on the

States Employment Board and our long term care for the future of Jersey and our future long term ability to fund public services and to fund our public sector workers in a fair and appropriate way going forward. That is why I think that this proposal is unfair. Yes, there is a proposal for a pay freeze for one year and yes there is a proposal for restraint and some sort of fiscal consolidation for a period of one year but I have heard nothing in any of the remarks that Deputy Southern has made that changes me from the view that this Assembly has to be responsible. I want to be engaging with our public sector workers over the next 12 and 24 months in being realistic about the affordable resources that we have to fund public services. There are going to be some difficult decisions to be made about how we square political priorities with the resources that are available. I want to have a positive engagement and to see the S.E.B. have a positive engagement with our public sector workforce as we deal with the very real challenges that we are going to be faced with in the next 2 to 3 years. I would like this Assembly to give us a strong mandate in order to carry out those important duties, those caring duties which are not only about caring for our public sector workers but doing the right thing for our economy in the longer term. That is what this debate is really about, how we move forward with our public sector relations, how we move forward. Because I would like to be a Minister for Treasury and Resources in 2 or 3 years' time and over the next 2 or 3 years that can bring forward Business Plans, that does have an envelope available for increased public sector pay, but I am afraid that this year it is the responsible thing not to do so.

The Deputy of St. Mary:

On a point of clarification.

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

Just a moment. Before we continue I would like to point out that in the contents of Members' speeches Members must be very careful not to impute improper motives either directly or by innuendo. Your initial comment crossed that line.

Senator P.F.C. Ozouf:

It may have done and I apologise if I did so and I made the comments in relation to the fact that I care about our public finances just as much as Deputy Southern cares about other things.

The Deputy of St. Mary:

Can I have a point of clarification? I hope this will help. I just repeat to the Minister who is the responsible person probably, will he say to the House that these figures on R.P.I. on those 3 dates are correct and he stands by them or not?

Senator P.F.C. Ozouf:

I do not have the figures in front of me. I do not have that schedule in front of me, but I know that our figures from the Stats Unit are beyond reproach in terms of accuracy.

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

To re-read the proposition it says: "To ask The States if they are of the opinion that they have no confidence in the States Employment Board." It does not state: "For the reasons of the pay negotiations" although I admit that they are used in the report that Deputy Southern suggested by these actions. The States Employment Board has a wider remit than just pay. While many of our States workers are managed well we cannot overlook the mismanagement of the H.R. (Human Resources) function. I will use the hard work of the Deputy of St. Martin as an example. The ongoing suspensions are a direct responsibility of the States Employment Board. There was a reluctance to act on the States Employment Board's side. Indeed when the Deputy of St. Martin tried to remedy this those members of the States Employment Board opposed. However, the majority of this House disagreed with the stance of the States Employment Board and supported the Deputy of St. Martin because the States Employment Board was not acting as a responsible employer. As for nurses who work very hard and are a great asset to this Island, they have a low

morale partly due to pay, partly due to being short-staffed but also partly due to the bad management that is occurring. What have the States Employment Board done about this? There are some major failings within the H.R. function and the States Employment Board are politically responsible. It is for these reasons that I will be supporting the proposition. Thank you.

1.1.6 Deputy M. Tadier of St. Brelade:

Before I start in earnest with my speech I feel, while it is still fresh in Members' minds, that I need to comment on some of the comments we did hear from the Minister for Treasury and Resources. It is a very heated debate and I think that is healthy at times to show that we are all very passionate about politics but of course we also have to make sure that we keep things within the correct parameters. But what grates with me, and I think it follows on from the Deputy of St. Mary's speech, is the whole thing about listening to people, whether it be listening to other Members or listening to members of the public and one of the things I hope to bring out in this short speech, short being used relatively of course, is to talk about the whole idea of transparency, accountability and listening. It is funny the way that this debate has turned into a debate about the economy. Perhaps that is right in once sense because I think until we solve the underlying cleavage that we have in this Assembly to do with differences of opinion on economics that we will not cure anything. But time and time again the Minister for Treasury and Resources will stand up and say: "Where is this money going to come from?" Deputy Southern or Deputy Tadier, it does not matter who it is he is talking about, never has any solution, but that is not true. Every time Members are coming up with alternatives we come up with a whole host of alternatives. The Minister for Treasury and Resources himself has said that taxation will have to increase and nobody wants to see G.S.T. going up, that is why every time Members come up with different propositions and different suggestions for increases in taxations or charges which are progressive and which are generally more fair every time they are rejected by the Minister for Treasury and Resources. It is almost like the child in the playground saying: "Well tell me, I want to listen" and putting your hands over your ears and going, "Lalalalala" so you cannot give an answer because: "Please, I want consultation but every time you give me an idea no, I am afraid that is not going to work." It is prejudged before we even start and as long as that mentality prevails within the House, but even more so in the Island, things are only going to get worse. Things are only going to get messy and things, well, they will not get bloody but certainly in figurative terms I think things are going to descend and that is already where we are. So that brings me nicely to the beginning of my speech. To set the scene, Deputy Southern did mention it but I want to reaffirm this idea that we are in unprecedented times. I do not think any time certainly in recent history we have ever seen teachers, nurses, members of the public sector both in the white collar and blue collar, I know some Members do not like those terms so I apologise, all working together. We have seen pan-union and pan-departmental discussions taking place. At Fort Regent we had an unprecedented number of union and other members of the public turning up to show their support because we are truly in unprecedented times. It was very difficult to tell how many people there were at Fort Regent. I think the seating capacity is probably around about 1,000 and there was standing room only in the building, so we think there were certainly between 1,200 and 1,500 people there. This is truly significant for Jersey, a conservative place, which as has been said before, teachers and nurses in particular hate any type of industrial action. They do not like to strike and they certainly do not even like to have to take work-to-rule action or any other kind of action, but we are in this situation. So this is the reality. We can all deal in opinion, we can all speculate, but these are hard facts. There was a meeting at Fort Regent, it was very well attended, we do live in unprecedented times. Teachers, nurses, all the unions are working together as never before. Now are we going to sit here and be deaf to that or are we going to say: "Actually there is an issue here and there is a problem which we need to address." So I think it is very right that we are having this debate today, whether or not you agree with the proposition or not. I want to shift the focus somewhat though because for me this is not about whether public sector workers are given a pay rise, whether they are given a pay cut or whether they are given a pay freeze. This is about the best practice and it is

about procedure and effectively there has been a removal of the right to negotiations and there has been a complete disregard for the collective bargaining. Now it could well be, and I will be the first to say it, if in reality the cost of living right across the board for the lower earners, middle earners and higher earners is zero then I have no problem with nobody getting a pay increase. Similarly if it can be proven beyond all doubt that the cost of living has gone down I will be the first person to stand up and say: "The cost of living has gone down by 5 per cent, it is only right that people take a 5 per cent pay cut." I will be the first to do that. But first of all there is a very moot point. The statistics do not add up and it is interesting to note how even though the pay freeze had been agreed a week or 2 before the figures were released the *Jersey Evening Post* withheld the figures to coincide with the 0 per cent inflation which in fact is very questionable anyway and also, as I have said, it depends where you are on the pay scale. We always know that the lower paid workers, people below £25,000 for example in Jersey, are facing inflation. People who maybe own their house or are paying off a mortgage, if they are fortunate enough to benefit from a decline in mortgage rates, for them it may seem that the rate of inflation has stopped. But we know for sure that people on the lower end are having less money in their wallets in real terms, and this is the issue here. While this has been going on there seems to be no scope for negotiations whatsoever and I think what sticks in people's throats, certainly in members of the public, and remember these are people who are not used to protesting, we know that in Jersey we do not have a great tradition of protest although when people are pushed too far it is amazing what can happen. So we are told that okay, we have to balance the books, there is no money, we all have to tighten our belts, but if something is really deemed serious like health we suddenly find the money for it. That is not to say that the health spending was not necessary, I voted for it just like I believe most or every Member in this house voted for it, but if the money is necessary we will find it, that is the message. But the public sector workers are being told, and this is the kind of sophistry and the double thing we are being told, saying: "No, we have not disregarded negotiations we are just saying that the negotiations start from a point where there is no money." Which is just as good as saying there are no negotiations. Saying: "Sure, we can talk about it but you cannot have any pay increase, but come and talk about it. That is the bottom line, you will not get any pay increase, but we will listen to you." It is a completely meaningless and futile exercise. This is what we are being told here. So the negotiations, there are not any. Even if they come we already know that the Council of Ministers, and fair play to them in one sense because they are sticking to their guns, have said there is no money available and that is what the ultimate point after negotiations, if there were any, would have to be. So I believe we are at a point where we are defending the indefensible. The facts speak for themselves. There is a problem here that the public are up in arms about it and I think there has been a blatant disregard for process as never seen before. I think part of the problem is, and the Deputy of St. Mary's alluded to it, is that we say one thing as a government and we do something completely different. Now let us look at the Strategic Plan, section 15 talks about protecting and enhancing our unique cultural identity. We have a whole chapter on that and it is perhaps a strange place to find talk about transparency but this is where it is buried and we all agree to it, we think that transparency and engaging the public, listening to them is important. It is easy to say, it is a lot harder to do. So let us read those parts, one point: "We will work to improve the public trust in government and establish a system of greater transparency, public participation and collaboration to strengthen our democracy and promote efficiency and effectiveness in government." Okay, well I am not really sure if we are doing that at the moment. We have seen that the public really do not trust us already to the point where they are willing to have a mass demonstration, whether it be to do with pay or whether to do with the coastline, and it is interesting, is it not, how we are willing to listen to 7,000 people, if it was 7,000 people or not far off, who went down to the beach on Sunday in a very I think poignant demonstration of solidarity that we must all stand behind our coastline. It was a different kind of demonstration really. It was more, if I can say it, a more unifying, it was more middle class and it was not really to do with any one section of society. It was everyone coming together saying: "It is important that we protect our coastline" and quite rightly to his credit the Minister for Planning and Environment did say: "Certainly this has to

be taken into consideration. When we see numbers of this proportion descending on a beach, expressing their opinion, then it certainly has to be taken into consideration.” I would say exactly the same thing for the meeting at Fort Regent. It was unprecedented. It was indicative of the hostility and the anger that members of the public have for this current regime. I want to talk slightly for a moment about the dynamics of change. I cannot remember who said it, but it is quite a well-documented phenomenon that any type of idea or any move for change goes through 3 phases. Initially you have where the idea is completely received in hostility, so any kind of change is mooted and it is largely ridiculed. We just need to think of Copernicus or Galileo saying how the world is round, gets laughed off by the Catholic Church, et cetera, even though they are visionaries. The second point is when it starts to receive some credibility and perhaps we have seen that this week with the Ombudsman. We know that a few years ago there was a chilly reception to it, then it gradually became received into people’s psyches and now it is almost like, and certainly in a few years it will be: “Well certainly we cannot do without an Ombudsman.” So this is the dynamics of change. So where are we in Jersey at the moment? I think we have a system, a problem where the public already know what is happening, so in one sense it is academic if we are all sitting here, or some of us are sitting here, others in the tea room, it is more comfortable, debating whether or not we have confidence in the States Employment Board, because we know in reality that the public do not have confidence in the States Employment Board. Now the reason I say that, and I can say it from an informed point of view, is that at the Fort Regent meeting which represented, as I have said, a whole host of departments and unions, there was an informal ballot taken as to whether members of the unions did have confidence and they voted overwhelmingly and I think unanimously ...

Connétable J.M. Refault of St. Peter:

May I have a point of clarification? Was the ballot taken from people from the private sector and was their view taken on board at that same time?

Deputy M. Tadier:

I am not sure of the relevance of that.

The Connétable of St. Peter:

The Deputy did say that a ballot was taken and the people at Fort Regent expressed their lack of confidence in the States Employment Board and that was representative in a ballot. I am merely asking did he also test the view of the members from the private sector?

Deputy M. Tadier:

I think it is an obtuse question if I may say so. I will answer.

The Connétable of St. Peter:

Can I clarify a little further? The private sector is the largest amount of people here in the Island employed.

The Deputy Greffier in the States (in the Chair):

I think you have made your point. Please let the Deputy continue.

Deputy M. Tadier:

Let me answer and if the answer is not satisfactory I am happy for the Constable to come up with a second point and it gives me a nice break to recompose myself. The point is I think the Constable knows full well that it is an irrelevant question because the private sector are not employed by the States Employment Board so sure, we could have asked people who work for HSBC whether they have confidence in the States Employment Board, we could have also asked people in Scotland whether they have confidence in our Government. I do not think that would have been relevant or helpful and also due to the limitations of the meeting they were only able to ask people who were in

the building. They could not go out and organise a ... it was an impromptu ballot so I suspect obviously members of the private sector were not consulted. I hope that answers the Constable's question, although I find it a strange question. So the point here is that what we are asking to do, and remember the second point in the Strategic Plan, we need to show that Islanders views are valued. Okay, so how do we do that? We can do it one way, so we can take these 1,000, 200,000, 500 people and say: "Your views are valued but the way we value them is by doing the opposite of what you say." That would seem a very perverse thing to do so what we need to do is what Senator Cohen quote rightly said is to take the view seriously, to listen to the public. The unions feel that their negotiating rights have been trampled over and I think Deputy Southern is simply putting those views across in the States so he is to be commended for asking that these views are represented and this is exactly what the Council of Ministers want to do, because they have set it in stone in their Strategic Plan. Then the last part in the Strategic Plan of relevance here: "The engagement of the electorate in the political process is necessary if Islanders are to feel that their views are of importance." So we do need to listen to what members of the public are saying. No doubt Members will stand up and try and refute this by saying: "Oh well, the public do not really know, do they?" Because as the paternalist government that we are we always know best. So why is it that money can be found for other events like a rabbit being pulled out of a magician's hat. We can always find money for certain projects as long as they have the backing of the Council of Ministers but here we know that we are approaching desperate times. We may be facing industrial action in our schools, in our hospitals, with our workers for T.T.S. (Transport and Technical Services) right across the board, the gardeners, the people who do our roads, the people who clean our streets. What will happen if we are completely inflexible and find that the money is not available? I do not think that really bears thinking of. Hopefully the Council of Ministers will not be so intransigent as to be deaf to the views of the public. We will hear from Senator Le Marquand and it is appropriate that we do. At the meeting at Fort Regent there were several Members from the States present and I will read out a list and I hope it is comprehensive. Here I am talking about not Members who were sitting at the back but Members who stood up or were sitting at the front. So I believe Deputy Le Claire was present, Deputy Vallois, Deputy Lewis, the Deputy of St. Peter, Senator Le Marquand was present. He was the only one present from the Council of Ministers and I think that is to be commended even though he did get something of a rough ride. I think the words "lamb to the slaughter" probably are not inappropriate here, but I still nonetheless think that the public respected the fact that he was there, the only one from the Council of Ministers. Deputy De Sousa and both Deputies Pitman were there, Deputy Martin, Deputy Phil Rondel. I know that there were other Members certainly Senator Ferguson was sitting at the back. There was a call at the end for solidarity from the board and ...

Senator S.C. Ferguson:

Clarification, Sir, so was Senator Breckon.

Deputy A.E. Jeune of St. Brelade:

Point of clarification, Sir, so was the Deputy here.

Deputy M. Tadier:

Yes, I was specifically talking about those who were on the front line and there was a call from all of us sitting at the front as to which States Members would be supporting and certain Members stood up, so I think everyone apart from Senator Le Marquand on the front row stood up, and with due respect the reason he did not stand up was because he needed to keep his position of impartiality. I am sure he ... and probably because he did not agree with this kind of action as well, but I am sure as he can speak next he will be able to clarify. So the reason I say that I am hoping that all of these Deputies including the Deputy of St. Peter who is not here, will ... they stood up, they said: "We will support the unions." They did not have to, they could have sat down, just stayed seated just like Senator Le Marquand was so I imagine that all of these Members will

certainly be voting for the proposition as put forward by Deputy Southern, or maybe they will just simply find themselves out of the Chamber and unable to vote but I would hope that is not the case. So I will sum up, I think I have gone on long enough, but just to get one Bible reference in because I have not had one for quite a while. When Senator Le Marquand was there the unions were on the platform, one of the speakers said to him: "Thank you, Senator Le Marquand for coming along. Now go back to the Council of Ministers and tell them what you see" and it just reminded me of John the Baptist when one of John the Baptist's disciples went to Jesus somebody said: "Are you the Messiah?" Jesus, in his usual way liked to be slightly cryptic and said: "Well, just tell them what you see. Say that the lame walk. The blind see, et cetera." So I think that is what triggered this in my mind. Are the public happy? So they send the poor little lamb, Senator Le Marquand, along and now he comes back and he says: "Well, tell them what you see. You see 1,200, 1,300, 1,400 public sector workers all up in arms, some of whom were very angry, some of whom said very unpleasant things which are not to be repeated about certain Members of the Council of Ministers. This is the reality of it. So let us not talk in opinion. Let us not talk about whether we think the pay freeze should or should not happen. This is simply about the negotiation process. It may well be that after the consultation we decide that we are not going to give a pay rise but at least that should not be the starting point. It should not also be the ultimate finishing point. There should be an option on the table and it may well be, which is probably my preferred option, that certain public sector workers who earn less than, let us say, £25,000 should be entitled to a pay increase. There may well be a case that the higher earners for whom inflation has not had such a big effect do not get a pay increase. But that is to be seen. It is not our place to judge that. So I will leave it there, simply to say that if we are serious about our pledge in the Strategic Plan to promote greater transparency, public participation and collaboration in our democracy, then we should be supporting this or we should at least be listening. We are in a very dangerous situation. I do not know what the chances are of this vote going through today. On paper they may be not that high but I would like to think that Members have a conscience. Deputy Southern did say that, effectively, it is a vote in a motion of no confidence but it will be nice if we could bring a vote in a motion of censure, but I do not think that is possible. So this is the only recourse that we have. Nothing will really change in reality. It is just to send a strong message out to the public but also to the Council of Ministers that this has been mishandled. If it had not been mishandled we simply would not be in this situation today where we are facing possible strike action, industrial action, work-to-rule, whatever you want to call it, go-slows, the avoidance of doing overtime. If that is not a good enough reason to vote that you have no confidence, Members have no confidence, then certainly take a leaf out of Deputy Maçon's book. There are a whole host of other reasons. The whole suspensions issue and I will leave that for some other Member to talk about, but certainly we know that suspensions in the H.R. Department, there are serious issues in it. I think we need to send out a strong message today to the public that we are listening. We need to send a strong message out to the Council of Ministers that it could do better. Even if it ends up with the same members on the Board I think this needs to be done and that we all need to move on and that due process does need to be observed in future so that we are not seen to hold our workers in contempt.

Senator J.L. Perchard:

Can I give notice of my intention to propose the closure on this polarised and repetitious debate?

The Bailiff:

Very well, you have given notice.

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

You have heard this before: "I was not going to speak but ..." I think probably when we started out this morning most people would not have put any money on this proposition getting anywhere simply because it is really seen to be a vote against the Executive, really, at the end of the day. It is unfortunately also, I think, that Deputy Southern really did narrow his whole argument on the point

which the Chief Minister picked up on, the 2009 pay rates and also the negotiations because if that is the case I cannot support the proposition simply because I was one of those who voted along with the 21 majority. So basically, what we are saying is: "I have no confidence in myself as well." That is the unfortunate part of this particular thrust by Deputy Southern. I did a lot of work and I am grateful for Deputy Maçon in raising the issues that I addressed regarding suspensions because unfortunately, unwittingly, we are, and I say "we", those who were in the House in 2004/2005 are responsible for ... probably if we say: "We are in a mess, in the mess we have got ourselves into simply because we, as the States body, agreed to ..." and I went in and got this out this morning - I have a copy at home but did not bring it with me - but the Employment of States of Jersey Employees (Jersey) Law 2005, we are guilty of it because what we have done, we have given the authority to the Chief Minister. In fact, in Deputy Southern's proposition, he makes it clear under ... I will read it out. It tells us in (4) who shall constitute or how the States Employment Board will be constituted and in (5) it says: "Membership of the States Employment Board." So in other words, we have given this over to the Chief Minister. Whether he wants it or not, he has it. Also, he has it down purely to the Council of Ministers. Now, what I would think we would be better off doing is probably bring in a change with the law and, certainly, maybe after I have those 3 propositions out next sitting with the gambling propositions, I may well bring a proposition here suggesting maybe we should change the membership of the States Employment Board because I believe it is far too narrow, it is not representative. **[Approbation]** I think they are conflicted and also, with the greatest respect to them, they are too busy. They are Ministers. How can they be doing all these things and yet, here we go, we give them ... and we say to them, in fact: "They must meet at least 4 times a year." Well, I would hope they are meeting more than 4 times a year because if one goes to part 3 of the law, it says: "The functions of the Employment Board ..." this is something I found out when I started doing my research into the suspensions issue, and we see the number of issues that the States Employment Board are responsible for and, really, if we are going to open up the whole debate and say: "Well, are we satisfied? Are we confident in the way they carry out the whole functions within the Article 8?" I would probably say no. But that is not what we are about today. I notice Deputy Le Hérisier has been on about this, about the issues about: "Determining the employment training and development needs of States employees and appropriate procedures for appraisals and transfers of States employees." We have been on and on about succession training. So who is responsible for that? I am afraid, the S.E.B. and, of course, my flavour of the month has been suspensions, to discipline, suspend and terminate the employment of States employees. Well, maybe I can give myself a pat on the back but I know, certainly, that the numbers of people being suspended since I brought this to the States have almost ... it is crazy. In fact, we now have a way ... I am not going to have a go at the Minister for Health and Social Services but almost a way where we have a way now of circumventing the system where we do not suspend, we do not exclude but we restrict people from their normal duties. I hope that will not be the practice to be followed. But really, if we are looking for something today I would think probably it is good to talk. I do not think the ... I do not know if I can even support Deputy Southern but what I would say is that we really have to look at this particular law and I think what we have to do also is extend the membership of the States Employment Board to make it more of inclusive rather than exclusive. I think what we have is far too narrow, down to too few people. I do not think, and I think Deputy Tadier is right, I do not think people are listening. They give the impression maybe they are listening but they certainly do not give that impression. So what I would say is, really, we have to do is come back and look at changing the particular law to ensure the States Employment Board is much more representative of this House not just of the Executive.

1.1.8 Senator B.I. Le Marquand:

I was the only Minister present at the meeting at Fort Regent and there I heard group after group claim that their right to collective bargaining had been eroded. I also heard other things. I heard some groups, such as the firemen who, incidentally, do an excellent job and have worked very flexibly and are terrific can-do people, and the nurses who we all are particularly supportive and

appreciative of, expressing concerns in relation to their ability with 2009 resources or with 2010 resources to do the job to which they were committed. I also heard concerns being expressed in relation to the possibility of redundancies. I was concerned that the different groups, when making the connection between pay levels and the ability of the States or Jersey, particularly going into difficult times, to maintain adequate staff levels particularly in the light of probable structural deficits of about £60 million a year from 2012. I also think, with regret, that the position on bargaining rights has been completely misunderstood. The allegation really is this; that a firm bargaining position on the part of the S.E.B. of a pay freeze is a denial of bargaining rights. I want to give some examples which, I think, demonstrate that this is not so. For example, if the S.E.B. had operated upon the basis of an opening position of a pay cut of 1 per cent, even though they knew that what they wanted to achieve was a pay freeze, that would be okay. That would be okay because they could start with the position they never intended to end with and then appear to be negotiating up to the position they intended to end with and that would have been okay. Now, frankly, that is a nonsensical state of affairs because if, by being honest right from the start and indicating what your ending position is, you are then going to be accused of denial of collective bargaining rights. The denial of collective bargaining rights has to do with the refusal to accept the representation of unions and other representative groups, not to do with taking a firm position. Just take another example. Is this a denial of bargaining rights? What if the opening position had been to offer 0.1 per cent increase but that had been firmly kept to? Is that a denial of bargaining rights? Presumably upon the basis of the logic of those who attended the meeting it would be. If it was not, that would mean only the magical figure of 0 per cent as a position represented that. If I were the firemen, it is not for me really to advise some of the employees of one of my departments, but if I was a fireman, I would be negotiating upon the basis of a 2 or 3-year deal. That has not been excluded. There is no denial of bargaining rights for a 2-year deal or a 3-year deal with future safeguards of pay particularly knowing that, if anything, we are going to be heading into more choppy, more difficult waters in 2011 and, certainly, in 2012. I also might be wanting to talk to my employers in relation to guarantees of levels of manning. If that truly is their concern, and I accept it is one of their major concerns, why not seek those sorts of things? That has not been denied as part of the collective bargaining process. As there could also be issues in relation to certain other groups, and perhaps this might apply to the manual workers, that the giving up of certain restrictive practices in whatever colour the book may happen to be might be negotiated away in place of getting extra money. That is not being denied as part of the overall process. I would hope that as the whole Island faces the reality of harder financial times, with choices having to be made between further tax increases on the one hand or really deep service cuts on the other hand, I would hope that we could all, and when I say “we”, I mean we all in this House as well as we all in this Island, could be remembering that we are here, ultimately, to work for the public good. Now, I worked as a public servant for more than 18 years. Yes, I happen to be a chief officer and then magistrate but I worked alongside colleagues, many of whom were very, very deeply committed to service of the public. I think we have to recognise that most of our public workers are very deeply committed to providing the services and care about those things. But if we are going to square this circle, this difficulty which we all face, let us try and work at it together. I am very fearful that right at the start of facing the difficulties that we are going to face industrial action and things of that nature which are going to push people into hostile positions and to cease to co-operate and work together. We have to face the facts that we all face hard times. Let us work at these together rather than start fighting each other. The S.E.B. and the Council of Ministers have a very difficult task as do all the Members of this House in the years to come. I, for one, will today be supporting the S.E.B.

1.1.9 Senator S.C. Ferguson:

Deputy Maçon tied the proposition to human resources but I would refer him to the report on the proposition which has tied it very firmly to the concept of a pay freeze. I also, as Members have gathered, went to the Fort Regent meeting. It was not unanimous. I sat at the back so I could see, listen and talk to the people about what was going on. There was, yes, a certain degree of militancy

but, sadly, the comments and rationale applied by Senator Le Marquand never surfaced during the meeting. The Deputy of St. Martin commented that we delegated too much to the States Employment Board. Any executive body is responsible for terms and conditions and the workforce representation, they are fully represented in the negotiations as the S.E.B. and the workforce and they meet. Going back to the proposition, Deputy Southern has blinded us with a plethora of figures but what he has neglected to say is that the conditions and pensions over here are comparable with public sector pensions and conditions in the U.K. and this is a very important part of the public sector in the U.K. In fact, it is causing considerable difficulty over there. The Deputy also seems to think that there is a God-given right to pay increases. Senator Le Marquand has offered alternatives but I am sorry that the Deputy has never worked in the world of commerce, the real world. Most people would prefer to have a job, the security of a job, than have a position where some keep a pay rise and others lose their jobs. The realities of economic life are that pay negotiations depend on a good financial background. It is absolutely correct we are facing a structural deficit, for a start. We have a worsening labour market as well which is to be expected. In the private sector, if there is nothing in the pot for pay rises then that is it, folks. Employees have a number of options but forcing an employer to pay when there is nothing in the pot is unrealistic. In fact, it is so short sighted I am totally amazed. It defies the laws of economic gravity and reality. The Deputy's solution, as he has said on many occasions, is quite simple. Increase taxes to pay for rises and as he has declared before, he believes in big government and high taxes. He talks of employee rights. Well, with rights comes responsibilities. What about the employer's rights? There must be a degree of proportionality. Furthermore, the Deputy says that the pay rise complies with the 3Ts and is pumping money back into the economy. It does not. It may be timely. It may be targeted but it is certainly not temporary. It is an ongoing responsibility *ad infinitum*. As the Chief Minister has said, the Deputy is economical with the truth when he calls this a slap on the wrist. The practice in this House with votes of confidence is that there is a resignation which follows and I ask Members to consider this carefully when they are voting. At the time of the elections last year the question of the economy was much in evidence. The only thing that has changed is that the economy has worsened and we have to think not only in this House, we have to think of the whole Island not just one small part of it. I ask Members to ignore this siren call and reject the proposition.

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

I have to say, whatever the outcome of this debate I am really pleased about one thing and that is that the veneer of rationality and reason which the Minister for Treasury and Resources has certainly put across so well has finally been stripped away to see the real personality above the politics. I think many people listening will say: "The politics of the gutter in his attack on Deputy Southern." Quite disgraceful and I challenge him. We have 6 hours left. If he can come up with any evidence to prove that Deputy Southern has ever said he wished to destroy the finance industry or that the J.D.A. (Jersey Democratic Alliance) has, then come back and give it or else resign because he is a liar.

The Bailiff:

No. No, Deputy.

Deputy T.M. Pitman:

Okay, I will withdraw that for 6 hours, Sir. I apologise.

The Bailiff:

No. No, it is not the 6 hours.

Deputy T.M. Pitman:

Then I withdraw it.

The Bailiff:

What do you withdraw?

Deputy T.M. Pitman:

That he is a liar.

The Bailiff:

Thank you.

Deputy T.M. Pitman:

I will be very, very pleased to see how he can demonstrate his comments. Perhaps that is more eloquently put. But, indeed, yesterday Senator Le Marquand jokingly described headline writers as existing in a parallel universe. I am afraid I have to say that listening to much of what the Chief Minister and certainly the Minister for Treasury and Resources have said today, I can only conclude that they exist in a parallel universe. The Chief Minister's comments about encouraging partnership, well, I am afraid that he and his S.E.B. are going about it in a very strange way. I would also like to know because I must be missing something important here, how he can talk about the offer to mediate. How do you mediate something when nothing is on offer? We talk of envelopes but the envelope is empty, we are told, so this is just word play. This is just semantics. I suggest it is just more spin, as we get so often. I think Deputy Southern and I think the Deputy of St. Mary after him put the case with the statistics, the figures, very, very well. I struggle to see how people can argue with the basis of the points that have been raised by Deputy Southern and it is a shame where, as I say, the personality issue has to be played to try and win a vote, but I suppose I am wising up. I should begin to accept that. That is the way a right-wing Council of Ministers operates and there is, of course, some very honourable exceptions there. I listened to Senator Le Marquand's speech and I have a lot of respect for Senator Le Marquand and he was there, like Deputy Tadier mentioned. A number of us were, sat down the front, not hiding at the back. We are the ones who had to stand there and be put on the spot, so to speak. Senator Le Marquand was quite brave because he, I think mistakenly, mentioned taking a £75,000 pay cut which did not go down very well with the mood of the 1,300 or 1,400 people. But fair play to him. But listening to his speech I have to say, you could really tell that he was lawyer because when he talks about the pay package and how it could be spread over a couple of years I really have to ask, does he not appreciate that, effectively, people would then be playing catch up and that has a lot of very negative connotations and implications. I respect where the Senator is coming from because I think he is an honest and genuine man. But because I think Deputy Southern put his points across so well with his figures, I would really like to focus on the negotiation or lack of because as someone who is now a politician but was formerly involved on the other side, I think I am fairly well placed to offer an opinion and it is, of course, my opinion. But I say it is one echoed by an awful lot of people. The first issue - and there are many which, I think, are interrelated - which comes to my mind is what I see as indisputable evidence of a grossly incompetent understanding of and approach to industrial relations. An incompetence that one, surely, should not expect to find within the Executive of a democratically elected government. This is not the way that we do things or should do things. The second, I am afraid, is what can only be described as, having spoken and listened to many involved and many on that night at Fort Regent, what certainly comes across to people is an appallingly inappropriate arrogance in the way that negotiations, and I do use that term very loosely, have been handled. The third issue, however, and I say this, as I say, both as a politician and someone who used to be involved as a staff representative, is even more damning than the previous 2 and this is, in my opinion and many who have contacted me among the public sector, the folly of adopting a position, in this case imposing a pay freeze and declaring this non-negotiable because, effectively, that is what has been done, declaring that simply because an opportunity presents itself not through any true analysis, not because it is there, not because it is the limit of true affordability, not because there is simply no other workable alternative but because circumstance

happens to present the opportunity, that is a hugely damning state of affairs, in my view. We are still, perhaps, adopting the position that the S.E.B. have and the Council of Ministers, I accept, because the link is unavoidable, simply because the employer in his arrogance and contempt believes that he can. I tell you that is the way certainly 1,000-odd people are thinking, probably more, because as we know, not everyone goes to meetings. Really, the number of people who have contacted me and I have to hold up my hands. I know a lot of people in the public sector and what they are putting across to me makes me think of the saying that sometimes if you kick even the most placid of dogs hard enough it will eventually turn and bite you and from the amount of people who contacted me and from being there at that meeting with 1,300, 1,400 people, whatever was there, I apologise for the analogy but I really think the S.E.B. should probably be getting the tetanus jabs ready because I think they are about to get savaged and they have really brought this upon themselves. I say this with no pleasure or satisfaction but people have simply had enough of what comes across as spin, double standards, bullying, contempt even and, certainly, incompetence. I think it was Deputy Tadier who talked of the threat of strikes, widespread industrial action. I think that is looming. Not just possible but quite probable now. In all my time as a union representative and a staff representative I have never been involved in a strike and I think Members ought to focus on the reality that Jersey has union representatives, staff representatives, who in their sensible commonsense approach would be the envy of anywhere in the western world. Not for Jersey people strikes at the drop of a hat but, as I say, people are saying: "Enough is enough." I think that there are 2 things and 2 things only that can really prevent this escalation and the first is, not surprisingly, getting rid of the States Employment Board who, quite frankly, have proven beyond argument that they possess neither the ability, the commitment or motivation that the role of an employment board demands. But putting aside the spin and the hand wringing and acknowledging that the money is offering a framework for true and genuine negotiation were initially there. They have disappeared. Sleight of hand. Again, it is one thing to come upon a hole. It is another thing to dig it and then claim it just appeared there by magic. Far from a sensible and only option for the States Employment Board in times of economic downturn, a pay freeze, I have to say on this scale is totally illogical. I do not know if any people have been following all the debate in the U.K. about the proposed pay freezes but if you do a little research, and I know some Members do not like to do it or credit that it exists even, but the reality is that if you, effectively, take money out of the economy in a downturn, that only has negative implications for the future. That is a fact. It is a fact. If people want to adopt a head-in-the-sand blind refusal to look reality in the face, that is fine. We are attempting, effectively, to take millions out of the economy by denying that money in the employees' pockets. Not only this, but further research, and I do not think there is many who would dispute this, indicates that if you do follow this route that the S.E.B. is pursuing, then eventually pay claims will be far bigger. Far, far bigger as people attempt to play catch-up, as I have already mentioned. Now, we are not meant to be having the rescindment of the pay freeze debate today so I have tried to avoid going into it too much and I realise that is difficult not to do. Ultimately, I believe we have to rescind that but that debate itself is for another day. What we certainly must do is reopen negotiations as Deputy S. Pitman's proposition is demanding because what has been done, and I have to differ with Senator Le Marquand here, although I have huge respect for him, what has been done in the apparent negotiation has been quite disgraceful. It seems that we have some difficulties if we dismiss the S.E.B. because the Chief Minister has to be the Chair. Well, maybe, as has been mentioned by others, we have to dismiss him and have him back but, definitely, with a much better cross section of Members in this House. We heard what I have to say I thought was scurrilous mention of playing party politics. Well, I am afraid the S.E.B., to me, is based entirely on party politics. It is based on ideology, not reason, not rationale and that, I think, is what we need to get away from. I think we really need to leave the shroud waving aside and get back to the basics of what people are feelings so angry about and that is a fair day's pay for a fair day's work. It is about being able to trust the Government that it will not rely on sleight of hand. Dare I say it, the present situation, the desire to make loyal, hard-working employees pay for the multi-million pound deficit, should I say, brought about by the gross incompetence of certain

key players in both camps. Taxpayers' money. Yes, well it is a fact, is it not, the incinerator contract, Deputy of St. Mary mentioned it. It is relevant. It is highly relevant. The way to protect morale to ensure the greatest productivity is not to insult workers' intelligence with the farce of effectively saying: "Yes, negotiations can take place but there is not any money available to negotiate with." How insulting do we wish to be in apparently supporting our staff? I really do not feel that we, or rather S.E.B. and the Council of Ministers could appear any less professional. If we all leave aside all the theatrics of this shroud waving, I have to ask: "Can the S.E.B. really not see the glaring reality?" That in the bigger picture, and I know we all use that term a lot, industrial action, which I do believe is now almost inevitable without a political sea change, moral is falling through the floor. Productivity that can only go one way, down, will ultimately cost this Island far, far more. That is surely something that we all want to avoid whatever our political leanings. This, of course, as I have said earlier, is without even considering the impact resulting from, effectively, taking money out of the economy. I think Deputy St. Mary and Deputy Southern have said enough on that. In the final analysis, I would suggest that what really must be seen as underlying all of this at the very bottom, unless we get that sea change, is a disregard for the well being of ordinary States employees. I am afraid an almost, I am tempted to say hate, loathing, for the protection and support of these employers provided by the unions. Now, I was a union rep. I have never been involved in a strike. I do not think I have ever made unreasonable demands. Negotiating is a difficult business and I think it is, as Deputy Southern said, about give and take. But it is about both sides coming to the table willing to give and take. You generally come out with a solution which is most often not what either wanted exactly but it is workable and it is acceptable and people get on with things in good faith. I think this loathing for the unions has been festering within Jersey politics for a very long time and it certainly starts a long time before this Council of Ministers. The Minister for Treasury and Resources is shaking his head but he has his opinions. I respect them. I have mine. I have not resorted to the personality politics yet so I am doing okay. Do we need unions? Do we need unions? I think Senator Ozouf probably does not think we do. Well, maybe we could just slide back just a few years when I sat in a negotiation where a States Department attempted to pay one, the only one ethnic minority member who had just qualified, they attempted to pay him £9,000 less than his colleagues. Now, where would he have been without the union? Where would he have been? What did the negotiators, the employers, hang that on? It was age. It was experience. It was despite the fact that his salary that he should have been entitled to was all worked out by Hay, it was there in black and white. No, it was all about age and experience. It was only when I pointed out that about 6 weeks before they had appointed a younger, less experienced employee who admittedly, just by coincidence, was very much whiter, on full salary. This is fact. This is fact. I was there. Is the States a good employer? I think in many instances the States is a very good employer but let us not kid ourselves that they are perfect because we are not. As a States employee representative I have seen more bullying than I could care to mention and without the bolshie union representatives, it would be 10 times worse, let me tell you. If we did not have the unions to negotiate, and that is all they are trying to do, that is all those 1,300 or 1,400 people wanted, well, it could not happen now, could it, but maybe we would see people who stand for election have their contracts broken illegally, confirmed by J.A.C.S. (Jersey Advisory and Conciliatory Service). I wonder what the Chief Minister would say about that. All rubber-stamped by this House, I expect, so that is okay, is it not? "Off you go, peasant." I grow pretty tired of hearing excuses. I think it was Deputy Tadier who mentioned that people do put forward alternatives and they are always dismissed, mocked, laughed at. I talked about progressive taxation the other day. I was told: "How many of these wealthy people do you think live in this Island? It would not come to very much at all." I do not get to talk to many millionaires apart from all my friends in the Council of Ministers, some of them. But I did talk to one, a couple of years ago. He did cross the road to avoid me but ...

The Bailiff:

Sorry, you are not meant to mention under Standing Orders the private affairs of people.

Deputy T.M. Pitman:

I was slipping into the Council of Minister's approach. I am sorry. But I chatted to this gentleman about tax and it was quite interesting because he told me how he was happy to pay a little more. He said he pays for what he does now because of the system, and he is an accountant who is obviously very good, and he said that he could. Nothing wrong with that. He is doing nothing illegal. So I was intrigued and I ask him what he meant by "a little more". I was expecting, you know, £50 or £100. His response: "Oh, not too much. Perhaps £40,000 or £50,000." £40,000 or £50,000. That is one individual. So I think some of these people who dismiss all talk of alternatives really want to wake up and smell the political coffee because those excuses will not last any longer. They have worn thin with States employees who are sick and tired of having their good faith ground into the dirt by people who, frankly, are out of touch and, like them, I am tempted to say: "Just do not care." If we want productivity, if we want higher morale, let us treat people with respect. No one is asking for an arm and a leg. They are asking for money that was there but disappeared. A bit like the park funding disappeared. I will support this because not to do so would be to betray those people and I stood up and, when quizzed at Fort Regent, like a number of other people I voted the right way, anyway, with the pay freeze. I will be supporting it. Deputy Southern has made a very eloquent case and he has been sorely mistreated by certain elements who, again, have to bring in the personality politics. Forget the Council of Ministers as being about policy. It is not. With a few exceptions it is about personality. It is about attacking people because they have no argument. Deputy Southern has made his case. I believe he has won his case and we should accept this so we can all look States employees in the eye.

Senator J.L. Perchard:

I would like to propose the closure of this debate as I believe it to be a waste of Members' time. I say a waste of time because in 2 weeks' time we will have the opportunity to debate the real issue which underpins this debate and that is when we debate P.143, Deputy Shona Pitman's proposition, to rescind the States decision in respect of the 2010 pay freeze. Because this proposition completely misses the target, I propose the closure immediately.

The Bailiff:

Is the closure seconded? If it is not seconded ... it is seconded. **[Seconded]** Then the appel is called for. I shall inform Members, as I know Members like to know, I have at the moment 4 further Members who have indicated to me that they wish to speak. Very well, the matter before the Assembly is the closure motion proposed by Senator Perchard. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 17		CONTRE: 26		ABSTAIN: 0
Senator T.A. Le Sueur		Senator S. Syvret		
Senator P.F.C. Ozouf		Senator A. Breckon		
Senator F.E. Cohen		Senator S.C. Ferguson		
Senator J.L. Perchard		Senator A.J.D. Maclean		
Senator B.I. Le Marquand		Connétable of St. Helier		
Connétable of Trinity		Connétable of St. Lawrence		
Connétable of Grouville		Deputy R.C. Duhamel (S)		
Connétable of St. Brelade		Deputy J.B. Fox (H)		
Connétable of St. Martin		Deputy J.A. Martin (H)		
Connétable of St. Saviour		Deputy G.P. Southern (H)		
Connétable of St. Peter		Deputy of Grouville		
Connétable of St. Mary		Deputy of St. Peter		
Deputy of St. Martin		Deputy J.A. Hilton (H)		
Deputy R.G. Le Hérisier (S)		Deputy of Trinity		
Deputy I.J. Gorst (C)		Deputy S.S.P.A. Power (B)		
Deputy A.E. Jeune (B)		Deputy S. Pitman (H)		

Deputy A.T. Dupré (C)		Deputy K.C. Lewis (S)		
		Deputy of St. John		
		Deputy M. Tadier (B)		
		Deputy T.M. Pitman (H)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy M.R. Higgins (H)		
		Deputy A.K.F. Green (H)		
		Deputy D. De Sousa (H)		
		Deputy J.M. Maçon (S)		

The Bailiff:

Very well, then the debate continues and I saw next the Deputy of Trinity.

1.1.11 Deputy A.E. Pryke of Trinity:

In my ministry I have the largest workforce of over 2,500 employees and I have a duty of care to every single one of them. I value every member of that workforce. As in any organisation, it is a team effort but I am also very much aware of the pressures that some of the staff are under, especially the nurses and the doctors. But I am very pleased too that the Council of Ministers and this Assembly supported the extra funding for more nurses and medical staff in the Business Plan and that was a very positive step. I also have a responsibility to take the wider picture and the States Employment Board and the Council of Ministers brought the proposal for a pay freeze to this House which was overwhelmingly approved. We are in a very different economic climate. The situation has changed over the last year and there are and will be great financial pressures as we go ahead into 2010 and beyond. I have met with unions, have full, open discussions with them about raising nursing staff levels, pay and conditions and as it has been said, the morale was low but I can tell you after the Business Plan approved the extra funding, I walked around most of those wards talking to the nurses and the doctors and they saw that as a very, very positive move. The dialogue with the unions is always open and that is vital. My Business Plan this year was very difficult and it was very painful but I am pleased to say that there were no compulsory redundancies. In answer to a written question that Deputy Southern asked about the recruitment of nurses, and I quote from my answer: "That the size of nurse recruitment and retention problems and possible solutions will be actively working together with the unions." It is a complicated matter involving issues concerning working conditions, staffing levels, accommodation standards, cost of living, childcare, recruitment methods, pay and conditions of service. It is not just one issue and with the unions I will be taking back a paper to the States Employment Board to look after. The States Employment Board took that right decision. It was a time to inform unions on where we were. If they did not, it would be seen as being wrong and irresponsible. I strongly support the States Employment Board and, as they have said, as the Chief Minister said, of looking forward a way of how we can, with negotiations, take this forward. It is, as I finish, the message that is difficult and that is what we have to contend with.

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

Much of what I was going to say has already been said and articulated far better than I could by Senator Le Marquand. However, I would like to pull out a couple of things. I was pleased to hear from the Minister for Treasury and Resources talking about positive engagement with the staff because I think this is one of the issues where the Employment Board could do better. I will not be supporting the proposition because I think the Employment Board were carrying out the wishes of this Assembly which was clearly articulated in the pay award and I regret that we are going to go through the whole thing again in the near future. But my advice to the States Employment Board is this. They do value the unions and I have seen that very clearly in my time as an employee and my time sitting on the Joint Council. So the unions are a valuable part of the workforce and, indeed, essential when coming to negotiate pay awards and terms and conditions. As the Minister for

Health and Social Services said, terms and conditions are about the whole package, not just the pay award. I have had many phone calls and I would say that half of them are saying they are very disgruntled about not having a pay award and probably half of those more disgruntled about not being heard rather than not having a pay award. The other half are very grateful to be in secure employment and want to continue to support their management and deliver the services that they promise to deliver, that they are paid to deliver. But my advice to the Employment Board is this. The trade unions are a very good body to negotiate with but we must stop communicating through the trade unions. We must start to communicate directly with our own staff. If there was to be no pay award as agreed, a letter should have gone, I would suggest, to every member of staff from the Chief Minister explaining why. We should not allow a third party to tell the staff why. I will not support this proposition but we must communicate better. We see at meetings of unions when we hear it was unanimous. Sometimes it is only 20 per cent or 10 per cent of the workforce. Yes, they need to be heard but so do the rest of the staff and we have to start to negotiate through the union and communicate with every member of our staff and that is where I think we have gone wrong.

1.1.13 Senator S. Syvret:

I was interested to hear Deputy Pitman, former public sector employee and a union rep refer to the amount of bullying that takes place in the public sector. Certainly, I would agree with him. That chimes entirely with my experience which is why I thought it rather ironic a few weeks ago to hear and see the States Employment Board attempting to use allegations of bullying against me and probably other Members, too, anyone who dares to criticise and question the very senior top tier of the civil service and any Back-Bencher who is doing their job, what we are here for, fulfilling their duty as seeking to hold to the Executive in the public sector properly to account on behalf of taxpayers. But the bullying question is quite fascinating and it is just one of the reasons why I will be supporting this proposition. The fact is, the States Employment Board is grossly defective in many, many areas. The prime focus of this debate has been about the pay question but, frankly, even if it were not for the pay question there are many other grounds on which we can look at the practices, habits and standards of public sector employment management in Jersey and see what an unmitigated mess and disaster it is. I could not count the number of members of staff I know of a variety of grades who have been bullied, intimidated, silenced, denied promotions, passed over for promotions, usually because they have been trying to do their job properly and ethically. For example, regulate in the appropriate area and this has made life difficult for more senior colleagues or more senior colleagues in other departments. People have been, effectively, engineered out of their jobs; have, effectively had their careers stopped, and found their prospects of a decent and ethical career and their opportunities to do their job properly and fairly and ethically and well have been stopped by a kind of stagnation within the upper reaches of the civil service. I suppose it is best described as a case of being in with the in crowd. There is an in crowd responsible for the very upper tier or 2 of the civil service and woe betide any employee who is not in with that in crowd. You rock the boat, you do not play the game, you go against them and, boy, do you catch it in the neck in ways that can be life changing. Any competent Employment Board would have dealt with these issues, would have crushed this culture a long, long time ago but it failed to do so. We have seen, for example, a number of prominent examples. The social worker who I supported who was, basically, sacked from his job for telling the truth and for trying to stop what was a manifestly criminal policy that had been pursued by the States of Jersey for many, many years. A policy that involved taking already damaged and messed up, vulnerable young people and doing things like holding them in solitary confinement. I thought the case that came to my attention at that time, particularly, of a 2 month period in solitary confinement, 2 months, was horrifying enough. My investigations subsequently and my networking and my speaking with other of these victims, the victims of this monstrous abuse, I discovered one young man who was kept in solitary confinement for 9 months. Nine months. Now, it is a criminal offence to do that. Jersey is breaching its international convention obligations by behaving in that way. The punitive and coercive use of solitary confinement is classified as torture and we are supposed to recognise that fact. It would be

illegal to treat adults in that way yet here we were, blithely and casually doing it for years. The conscientious employee who tried to stop it was sacked and the man who was responsible for driving his sacking, notwithstanding the fact that a variety of these malfeasances were exposed in the subsequent Employment Tribunal, was suspended for merely a few weeks and was given his job back and he is still back managing the unit. That is an example of what I mean by being in with the in crowd. Now, what kind of competent Employment Board would enable that man to return to work having been demonstrated and evidenced in our judicial environment of having behaved utterly reprehensibly, allowing him back to work after a few weeks of suspension. Yes, we have the Chief Officer of the States of Jersey Police Force suspended on bizarre and perverse grounds for this length of time. There is a prominent local medical consultant who was likewise suspended. Going on and on and on for months and months and months. A couple of years, I think in that case. What kind of competent Employment Board and what kind of competent officers employed by that Employment Board can possibly allow this kind of culture and these kinds of practices to persist as they do? The answer is no competent organisation could which is why there can be, frankly, on any intellectual and objective basis, no confidence in this Employment Board. For example, the Chief Executive to the Council of Ministers is the Chief Officer or whatever the phraseology may be of the States Employment Board. He is head of the paid service. This is the man who, at the very top of the civil service, responsible for running the public sector, conducts things like the suspension meeting against the Chief of Police without giving proper notice, without following due process, without following the correct procedure and then shreds and destroys the notes afterwards, before they can be verified by everyone present. And we are supposed to imagine that this Employment Board and this officer is competent? I am sorry. Not remotely. Then we have the example which, likewise, has been very well documented and explored in the Court and, subsequently in this Assembly, of the death of a patient in the hospital. Senior employees there have been proven have been evidenced, who have engaged in a cover up, who have manufactured post-event file notes in order to cover up the errors and the mistakes they have made. We know that these employees did this. It is evidenced. We know because we have looked at the evidence here that the events which lead up to that tragic death of that patient were a cascade of gross high level management errors. Clinical governance failures, reporting failures, H.R. failures. It is all there, obvious, crystal clear. It is evidenced. It is proven. What action has the Employment Board taken against these senior managers who, basically, were responsible for the death of a person, then tried to cover it up and then, as is well documented and it is not often that I am in the same camp as the *Jersey Evening Post* and then all lied to the *Jersey Evening Post* about it. Where are the suspensions? Of course, we are quite happy to suspend the Chief Officer of the States of Jersey Police Force, the medical consultant, people like the social worker and a whole variety of others, often on the most spurious and nonsensical and manifestly ridiculous grounds. Yet time and time again we see senior employees who are in with the in crowd, basically, toe the establishment line and a part of the system, they get a completely different treatment even though, as in many of the cases I have referred to, there are well evidenced examples of gross malfeasance against them. Now, this Employment Board is simply abusing the public interest in not dealing adequately with these issues. It is not fair. It is not efficient. It is not effective. It is not competent. It is not cost effective. It is not giving the taxpaying public value for money. The culture we have in the upper tiers of the public sector, I am afraid, is simply unethical and unreliable in terms of the public interest. I will just conclude by giving one other example which I became very, very aware of and this was one of the syndromes I began to become aware of very, very early in 2007, which I explored in great detail and came across a wide variety of examples and that is where employees were discovered, in some places for example having child porn on their computers. In one case, at one of the children's homes, having an improper relationship with a young girl; a teenage girl and in many of these instances the attitude, the approach of the management at the time, when these things came to their notice was to call the employee in question into the office and say: "Well, look this is very, very serious. Do you understand the gravity of these issues? Your reputation will be destroyed and you could go to prison for this kind of thing. We cannot possibly have this but look,

tell you what we will do; resign immediately, just leave the Island; go away and we will say no more about it, okay?" That is what happened. There are many examples where the police were not called, people who were child abusers were basically allowed to walk and go off into other possible work in Jersey because, in several cases, off to other jurisdictions and continue practicing elsewhere because they were not dealt with properly and appropriately. They were not referred to the law, they were not sacked, these were not put on their employment records and consequently, as a result of this: "Oh, anything for a quiet life; let us just sweep it under the carpet" attitude you find in the senior management, these people are now still out there, still posing a danger to vulnerable young people somewhere else. There is no doubt about it; the upper levels of the public service sector, the very highest tiers of the civil service are profoundly dysfunctional. They are out of control and acting in ways that are simply diametrically counter to the public good and this is not a new phenomena; it appears to have persisted for years and years and years. There is no evidence at all that this Chief Minister, this Council of Ministers, the Chief Executive to the Council of Ministers and this Employment Board are remotely even capable of beginning to grasp the true nature and magnitude of these issues, let alone properly address them in the name of the public good. I will certainly be supporting the proposition.

1.1.14 The Deputy of St. John:

As required earlier on, I must say that I will declare an interest that some of my family work within the States. I will say that I attended the meeting at Fort Regent and the feelings were running high against the Employment Board, which is obviously to be expected, given the Minister and the majority of the House were not willing to help people by giving them the £400 per year pay rise that I had brought to the House on a proposition which could have helped many of those people at the very bottom end, that is why I pegged it at £400 per annum but the Members here did not seem, or the majority were not willing to support it. Yet we see in questions answered yesterday on W.E.B. (Waterfront Enterprise Board) and in response to a question that I put to the Chief Minister, that the approximately 20 staff employed within that private company, as we are told by the Minister, which is wholly owned by the States of Jersey, could be sharing something in the region of £140,000 wage increase this coming year, yet we are told that in the private sector. That to me is very odd, it is very odd. Only yesterday I was listening to one of the shadow members of the Conservative Party explaining a pay freeze that they were going to put in place, if elected, next year in the United Kingdom. A pay freeze - and it is a shame that the Minister for Treasury and Resources is not here - a pay freeze that would in fact affect everybody except those people on an income of X, and I think the X figure was £18,000, and it is a shame that the Minister is not here because I think if our Minister had looked at doing something similar, of course our cost of living is somewhat higher in Jersey so that figure could have been raised £1,000 or £2,000, I am sure it would have been far more acceptable to Members of this Chamber than going for a total pay freeze across the board to everybody. It is a shame that even now at this late stage he has not even given that consideration because I was trying to help the people at the bottom end because a pint of milk costs the same to somebody earning £200,000 a year and somebody earning £15,000 or £20,000 a year but therefore that was not to be. That was not to be but I sincerely hope that common sense will come to play over the next 18 months when negotiations are taking place because there is an old saying: "Jaw, jaw and more jaw will get you far further than war" and therefore I sincerely hope that the Chief Minister and the Minister for Treasury and Resources and all of the States Employment Board do a lot more talking, as was said earlier by Deputy Green. Talk to the people; not necessarily to their unions. Go and talk to all the Ministers, go and talk to your staff because, at the end of the day, they are the people who are doing what is right for this Island. We have to do what is right by the people we employ and I hope, I sincerely hope that all of you here this morning - I am not 100 per cent sure how I am going to vote because at the end of the day I have respect for each Member in this Chamber and they will have come to their decisions using the feelings on that particular day. But, at the same time, remember we owe something to all of our employees,

whether in the private or public sector, whether we employ them through a private company called W.E.B. or whether we employ them directly through the States Employment Board. Thank you.

The Bailiff:

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

1.1.15 Deputy G.P. Southern:

I shall try and tailor my reply to the 4 and half minutes that remain because I know that it is inevitably fatal to get between a States Member and his lunch, whether free or not. So, where are we? Right, we are in a sad place. Relationships with our employees ...

The Bailiff:

Deputy, I am so sorry, I am just going to interrupt because the Deputy has reminded me of the Standing Order about where there is a motion of no confidence, a person has a second right to speak but I do not think it applies on this particular occasion because the Standing Order as it is specified refers to committees and panels set up by the States and this is not, so I think the Chief Minister is not going to have a second go.

Senator T.A. Le Sueur:

It does not matter because I was going to say I waive my right to reply in an effort to try and finish before lunch.

The Bailiff:

Sorry, Deputy but I just wanted to clarify that matter.

Deputy G.P. Southern:

Rightio; 3 minutes. It is good practice for the election time, is it not? Where are we? We are in a sad place because relationships have undoubtedly broken down with our employees; 1,400 or 1,500 people at a mass meeting expressed their dissatisfaction, expressed their lack of confidence in the States Employment Board, in their employers. We are at an unprecedented position and it matters not whether we have still got the opportunity to go to mediation or whatever, in between times where teachers; a conservative element on this Island, reluctant in any way to take action, have decided to go to ballot to take action which might include strike action and that many sectors are considering this. How have we got here? How have we got here? We have got here, we are told, it is the responsibility; there is a lot of use of the words "responsible decisions" and "our responsibility". The fact is that this Chamber put the money into that budget to pay for a pay rise. That is the decision we took. The States Employment Board and then the Council of Ministers took the decision to take that out, to bring it back to us in order to take it out, never discussed the principle back on 23rd March: "We are going to impose a pay freeze." Did they bring that, in principle, to this House? They did not. We have a breakdown in communications; we have got a breakdown in trust and faith in ourselves as employers. Now, we have heard plenty of fine words. We have heard the Minister for Treasury and Resources say very forcefully: "I care about the public sector workforce" and we have had the Constable of St. Brelade with the very most ... fine words: "Respect and value our workforce by imposing a pay freeze; an arbitrary and unilateral pay freeze; nothing to debate, nothing to discuss." We are encouraged by Senator Le Marquand: "Oh yes, there are many ways around negotiation. You can talk about a 2 to 3-year deal; with a 2 to 3-year deal you can attempt to play catch-up." That is inevitable. You can talk about productivity. Well, let us talk about productivity. Right, put it in in return for only having a zero cap, you will have, let us say, larger class sizes or in nursing; right, we will increase the productivity of the beds. We will increase the throughput. No, that is a nonsense. It does not work. You have got to have something on offer to make productivity deals work and we have got nothing on offer. We are told we are communicating. Deputy Green said: "Why do we not communicate properly the reasons why?" Because the reasons why are economic and political nonsense. They do not work in times

of recession. We should be putting this money in peoples' pockets and that is what they resent. We are told that the March figure for 2009 of the R.P.I. has come down to 2.1 per cent; 1.9 per cent of which is applicable to G.S.T. and we cannot possibly give any money towards that because it is repaying G.S.T. back. No; listen to the teachers last night who said teachers are suffering from 20 means 20. We have not only taken G.S.T. out of their pockets; we have taken 20 means 20 out of their pockets. That is why they are suffering and their costs are still going up and that is what they are miffed about. As Deputy Green said, half of the people are miffed that they have not gotten a pay rise. Half of the people are extremely disgruntled at the way they have been treated. That is the issue. So, in their treatment of the public sector, we have ruined all faith and trust in us as employers in persuading the public sector that it is right and proper that they should take a pay freeze, we have failed to communicate it; the States Employment Board has failed to communicate it and has failed to communicate properly with us, giving us partial and distorted figures in order to persuade us that it makes sense to impose a pay freeze. Now, as far as I am concerned and as a Member said, that is not the only failing in the States Employment Board and Deputy Maçon is going to support this because of other reasons not elucidated by me. I believe that, given the constitution that we have got, we can either - and I will consider it if the Deputy of St. Martin does not do it - bringing forward some means to make the States Employment Board more representative, changing its constitution in order to better deal with our employer relations but, in that absence, the only measure we can do is say to the Chief Minister: "Go back, rethink, support this motion of no confidence and go back and think about your policies. We reject the approach, we reject the way you have handled things. We have no confidence in the States Employment Board" and I urge Members to support this proposition.

The Bailiff:

The appel is called for then in relation to the proposition of Deputy Southern, projet 142; the vote of no confidence in the States Employment Board. I invite Members to return to their seats and the Greffier will open the voting. Have all Members had an opportunity of voting? The Greffier will close the voting.

POUR: 11		CONTRE: 35		ABSTAIN: 0
Senator S. Syvret		Senator T.A. Le Sueur		
Senator A. Breckon		Senator P.F.C. Ozouf		
Deputy G.P. Southern (H)		Senator B.E. Shenton		
Deputy P.V.F. Le Claire (H)		Senator F.E. Cohen		
Deputy S. Pitman (H)		Senator S.C. Ferguson		
Deputy M. Tadier (B)		Senator A.J.D. Maclean		
Deputy of St. Mary		Senator B.I. Le Marquand		
Deputy T.M. Pitman (H)		Connétable of St. Ouen		
Deputy M.R. Higgins (H)		Connétable of St. Helier		
Deputy D. De Sousa (H)		Connétable of Trinity		
Deputy J.M. Maçon (S)		Connétable of Grouville		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. John		
		Connétable of St. Saviour		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Deputy R.C. Duhamel (S)		
		Deputy of St. Martin		
		Deputy R.G. Le Hérisier (S)		
		Deputy J.B. Fox (H)		
		Deputy J.A. Martin (H)		

	Deputy of Grouville		
	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 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 A.K.F. Green (H)		

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

The adjournment is proposed and therefore we will reconvene at 2.15 p.m.

LUNCHEON ADJOURNMENT

2. Draft Marriage and Civil Status (Amendment No. 3) (Jersey) Law 200- (P.123/2009)

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

The States are not yet quorate. Could some more Members please return? Right, the States now move on to the Draft Marriage and Civil Status (Amendment No. 3) (Jersey) Law 200-, and I ask the Greffier to read the citation.

The Assistant Greffier of the States:

Draft Marriage and Civil Status (Amendment No. 3) (Jersey) Law 200-: a law to amend further the Marriage and Civil Status (Jersey) Law 2001. The States, subject to the sanction of her Most Excellent Majesty and Council have adopted the following law.

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

This is a small amendment to improve on the amendments to the law which was passed in July 2008. That amendment allowed the natural parents of a child born outside of marriage to amend the birth certificate of the child by changing the surname. It was later realised and the Deputy of St. Martin deserves some credit here, that if the mother had included the father's surname in the original name, such as Richard Le Marquand Smith, then a later change of name to Richard Le Marquand Le Marquand was ridiculous and all [**Aside**] ... too many Le Marquands, quite right, yes, and also rather gave away what had happened. It is my understanding that changes which are allowed under the previous amendments and under this are practically back-dated to the date of birth. However, changes can only be made while the child is a minor. Now, this amendment allows not only the change of surname but, in addition to that, the change of 4 names as well so that the child could become, by the dropping of the first Le Marquand, Richard Le Marquand. It also allows the addition of 4 names so the child might be unlucky to end up as Richard Ian Le Marquand [**Laughter**] or if the Richard was also omitted, something even worse. [**Laughter**] I commend this small amendment to Members. There are some procedural issues which I will deal with later under the detailed discussion but I commend the principle.

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

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles? The Deputy of St. Martin.

2.1.1 The Deputy of St. Martin:

I am grateful to the Minister for Home Affairs. It just goes to show what a change of a Minister for Home Affairs can do because last July I brought 6 amendments and in fact one was so, so important and it just got through by one. That was to allow the father of a child to have their name or the child named after him rather than the mother and to get that through won but the opposition one had about these particular amendments, and this particular one would have been passed but the Minister for Home Affairs rejected it because she felt it had to have a second part to it, which we have now got, and I have been pressing since last July and I am grateful to the current Minister to bring this back to right a wrong because basically it is going to make things so much easier for people who choose by their own volition not to get married. They do not have to in law but what it will do now, this piece of law or legislation will help so many people who voluntarily decide they do not wish to marry and they wish to name their child after the parents of their own choice. So I would commend this to Members and ask that we do accept it. Thank you.

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

Does any other Member wish to speak on the principles? Very well, we move to the Articles. Sorry, before we go on to that I need to ask whether Scrutiny would like to review this particular piece of legislation. Deputy Le Hérisier?

Deputy R.G. Le Hérisier (Chairman, Education and Home Affairs Scrutiny Panel):

No, Ma'am.

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

We pass on to the Articles. How do you wish to take the Articles? Together? [Aside] I beg your pardon. Would Members kindly show whether they wish to vote in favour of the principles, please? Do you wish the appel? If all Members who are in the precincts would return to their seats? An appel has been called for and I ask the Greffier to open the voting.

POUR: 33		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
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 D. De Sousa (H)				
Deputy J.M. Maçon (S)				

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

We pass on to the Articles.

2.2 Senator B.I. Le Marquand:

Yes, I am going to go into some slight detail but as quickly as I can. Article 1 is simply a matter of interpretation referring back to the original law. Article 2 amends the existing Article 59A which was inserted last year and which gives the right to register or reregister the name of the children and it does say, in the way that I have already described, by allowing either the removal or the addition of 4 names in order to get around the difficulty. You will note that there is a sub-paragraph (3B) which makes reference to paragraph (3). Paragraph (3) of the original law is the procedure by which, in a case such as this, both parents, both natural parents would need to consent to this change. Then we come to Article 3, which is the amendment to schedule 2A. This appears to be repetitive. The reason it is repetitive is that it essentially deals with situations of back-dating where changes took place earlier and so it appears in 2 different forms but has the same effect in both forms. Finally, I come to the major confession, which I have to make, which is that Article 4 is wrongly numbered. We have 2 Article 3s; I do not know if it is possible sur le champ as it is an obvious mistake to amend.

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

It will be picked up, Senator.

Senator B.I. Le Marquand:

Yes, okay, so there it is. It simply gives effect in the ways that I have indicated before and, finally, the citation which indicates that the amendment will come into force 7 days after it was registered, which means registered in the Royal Court.

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

Does any Member wish to speak on the Articles? No? Do you wish to reply then, Senator? You would like an appel, Senator? Okay, again, I would call any Members who are in the precincts who wish to vote on the Articles to return to their place and I ask the Greffier to open the voting.

POUR: 33		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				

Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
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 T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

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

Moving on to the Third Reading.

2.3 Senator B.I. Le Marquand:

I would like to take the Third Reading. I do not think it is necessary to say anything further than I have said already.

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

Does any Member wish to speak on the Third Reading? Very well, I ask the Greffier, as a standing vote this time, perhaps. You would like to speak, Deputy? The Deputy of St. John.

2.3.1 The Deputy of St. John:

I would like to say how much of a breath of fresh air it is to find a Minister who in fact is willing to work with the Back-Benchers, as Senator Le Marquand is. It is a breath of fresh air in this Chamber. [Approbation] In saying that, I would ask for the appel and I was that Member who did not vote in the first because I thought it was going to be a standing vote but with that I ask for the appel on this one.

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

An appel has been called for. I would ask the Greffier to open the voting again, please.

POUR: 37		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				

Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

3. Draft Public Employees (Contributory Retirement Scheme) (General) (Amendment No. 10) (Jersey) 200- (P.126/2009)

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

Moving on to the next item, it is the Draft Public Employees (Contributory Retirement Scheme) (General) (Amendment No. 10) (Jersey) 200- , in the name of the Chief Minister and I ask the Greffier to read the citation.

The Assistant Greffier of the States:

Draft Public Employees (Contributory Retirement Scheme) (General) (Amendment No. 10) (Jersey) 200-: the States, in pursuance of Articles 2, 3 and 4 of the Public Employees (Retirement) (Jersey) 1967 have made the following regulations.

Deputy A.K.F. Green:

Could I just declare an interest as I will be a recipient of this pension scheme?

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

Do you intend to withdraw? I think that would be wise.

Deputy J.B. Fox of St. Helier:

Likewise for me, I receive a pension from this so I probably need to withdraw as well.

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

You also withdraw? Thank you.

Connétable J.M. Refault of St. Peter:

I have the same problem. I have just realised that I have the same problem and I am also in receipt of a pension or will be when I am 60.

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

So you are withdrawing also?

The Connétable of St. Peter:

I think I should, yes.

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

Is this absolutely necessary? Is this affecting existing employees?

Senator T.A. Le Sueur:

No, it is really to do with the admitted bodies, which are not ...

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

I do beg your pardon. Therefore, if it is not ...

Senator T.A. Le Sueur:

In fact, none of the people who have withdrawn, I would have thought, unless they have an interest in admitted bodies, need to withdraw.

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

Okay, in which case it was Deputy Green and Deputy Fox who are not involved as admitted bodies, then they may return to the Chamber and resume their seats.

Deputy I.J. Gorst of St. Clement:

Could I just declare that my wife is a Member of this scheme however, as you have rightly ruled, I do not believe that this directly affects her membership of that scheme. Thank you.

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

Thank you. The Chief Minister.

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

As I was saying, I would like the Assistant Minister; Deputy Le Fondré to act as rapporteur for this item.

3.1 Deputy J.A.N. Le Fondré of St. Lawrence (Assistant Minister, Chief Minister's Department - rapporteur):

I shall try and keep this as short as possible, I think, after the days and weeks we have had so far. The Chief Minister is promoting amendments to P.E.C.R.S., also referred to as "peckers", which is the Public Employees Contributory Retirement Scheme, to the general regulations. The amendments relate to Regulation 9, which provides the Chief Minister with the power to extend membership of P.E.C.R.S. to employers other than the States in principle employer. The objective of the amendments is to clarify obligations of admitted body employers to P.E.C.R.S., particularly in the areas of payments of contributions and provisions of membership data. The amendments have been redrafted as a result of various recommendations by the scheme's former external auditors; PricewaterhouseCoopers and in addition have been picked up by independent actuaries; Watson Wyatt in their review undertaken in 2004, which is also widened to include an obligation on admitted bodies to provide the necessary membership data in a timely fashion in order to ensure effective administration. Various individuals including the Attorney General, the P.E.C.R.S. Committee of Management and the Public Employees Pension Scheme Joint Negotiating Group all support the need for the detailed regulations being brought in in respect of the admitted bodies in

order to protect all parties concerned. The short and summary version of that is it clarifies a variety of areas to do with payments and documentation that need to be provided by admitted bodies. I hope I can keep it at that point and I would like to move the principles of the regulation.

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

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

3.1.1 Senator J.L. Perchard:

Just to ask a question; I must confess I had not read the detail of the report. I just want to ask a question of the rapporteur as to why he feels or why the Council of Ministers feel somebody who is not employed by the States should be entitled to be a member of the Public Employees Retirement Scheme?

3.1.2 Deputy R.G. Le Hérissier:

I am a member of another scheme; the education one. I wonder if the Assistant or the rapporteur could talk to the issue, building on Senator Perchard's point, when they come to the scheme do they come with their financial situation totally secure and under what conditions, as there appears to be this option here, under what conditions are they expected to carry a burden of the debt that was transferred to the scheme, because surely if they are coming to the scheme and it is their view that the debt was no business of theirs and it was not in any sense incurred by them, why should they contribute to resolving that particular issue? We have had, as the Assistant Minister well knows, a case where we have taken big debts into the broader scheme with consequences that we still live with. Thank you, Ma'am.

3.1.3 The Connétable of St. Helier:

I also need to declare a very, very small amount somewhere in the scheme from the days when I taught for the States. I am surprised by the brevity, and it is good in a way from the rapporteur, but the extreme brevity of his introductory remarks, given that we all know that the scheme, this particular scheme has enormous liabilities and I believe the last paper I saw, in fact I think a newsletter has just been issued to teachers which indicates a deficit in the scheme of many million pounds.

Deputy J.A.N. Le Fondré:

I will sit down again in a minute but just to clarify this has nothing to do with the J.T.S.F. (Jersey Teachers Superannuation Fund); the teachers' scheme; this is to do with the P.E.C.R.S.

The Connétable of St. Helier:

I think the point I am making applies far more to this scheme and I think it would be good if the rapporteur could tell us in his summing up on the principle, at what state this scheme currently is in in terms of the under-funding of it. We are talking about huge sums of money and what steps ... I am particularly interested to know what steps the Council of Ministers are taking to do something about the fact that we offer final salary pensions in a world where most or many companies and many public sector organisations are seeking to move to a defined contribution scheme? The last time I attempted to, some would say, trail blaze this particular subject at a Parish Assembly, I was criticized by a Deputy, who is not in the House at the moment, but I was criticized by a Deputy for not allowing the States to lead on this matter and for expecting the Parish to go it alone. But, clearly both ratepayers, where there are members in this particular scheme, our ratepayers in St. Helier pay a significant amount of their rates towards meeting some of these liabilities and of course we are making no provisions for the massive under-funding of the scheme as we go into the future. So, it does seem to me odd that the Council of Ministers appears to be tinkering. I can see the desire to get more people into the scheme because that, in a way, will help bring in more income to it, but what is the Council of Ministers doing about the pension problem that other firms and other public sector organisations are dealing with and when can we expect to have an update on

that or even, you know, when can we expect to see the consultation? Of course I am not talking about existing employees and I was not when I brought it to the Parish Assembly last year. We are talking about new employees coming into a scheme and rolling this liability forward into the future. What is the Council of Ministers doing about it?

3.1.4 Senator S.C. Ferguson:

I wonder if we can return to the actual proposition we are discussing, Ma'am? Well, I could go on to say that the background and rationale of the pension funds is covered extremely ably by the Auditor General in his reports a couple of years ago but, the thing is, these particular amendments are amending Regulation 9 and are providing conditions. I just wondered, being a bit suspicious, if there had been problems, which is why the amendments have been brought. Is it, you know, very often you do not realise you have got problems until you try and expand or you undertake a process perhaps to expand the scheme and you find problems in that particular process, and I wondered if something had occurred which caused this to need to be done? Perhaps the rapporteur could put my mind at rest?

3.1.5 Senator T.A. Le Sueur:

I hasten to reassure the Constable of St. Helier and others that this is not an arrangement to incite or encourage other people to apply for admitted body membership; this is in fact to clarify the position in respect of existing admitted bodies, of which I believe the Parish of St. Helier is one. What has been shown up and found since 2004 is that there is a degree of uncertainty which needs to be clarified. It has taken this long in conjunction with discussions with all sorts of bodies who have interests more direct in this in order to rectify the shortcomings or uncertainties in the present scheme. So, this amendment goes no more than that. This is not a root and branch review of the P.E.C.R.S.; it is certainly not an encouragement to provide for more admitted bodies. Indeed, the policy is generally to try to resist the urge to add admitted bodies to the scheme and keep it simply for public sector employees but there will be occasional situations where bodies, where individuals employed by the States previously have now become employees of bodies not directly employed by the States. In those sorts of situations, provided that the debt is properly funded and that is one of the conditions for admitted membership, provided that debt is properly funded and continues to be properly funded and acknowledged by the parties concerned, then it is only right that those employees that we originally took on and worked for us should continue to have that entitlement. I stress that this is not an extension of the scheme; it is simply a clarification of the existing situation.

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

Does any Member wish to speak? Then I will ask Deputy Le Fondré to reply on the principles.

3.1.6 Deputy J.A.N. Le Fondré:

I think the Chief Minister has probably answered a number of the questions, in particular I think in relation to the position of the scheme and future reviews and that type of stuff I think may have become more of the domain under the debate that Senator Shenton has coming forward in November, and I think that is when we will have to reserve our comments until that point. The Chief Minister has also referred to Senator Perchard's queries about admitted bodies into the scheme, in other words non-employees of the States, but effectively they were previously employees of the States in general terms, or of the wider public authorities that we have. Again, to reiterate the point made by Senator Ferguson is that this is a relatively technical amendment. It is to do with data and documentation clarifying things and comes out predominantly as a result of the review in 2004; it is not a significant change to the situation. I think I will stop there on the comments, Ma'am.

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

The principles are proposed, those Members in favour kindly show and against? The principles are adopted. The Corporate Services Scrutiny Panel is the panel I expect would be involved?

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

No, thank you, Ma'am.

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

Very well, we move to the Articles and it is Deputy Le Fondré again. Would you like to propose the Articles?

Deputy J.A.N. Le Fondré:

Is it possible, I do not know if Members have queried whether we can just move them *en bloc*, Ma'am?

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

That is a matter for you. Does any other Member wish them to be taken separately? Very well, if you would like to propose them *en bloc*. Are they seconded? [**Seconded**] Does any Member wish to speak on the Articles? Very well, would Members kindly show if they are in favour of the Articles? Those against? The Articles are adopted. Would you propose the Regulation in Third Reading, please? Are they seconded in Third Reading? [**Seconded**] Would any Member like to speak in Third Reading? Very well, those Members voting in favour? An appel has been called for. The appel has been called for on the Draft Public Employees (Amendment No. 10) Regulations Third Reading and I call Members to return to their seats. The Greffier will open the voting.

POUR: 38		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F.C. Ozouf				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
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 S. Pitman (H)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				

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

4. Draft Road Traffic (No. 59) (Jersey) Regulations 200- (P.128/2009)

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

We pass now to the next item which is the Draft Road Traffic (No.59) (Jersey) Regulations 200- and I ask the Greffier to read the citation.

The Assistant Greffier of the States:

Draft Road Traffic (No.59) (Jersey) Regulations 200-: the States, in pursuance of Order in Council of 26th December 1851 on Article 92 of the Road Traffic (Jersey) Law 1956 have made the following regulations.

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

This is in the name of the Minister for Home Affairs and I ask Senator Le Marquand.

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

I feel rather at home this afternoon because here is my old stomping ground; the Road Traffic (Jersey) Law. One of the peculiarities of that law is that the States have the power by regulations to make changes to the law and so today we are looking at regulations which will have exactly that effect of inserting some new paragraphs in the law and making amendments. This looks quite ferocious but is not that difficult at all once I have explained it to the Members. The amendment has been provoked by a number of cases in which a person involved in an accident, this is drink-drive legislation, of course, which a person involved in an accident has been unconscious due to injury and therefore unable to consent the taking of a sample in a case in which there was good reason to suspect that they had been driving with excess alcohol in their body. Although the law looks complicated it is in fact simple once its central purpose is understood. There are a number of major amendments and I am going to just touch on those so that Members will understand what it is about. First of all, amendments to Article 26; Article 26 of the main law is causing death by careless driving when under the influence of drink or drugs and there is a provision, an amendment there so that a person who is unable to consent at the time can nevertheless be potentially convicted of that offence if the correct procedure is followed through. There is a new Article 30A to give a police officer the right to ask a doctor, which, in practise, means a police doctor, to take a sample where certain conditions are fulfilled. Subsequently, with a new Article 30B a police officer may require the person from whom the sample was taken to consent to the sample being tested and an unreasonable refusal gives rise to an offence similar to the offence of failing to provide a sample which already exists under Article 30(7). So, in effect what happens here is that the unreasonable refusal to consent moves from the taking of the sample to the analysing of that sample. There are various safeguards, including Article 32B; the requirement for the doctor in the hospital to be notified and to have not objected on medical grounds and there are various other safeguards and consequential amendments which I am not going to go into in more detail. Clearly this covers a loophole, a technical loophole where a person ought to be convicted of a drink driving offence but cannot be so for technical reasons and I commend these regulations. The last thing I should of course say is that because there are regulations, there is no human rights compliance statement but I assure Members that I have been advised that if that was required, that this is not in any way incompatible with that and, in fact, it is following very closely similar legislation in the U.K. so I move the principles.

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

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles? The Deputy of St. Martin?

4.1.1 The Deputy of St. Martin:

I could always say a long time waiting. I think the alcohol tests came into operation on 1st November 1967 and when it first came out, what it was, it was intended to revolutionise the way in which those who had been drinking could be taken to court for being drunk but of course there was difficulty prior to that because one had to go through a peculiar test of having to walk along a yellow line or a white line and put their hands out to the side and see if they could touch their nose. Certainly, if one ever wanted to see something comical it was trying to see the police officer proving that someone was drunk while in charge of a vehicle so when they brought the alcohol test in it was a novel way. It also meant that if people had been drinking they could still be found guilty even though they appeared to be all right to be able to walk along this line. But during the course of that time there were any number of ways in which people would try to avoid themselves being found guilty of something that quite clearly they deserved to be found guilty of and one of the ways was of course to lie unconscious or get yourself taken off to hospital. That way no one could take blood from you and it is interesting to see that it has taken Jersey almost 42 years to get there. In fact, we ought to compliment Guernsey, if one reads the report, Guernsey introduced this in 1989 and so here we are, 20 years later, in fact it says the Solicitor General made recommendations way back in 2006. Really, we are not really being that fast forward with our legislation but certainly this is something which I think we should all welcome and those who are guilty will no longer be able to find a way of avoiding their true measures. Thank you, Ma'am.

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

Does any other Member wish to speak on the principles? Would you like to reply now, Senator Le Marquand?

4.1.2 Senator B.I. Le Marquand:

Yes, merely to thank the Deputy of St. Martin for his very helpful contribution.

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

Those Members voting in favour of the principles kindly show; those against? The principles are adopted. This matter comes under the jurisdiction of the Education and Home Affairs Scrutiny Panel. Deputy Le Hérisier, does your Panel wish to scrutinise?

Deputy R.G. Le Hérisier (Chairman, Education and Home Affairs Scrutiny Panel):

No, Ma'am.

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

Very well, we pass on to the Articles, Senator.

4.2 Senator B.I. Le Marquand:

Yes, I am not quite sure how much detail to take these in. I will attempt a level of detail. Article 1 is simply interpretation of referring back to the law. Article 2 adds Article 30B(4) which is a new offence being created to the list of motoring offences. Article 3 is amendments that I said before in relation to the law of causing death by careless driving while under the influence of alcohol and this means that a person who causes death by careless driving can be convicted of being under the influence of alcohol if they, without reasonable excuse, fail to give permission for the laboratory testing of a sample which is taken under the general provisions. Article 26(2) - I am going to refer to the Articles in the main law rather than in the Regulations - Article 26(2) is simply to add into the list of offences for the purposes of the 3-year statutory minimum. Basically, a person who is convicted of a second drink driving offence within 3 years, there is a statutory minimum

disqualification of 3 years, barring special reasons and so when we create a new offence we have to add in the new offences in relation to that so that we have all the drink driving type offences and I would simply move on Articles 1, 2 and 3.

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

The Articles are seconded. [Seconded] Does any Member wish to speak on the Articles? Do you wish to reply, Senator?

Senator B.I. Le Marquand:

No, I do not think that is necessary.

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

All those voting in favour of the Articles, kindly show. Those against? The Articles are adopted. Going on to Third Reading, please, Senator.

4.3 Senator B.I. Le Marquand:

I have got to go on to the other Articles, have I not? I have only done 1 to 3. I can speed up, if people like and take all of the rest in one go but I think the Members deserve a slightly better explanation of that. I am going to take Articles 4 to 6 together. All of these are simply amendments of the type I mentioned before, relating to adding all the offences of a similar drink-driving type in relation to the 3 year minimum and I would like to propose Articles 4 to 6.

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

Are they seconded, first of all? [Seconded] Does any Member wish to speak on Articles 4 to 6? No, you possibly can speed up, Senator. Would you like to reply on Articles 4 to 6? No reply. All those voting in favour of Articles 4 to 6 kindly show. Those against? Articles 4 to 6 are adopted. Senator, Article 7 and beyond?

4.4 Senator B.I. Le Marquand:

I want to take Article 7, though Article 7 introduces 2 new Articles which are 30A and 30B. Article 30A is a provision giving the power to get a doctor to take specimens of blood from persons who cannot consent. There are various safeguards in relation to this which I will not go into at this stage in detail. The request is not made to a hospital doctor; it is made to a police doctor and there are all sorts of technical details on that. Then the new Article 30B is the testing provision and this is the core of the new offence because if blood has been correctly taken and complies with the various different complex details, then a police officer has the right to require a person to give his permission to the laboratory testing of that and a new offence is created under Article 30B(4) of without reasonable excuse failing to give his or her permission for that and the penalties there are the same under the normal drink-driving matters and there is also the normal mandatory periods of 12 months' disqualification for the first drink-driving and 3 years for a second and other subsequent amendments. I could go into a lot more detail but I am certain Members do not want me to so I will cease and propose Article 7 at this point.

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

Is Article 7 seconded? [Seconded] Does any Member wish to speak on Article 7? The Deputy of St. John.

4.4.1 The Deputy of St. John:

I do not think the Minister should get away totally free. Under 30A(4): "A request under paragraph 1 shall not be made to a registered medical practitioner other than a police medical practitioner." That, as you say, is new. I have one or 2 concerns because, having over many years been, as you know, Centenier, the police surgeon in fact works very, very closely continually with the police and sometimes it is useful to have an independent medical practitioner to take the samples because it

creates confidence in the actual person being required to give the sample and I have no problem in both being present; an independent practitioner and the police doctor. But in the past I have seen the working relationship get so close after many years that in fact I have had one or 2 concerns. But, more than that, I would like to know the Minister's views given his background within his previous life.

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

Does any other Member wish to speak on Article 7? The Deputy of St. Martin.

4.4.2 The Deputy of St. Martin:

Could I just assist the former Centenier? The circumstances may well be that where the blood is being requested is not in a hospital so the only medical practitioner would be the police surgeon so that is why that piece of legislation would be there. That is how I read it and I do not think there is anything to be seen that possibly there could be any collusion, but I think that is how one would read it. The officer there, it would be the police surgeon, of course he or she may be the only medical person there.

The Bailiff:

Does any other Member wish to speak? Very well, I call upon the Minister to reply on Article 7.

4.4.3 Senator B.I. Le Marquand:

In response to my friend, the Deputy of St. John, it is of course a normal practice under the existing Articles, where the breath test system has not worked for some reason and blood or urine is taken that it is taken by a doctor who is employed by the States of Jersey Police or attached to them. He is of course a professional in his own right and subject to professional duties and it is difficult to see how there can be a loss of objectivity when all he is doing is taking a sample of blood and causing it to be made into 2 parts and then passing it on. The Deputy of St. Martin is absolutely right; there is a provision because I did not want to go into too much detail unnecessarily. There is a provision if a police medical practitioner is not there for another doctor to do it. But this is normal practice. I personally am totally relaxed about it because they are professional people in their own right, albeit they are being paid at public expense. So I simply move on Article 7.

The Bailiff:

All those in favour of adopting Article 7, kindly show.

Deputy Rondel and Deputy Tadier:

Can we have the appel please, Sir?

The Bailiff:

The appel is called for in relation to Regulation 7 so I invite Members to return to their seats and the Greffier will open the voting.

POUR: 35		CONTRE: 3		ABSTAIN: 0
Senator P.F.C. Ozouf		Deputy of St. John		
Senator B.E. Shenton		Deputy M. Tadier (B)		
Senator F.E. Cohen		Deputy J.M. Maçon (S)		
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Brelade				

Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				

The Bailiff:

How do you wish to proceed after that Minister?

Senator B.I. Le Marquand:

If I may take the next Articles 8 and 9?

The Bailiff:

Eight and 9?

4.5 Senator B.I. Le Marquand:

Yes, which refer to amendments to Articles 32 and 33 of the main law. Article 32 relates to protection for hospital patients, and again there are a number of technical issues. The crucial one here is that the doctor responsible in the hospital for the person, must be informed and must not object on medical grounds, either to the taking of the sample or subsequently to the person going through the procedure being required to give the sample, and given appropriate warnings and so on and so forth. The grounds for the hospital doctor to object are in Article 32(4) or Regulation 8(4). Article 33; the amendments to that relate to evidence in proceedings. There are already of course in the existing law, quite complicated rules in relation to evidence because this is a highly technical area of the Criminal Justice Law, and these are amendments to Article 3 to allow the use of samples taken under this new procedure to be used in relation to prosecutions and also to allow for the procedure generally. Again there are more technical details including the dividing of samples in to 2 so that the person can be provided with their own sample or their partner's sample if they wish to double check the testing process. I would move in principal, move the adoption of Regulations 8 and 9.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on Regulations 8 or 9? All those in favour of adopting Regulations 8 and 9 kindly show. Those against. They are adopted. You can probably then propose the rest, can you, Minister?

Senator B.I. Le Marquand:

Where?

The Bailiff:

Ten to 13?

4.6 Senator B.I. Le Marquand:

I was going to be so bold as to attempt that, Sir, yes. Regulations 10 to 13. Regulation 10 is Article 35; this is the Article of the Law, which requires the taking of a driving test after the end of what I used to call the primary period of disqualification. **[Interruption]** I am sorry, shall I start again if people are ...? Yes, okay I apologise. Regulation 10 is in relation to an amendment to Article 35. Article 35 is the part of the law which relates to the requirement to re-take a test after a period of disqualification. It means that after the primary period of disqualification has ended, a person has to get a provisional licence and then take the tests both theory and practical before they can get a full licence. This is simply adding in additional offences contained or created, particularly the Article 30B offence in to that list. The amendment to Article 36; this is quite technical also but this has got to do with the cascading down of offences, because there are certain offences a person can be charged with where, if they are charged with a greater offence they can be convicted of a lesser offence. In this particular case the greater offence might be an offence of causing death by careless driving while under the influence of alcohol. They might be acquitted of that by a court and nevertheless found guilty of the new offence of refusing to agree unreasonably to the sample. So that is purely technical. Regulation 12 relates to amendments to Schedule 1. Schedule 1 is: "Offences in the law for which disqualification or endorsement is possible" and again the new offence, 30B(4) is added. Schedule 3, which is mentioned in paragraph 2 of that section, is dealing with offences, which a Centenier cannot deal with by way of a Parish Hall Inquiry. Obviously these matters are far too serious for that and there are a number of consequential amendments there. Finally Regulation 13 simply gives the name of these regulations and says that they will come in to force 7 days from the day on which they are made, which I hope will be very shortly. So I move that the House adopt Regulations 10 to 13.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on any of those Regulations?

4.6.1 Connétable K.P. Vibert of St. Ouen:

Only, Sir, just to clarify just in case there was misunderstanding, I think that in Schedule 3 of the law it is for items which the Parish Hall Inquiry cannot give sanction to rather than cannot look at.

The Bailiff:

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

4.6.2 Senator B.I. Le Marquand:

The Connétable of St. Ouen set it right, Sir.

The Bailiff:

Very well, all those in favour of adopting Regulations 10 to 13 kindly show. Those against. Those Regulations are adopted. Do you propose the Regulations in Third Reading?

Senator B.I. Le Marquand:

Yes I propose the third reading, Sir.

The Bailiff:

Does any Member wish to speak on the Third Reading? All Members in favour of adopting the Regulations in Third Reading kindly show. Those against. The Regulations are adopted in Third Reading. Perhaps at this stage I can just inform Members of the lodging of P.171 by Senator Ferguson under the name, Provision of States Members' Lunches at Certain Meetings and Car Parking.

The Deputy of St. Martin:

With that, Sir, could I ask that that will definitely go to P.P.C. (Privileges and Procedures Committee) for comments and to be done in a timely fashion?

Senator A. Breckon:

I wonder if I could ask a question of the Chair? Is it in order to put down 2 matters for debate in the same session? Because that is to do with refreshments or whatever, which we debated with ...

The Bailiff:

This is just a lodging at this stage. It will not be debated ... I see in the forthcoming session? Well we will have to see but it is not being debated now.

5 Rental Deposit Scheme to Protect Tenants' Deposits (P.130/2009)

The Bailiff:

Very well, so then we move on to the Rental Deposit Scheme to protect tenants' deposits, Project 130, lodged by Deputy Southern and I will ask The Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Minister for Housing to bring forward for approval by the end of March 2010, Regulations under Article 24 of the Residential Tenancy (Jersey) Law 200-, to establish a rental deposit scheme to protect deposits paid by tenants and to resolve disputes arising from the operation of the scheme.

The Deputy of St. John:

Could I declare an interest being a landlord, Sir, and obviously this will affect ...

The Bailiff:

Well, can I just say this, because I have given a little thought to this. What this proposition concerns is the mechanism for dealing with deposits in relation to properties, which are rented. It does not alter anyone's legal rights; it does not alter the ability of the tenant, in law, to get it back, or the ability of the landlord to take some of it if there has been damage. It is simply a mechanism. I do not therefore consider that either a landlord or a tenant, because it affects tenants just as much as landlords, has a direct financial interest. However, I do think it is right to say that there is an interest. So it is one of those where I think if you are either a landlord or a tenant, you should declare it, but you do not have to withdraw. Very well, Deputy Southern? I think again, it is better that Members should declare it. Well they had better declare it now but also repeat it if they speak. **[Interests declared]** All right, hopefully the Greffier got all those, and you already have the Deputy of St. John's. Very well, but again I think it is only fair to Members, that if Members stand up to speak and they have declared an interest, they should remind Members of it because it is difficult for everyone to remember who has declared an interest.

Deputy S. Power of St. Brelade:

Before Deputy Southern starts, is it not fair to interpret this that the only person, the only Member who could have an interest in this, a pecuniary interest, would be somebody who has an interest, a financial interest, in a company that does tenant deposit schemes somewhere else?

The Bailiff:

Well I am sorry, I think I have given my ruling and we will stick by that.

Deputy I.J. Gorst:

I am just picking up on what Deputy Power has said. As we discussed yesterday, Sir, I do have an outside interest in a local firm. They do have an operating arm, which does operate this type of scheme in other jurisdictions.

Deputy M. Tadier:

Can I add to Deputy Power? Can I suggest that it is only disreputable landlords that need to have any concern [Laughter] or any interest and I am sure the Deputy of St. John is not in that category, so I am sure we can proceed in good faith?

The Bailiff:

A very fair point, Deputy, which is why I did not consider this a direct financial interest of any sort. So I will just go to that to pick up Deputy Gorst's point. Again, you are simply employed by a company, which may do this sort of business if ...

Deputy I.J. Gorst:

It currently does it; we have an operating arm that does this in another jurisdiction. That is not to say that the company in Jersey would do it in Jersey, Sir, nor would it be direct and financial to myself even if it did.

The Bailiff:

It does not seem to me you have any financial interest in the outcome.

Senator S.C. Ferguson:

I was just going to also declare an interest, Sir, as a landlady.

The Bailiff:

All right, thank you. Deputy Southern?

5.1 Deputy G.P. Southern:

What a joy it is to have such a wonderful cross-section of society in the Chamber today. [Laughter] We can really be representative perhaps, on this proposition and Members will be relieved to note that this proposition does not involve massive outlays of £10 million, which is always controversial, nor does it require any motion of condemnation. This is totally positive. It is also, I believe, a very straightforward proposition and one that fortunately or unfortunately we have seen before, and we have seen over a number of years. This is one of those issues like the town park, I believe like the financial ombudsman, which has hitherto kept coming back. It has been coming back for a number of years. I do not claim to be attached to a rental deposit scheme in the same way that Senator Breckon was attached to the financial ombudsman scheme, or for quite that length of time. Nonetheless, I am attached to it and it is very straightforward. The proposition has already been before the House, as I say. More or less I lodged this first, or a similar motion on 29th August 2008, Rental Deposit Scheme to Protect Tenants' Deposits, and I met with opposition from the Housing Department. They said: "Well hang on, we are going to bring the Tenancy Law and in it we will proceed forthwith with regulations to cover tenants' deposits." The statement as declared on P.130, that I received was: "Members are strongly urged to reject this projet and instead permit the open and thorough process outlined above to be completed. Thereon, the Draft Residential Tenancy Law (Jersey) will be lodged for debate in 2009" and it was, and it was debated on 29th July. Draft Regulations under that law for the statutory scheme to protect deposits and resolve will likely be lodged later in 2009. On the back of that promise I withdrew my proposition. The Minister for Housing said, back in July: "Do not worry the R.T.L. (Residential Tenancy Law) is

coming. Regulations contained in there; they will be lodged along with them and we will get the scheme up and running and we will have it with us by the end of 2009.” Here we are in October 2009 and no sign of it. So unsurprisingly, because if I am nothing else I am dogged, I am back and in response I have got, and Members have before them, 9 and a bit pages of comments on my suggested way forward. To be honest I find that there is nothing in those whole 9 sides, which adds anything new to the debate. It makes one or 2 points about the approach that might be taken. However, it does not deny any of the facts in the case and nor does it do anything else than say: “What we would like to do as a Housing Department is to put off acting on a rental deposit scheme until some later date.” I believe way back in 2008 I made the case absolutely for a need for a rental deposit scheme. For example, on page 13 of my annex I talk about the number of cases, which come before the Citizens Advice Bureau with a dispute between landlord and tenant over a rental deposit. While the number is on a relatively downward trend, it is still significant. I went back to Citizens Advice last week and discussed with the manager whether the case could still be made, and the answer was yes. “About 4 cases a week come to us; disputes over rents between landlords and tenants.” I must point out at this stage early on lest I forget, that a rental deposit scheme in the manner, which has been explored and is being developed, benefits both the landlord and the tenant. Most significantly a custodial scheme, which is the way that things are developing and is the thinking generally of the Housing Department, could be done at no cost to the States. No cost, and it benefits both parties anyway. The issue here is, do we want to get on with it now or would we wait, would we rather wait until the end of 2011 at the earliest, most likely 2012, in order to do something, which is slightly wider. That is the only question here. So the question is one of delay or do we know enough to act now and can we get on with it? For example, the Citizens Advice Bureau produced some key findings, which suggested that over 30 per cent of respondents who took part in a rental survey said that they had a deposit unreasonably withheld in the past 5 years. Only 5 out of 18 respondents who said that they had a deposit unreasonably withheld were successful in getting their money back. In 2 cases it took over 3 months for the rental deposit to be eventually returned. Seventy five per cent of respondents who had had a rental deposit unreasonably withheld agreed with a proposal like custodial service to safeguard deposits should be set up. So there is a demand for this, it protects both sides and it is clear that the numbers are not reducing. There are all sorts of issues around how to resolve these sorts of disputes. The first point to make, I think, is that legal aid is not usually available for small claims under £1,000. So while the Small Claims Court can deal with the matter, it is nonetheless not as straightforward as it might be and the problem there is chasing up even when you win the case, and pinning the landlord down to get the money back. Speed is of the utmost concern. You have got a deposit of, let us say, £1,000 and it could be much larger nowadays, £2,000 on a flat and you have it in dispute and you need that £2,000 to move to the next flat. You are fairly well stuck. It is an enormous problem and that same applies down the scale lower down. As it said, in the C.A.B. (Citizens Advice Bureau) Report: “The most serious weakness for Petty Debts Court, which does exist to recover rental deposit, is the potential difficulty in enforcing the judgment, as the onus remains with the plaintiff to initiate enforcement by either wage arrest or arrest on assets. Just to illustrate what is going on I just want to refer to a case, which has been publicised only last week in the *Observer*, illustrating a national case, which equally applies to Jersey. This person should have received more than £1,660 when she moved out of her rented flat 4 months ago. Since then she has been told by the Lettings Agency that the deposit is with the landlord. He in turn says: “Oh no, it is with the Lettings Agency.” You can see the problem. Hard to enforce, who has got the money, who should I be chasing, who should I prosecute? Anyway at the end of the day very difficult to resolve. That is a sort of typical issue, very difficult to resolve. It points also to a rise in the number of complaints coming to C.A.B. and other organisations over rental deposit issues. Because Buy to Rent is increasing and house purchases are going down. So the issue increasingly talks about a 44 per cent rise in the last year, in the number of complaints. We are talking about some 14,000 units of rental and lodging accommodation on the Island, so it is a fairly large issue, 22 per cent of Islanders live in qualified private rental accommodation, around 9,000 units. Significant. Thirteen per cent live

in non-qualified accommodation, 3,500 units, 4 per cent in Housing Trust properties, 1,500 units, 12 per cent in housing provided by the States, 4,600 units. A significant number of units where the potential for deposit protection is an issue, only 13 per cent of which is non-qualified accommodation, 3,500 units. The argument being presented by the Housing Department is that, initially it was said: "We could not possibly put forward a scheme at this stage without including lodging houses." It was suggested during the debate last time that that was legally difficult. The Minister then returned to the House and apologised in the afternoon to say: "No, I accidentally misled you, it is not impossible, it is just what we want to do." I too would love to be able to include 3,500 units of non-qualified accommodation in this scheme and to get it in to place now. But we are told we cannot do that, we have to withdraw the current Housing Law and wait until we have got a new migration policy in place and the new names and address register in place, attached to a scheme of landlord registration. When we can do that, then we can include the non-qualified and find the perfect solution to get some protection for these people? However, that depends on if this House accepts the migration policy, if this House accepts the names and address register as it is produced. Both of which contain a minefield of a variety of aspects, which might make them unacceptable to the House. There is no guarantee we will have a migration policy and a names and address register in place by, let us say the end of 2011. This House has to accept those and their complex pieces of legislation. They are both something like 2 and a half years behind schedule, so whether they can come up there in the intervening years, is also an issue. So the case I believe has been made, no new evidence has been produced that there is not a need for these things, or that the setting up of a custodial scheme is either difficult or impossible. Both are progressed in various directions, have already been progressed by the Housing Department to a large extent. Citizens Advice says still: "This is an issue please get on with it." Back in 2007 Citizens Advice was saying: "Please get on with this, we have had delay after delay after delay on this issue." It is within the powers of this House today to say to the Housing Department: "Please get on with this and do not delay any further. We need a rental deposit scheme, albeit for the majority of tenancies and not all tenancies but please get on with it. It is perfectly possible to do. Why are we not doing it?" The fundamental question for the Housing Department, the Minister for Housing, the Assistant Minister today to do, is to prove the case not to act now because this is well established and we could say: "Get on with it." Please support this proposition.

The Bailiff:

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the subject? Deputy de Sousa?

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

I am hoping the House will finally move forward with this and support this proposition, as a tenant of a private landlord and one of the very good ones, of which there are many on the Island. We have been told in the comments from the Housing Department that it needs to be delayed a bit longer to make it a bit wider, to incorporate the things that Deputy Southern has mentioned in his speech. Surely it would be to support this now, get this in, and then it would be for the Housing Department or any other Member to bring in amendments through a further proposition to incorporate those without qualifications? I urge this House to accept this and back this today.

5.1.2 Senator A. Breckon:

What I would like to do, sad to say I have got considerable experience of this because I do get lots of cases. I just want to quote a number of examples to demonstrate how it happens. The first one is a lady who left accommodation on reasonably good terms, the deposit was on the way but unfortunately she forgot to cancel the standing order with the bank, and the landlord took it and decorated the flat and then the deposit did not return. It finished up in Petty Debts and it went to mediation, it was resolved with the costs of the action awarded. Well, I say the costs because in the main this is a process that was started by formal Bailiffs, where Alternative Dispute Resolution was

there to enable ordinary people, if you like, to get a low cost, none too formalised method of resolving disputes. The actual cost of lodging the action is about £30 with the Petty Debt and then most people with a paper committal or with a friend can get through the process. So I must say, and to the former magistrate, it was a process that has been set in place through the Petty Debts Court, through a mediation service that works for ordinary people that find themselves in this position. That is one case where there was remedy but for the person involved it is still a bit of an ordeal to get their deposit back. It is a shame the Minister for Housing is not here. The second case I recall, and there have been many so these are just a few examples. He and I were in a property up at Five Oaks and there was a dispute of about, I think it was about £1,200 of a return of deposit. The landlord was there and he was quite animated and he was running round the place looking for things where he could retain some money. He had a pair of steps and he climbed the steps looking for something on the wall, and he was like this and he lost his balance and he grabbed the curtains, which were fairly heavy like and the whole lot came down. Senator Le Main and myself just looked at each other and thought: "Well who is going to pay for this?" Because obviously it was not the tenant, it was the landlord himself who finished up under these curtains when he fell off the steps. We acted again through that but again it was with the threat, if you like, or the process of the Petty Debts Court, where the process is if somebody is trying to recover, there is what they call a 7 day letter: "Senator Ferguson if you do not give me the money back within 7 days then I action you without further notice to get it." That is really the essence of it, it can be a bit slower than that, and then the stamp duty is paid. Around about £30 you are paying on the cost of it up to £10,000. I must say it is very effective, it does work but that is where we are with this. The other one where there were 2 young ladies who had rented a flat and paid £750 each and again they were not getting their money back. One had left the Island and it was a bit of a thing and in some of these cases it is a pity that the man is not here because sometimes the same landlords come round again. They are known for this, and when somebody comes with a story about what has happened and they say who it is today: "Oh dear here we go again" and some do run to the wire before they pay their money back. With this, in my experience, there is not a great deal of difference with people with and without qualifications. The principal is the same if Senator Ferguson owes me money, the fact whether she has got qualifications or not is not the issue. The fact is, it is the debt and the outstanding thing. Again, in a mediation process as happens now, the mediator can take a view that £1,000 was a deposit but somebody has taken a couple of doors off or whatever. In many occasions people might put a few tiles up or shelves so there is sometimes a quid pro quo. So then the advice is to anybody moving in, buy one of those disposable cameras with 36 shots. Take them, get 3 copies, post one to yourself but do not open it. Do the same with the landlord and keep one that you can look at. At the end of the tenancy present the photographs and that is your evidence. They are dated, that is it; that usually does the trick. But I do think, Sir, there is a need for a centralised process and it is nothing new. It was Senator Stein many years ago who took this up. Again Citizens Advice and the figures in there show that there are about 5 or 6 known cases a week. I would suggest to Members if that was people being mugged in the street then we would be crying for more police. You know, we must police this. I am not saying it is all landlords or it is all tenants but the fact is there is some friction there, and that is only the ones that surface. There are many more I would suggest, as it said in the survey that was done by Citizens Advice. Many people when questioned about: "Have you had a problem with this in the last few years?" Well they had but they had let it go, and again some people sometimes, do not forget, English is not their first language, what are their rights? With that I have had many people from all over the place have been on the Island a short time, have had a problem with this. The other thing with it, it can do a great deal of damage to the Island itself. The reason I say that is, and I know it happened with some young Irish workers who came here years ago who had a similar experience. They left, they came to work for a season and left under a cloud, and their relatives and friends were going to come for a holiday while they were here. They did not do that and they finished up in Torquay, but they had a bad experience of coming to live and work in Jersey because of this very thing, an unqualified accommodation. So I think if we get it right there are some win-win situations as well.

I cannot really see what the opposition to Housing is and I think Deputy Southern is right, I think we need to do it and we need to do it now. We need to send out the signal that there is a problem but also that we are prepared to do something about it. It is probably about 15 years this issue has been around, maybe give or take a year or 2 but I think it is an example that we can show the people outside that we are aware of everyday problems where some tension exists in a situation, and we can suggest the method which looks at alternative dispute resolution, a central source. The funds from interest would make the thing work. People could look at it; they are not going to give necessarily tenants all their money back if damage has been done. Fair wear and tear; again there are areas of this; reasonableness. Somebody who is well versed and qualified, and there are many professionals who would give their time and effort to a scheme like this I am sure at a reasonable cost, and I think in general terms it would wash its own face. So I think all we need to do is to be the enablers of this and I hope Members will support Deputy Southern on this.

Deputy C.H. Egré of St. Peter:

I note that we have only just been quorate for an awful long time, about 20 to 30 minutes. It might be worthwhile for some of my colleagues in the back room to come and pay a visit here to allow some people who need to leave. [Approbation]

The Bailiff:

Indeed, Deputy, that is well spoken because we have been quite short on numbers for quite a large part of the day and it is really for Members to contribute to these matters. Deputy of St. Martin?

5.1.3 The Deputy of St. Martin:

I am pleased to follow Senator Breckon because he touched on the subject I like to talk about as well but before I do so, I think we want to compliment Deputy Southern for sticking at this, because this is again almost like Senator Breckon with his Ombudsman. You know it takes a bit of doggedness to keep coming back to the States to get something put right, redressed really, it needs putting right and I hope that he will get support this afternoon. Once upon a time there was a Housing Committee way back in 1996/1997, which had a Deputy Le Main because he had just lost the election for Senator and he came back reincarnated as a Deputy. He was on that Housing Committee alongside a very young looking Deputy Duhamel and a Deputy Hill and we were looking to ways in which we could improve the lot for so many people who were in poor lodgings, et cetera, and a working party was set up. If one looks at page 10, they compliment Deputy Southern on his work. Page 10 makes it quite clear there that this was set up and it took us, at the time in 1996/1997, we had Senator Stein as our particular President. It was a bit like the Health Committee today, we had any number of quick changes. We had a number of different Presidents in those days, but it fell upon ... the presidency became I think about 1998/1999, under the presidency of a certain Deputy Le Main, 10 years ago. So he was party to this actual working party to get a look in to what was going on. However, when he became the President he did not wish to pursue it and Senator Stein who by that time had lost her position as President came to the States and one looks at it, it is P.2 of 2002, so in other words it was January 2002 so this is quite some years ago. It made it quite clear there, subsequent to the working party's report, so here we had a working party had made all the recommendations and way back in 2002, and that same President who is now the Minister, who was party to the original working party, is the person who is finding fault and cannot find a reason for coming forward. If one reads the comments, he is asking for more delay. Well, I know we have got the Assistant Minister today and no doubt he will try to defend the indefensible but I would hope there would be sufficient Members here today who will take a wrong and put it right and not spend too much time really and just give our support to Deputy Southern on something, which is really a long, long time coming.

5.1.4 Deputy S. Power:

I feel I am obligated to speak here. First of all I want to apologise for the fact that my Minister for Housing is not here. He is on a C.P.A. (Commonwealth Parliamentary Association) visit to Tanzania and he will be back tomorrow afternoon. He is with Senator Routier and the Constable of St. Clement. I think the first thing I would like to say is that I came here in 1982. I think I said this in the last debate in July, on the Residential Tenancy Law, and I have lived also in some bad places and I have seen it first hand. I would be the last person, I say to everyone in this Chamber, I would be the last person to procrastinate on something like this because I have seen bad accommodation, even recently as much as 2 weeks ago, with the Scrutiny Panel. I have seen ugly accommodation, I have seen dangerous accommodation, I have seen good accommodation and I have seen excellent accommodation. I am the first to admit that there are some landlord and some tenant issues that will always be with us.

The Bailiff:

I think we have just become inquorate. Yes, can you summon Members back please?

Deputy S. Power:

We might have a quick result here, Sir.

The Bailiff:

All right, we are quorate again.

Deputy S. Power:

In the last 3 to 4 weeks, just to give Members some examples, I want to just talk very generally about 3 issues, 3 specific landlord/tenant areas. I am in touch with a German lady who is now living in Hamburg who lost a deposit with a local landlord and I am in touch with her. I am dealing with a Polish gentleman; some of you remember an email from somebody called Crimson Avenger. That gentleman has been in touch with me and I have established contact with him. He is now living in Warsaw and has given me details of a complaint he has, and there is a French girl who was living at Cheapside where all her possessions were confiscated. The common denominator with those 3 cases is, it is all the same landlord. So I will develop this argument a little later but I hope Members bear with me while I take a few minutes to explain what I have been doing for the last 8 months. I am not answerable for the department, for housing committees going back to what the Deputy of St. Martin said. I was appointed last December and I have worked to the best of my ability, with the diligence that I have brought on the earlier proposition, the Residential Tenancy Law, and now on this. But I would like to now tell you what we are doing, and it does not vary much with what Deputy Southern is saying, because I would suggest to Members that where Deputy Southern has proposed a deposit scheme, a protection for tenant deposit scheme, I want to go further than that and I would like to explain that. I want to target also specific landlords and while a tenant deposit scheme is all encompassing, all applying to all landlords and all tenants in an all landlord tenants relationship, what I want to do goes much beyond that. So we are coming at the same problem from 2 different directions. We have in Jersey, like anywhere else in the U.K., like Brighton, Bristol, Belfast, Bolton, we have bad tenants but we also have bad landlords and it is not all about deposits. I want to give some examples to this. There are 132 contested actions in the Petty Debts Court so far this year, and only 19 related to rental deposits. Of those 19, 10 were settled on or before mediation, 2 were withdrawn, none were dismissed, one was adjourned, seen A.D.R. (Alternative Disputes Resolution), and there are 5 pending. There was one default judgement. This email is of 1st October. In addition, Deputy Southern quoted some statistics from the Citizens Advice Bureau. There were in the last year, 421 landlord/tenant complaints in addition to tenant deposit complaints, of which 82 were related to unqualified lodgings and 38 to housing trusts. It is clear to me, from the statistics from the Citizens Advice Bureau, and we have talked to them, that disputes over the return of deposits are not the most common type of dispute. Many more disputes relating to general landlord and tenant relations arise and it is in our comments on

page 4. So when you look at a tenant deposit problem, it is an emotive issue but there are other issues as well and that is what I want to deal with in the next few minutes. The key issue as far as I am concerned, is what is the best way of dealing with the problem of providing protection for both the tenant and the landlord, or with the return of deposits and other disputes. Deputy Southern's proposition asks the House to agree to implement a tenant deposit scheme without any further delay, and I would say that the difference in timing, and I have heard this, between Deputy Southern's proposition and what I am suggesting, is about 6 months. We would take 6 months longer than the Deputy although I can see he does not agree with that. He states that it is an issue that has been around for many years and that the Minister for Housing agreed last year to bring in a regulation to establish a scheme at the end of 2009. In actual fact, what the Minister for Housing said, he said that he would likely, if you check the wording of what he said. This was deliberately said for at the time the department was waiting for the results of the Jersey Annual Social Survey and they came out after the Minister's comments. The problem for the department and the truth is, that we have moved on since, and the report that the Minister for Housing has asked me to put forward here today, is as a result of changes and developments. It is important to acknowledge that the Minister for Housing is not disagreeing that there are incidents out there and I have just given you 3. Recent publicity in the local media will demonstrate that I am keen to deal with this problem as well and we know that there is an old problem. Deputy Southern said that there is something in the region of 14,000 units of rental and lodging accommodation in Jersey, and there is another problem here that does not take in to account, those that are in lodgings in private homes and that is another issue. Again the statistics from the Citizens Advice and the Consumer Council to show, I think that Senator Breckon alluded to it, that there are some 300 cases per year where people do complain about returns of a deposit. The Jersey Annual Social Survey said that about 5 per cent of those who rent or lodge had experienced a problem with a deposit over 5 years. I would suggest that set against the figure of 14,000 units of accommodation the problem is low. It is a problem but it is low. It is against that backdrop that the Housing Department, myself, the Population Office have reviewed the best way to move forward and this is what I am coming to. The Minister for Housing is very keen to demonstrate equity among those who rent or lodge. The current Housing Law, the 1948 law was written in such a way that those who are not qualified under Housing Law cannot rent property. They have no security of tenure. The Residential Tenancy (Jersey) Law that was passed in July only applies to those who are qualified to rent. Any scheme brought in under the regulation making powers of the Residential Tenancy (Jersey) Law would only apply to those in the qualified sector not the unqualified sector. It is true that a deposit scheme could be brought in now to protect those in the qualified sector of the rental market but the view has been taken that rather than cause the division, it would be better to wait a few months more, and I am talking about 6 months, between Deputy Southern's tenants' deposit scheme and this scheme and what I am talking about is a landlord registration scheme. In the department's view it is not realistic to bring in a tenants' deposit scheme and it cannot be brought in and be in force by next year. The main problem is law-drafting time, and we have discussed this and we have been told that the deposit protection scheme cannot be brought in before June 2010 at the earliest. Once a regulation was adopted a tender process would need to be undertaken for a provider and once appointed, the provider would need to establish the scheme. The proposals of the Minister for Housing, which are referred to in our comments, are linked to the introduction of the migration policy that Deputy Southern referred to and the repeal of the Housing Law, which is badly needed, and potentially a Lodging House Law and the creation of a new Jersey names and address index. It is expected that these proposals will be in place by the middle of 2011 at the time when the migration policy is due to come into force. The difference in timing is about 6 months. These proposals involve the creation of a landlord registration scheme whereby anyone, anyone, anyone on this Island offering accommodation for reward would be required to register with the Population Office. As well as supporting landlords and tenants and relations in general including deposit issues, a landlord registration scheme would support and complement other quality initiatives. These initiatives are all outlined in the Minister for Housing's comments and refer to a

future obligatory notification by landlords, for change of address of new tenants, public health, fire service usage. I want to comment to you briefly on one of the advantages of a landlord deposit scheme. It would allow the Minister for Housing and the Population Office to work with the Planning Department where there are illegal units of accommodation. To work with Health and Safety where we have issues, and to work with the Fire Service, which is something we cannot easily do right now. The U.K. has recently finished consulting on a landlord registration scheme and they introduced a tenant deposit scheme in 2007. They felt, having brought in the tenant deposit scheme, that there were issues with landlords who would not sign up, and I quote from the U.K. Government: "Taken with other measures proposed, we believe that it also represents, a landlord registration scheme, represents the best means of tackling poor landlords. It provides a means by which we can drive up standards and isolate those who wish to operate outside the law, rather than penalise all of those who are good landlords by removing their ability to regain possession." So they are focusing on the bad landlord rather than all landlords. The cost of maintaining a landlord registration scheme would be funded by annual registration fees and possible minor fees due on any change of tenants, and these fees would replace current annual registration fees paid by lodging house owners. In contrast, in the department's view, a tenants' deposit scheme will be dependent on sufficient income being made available for a scheme provider to manage the service. With low interest rates at the moment this could be very problematic, and there are means of requiring landlords to pay deposits once they have retrospectively signed on to the scheme. Getting landlords signed up to a tenants' deposit scheme in the U.K. took a while and had to be enforced and such a process may not easily transfer to Jersey. In actual fact, Sir, I would suggest that not all that is good in the U.K. is necessarily good for Jersey. I was going to suggest I read part of the Housing Tenant Deposit Scheme's Order 2007 in the U.K. but it is 28 pages and if I were to be selective I might lose Member's concentration so I will not. The Petty Debts Court in Jersey already, as I have called out on some figures, has a very successful mediation process incorporated in to the Court, where the majority of small claims are sent to mediation and most of them, 75 per cent are settled in this way. The landlord registration scheme would target bad landlords; that deposit would be frozen in the event of a dispute and would be dealt with within 10 days. Also the landlord registration scheme would single out bad landlords, and in cases delete them from the list, and disallow them the ability to rent accommodation. In conclusion I would ask Members to appreciate the work that has been undertaken in the last 8 months. It is appealing to look at Deputy Southern's and say it is a quick fix but there are other issues. I want to work with the Planning Department, I want to work with Health and Safety and I think a landlord registration scheme will be simpler than a tenants' deposit scheme. Some criticism has been made as to why this has taken so long. In answer to that I can only say that the Population Office was formed in 2006 to take responsibility for the migration policy, and by default the move to Ministerial government. It also inherited this Residential Tenancy Law. It is a small team working on both policies and we have no desire on behalf of anyone to delay this work, certainly not me. I request Members to seriously consider the proposals and the comments for a landlord registration scheme, they are presented as a cost, and support the comments and reject Deputy Southern's proposition.

5.1.5 The Deputy of St. Mary:

Well, we have heard in a most amazing speech, the obfuscations and the fantastical complications of this. We have heard about what happens in the U.K., we have heard about the migration policy. What is the problem with this tenants' deposit scheme? What is the problem? We have heard 1996 this was going on and I know from my time in the Amos Group, the tenants' deposit scheme came up again and again as a theme. Where is it? What is the problem? The case is quite clear. We have seen from Deputy Southern's excellent report about the case studies, he lists them case study after case study of issues on both sides, landlords and tenants. We have seen that the research has been done by the Housing Department, R.107/2008. The conclusion there is really quite simple and unambiguous, and it is probably worth reminding Members, as they might have forgotten after that last speech, but the conclusion was if I can find it, it is on page 6 of the proposition. "As a

result of balanced responses received to this consultation it is evident that some form of process needs to be put in place to provide peace of mind to both tenants and landlords with regards to the return of deposit moneys. "Asking for a deposit" as one landlord stated: "is the only way a landlord has of safeguarding their property. Equally for a tenant, the prompt return of a deposit may be the only way that a tenant has of funding a deposit for a new home. That is a balanced conclusion. It takes in to account both sides and it is a result of a consultation process that has already happened. The Minister for Housing's attitude to this whole, well I do not know what to call it, to this whole issue, is shown on page 3 of his comments, about when he describes the results of the J.A.S.S. (Jersey Annual Social Survey) Survey. The Jersey Social Survey was published earlier this year, I think in January, 3,500 responses if I remember correctly. In the second paragraph from the bottom of the comments on page 3 we read: "The J.A.S.S. results have now been received and they do not demonstrate a high incidence of disputes over the return of deposits." So you think: "Oh that is all right then." Then quite honestly the Minister carries on: "5 per cent of people who had rented accommodation reported a deposit dispute in the last 5 years." Five per cent of people, well if you do the sums, that is 625 people, and as Senator Breckon rightly pointed out, if there were 625 people being mugged over a period of 5 years then something would be done about it and the House would be up in arms. I find it astonishing that that sort of level of problem can just be sidelined. In fact I think the Assistant Minister said: "Well it is not very serious, not very significant" but if you were one of those people with £1,200 at stake, how would you feel? I just find it quite amazing and we even get a request in the comments of the Minister for Housing for more consultation. Well, Members know that I am very much in favour of good and adequate consultation with all the riders that go with it to do it properly, but here we have something that has been consulted on. We know the answer. My goodness me. The only reason for delay is we are told that maybe if we waited a bit we would have a fully comprehensive solution, which would tackle all tenant and landlord issues and that might take longer. Well I am sorry, but the landlord registration scheme, which the Assistant Minister referred to, if Members look at what that would achieve and in fact the Assistant Minister listed it, it is a stand-alone scheme; it does other things. It deals with problems of fire, tracking people when they move accommodation and so on but it has not much relevance to this proposal. We can have this proposal without a landlord registration scheme. We have already voted through a Residential Tenancy (Jersey) Law. We have dealt with the other major issues. We already have the regulations to put this in place. The Minister just has to do it, and we have the commitment of the Minister for Housing, to bring in Statements of Condition Reports. It is there in his comments. We have that commitment, as soon as the Residential Tenancy (Jersey) Law comes back he has committed to bringing in Statements of Condition Reports. There is nothing standing in the way of this proposition. We need to protect landlords and tenants. It would be self-financing. Model schemes exist already. For goodness sake let us get on with it.

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

I do have to declare an interest as a tenant. I would just like to say that it does confuse me in this House sometimes how certain things it is okay to do it piecemeal, it is okay to do it step by step and work towards things, and to achieve apparently the best results. Now we are hearing: "Well let us not take it step by step, let us bring the whole thing together." It is just beyond belief. Also, what is even funnier is the fact that we have a depositor compensation scheme because we have international obligations. All of a sudden: "Oh it is ready to go", since the elections. That is funny. Then the Migration Law, which has been going on for years and years and years, which is one of our fundamental strategic policy plans for a limited population growth, continuously gets put off, consultation upon consultation. It was always going to be dishonest, for one, because believe it or not, our demography changes on the Island, so it is always going to have a different response. I would say to the Assistant Minister, well done for trying to move forward with what he is trying to do because obviously the Minister for Housing who has been involved with this for the last 13 years has not been able to achieve it at all. So I would like to say well done to the Assistant

Minister for being proactive and trying to achieve something, but unfortunately I will be supporting Deputy Southern's proposition.

5.1.7 Deputy M. Tadier:

Very well spoken, Deputy. It is interesting, this idea about revolution and evolution, is it not, or piecemeal and wholesale, because it seems that, for once, Deputy Southern - or maybe not just for once - is trying to bring something [Laughter] which is talking about evolution, not revolution, and yet we have one of the Ministers or the Assistant Minister here saying: "No, what we need is revolution. We need it to come in straight on the one-day term which is wholesale. So these are the inherent contradictions we have to deal with. I think really and truly we are all pulling on the same side here. I do not think anyone has a problem with the rental deposit scheme. I think we all agree that it is necessary, that there are abuses at the moment that the current situation is not satisfactory, and it is really a question of timing. Government in general, whether it is in Jersey or elsewhere, is accused of taking a short-term view. So I would like to maybe outline what I think are the possible long-term, medium-term and short-term objectives that we should be going for. There certainly are deficiencies in both schemes. I am quite disappointed in one sense that the non-qualified sector is not covered. That is a big problem. I think that the unqualified sector in many ways has more problems than the qualified sector, simply because of the whole dynamics of it. There are more transient people who use the unqualified rental sector and, by very nature, it is more precarious. They do not have the same rights and also they are more likely to lose their deposits because nothing is written on paper; it is all done by word of mouth et cetera. So that is something that definitely needs to be addressed in the medium to long term. It would be ideal if it could be sorted out here, but it seems apparently it is more complicated than that. I think also in the long term this just needs to be a starter. What we really need to be doing is thinking joined up about what kind of provisions we have, both in the private and in the public sector when it comes to accommodation because the standards of accommodation in certain areas are shocking, and I know I have had informal chats with my colleague, the Assistant Minister for Housing, and there are still units of accommodation primarily in unqualified sectors but even sometimes in the qualified sector, which beggars belief, and to see the quality of accommodation that people are having to live in in Jersey and paying very good money and premium rates sometimes for what I would not expect anyone to live in. I certainly know when I have been living abroad that I have been offered some substandard accommodation and it is not fun at all. So we need to be looking forward to joined-up thinking to have maybe a scheme where all landlords, no matter which sector they are in, have to sign it up, there is a nominal fee and it is self-funding so we can send inspectors around; it does not matter which sector, whether it is qualified or unqualified, to make sure that all the units that we are expecting people in Jersey to live in are all satisfactory and all up to scratch. That needs to be the long-term objective. It can be self-funding and I think there needs to be consultation there. I think in the medium term, of course, we do need to make sure that people who are working in the Island can be sure that they are not going to be ripped off by disreputable landlords. We are not saying that all landlords are like that. By all means, there are very good landlords. There is good and bad everywhere. So I think the real issue here is an issue of timing and I do not see any reason why Deputy Southern's cannot be enacted. I think the answer, with due respect to my St. Brelade colleague, the answer of law-drafting time is the pat answer given by the departments. No department will ever have the law-drafting time and it all boils down to priority, but I think if this House takes it upon themselves to endorse this piece of legislation to say that we want this to come back, is it by March 2010, then I am sure that will be given priority. This is to really get things going. This will give us a definite timescale rather than promises which can always be put back because we know, the way life works, that we have the best intentions and then something else comes up that needs a bit more investigation. Before you know it, we may not even have a deposit scheme for another one or 2 years, and that is with the best intention in the world. So I think we need to get behind the proposition here. We need to vote for it. We need to give some definite answers, and remember this is not comprehensive. This just starts off with people who are in the

(a) to (h) bracket and then we need to fill in all the holes, but this is evolution, not revolution. I think we all need to get behind it. We all know it is the right thing to do, and let us get it done sooner rather than later.

5.1.8 Senator T.A. Le Sueur:

I will begin by declaring an interest as a landlord and then go on to acknowledge that, as Chief Minister, I have responsibility for the Migration Law and migration policy. That in fact is handled by Senator Routier on my behalf, as Assistant Minister, and I am sorry to report he, as well as the Minister for Housing, is also out of the Island today and so he is unable to speak. I think there is not a great deal between anyone around this room in that we all see the need for a tenant deposit scheme, and I am happy for once to agree with Deputy Tadier that it is really on matters of detail that we need to talk. A question, as he says, of timing and of joined-up thinking and of law-drafting priorities. We effectively have 2 slightly different approaches here. We have got the approach proposed by Deputy Southern which is addressing, by hopefully next March, the law-drafting for a tenant deposit scheme, and the approach of the migration policy and the housing policy of a migration system which, as Members will see from the Minister for Housing's report on page 3, should be available for debate in mid-2010. So we have got one proposal available hopefully by March 2010 and the other hopefully by mid-2010. It is really a question then, given that nano-difference in timing, what is the better approach to take, recognising that whichever legal approach is taken, it will then take a further 6 or 9 months to implement, so we are probably talking about the end of 2010 either way. So it is really a question then, as I say, of what approach to take to solve a problem which we all agree needs to be resolved. As I see it, there are 3 parties involved in the whole picture. One is the landlords, the other is residential tenants, and the other third is what I call lodgers or those in the unqualified sector. Really, our solution ideally should encompass all 3 bodies. At present the proposals from Deputy Southern would cover 2 of those bodies. The proposals from the Minister for Housing or for the migration body would cover all 3. Is it worth a 3-month additional delay? That is a question for Members to resolve themselves. I suggest that it probably is, and I indeed suggest that not so long ago Members around this room were anxious to promote a migration policy with all haste: "Oh, we cannot afford to delay that. Let us get on with it and let us get it into place." That policy has been set out, approved and agreed by Members. So I think this question of timing becomes the key issue. Do we really believe that it is that much different? Can we afford an extra delay? I think we also appreciate that even the existence of a tenant deposit scheme, it will not necessarily resolve all issues. There is still going to remain the option of going to court or centre dispute resolution, of mediation, and I think, for me, the need to treat equally fairly landlords, tenants and the unqualified sector, to me justifies an additional 3-month delay. Yes, I would regret that delay as much as anybody else, but I would far sooner have a situation which is fair and equitable to everybody. Otherwise, do you know what is going to happen? We are going to have pressure put on the rental deposit scheme and the unqualified sector are going to languish for another year or 2 in the doldrums because clearly one can put more effort, more law-drafting resource into one particular scheme and it will be at the expense of another. We have to prioritise in law drafting just as much as in finance or any other resources. I want to use those resources in order to get the best result, best outcome for the whole population of the Island, qualified and unqualified. If there were very large differences in time, I would accept that we could not wait that long. For this period of time, I believe they could. Just to correct what I think is an error but maybe the Assistant Minister for Housing can confirm, the Deputy of St. Mary has suggested we already have the regulations ready to go. I do not believe we have. We have the law which has been passed. I believe the regulations are still in the course of being drafted. As is the nature of things, it is the detail which causes the difficulty. If the regulations were ready now, I am sure Deputy Southern would not have said March 2010. He would have said October 2009. So it is going to take time to pass those regulations. I cannot guarantee that even by March 2010 they will be ready, any more than I can guarantee that the Migration Law will be ready by June 2010. All I am suggesting is that the time difference is 3 months or so, either way. The problems are

going to be there whichever route we go down. I believe we should go down a route which gives the best chance of success and solutions and fairness and equity to all those involved in the landlord/tenant/lodger situation. While I can sympathise with Deputy Southern, I would prefer to support the Assistant Minister for Housing and the migration policy in that approach to resolving this problem.

Deputy G.P. Southern:

Can I ask for a point of clarification from the Chief Minister, please? I think he said that both would have to go off to Privy Council. Is it not the case that where it is an issue of primary law that has to go off to Privy Council with a consequent delay, but regulations, the framework of which and the powers of which we have already drafted, do not have to do so.

The Bailiff:

That is correct. I can say that from the Chair.

Senator T.A. Le Sueur:

That is correct. That is not what I said. I did not mention the Privy Council. The delay is going to be in implementing, finding the appropriate bodies to put this into place, once the regulation has been adopted, but it is not a Privy Council delay. There is going to be a delay in implementation: the nuts and bolts.

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

I was not really going to speak on this, but I do have to follow the Chief Minister. He says does it really matter whether 2 or 3 months makes a difference. Let me tell people who have not been in the House as long as myself and Deputy Southern, we worked on the Shadow Scrutiny of the Migration Law in 2005 and yes, you have seen a version of the name and address register. Everyone in the House keeps saying we have to wait until the new migration and its consultation on part 2 of the Migration Law to replace Housing Law, Regulation of Undertakings and Development Law, and these are massive pieces of different legislation and many, many - I would say 45 - of the people in this House have not seen this work and they do not realise, and even when there was a consultation at the Société a few months back, there were about 6 people there, and some were new people, some were not. So this myth about do we wait until 3 months until we agree. The little old ladies start ringing up from the country Parishes and say: "What do you mean I have to go and register? I have to go and put my house on a housing register. I do not like this law." They do not know what is out there and not many people know what is coming. Again with employers/employees, we are going to give a lot more rights to the employers to hold the regulation of undertakings. That is a different debate, but what I am saying, please do not be put off by the 2-month delay of the Chief Minister because there has been a lot of movement on the Migration Law since Shadow Scrutiny in 2005. A lot of it is not enough. There are still some very big holes in finding the landlords and keeping them to account in the unqualified sector. That is the delay. I know that is delay because it was told to us by, I think it was Deputy Gorst, and the Chief Executive Officer himself. There has always been a problem in identifying how many people live in the back rooms of how many houses in each Parish. It has always been a problem. So do not be mythed that this is going to be a 2-month delay. Again it is jam tomorrow. Why cannot Housing accept this? I do love their comment on page 4: "A landlord registration agreement." A new thing, you know. Okay, the U.K. Government finished consulting at the beginning of August on proposals for a landlord registration scheme. Consultation finding results are expected later in the autumn. Well, I wish I had have found out who did that consulting and not relied on someone like Professor Whitehead to do ours, because it seems a lot, lot quicker, and this is for the whole of the U.K. Where is this landlord registration scheme now been dreamed up from? It is not rocket science. It can be brought in. It can be done to protect landlords as much as tenants. All the Deputy's proposition is, it asks the Housing Department to go away and bring back a scheme by

March next year. It can be their scheme. We can bring amendments, we can all do that, but please, unless there is something in this House that has fundamentally changed since I have been in here in 9 years, and I know we have gone to Ministerial government, but unless we do not really think that we are going to discuss and pass new migration law on the hoof and on the nod, the Chief Minister is talking out of the back of his head because we do not do with the things in that way in this House and it will not be happening in this House either. There will be a lot of changes when the law is brought forward, when the proper section is brought forward. So, I am very sorry, I cannot believe that we are now being told: "Let us just wait 2 or 3 months." Deputy Southern is over-egging the pudding and it will be done. The last comment was: "But I cannot tell you that it will be ready by June or July next year." Of course he cannot. He cannot even guarantee it is going to be voted through this House next year unless he knows something I do not. **[Approbation]** Thank you.

5.1.10 Deputy T.M. Pitman:

Unless I am very much mistaken, and I may well be as we are near the end of the day, I thought I heard the Assistant Minister say that the earliest this could be put in place was the end of May/June 2010. If that is the case, then I would suggest that there really should not be the problem that we seem to be making. I think Deputy Southern would accept that target with open arms, possibly, but be that as it may, the fact is, certainly when I consider the number of people I have personally encountered already as a politician who have experienced such problems, people who have not even gone to Citizens Advice, which I will touch on later. The case for yet another procrastination is unsustainable. Really one considers the dates mentioned, I mean, 15 years or so in reality, the question has to be asked: "What on earth is going on?" That is my attitude as a new Member, and I have listened to what Deputy Martin said. I can only imagine what she really thinks, what Deputy Southern really thinks. Luckily, they are polite people. Here, I am sorry - he will correct me if I am wrong - but I think the Assistant Minister is being far too diplomatic in his defence of this. I know he works hard, as most of my contact as a Deputy relating to housing eventually comes to him if I cannot resolve it lower down. I have to ask if the truth is that the Deputy is doing the work of 2 in many instances. Do not be shy. Perhaps he will tell us. I know C.P.A. trips are classed as States business and I accept that, but with matters as pressing as this and as long delayed as this, I really would have thought that the Minister himself could have rearranged his priorities to be here. I am not going to repeat all the very good points made by previous speakers. I think Deputy Vallois' and Deputy Martin's on the migration policy were particularly pertinent, but one point I must take the Minister for Housing to task by his Assistant is that this is a comparatively small problem from the statistics quoted. I am afraid the truth is, as I have alluded to already, it is quite clear that not all people who are ripped off, for that is a term we have to use, go to Citizens Advice. They do not. Or even to a politician. This was brought home to me over the summer when I met 2 young women socially who told me that they simply had not bothered. Now, why, do you think, when there is about £1,000 involved? Because they felt wholly intimidated, and I do not think there is any one of us in here who would question that that is a very real situation for many people. So what are the real figures? How many more are there in similar situations? I am afraid, for people like this, we simply cannot allow this to drift on and on any longer. We were brave yesterday with a similarly lengthy Ombudsman saga. I am pleased I managed to say that word, because I cannot normally. I would say let us be brave today and instruct the Minister for Housing to finally get this done A.S.A.P. (as soon as possible) and better still I would ask Deputy Power, his assistant, who I have a great deal of sympathy for, to stand up, be really brave, withdraw his opposition to this, give it his support and we can make the right decision. Enough really is enough. Please support this.

Deputy C.F. Labey of Grouville:

Could I just ask for a point of clarification on the Assistant Minister for Housing's speech? When he delivered his speech, he gave it mainly in the first person, and I would just like some

clarification as to whether it was him speaking as himself, as Deputy, or for the Minister. I just need some clarification on that. Thank you, Sir.

Deputy S. Power:

Am I allowed to reply, Sir?

The Bailiff:

The Assistant Minister speaks for the Minister when the Minister is not here.

Deputy S. Power:

Yes, Sir. The Assistant Minister speaks for the Minister and the department.

The Bailiff:

Very well. Does any other Member wish to speak? Deputy Ozouf.

5.1.11 Senator P.F.C. Ozouf:

I support a deposit protection scheme. I have studied the arrangements that exist in the U.K. and I have looked at the website that deals with the holding of deposits and, in the United Kingdom, when you enter into a tenancy agreement, you register it, there is an online portal which you go in, you put your money in, you register it. It is, from what I can see, a very light and administratively not very burdensome proposal which clearly works, and I have no doubt that we can introduce and the Housing Department are capable of introducing the same thing, and I think there is a broad consensus among Members in order to bring one in. The problem that I have is that we are at risk of again promising things that it is unreasonable to expect the Minister to deliver. I will say this for a few reasons, and a few reasons why I cannot possibly support this proposal by Deputy Southern, but there are good reasons for that and it is not because I do not want a deposit protection scheme because I do, and I think the Assistant Minister has made, which I have been also briefed on, very clear what his position is. The proposition asks us to bring forward or asks the Minister to bring forward a scheme by the end of March 2010. Now, we are currently 7th October. There are standard arrangements that need to happen in terms of consultation, which clearly there would be no consultation if we brought forward and met within that timetable. This is not just a simple issue of drafting a piece of legislation and bringing it forward to the Assembly and then, by magic, this thing being brought in. There is, first of all, consultation that needs to be dealt with. Secondly, there is the issue of funding. I am afraid, with a low interest rate environment, this is not self-funding. There are going to be fees issued. I know the regulations permit us to do that, but we are kidding ourselves, as we have done on a number of occasions, when we say that there is a zero cost to this. There is a cost to this. There is a set-up cost for this, and that needs to be properly organised. That needs to be properly organised, both in terms of legislation, both in terms of drafting the appropriate computer programs to deal with the paperless system, and it has got to be done properly. Rushed legislation is bad legislation and is inevitably going to cause more problems because it is going to be either administratively burdensome or whatever. I do not think the Minister for Housing is being unreasonable in asking for a period of a further 3 months over and above what Deputy Southern is asking to deal with it. That is what I have heard the Assistant Minister say. That is what I have read in his comment, and I do not think that that is unrealistic. It is not possible for any, I would have thought, reasonable Member of this Assembly who is experienced in drafting legislation and bringing things forward for approval, for this total scheme to be lodged by the end of May. It is simply not going to happen and I do not think this Assembly should send out messages as unfortunately we are increasingly doing that we can deliver things within timetables and then we will end up effectively sending messages that we do not do what we promise. I think that is the wrong thing to do. The Assistant Minister has given a commitment to bring this forward. His Minister is behind him. There was work to be done on funding. There was work to be done on consultation. There were no doubt computer programs that need to be built in order to run the thing properly, and that needs to be done, but it cannot be done by the end of

March. So, Members, I think, need to reject Deputy Southern's proposition but need to continue to put the heat on the Minister for Housing and the Assistant Minister to bring this forward as soon as possible. I think that is the reasonable approach for Members to take.

5.1.12 Senator B.E. Shenton:

I would just like to say something to the Council of Ministers that if you have a proposition before you that you agree with but you think the timetable is wrong, then please bring an amendment. **[Approbation]** That would be the logical thing to do. If you want an Ombudsman, put it in the Business Plan. **[Approbation]** It is not rocket science.

The Bailiff:

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

5.1.13 Deputy G.P. Southern:

I think I still have gauged the feeling of the House. Before I do anything else, can I praise Senator Ozouf for his loyalty to his Minister for Housing by inventing yet more reasons why we cannot do something, and while on that topic, draw attention to what I pointed out before? These are regulations. The framework for the regulations already exists. There are 5 Articles with several sub-clauses as to what we want to be able to do, some of which are going to help to be able to do it. It is not rocket science, as Senator Shenton said previously. That does not have to go. It is not primary law. It is the framework of regulations. It has already had one check on it: "Is this what we want to do?" Yes, it is. That can go straight through. It does not have to go to the Privy Council. We have heard lots of information today, and basically Deputy Power says: "I want to do a scheme which has much wider protection" and points out that what he wants to do, and I did not realise there were quite as many things he wanted to do, as he eventually said. We are talking about migration policy, names and address register, possibly a new lodging house law, enforcement of the signing up - by the way, enforcement of signing up is already in the outline, the framework regulations - and a landlord registration scheme. That is wonderful. That is wonderful, but to pretend that all of this lot can be got through this House with a mere 3-month delay on what my proposition says is abhorrent nonsense. I will guarantee you that that will not happen with a mere 3 months' delay. Absolutely impossible. The research has been done. We do not need, at this stage, a model with all the bells and whistles on. That can be amended relatively straightforward. We have got all these massive laws through and we are ready to go and add in the lodging houses. Two comments were made, I think, during the day about the low interest rates and not being able to pay for this scheme. The scheme is not enormously expensive, and the estimates say - the estimates have already been done - that it might contain up to £10 million; £10 million for a system that arbitrates with a couple of staff and takes witnesses or photographs at the beginning and end of the tenancy. It is not hard to do, even with low interest rates. Of course this can be pushed through. Senator Le Sueur again said: "We all see the need" and we do. If we agree with the principle, if we agree with the need, then by all means let us get on with it. The Deputy of St. Mary and Deputy Pitman have usefully pointed out that for every case that comes to CAB, all goes to the Petty Debts Court. There is any number of cases where people living in Jersey just lose faith and say: "I have lost £1,000. Oh, dear. I have just got to put it down to experience." That is what happens in the majority of cases, and if it does, the issues that we are talking about add up to some 600 a year because we are talking about that sort of issue. The Assistant Manager said very usefully and very helpfully - I am clear on this: "We could not possibly get my proposition in place until the end of May 2010." Well, can I give him the reassurance - and it is one that I will stick to, unlike his Minister - that if he cannot do it until May, and in March I ask: "Where is it?" and he says: "I cannot get it there until the end of May; that is the earliest", I will say: "Well done. Keep on cracking on it." I will not get out the big stick and beat him around the head. If we can have this in place by May, that will be streets ahead and great years ahead of the all-bells and all-whistles system that is proposed. I therefore maintain this proposition and call for the appel.

The Bailiff:

The appel is called for in relation to P.130, rental deposit scheme, and I invite Members ...

Senator B.I. Le Marquand:

I note a potential interest as a landlord.

The Bailiff:

Very well.

Connétable D.J. Murphy of Grouville:

Can I just say that I shall be abstaining due to the fact that I have an interest as well.

The Bailiff:

I invite Members to return to their seats and the Greffier will open the voting.

POUR: 22		CONTRE: 18		ABSTAIN: 2
Senator B.E. Shenton		Senator T.A. Le Sueur		Senator B.I. Le Marquand
Senator A. Breckon		Senator P.F.C. Ozouf		Connétable of Grouville
Connétable of St. Ouen		Senator F.E. Cohen		
Connétable of St. Helier		Senator S.C. Ferguson		
Connétable of St. Saviour		Connétable of St. Brelade		
Connétable of St. Peter		Connétable of St. John		
Connétable of St. Lawrence		Connétable of St. Mary		
Deputy R.C. Duhamel (S)		Deputy J.B. Fox (H)		
Deputy of St. Martin		Deputy J.A. Hilton (H)		
Deputy R.G. Le Hérisier (S)		Deputy J.A.N. Le Fondré (L)		
Deputy J.A. Martin (H)		Deputy of Trinity		
Deputy G.P. Southern (H)		Deputy S.S.P.A. Power (B)		
Deputy of Grouville		Deputy K.C. Lewis (S)		
Deputy of St. Peter		Deputy I.J. Gorst (C)		
Deputy S. Pitman (H)		Deputy of St. John		
Deputy M. Tadier (B)		Deputy A.E. Jeune (B)		
Deputy of St. Mary		Deputy A.T. Dupré (C)		
Deputy T.M. Pitman (H)		Deputy E.J. Noel (L)		
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

Can I just say this from the Chair? I appreciate that this is a long sitting and there are many matters to be considered and Members do occasionally have other things to do, but we have staggered through today, limping just above the quorate number for most of the day, and then, when the vote comes, almost everyone is here. I do remind Members of their obligation to participate fully in the debates. [Approval]

The Deputy of St. John:

Could I pass a comment? I appreciate exactly what you have said, but it is very warm in here today, Sir, and this machine has been out of commission or blocked up most of the day and the temperature was up to 76, 78 in the far corner which is beyond a reasonable temperature, Sir.

The Bailiff:

Yes, I do agree; it is very warm.

Deputy S. Power:

I just take this opportunity to congratulate Deputy Southern and the department who are now working towards the result of this vote. [Approbation]

6. Draft Sex Offenders (Jersey) Law 200- (P.132/2009)

The Bailiff:

Very well. Thank you. We come next to the Draft Sex Offenders (Jersey) Law 200-, P.132, lodged by the Minister for Home Affairs, and I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Sex Offenders (Jersey) Law: a law to require the notification of information to the police by persons who have committed certain sexual offences or sexually aggravated offences, to provide for the imposition of restraining orders on sexual offenders, to provide for the imposition of orders on certain people to protect children, to provide for the imposition of travel orders on certain people to protect children outside Jersey, to provide for the establishment of arrangements to deal with sexual offenders and for incidental and connected purposes. The States, subject to the sanction of her Most Excellent Majesty in Council, have adopted the following law.

The Bailiff:

Yes, the Minister to propose the principles.

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

This is a complicated law which has required 33 drafts over a number of years. The new provisions follow, in general terms, those contained in part 2 of the United Kingdom Sexual Offences Act 2003. I am afraid that in this debate we are going to have to enter the murky area of sexual offences and sex offenders. We are going to have to talk about sexual predators and particularly predatory paedophiles. However, although much of our focus may be upon a need to protect children against such people, the ambit and intention of this law is to also provide protection for other vulnerable groups such as adults with learning difficulties or brain injuries or the elderly, and indeed, the ambit of the law is wide enough to provide protection for the population at large. However, this law is not a panacea which will solve all the public safety difficulties of society in this area. That is simply because many of the people who are convicted of sexual offences have no previous criminal record in this area of crime. However, this law provides the best protection currently available in relation to people who have previous convictions and in relation to individuals where there is substantial reason to believe that they represent a significant risk. In considering this area, I have had to balance on the one hand the need to protect children and other vulnerable groups and, on the other hand, the human rights of offenders and of other people who represent a substantial risk. The key in understanding this is contained in Article 8 of the European Convention on Human Rights. I am now going to quote this as follows. Article 8(1) states: "Everyone has a right to respect for his private and family life, his home and his correspondence. That right is not an absolute right because Article 8(2) permits interference by a public authority with those rights, but only as in accordance with the law and in such a way as is necessary in a democratic society in the interests of national security, public safety, economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others. I stop to emphasise the words "necessary" and the words "for the prevention of disorder or crime". In order to satisfy this test, the measures proposed must be found to be necessary and proportionate to prevent crime. I am of the opinion that they are. I have been advised that they are and in the U.K. where similar legislation exists, there have been, as far as I am aware, no successful challenges on human rights cases to this legislation. I come now to the general layout and structure of the law. With the exception of the provisions contained in Article 11, to which I will refer later, all the other relevant provisions are activated by a previous criminal conviction, whether in the future or in the past and whether in Jersey or

elsewhere. The definition sections contains a definition of “relevant offence” which means either a sexual offence to which this law applies or an act by a person ordinary resident in Jersey done outside Jersey that is an offence in Jersey by virtue of Article 17. That triggers many of the provisions. The sexual offences to which this law applies are set out in Article 2 and cover the entire gambit of sexual offences in Jersey, although there are safeguards built in in relation to certain offences of a more minor nature. The next key provision is contained in Article 3 which specifies those persons who are subject to notification requirements. People commonly talk about there being a sex offenders’ register. There is no such thing. There is no reference to this in the law, but instead there is a reference to notification requirements. There are various ways in which a person can become subject to notification requirements and I will deal with those in more detail later on. Article 5 deals with a period during which a person will be subject to notification requirements which in general terms is normally a minimum of 5 years but which can be extended subject to appropriate safeguards. Articles 6 and 7 contain the notification requirements. That is what a person must do in order to comply with those. The core of this is that they must notify a police officer of their address, of any names which they use other than their normal names. Furthermore, they must inform the police officer of any intention to travel outside the Island and there are powers to take fingerprints, photographs and non-intimate samples for the purposes of present or future identification. Article 9 contains appropriate powers for the Bailiff or Jurat to grant warrants. The next major provision is contained in Article 10 which relates to restraining orders. Again there are a variety of ways in which a person may become eligible to have a restraining order made against them, and these mirror the provisions in Article 3. As a safeguard, the Court can only make a restraining order if it is satisfied on a balance of probabilities on the application of the Attorney General that the person poses a threat of serious sexual harm to the public or any particular person or persons. The Court can then order a person to do certain things and also can order them not to do other things. The next major section is Article 11 which deals with child protection orders. As I said before, this is the one case where a person may become subject to an order without having a previous criminal conviction. However, the person must have done certain acts and the Court can only make the order again on the application of the Attorney General if it is satisfied on the balance of probabilities that it is necessary to make the order to protect children generally or a child from harm from the defendant. A child protection order prohibits a defendant from doing anything described in the order and has effect for a fixed period of not less than 2 years which can, if appropriate, be extended. The next major provision is in Article 12 and relates to travel orders. Because a person subject to notification requirements has to notify the authorities of an intention to travel outside the Island, the Attorney General can apply to the Royal Court for an order prohibiting such travel or providing restrictions in relation thereto. The thinking behind this is international in nature and it is an acceptance that we have responsibilities for the protection of children and other vulnerable people in other countries against risks posed by sex offenders living in Jersey. Articles 13 to 16 contain the provisions whereby different categories of person can become subject to notification requirements. Article 17, to which I have referred before, is significant because it makes it possible for a person ordinary resident in Jersey who commits a sexual offence in another jurisdiction to be charged for that offence in Jersey. Again this is part of our international responsibilities and also recognises the practical difficulties in relation to some foreign jurisdictions obtaining extradition of people who have offended in their country. Articles 18 to 26 deal with the details of appeal procedures. Articles 27 and 28 deal with control of information and arrangements for consultation and for the general management of the law. I would highlight at this point that there are obvious sensitivities in relation to the type of information which will become available to the authorities. Leaks of such information, no matter how well intentioned, may have devastating effects upon the lives of former offenders who may be co-operating with the authorities in relation to the minimisation of their future risk. There are those who would propose the equivalent to a Megan’s Law, i.e. the parents are provided with information in relation to former offenders who live in their area. I do not support this approach although I understand why some people feel strongly on this issue. The fact

is that even former sexual offenders have rights. If they are going to become reintegrated into society, while appropriate safeguards exist against future offending, it is vital, particularly in a small society like Jersey, that information is not leaked out which may lead to vigilante action or the destruction of their rebuilt lives. This law contains no special provisions in relation to offences of leaking such information for the simple reason that such offences already exist under the data protection law. However, I am conscious and now give notice to the Members of this Assembly that it will probably be necessary to increase the penalties under that law to include an option of imprisonment in order to provide the necessary safeguards in this area. Before I move on, I point out that a great deal of work will need to be done in relation to protocols on information sharing and indeed the relevant Ministers and the Chief Police Officer must come up with appropriate general arrangements within 6 months of the commencement of the law. Article 29 contains provisions in relation to roles of the Court. A great deal of work will need to be done in this area, but I am assured by the Deputy Judicial Greffier that this has already started. I come now to the resource implications of this law. There are very detailed provisions contained in the report. Indeed, I suspect that the Home Affairs Department does deserve some sort of award for having produced the best level of information and detail ever produced in Jersey relating to resource implications. A multi-agency approach must be taken in relation to this, and you will see that there are additional resource requirements both at police headquarters and with the Probation and After-Care Service and with Health and Social Services. The M.A.P.P.A. (Multi-Agency Public Protection Arrangements) co-ordinator post at Probation is absolutely key to co-ordinating everything and to ensuring the successful operation of the law. I want to talk about the size of the workload involved. Firstly, the first 2 years of the operation of the law will involve a major catching-up process. Assessments and decisions will need to be made in relation to people who could potentially become subject to notification requirements and thereafter restraining orders. Current information is that there are about 35 people living in the Island who represent a substantial risk to children and other vulnerable persons. However, there are in excess of 200 people living in the Island who could fall within the requirement for notification requirements. These will each need to be assessed over a period of time and decisions made as to the extent of risk which they currently represent. If a decision is made that a previous offender should become liable to notification requirements and to a restraining order, then a lot of work will need to be done in order to determine what orders should be sought from the Royal Court. Once orders have been made, then there will be a need to continue to monitor and work with those who are subject to orders both in order to ensure that they are complying with such orders and in general terms in order to seek to reduce the risk which they pose. At the same time, there will be additional people being convicted in Jersey of relevant offences and additional people coming to Jersey who are subject to orders elsewhere in the British Isles and additional people coming to Jersey who have committed relevant offences in other countries. There will be much to do. I must also mention the difficulty which has now arisen in relation to the assessment of the effect upon the Law Officers' Department of the additional workload. The note contained on page 14 is inaccurate. The Law Officers have now realised that they had not properly considered the effect upon their workload of the process of catching up with the backlog of applications to the Royal Court. This will be quite considerable but no precise figure has been provided on this and I suspect that the Attorney General may wish to comment and provide some additional information to assist this Assembly. The total cost of additional staff required by the States of Jersey Police, the Probation and After-Care Service and Health and Social Services in the early years is estimated as £431,000 per year and, in addition to that, the unquantified additional cost for the Law Officers' Department. There is a sum of I think it is £247,000 currently allocated for 2010. That will only allow funding at that rate for under 8 months. If we are to go ahead with full speed to catch up on the backlog, then more money will be needed for 2011, although this should drop back by 2013. Finally, I turn to the effects of the existence of the new law upon court and case costs. It is clear to me that the court and case costs subsection of budgets has been and is continuing to be a major problem to the Treasury and to the Minister for Treasury and Resources. One of the reasons for this is that in the past there has simply

not been a proper assessment of the costs which would result from successful appeals or unsuccessful appeals. The Deputy Greffier has given us an assessment of this. In fact, he has calculated it for us twice and come to similar conclusions via different routes. The indication is that in the first 2 years the court and case costs and other associated costs as set out on page 14 of the report will be of the order of £559,000 for the first 2 years plus £80,000 for expert reports, dropping to figures of approximately a fifth of that ... slightly different to that. The figures I have got, it would drop to one-fifth of 559, but to £20,000 from 2013 onwards. So, there is a considerable cost commitment particularly in the catching-up phase, but this is necessary. We need to do this. I commend this law and the principle of this law to the Members of this Assembly. A great deal of work has been done on this over a long period of time. The record of Jersey in relation to the protection of its children and other vulnerable people is not particularly good and we simply must now pass this law in order to improve the level of this. So, I commend this in principle to the Assembly.

The Bailiff:

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles? Yes, Deputy De Sousa.

6.1.1 Deputy D.J. De Sousa:

Just quickly, I would like the Minister to confirm that he will take on board the recommendations of the comments put forward by the Education and Home Affairs Scrutiny Panel as he has already ... these complement some areas of his speech and I am sure the House will be backing this.

6.1.2 Deputy A.E. Jeune:

The Minister is aware that while I completely understand the need for this law I still have some reservations. This law will cover people who we know about and who are within our own Island and those persons who come from jurisdictions where we have some liaison, who will share that information with us. It concerns me that it would appear - and the Minister will, I am sure, stop me if I am wrong - that we do not have a Europe-wide agreement for sharing of this information. I would not want people to have a false idea that they will be completely secure by this law until such time as it is covered across all jurisdictions.

6.1.3 The Deputy of St. Mary:

It is just a single question, really, on page 9. I am concerned about the resource implications, obviously, although I totally agree with the direction of this proposal. On page 9, the Minister quotes the Association of Chief Police Officers' manual of guidance for protecting the public in 2006-2007, and it appears that the figures and the sort of basis and justification for the amount of police and probation manpower is based on that report, the A.C.P.O. (Association of Chief Police Officers) report. I just wonder if the Minister can comment on what kind of validation or peer review that report has ever been subjected to. I support fully the notion that the police should be adequately resourced to deal with all this. If you look on page 9 of your ... the Minister is looking puzzled.

Senator B.I. Le Marquand:

Can I seek clarification? Am I being asked to comment on the accuracy of the A.C.P.O. report or on the accuracy of the estimated figures for manpower needed?

The Deputy of St. Mary:

No, it is not so much the figures that the Minister has presented, but it is the basis for them seems to be the A.C.P.O. report and the A.C.P.O. report is the chief police officers saying what they think would be needed to deal with registers of sexual offenders. But that is their report, and I just wondered if there has been any review of that report or validation independently because these are big sums, although, of course, the goal of all this cannot be argued with.

6.1.4 Deputy R.G. Le Hérissier:

As has been alluded to by Deputy De Sousa, there was a very rapid scrutiny. This is obviously one of the most sensitive issues we have dealt with and Deputy Jeune has raised a very, very good point. It is not a panacea. Not only that, there is no doubt there is an element of what you might call force-fitting of a U.K., indeed, an American thing if you consider the concept of Megan's Law, let alone Sarah's Law. There is the concept of force-fitting a U.K. type law on a very small community where, as the Minister has said, the issues of information becoming released to the wrong people or just filtering out and so forth is quite real. This was a very active debate in the Scrutiny Panel as to the extent - and it will be discussed when we go through the Articles - to which the information should be released. Because on the one hand there will be people arguing that the police with social service and probation backup will very tightly handle this, and there will be other people who will be saying that the information under these management agreements that are cited in the law has to be given to other agencies but under very robust conditions. Now, if a person is on one of these debates under a managed agreement and all of a sudden they are presented with a list and they see: "Oh, so and so lives next door to my sister", yet there is no provision in the law for her to be informed, for example, or the people are telling me that the police and social services are going to handle this so tightly that they will be able through other ways to deal with it. There is a real, real issue in handling such a law on a small Island, and that was one of the dilemmas that the Scrutiny Panel looked at. There is also another issue which another member of the panel will address when we come to Articles 18 to 26. It is that Article which the Minister mentioned where you do not have to be convicted but if a child protection order is made there is a legal process by which you can be put under the provisions of this legislation. That is a fairly frightening thing and, again, the nature of the evidence which would lead to this and so forth is very, very important and the way it can be contested and so forth and so on. Because we all know given the febrile atmosphere which exists in Jersey at the moment, and in other places, we all know that to call a person a paedophile or whatever is really a major, major social stigma which could well lead ... we have all read of that English case where a paediatrician was confused as being a paedophile and that led to public demonstrations and so forth. We all know it could lead basically to people having to leave the Island. So, that would be the paradox of this law, which some people may well want. They may feel we need to be a lot tougher. They may well say: "Well, that is the result" but you have to remember if the law perversely, accidentally or whatever, leads to this result, you have to remember you are putting the problem in another community. You are putting the problem in another community. We have seen just looking at that case in the U.S. (United States), in Los Angeles, where you do have Megan's Law and what happened was it appeared there was ... because of the pressures arising from surrounding communities, people with convictions ended up in a particular village or small town and it became notorious as a town which was basically a residence for paedophiles. It leads, again, to all sorts of problems. So there are real, real issues in how this is managed and we will wait for the Minister to ... because there is an incredible balance between protecting society, but I am afraid, as Deputy Jeune quite rightly said, perhaps not to the extent that people would wish, and ensuring that we do not get the wrong people stigmatised and that when people are being controlled it is under the strictest of conditions.

6.1.5 Deputy M. Tadier:

Deputy Jeune did raise a good point and it is one which came out in the session; I think it was 29th September that we met. I asked the very same question because while I think this law is necessary, ultimately I think there is a lot of certainly public pressure and political pressure and I think there are arguments to be had, but it is probably a law that we do need to get behind. The issue is that we are only as good as the information we get given, so if we only have information about sex offenders from the U.K. or from Jersey, Guernsey, et cetera, that is all we can really do to enforce. I think hopefully in the long term we will need to work at building databases that cover Europe, and that will need co-operation with presumably police forces throughout Europe and not just in the U.K. But another area, of course, is that this law is not a panacea because it deals with the fairly

limited scope of recidivism, or re-offending as it is more commonly called. So this is to stop people re-offending, effectively, but we know that it does not necessarily do anything in itself to stop people who might be offending for the first time or people who have never been caught, who have committed offences but never get caught. So there is need for a general vigilance and this law is pretty much limited to that. I am sure the Minister for Home Affairs will perhaps address that in his summing up. We did have issues in particular about the appeals process, but I think it is probably appropriate that I leave that until the Articles are read out and I can go over that.

6.1.6 The Deputy of St. John:

The Minister might be able to give us some indication of the actual time of the ... by the time it is completely rolled out and up and running. I see there is one, 2, 3 and 4, et cetera, but what is the indication of the actual time to really get it fully operational?

6.1.7 The Deputy of Trinity:

From a Health and Social Services point of view, I very much welcome this proposition. It will add to the information available to our services to enable the department to safeguard the public in general, vulnerable adults and children in particular. One important addition is the Court may decide to place restrictions upon the offender; for example, restrictions regarding contact with children in general or with a particular child. Another good point in the law is appointment of a post to co-ordinate the strength of a multi-agency response and managing that risk. This group will involve the police, prison, children's services, mental health and others. The law recognises the risk and managing it to protect further offending. It puts responsibility back to the offender, whereas up until now it has often been the victim. The law will also provide alerts regarding registered offenders which move to the Island and may move in with families. The law is also an expectation under the United Nations Convention on the Rights of the Child, of which this House is committed to signing.

6.1.8 Mr. W.J. Bailhache Q.C., H.M. Attorney General:

I would like to make it plain to Members I am taking the opportunity to speak as the head of the prosecution service and, therefore, with a direct interest in this piece of legislation. At page 14 of the report, as the Minister has already made plain, there is a reference to the expected financial burdens on the Law Officers' Department as though the same did not exist. That is not correct and I would like to make it absolutely plain it is not the Minister's fault that it is not correct. It is entirely the fault of my department because we were consulted and unfortunately this passage, which was prepared some years ago, was prepared on the basis that we were only looking at new cases, new prosecutions, and thought was not given to the reality that there will be a number of applications which are historic. We have to go back over previous cases. When I noticed that the other day at the informal briefing I mentioned it to Members and I would like to make it plain to the Assembly today. There undoubtedly will be a cost for the Law Officers' Department. Quite how extensive that cost is is very difficult to say because it rather depends on how many historic cases are brought forward, but if you look at the projections for the defence lawyers' costs, then it certainly would be fair to say that the costs for the Law Officers' Department will be a proportion of that; it will not be as much as that because some of the work is done for the prosecution lawyers by the Probation Service and so on in preparing all the information in the first place. But there will undoubtedly be a need to put some of these cases out into the private sector because we do not have enough lawyers in the department to cope with them all and, therefore, there will undoubtedly be an additional burden for court and case costs and it is not right that I do not explain that fully to Members today so that you know what that position is. The second thing I wish to say was just to comment briefly on the report of the Scrutiny Panel because I have a couple of comments and I think maybe there are a couple of misunderstandings in that report. I ought to express those views at this stage. Before I do that, can I congratulate the panel on reviewing this piece of legislation. It has been a regular complaint from the Law Officers that panels do not look at the detail of

legislation enough, and I am absolutely delighted that this panel has looked at this very important piece of legislation. **[Approbation]** The first point to make is that it appears as though there is a suggestion that this law goes no further than the equivalent U.K. legislation. I just want to make it quite plain to Members it does go further than the U.K. legislation, not least in allowing for an application for notification requirements on people who have previously been convicted of offences, rather than starting from the moment the law comes into force. There are other differences as well. Secondly, as a matter of procedure, because there is a discussion in the panel report about the appeals procedure, Members will see at the back end of the law is a provision enabling the Royal Court to make rules, and undoubtedly the Royal Court will have to consider making appropriate rules to bring the right procedure into force. I see that the panel is understandably concerned about the question of whether the appeals will take place in public or in camera, in private, and just to advise Members that there is an Article 6 requirement here for the Court to sit in public unless it is appropriate to sit in private. This will need to be considered quite carefully when the rules are drawn up and it may be that it will be possible to draw a distinction between those who have been convicted and those who have not. So, if one has not been convicted, it might be much easier to provide by rule for the Court to sit in private, in camera, for those sorts of applications and it might be less proportionate to consider that in relation to those who have been convicted. But at all events, that is just to explain that there is a mechanism for dealing with this by rule when the rules are drawn up, and these are the sorts of factors that will be considered. Next I would just like to deal with the notification period because I was not sure that I followed the panel's comments about the notification period. The first thing to say, though, is that Article 3 of the law provides that once convicted the offender will be subject to the notification requirements I think indefinitely, if I remember correctly: "A person who in Jersey is convicted of a relevant offence becomes subject to the notification requirements of this law upon conviction." Those then continue until the notification requirements are lifted and there is provision under Article 5(5), as I read the law, for a person to apply to the Court for an order that he or she should no longer be subject to those requirements. The provisions of Article 5, paragraphs 1, 2 and 3, which the panel were looking at, highlight the fact that the Court has to fix a period within which the application not to be subject to the notification cannot be made. In other words, the Court will say: "You are subject to notification procedures and you cannot apply to have those notification procedures taken away from you for 5 years" or for 6 years or for however long the case might be. So, that is, as it were, a minimum period during which the procedures will be in place. I say that because when one is looking at those minimum notification periods the scrutiny report suggests that it might be relevant to look at the Rehabilitation of Offenders (Jersey) Law and, with respect to the panel, I do not agree with that at all. The purpose of the Rehabilitation of Offenders (Jersey) Law is to enable offenders to be brought back into society, assimilated back into society. The purpose of this law is to provide protection for victims and particularly for child victims. Because the purposes are so different, it does not seem to me that it would be right to link the minimum notification period to the rehabilitation of offenders period, not least also because the Court when it sentences an accused person is not necessarily going to have regard only to the protection of potential victims in the future. The Court may have a number of factors which it would take into account in deciding what the right sentence is and, of course, it is the sentence which is very much linked to the rehabilitation period. So, one is not comparing like with like, and I just put that marker down. It is very right and appropriate that the matter should receive further consideration but not right, in my view, that the minimum notification period should be tied to the rehabilitation of offenders. Having said all that, can I say again I congratulate the panel on its report and also to congratulate the Minister on bringing this law forward. From the prosecution perspective, I would say that bringing the law forward has taken longer than I anticipated. Members may recall that I was placed under some pressure by the national media last year when answering questions about whether there was any sinister reason for not having this legislation and I assured the media I thought it was coming forward for debate last September, so we are a little bit later than I had anticipated. But for all that, I would like to commend the Minister on a piece of legislation which seems to me to be very much

needed, very desirable, and to assure Members that as far as the prosecution is concerned the prosecuting authorities will do their bit insofar as the legislation has to be implemented.

6.1.9 Deputy R.G. Le Hérissier:

Just a question and I thank the Attorney General for his comments. It was represented to us ... which is why we have put in the notification period. It was represented to us based on an experience of another jurisdiction that apparently there is a mirroring there of the period spent under rehabilitation of offenders when you can regard your offence as spent and the period of notification. In other words, the 2 allegedly were hand in hand. The thing I would ask then: is the Attorney General really saying ... and he may well be right because obviously one of the points that the Minister has made at many meetings is that essentially you are dealing with a condition that is not curable. Is he saying that in terms of these offences that really the Rehabilitation of Offenders (Jersey) Law should not apply?

The Attorney General:

No, I am not saying the Rehabilitation of Offenders (Jersey) Law should not apply because it may be that there will be occasions when it would not be right to require a person, for example, to disclose a previous conviction. It may be quite unnecessary to the job application that that particular person is going to make. So I think there is room for both pieces of legislation to apply.

The Deputy of St. Mary:

Can I ask a question of the Attorney General about his statement? It was about the financial assessment. I am afraid it is getting late in the day and I did not quite catch what the Attorney General said. Can he confirm that this figure of £559,000 in estimate of the court and case costs, is the Attorney General saying that that is low and, if so, by roughly how much? On the table on page 14 there is a figure for costs of risk assessments. Is that in addition to the Health and Social Services provision for 2 extra social workers to write, basically, risk assessments? I am a bit confused and I just want to make sure that is not double counting, that it is extra money as well.

The Attorney General:

No, I was referring to the costs which my department would incur. Those costs relate to the presentation of cases in court where we might be looking back over historic cases; in other words, not new cases. So we are contemplating a position where there will be extra cases to put to the Court. Now, to the extent that we can do that within our existing resources, of course, we will do so, but depending on the numbers there may well be some cases which we do not have the resources to deal with internally and we, therefore, will want to instruct private sector lawyers, Crown advocates, to do it on behalf of the Attorney General. What usually happens with those cases at the moment where private sector lawyers are engaged is that the cost of engaging them goes against court and case costs. Now, the summary table of court and case costs does not include a provision for the court and case costs of prosecution lawyers, and so to that extent they may be higher than is shown here.

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

I would just like to take the opportunity to thank the Minister for Home Affairs for bringing this forward. When I sat on the Education and Home Affairs Scrutiny Panel my panel did, in fact, question the former Minister on a number of occasions regarding this and we were told on those occasions that it was in the pipeline, it was being reassessed and changes were being made, and I believe that the Minister said this is the 33rd incarnation of the law. So it is really just to say thank you again, to mention what other Members have said when referring to our new Minister for Home Affairs that, indeed, he is taking his role seriously and bringing forward propositions that we all want him to do. I am sure that this will give great comfort to members of the public who have been concerned that Jersey is lacking in this law. On a personal note, I would like to thank him for

taking on board my own comments that I made to him and for including changes within this law. Obviously, I will be supporting it.

6.1.11 Deputy T.M. Pitman:

Like the Constable of St. Lawrence, I would congratulate Senator Le Marquand, future Chief Minister, a real breath of fresh air. I was going to say a really nice guy but that might imply that the others were not, so I will not; I have been told off once. Obviously, as part of the Scrutiny Panel, I fully endorse the earlier comments and concerns of Deputies Le Hérisser and Tadier. Also, as has been said, the issue raised by Deputy Jeune about individuals from Europe and the lack of information has and continues to be a huge concern to us. I cannot overstate that concern, to be quite honest. Other than that, and saving my thoughts for the Articles, I would comment briefly on the data protection issue and the dangers of leakage, if I could. We are all, I am sure, supporting this law because we want to improve the amount of protection offered to those who are vulnerable. That said, and as the panel took the step - quite a strong step - of hearing directly from an offender, it would be truly awful if through the mishandling of this area of the legislation we drove said offenders underground where ultimately the chance of reoffending would be greatly increased. That is a real concern. One final point on this: an inter-rated fact of the need for 100 per cent watertight co-operation with other relevant agencies. I mention this because I really do not want to see another scenario in the set of one I am aware of where a mother of teenage children finds herself with convicted offenders placed either side of her in a home. That sort of thing has surely got to be managed. I know it is going to be very difficult. The Minister has also acknowledged the concerns about dealing with any leakage and how we do so, whether the deterrent to such leakages is strong enough. I would really just like to echo that concern on behalf of the panel. I will obviously be supporting this.

6.1.12 Deputy J.A. Hilton of St. Helier:

I just rise to say, like others, that I wholeheartedly support the proposition brought forward by my Minister. Other Members have mentioned it and I will mention it, particularly to Deputy Jeune. Although I understand her concerns about foreign workers who obviously we do not have the detail of, who might be working with children and adults in nursing homes and all the rest of it, I think that is a matter of concern but I just feel that as we know that we have 250 identified sex offenders in Jersey and approximately 100 to 130 who will be put on the register, I think it is important that she supports the proposition and for the authorities to work with Europe in trying to get some sort of system together whereby information can be shared.

6.1.13 Deputy J.B. Fox:

I would just like to say that I welcome this legislation. It is going to help the law enforcement and the caring agencies tremendously in having this law to be able to fulfil at least some of the inhibitions and the difficulties that have been experienced in the past in bringing forward the information that will identify perpetrators, bearing in mind that on many occasions these perpetrators will be first time offenders and, therefore, will not have a record. So it is important that the information can be gathered and to do that you need to have the network of experienced officers, whether it be from health, police, probation, customs, et cetera, to be able to do this. This law will assist that. It is a valuable way forward.

Deputy A.E. Jeune:

Might I just ask for a point of clarity from the Attorney General on what he said earlier?

The Bailiff:

Yes.

Deputy A.E. Jeune:

When he referred to the U.K. - and I cannot remember when that came into place - did I understand correctly that the U.K. law only covered sex offenders from the date of the law, whereas we will go back in time - and, as Deputy Hilton suggested, it could go back 130 cases - but pre the U.K. law a U.K. offender could be in Jersey that we would not necessarily know about?

The Attorney General:

Yes, that is broadly true, although if he is in Jersey in the example given it will be possible for an application to be made to the Court for him to be subject to the notification requirements under our law. That will be one of the differences between our law and the U.K. law, and there are a few others as well.

The Bailiff:

Very well. I call upon the Minister to reply.

6.1.14 Senator B.I. Le Marquand:

Dealing firstly with the recommendations and comments of the Scrutiny Panel, I also thank the Scrutiny Panel for dealing with the matter so expeditiously. The first recommendation was a question as to the level of penalties in relation to data protection. That I thoroughly agree with and I suspect that we will need to have penalties for at least a maximum of 2 years' imprisonment in relation to that. The second question was raised in relation to dangers of leakages and so on which Deputy Trevor Pitman also raised. I thoroughly agree with that and that is why one needs to have penalties and disciplinary codes and so on. There are extensive arrangements and protocols will have to be set up for data sharing, but that is exactly the same point and I thoroughly agree with them. The third point related to child protection orders and expressed concerns about appeals being heard in camera or not. In fact, it is not just appeals, it would be the initial application as well. There are sufficient powers contained in the law for the Royal Court to make rules in relation to this, so there are specific powers which allow it to sit in camera if orders are going to be made in connection with children. In fact, of course, that would very often apply in relation to child protection orders. In addition to that, the examples mentioned in Article 29, I think it is, in relation to rules are not exhaustive. They are just simply examples. So the Court has ample powers and, in addition to that, as I mentioned to the Scrutiny Panel, the Court has, of course, inherent jurisdiction, so even if it does not have rules it can make up its own mind and sit in camera if it so wishes. I believe these are matters that need to be left to the Rules Committee rather than to legislation. The Rules Committee are very high-powered people involving not just the judges, Attorney General, Solicitor General, Greffier and Viscount but also experienced lawyers in procedural matters. I, of course, was very often involved with them in my days when I was Judicial Greffier. The next point was in relation to the Rehabilitation of Offenders (Jersey) Law. Now, I commissioned my staff to do some work on this today and then forgot, of course, that I was going to a meeting in the lunch hour, so I do not know the results of that, I am afraid, which is a complete failure on my part. I got stuck for half an hour this afternoon in here while a lot of people were sitting out there having a cup of tea and I could not get out to go across to find this out, among other things. I agree with the Attorney General on this, and I had written my notes before I heard him speak. These are entirely different concepts, in my view. The Rehabilitation of Offenders (Jersey) Law is there for a particular purpose and the fundamental issue in relation to these matters, particularly after initial periods, is as to whether a person still represents a risk to children or to vulnerable adults or to particular groups. It seems to me that is an entirely different concept. The question asked by Deputy Le Hérissier was a very interesting question as to whether, in fact, the Rehabilitation of Offenders (Jersey) Law should not be reviewed in the light of this. Of course, there are exceptions in the Rehabilitation of Offenders (Jersey) Law in relation to employment in areas like working with children or vulnerable adults. It does not apply to those categories. You have to declare all convictions and, of course, in addition to that and running parallel with this, we have the safeguards contained in vetting and barring type issues and police checks and so on and so forth. So, I do not

agree with the panel, with respect, in relation to that area. The next area mentioned was the issue of specialist access to forensic psychologists, and I want to read out what probation have said to me in a letter. They said: "We have been preparing for a long time and probably have the best trained team of probation officers anywhere when it comes to this difficult area of work. We use the services of a consultant forensic psychologist [who is named] who both conducts the training and provides case by case consultancy, so I think we do have it covered within our existing resource bid."

Deputy R.G. Le Hérisier:

If I may ask the Minister for clarification, the issue that was raised with us was given that one is dealing with people who are apparently not curable but the situation has to be managed, if someone has not been convicted and is living an ostensibly normal life but feels, to put it perhaps slightly crudely, they cannot control themselves, what access do they have to services in order to prevent them offending, hopefully?

Senator B.I. Le Marquand:

That was the question that was asked of me by the Scrutiny Panel and I did not have the answer then and I am not sure I have the answer now because I think it falls within the remit of the Minister for Health and Social Services. If they have not committed offences and were seeking help, I think they would have to come in through G.P.s (general practitioners) into the normal psychological services. I do not think probation would see themselves having the resources to pick this up or any authority in this area, but I am sorry my level of information is no better than it was then. I hope that dealt with the comments of the panel. If not, no doubt someone will remind me. Deputy Jeune in relation to limits of information, yes, she is absolutely right in relation to that. But, of course, the fact we have limited information is not a reason for not using the information we do have in order to protect people, and I accept that it is highly desirable that levels of information improve. I suspect that that is going to happen at an international level through Europe and that we will eventually be tagged on to that in some form. We are not a big enough entity to be going out and negotiating treaties and things like that of that size on our own, but it is a valid point. The Deputy of St. Mary, the number of police officers on page 9, it is referring to police officers and refers to a case load of approximately 50 per officer. Now, in the initial stages, of course, there is a building-up process as well. It is not just a management process and we are anticipating that there may be more than 100 ... my excellent deputy, the Assistant Minister, referred to 130. She must have got that from somewhere, though I am not sure where that figure came from. So, I think we are okay there, particularly in the building-up phase. I think I have covered Deputy Le Hérisier's points in relation to information release and the need for very clear safeguards. The protocols and things need to be agreed at a high level and within 6 months, and that is contained. The Deputy of St. John, the roll-out period, of course, we are going to be starting as soon as we can but the catch-up period we anticipate is 2 years. There is also this 6-month period for sorting out the full arrangements. So I think it is going to be building up over the first 6 months but approximately 2 years to catch up and then ongoing from there. I hope that answers the Deputy's question. The Attorney General's comments, he referred at one stage to Article 6 and I had a total panic thinking he was referring to Article 6 of the law, but he is, of course, referring to Article 6 of the European Convention on Human Rights and the fact that normally a person has a public trial and that is going to create attention potentially in certain areas. I think I have dealt with Deputy Trevor Pitman's comments, so hopefully, unless any Members think I have not answered their specific questions, I think that has covered everything. I maintain the principle and ask Members to support the principle of the law.

Deputy M. Tadier:

Can I just ask a question of the Minister? Will the Minister be taking these in sections or all together?

The Bailiff:

Well, let us come to that. Let us vote first of all on the principles. So, the appel is called for in relation to the principles. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 36		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator A. Breckon				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of St. Brelade				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Bailiff:

Deputy Le Hérisier, this may seem an unnecessary question, but I take it your panel does not wish this matter to be referred to ...

The Deputy of St. Martin:

May I say that it might be a good juncture to call it a day and come back fresh tomorrow to go through the Articles?

The Bailiff:

Yes, but I was just going to pick up the point that Deputy Tadier raised, though. Minister, it is a matter obviously for you. It would certainly be in order to propose the Articles in parts so in other words take one part at a time and propose the Articles within that part.

Senator B.I. Le Marquand:

I had prepared a batting order which did divide some subsections up in case there was going to be opposition to any particular subsections. I can cover them, but the trouble is if I cover the whole of Part 2 in any sort of detail there is a mass of detail there, and similarly in Part 3. Parts 4, 5, 6, 7 and 8(1) can be conveniently dealt with as parts.

The Bailiff:

It will be a matter for you as to how much detail you take or whether you propose them in less detail and answer questions, but that is a matter for you. Either way, the adjournment is proposed. It seems as if this is going to take some time whichever way it is done.

Senator B.I. Le Marquand:

I think so. I have worked on preparing this for days if not weeks, but I would be very happy to take it all as one without any comment, of course.

The Bailiff:

Well, as long as the debate does not take days or weeks. **[Laughter]**

Deputy M. Tadier:

I can perhaps give some indication. All it is is really I needed to pick up on Article 11 which the panel does have an issue with. So I think it is really just Article 11, although possibly Articles 18 to 26 which deal with the appeals procedure.

The Bailiff:

Well, what I can say, Deputy, is that any Member is entitled on a Bill to any particular Article being voted on separately in case a Member does not like a particular Article. So even if the Minister proposes it in part, so he proposes several Articles at a time, if any Member wants a separate vote on a particular Article that can be done. Very well. I think the adjournment is called for. Do Members agree to adjourn until tomorrow at 9.30 a.m.?

ADJOURNMENT